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Notice No | Contents | Page

EN

[1] Text with EEA relevance

[1] Text with EEA relevance

[1] Text with EEA relevance

II

(Preparatory Acts)

COMMISSION

Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers

(2002/C 203 E/01)

(Text with EEA relevance)

COM(2002) 149 final — 2002/0072(COD)

(Submitted by the Commission on 21 March 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular, Article 137(2) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) This instrument respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union; in particular, it is designed to ensure full compliance with Article 31 of that Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

(2) Moreover, point 7 of the Community Charter of the Fundamental Social Rights of Workers provides, *inter alia*, that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community; this process will be achieved by harmonising progress on these conditions, mainly by forms of work other than permanent contracts such as fixed-term contract work, part-time work, temporary work and seasonal work.

(3) The conclusions of the European Council in Lisbon of 23 and 24 March 2000 set the European Union a new strategic target, namely to 'become the most competitive and most dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion'.

(4) In accordance with the European Social Agenda, which, on the basis of the communication from the Commission, was adopted by the European Council in Nice of 7, 8 and 9 December 2000, with the conclusions of the European Council in Stockholm of 23 and 24 March 2000 and with the Council Decision of 19 January 2001 on the 2001 employment guidelines, a satisfactory and flexible work organisation system has to be put in place, with new flexible contracts offering workers a fair degree of job security and enhanced occupational status, which, at the same time, is compatible with the workers' aspirations and undertakings' needs.

(5) The Commission consulted the social partners on the course of action that could be adopted at Community level with regard to flexibility of working hours and job security of workers on 27 September 1995.

(6) After that consultation, the Commission decided that Community action was desirable and consulted the social partners once again with regard to the content of the planned proposal on 9 April 1996.

(7) In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories had indicated their intention to consider the need for a similar agreement on temporary work.

(8) The general cross-sector organisations, i.e. the UNICE, CEEP and ETUC, informed the Commission in their joint letter of their desire to implement the procedure provided for by Article 138(4) of the EC Treaty; in a joint letter they asked the Commission for an extension of the deadline by three months; the Commission granted this request by extending the negotiation deadline until 15 March 2001.

(9) On 21 May 2001, the social partners acknowledged that their negotiations on temporary work had not produced any agreement.

(10) There are considerable differences in the legal situation of temporary workers within the Union.

(11) Temporary work should meet undertakings' needs for flexibility and employees' needs to reconcile their working and private lives and contribute to job-creation and participation and integration in the labour market.

(12) The aim of this directive is to establish a protective framework for temporary workers which also provides temporary agencies operating in the European Community with a consistent and flexible framework which is conducive to their activities, without imposing any administrative, financial or legal constraints which would impede the creation and development of small and medium-sized undertakings.

(13) This Directive shall be implemented in compliance with the Treaty, specifically with regard to freedom to provide services and freedom of establishment and without prejudice to Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 [1] concerning the posting of workers in the framework of the provision of services.

(14) Directive 91/383/EEC of 25 June 1991 [2] supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship establishes the safety and health provisions applicable to temporary workers.

(15) With respect to basic working and employment conditions, temporary workers should not be treated any less favourably than a 'comparable worker', i.e. a worker in the user undertaking in an identical or similar job, taking into account seniority, qualifications and skills.

(16) However, differences in treatment are acceptable if they are objectively and reasonably justified by a legitimate aim under national law.

(17) In the case of workers who have a permanent contract with their temporary agency, and in view of the special protection such a contract offers, provision should be made to permit exemptions from the rules applicable in the user undertaking.

(18) In view of the need to maintain a certain degree of flexibility in the working relationship, provision should be made for the Member States to be able to delegate to the social partners the task of defining basic working and employment conditions tailored to the specific characteristics of certain types of employment or certain branches of economic activity.

(19) There should be some flexibility in the application of the principle of non-discrimination in cases of missions effected to accomplish a job which, due to its nature or duration, lasts less than six weeks.

(20) An improvement in the minimum protection for temporary workers occasioned by this Directive will enable any restrictions or prohibitions which may have been imposed on temporary work to be reviewed and, if necessary, lifted if they are no longer justified on grounds of the general interest regarding, in particular the protection of workers.

(21) There must be an effective means of safeguarding temporary workers' rights.

(22) In compliance with the principle of subsidiarity and the principle of proportionality under Article 5 of the Treaty, the aims of the action envisaged above cannot be achieved satisfactorily by the Member States, since the goal is to establish a harmonised Community-level framework of protection for temporary workers; owing to the scale and the impact of the action planned, these objectives can best be met at Community level by introducing minimum requirements applicable throughout the European Community; this directive confines itself to what is required for achieving these objectives,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This directive applies to the contract of employment or employment relationship between a temporary agency, which is the employer, and the worker, who is posted to a user undertaking to work under its supervision.

2. This directive applies to public and private undertakings engaged in economic activities whether or not they are operating for gain.

3. Member States may, after consulting the social partners, provide that this directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported training, integration or vocational retraining programme.

Article 2

Aim

The purpose of this Directive is:

1. to improve the quality of temporary work by ensuring that the principle of non-discrimination is applied to temporary workers;

[1] OJ L 18, 21.1.1997, p. 1.

[2] OJ L 206, 29.7.1991, p. 19.

2. to establish a suitable framework for the use of temporary work to contribute to the smooth functioning of the labour and employment market.

Article 3

Definition

1. For the purposes of this directive:

(a) 'worker' means any person who, in the Member State concerned, is protected as a worker under national employment law;

(b) 'comparable worker' means a worker in the user undertaking occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills;

(c) 'posting' means the period during which the temporary worker is placed at the user undertaking;

(d) 'basic working and employment conditions': working and employment conditions relating to:

(i) the duration of working time, rest periods, night work, paid holidays and public holidays;

(ii) pay;

(iii) work done by pregnant women and nursing mothers, children and young people;

(iv) action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

2. This directive shall be without prejudice to national law as regards the definition of contract of employment or employment relationship. However, Member States shall not exclude from the scope of this Directive contracts of employment or employment relationships solely because they concern:

(a) part-time workers within the meaning of Council Directive 97/81/EC of 15 December 1997;

(b) fixed-term contract workers within the meaning of Council Directive 99/70/EC of 28 June 1999;

(c) persons on a posting at a user undertaking.

Article 4

Review of restriction or prohibitions

1. Member States, after consulting the social partners in accordance with legislation, collective agreements and national practices, shall review periodically any restrictions or prohibitions on temporary work for certain groups of workers or sectors of economic activity in order to verify whether the specific conditions underlying them still obtain. If they do not, the Member States should discontinue them.

2. The Member States shall notify the Commission of the result of said review. If the restrictions or prohibitions are maintained, the Member States shall inform the Commission why they consider that they are necessary and justified.

The restrictions or prohibitions which could be maintained shall be justified on grounds of the general interest regarding, in particular, the protection of workers.

CHAPTER II

EMPLOYMENT AND WORKING CONDITIONS

Article 5

The principle of non-discrimination

1. Temporary workers during their posting, shall receive at least as favourable treatment, in terms of basic working and employment conditions, including seniority in the job, as a comparable worker in the user enterprise, unless the difference in treatment is justified by objective reasons. Where appropriate, the *pro rata temporis* principle applies.

2. Member States may provide that an exemption be made to the principle established in paragraph 1 when temporary workers who have a permanent contract of employment with a temporary agency continue to be paid in the time between postings.

3. Member States may give the social partners at the appropriate level the option of concluding collective agreements which derogate from the principle established in paragraph 1 as long as an adequate level of protection is provided for temporary workers.

4. Without prejudice to the provisions of paragraphs 2 and 3 above, Member States may provide that paragraph 1 shall not apply where a temporary worker works on an assignment or series of assignments with the same user enterprise in a post which, due to its duration or nature, can be accomplished in a period not exceeding six weeks.

Member States shall take appropriate measures with a view to preventing misuse in the application of this paragraph.

5. When this directive calls for a comparison to be made with a comparable worker in the user undertaking but no such worker exists, reference shall be made to the collective agreement applicable in the user undertaking; if no such collective agreement exists, the comparison will be made by reference to the collective agreement applicable to the temporary work agency; if no collective agreement is applicable, the basic working and employment conditions of temporary workers will be determined by national legislation and practices.

6. The implementing procedures for this Article shall be defined by the Member States after consultation of the social partners. The Member States may also entrust the social partners at the appropriate level with the task of defining these procedures for this chapter by means of a negotiated agreement.

Article 6

Access to permanent quality employment

1. Temporary workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment.

2. Member States shall take any action required to ensure that any clauses banning or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary worker after his posting are null and void or may be declared null and void.

3. Temporary agencies shall not charge workers any fees in exchange for arranging for them to be recruited by a user undertaking.

4. Temporary workers shall be given access to the social services of the user undertaking unless there are objective reasons against this.

5. Member States shall take suitable measures or shall promote dialogue between the social partners, in accordance with their national traditions and practices in order to:

— improve temporary workers' access to training in the temporary agencies, even in the periods between their postings, in order to enhance their career development and employability;

— improve temporary workers' access to training for user undertakings' workers.

Article 7

Representation of temporary workers

Temporary workers shall count for the purposes of calculating the threshold above which bodies representing workers provided for under national and Community legislation should be formed at the temporary agency.

Member States may provide that, under conditions that they define, these workers count for the purposes of calculating the threshold above which bodies representing workers provided for by national and Community legislation should be formed in the user undertaking.

Article 8

Information of workers' representatives

Without prejudice to national and Community provisions which are more stringent and/or more specific on information and consultation, the user undertaking must provide suitable information on the use of temporary workers when providing information on the employment situation in that undertaking to bodies representing the workers set up in accordance with national and Community legislation.

CHAPTER III

FINAL PROVISIONS

Article 9

Minimum requirements

1. This directive does not prejudice the Member States' right to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers or to promote or permit collective agreements concluded between the social partners which are more favourable to workers.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.

Article 10

Penalties

Member States shall lay down rules on sanctions applicable in the event of infringements of national provisions enacted under this directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective proportionate and disuasive. Member States shall notify these provisions to the Commission by the date given in Article 11 at the latest and any subsequent amendment within good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this directive.

Article 11

Implementation

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive by [two years after adoption] at the latest, or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this directive are being attained. They shall forthwith inform the Commission thereof.

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

Article 12

Review by the Commission

(Five years after adoption of this directive) at the latest, the Commission shall, in consultation with the Member States and social partners at Community level, review application thereof with a view to proposing, where appropriate, the necessary amendments to the Parliament and the Council.

Article 13

Entry into force

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

Article 14

This directive is addressed to the Member States.

Proposal for a Decision of the European Parliament and of the Council amending Decision No 276/1999/EC adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks

(2002/C 203 E/02)

COM(2002) 152 final — 2002/0071(COD)

(Submitted by the Commission on 22 March 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 153(2) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Decision No 276/1999/EC [1] was adopted for a period of four years.

(2) In accordance with Article 6(4) of Decision No 276/1999/EC, the Commission has submitted to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions an evaluation report [2] on the results obtained at the end of two year in implementing the action lines set out in Annex I to that Decision.

(3) The findings of the evaluation formed part of the basic documentation for a workshop on safer use of new online technologies at which leading experts in the field examined the likely future evolution of the issues addressed by the action plan laid down in Decision No 276/1999/EC (hereafter referred to as the 'action plan') and made recommendations to the Commission.

(4) New online technologies, new users and new usage patterns create new dangers and exacerbate existing dangers at the same time as opening a wealth of new opportunities.

(5) There is a clear need for coordination within the safer Internet field, both on the national and the European level. There should be a large degree of decentralisation using networks of national focal points. The involvement of all the relevant actors, especially a greater number of content providers in the different sectors, should be encouraged. The Commission should act as a facilitator for and contributor to European and global cooperation. Cooperation between the Community and candidate countries should be enhanced.

(6) More time is needed for actions to be implemented to enhance networking, to achieve the objectives of the action plan and to take account of new online technologies.

(7) The financial framework constituting the principal point of reference for the budgetary authority during the annual budgetary procedure should be amended accordingly.

(8) The Commission should be required to present a second report on the results obtained in implementing the action lines after four years and a final report at the end of the action plan.

(9) The list of applicant countries able to participate should be amended by including Malta and Turkey.

(10) The Action Plan should be extended for a further two years duration which should be regarded as a second phase; in order to make specific provision for the second phase, the action lines should be amended, taking account of the experience and the findings of the evaluation report.

(11) Decision No 276/1999/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

Decision No 276/1999/EC is amended as follows:

1. The title is replaced by the following:

'Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a Multiannual Community Action Plan on promoting safer use of the Internet and new online technologies by combating illegal and harmful content (*e*Safe)'

2. Article 1(2) is replaced by the following:

'The action plan shall cover a period of six years from 1 January 1999 to 31 December 2004.'

[1] OJ L 33, 6.2.1999, p. 1.

[2] COM(2001) 690, 23.11.2001.

3. Article 1(3) first subparagraph is replaced by the following:

'The financial framework for the implementation of the action plan for the period from 1 January 1999 to 31 December 2004 is hereby set at 38,3 million euro.'

4. Article 6(4) is replaced by the following:

'At the end of two years, at the end of four years and at the end of the Action Plan, the Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, once the committee referred to in Article 5 has examined it, an evaluation report on the results obtained in implementing the action plan referred to in Article 2. The Commission may present, on the basis of those results, proposals for adjusting the orientation of the action plan.'

5. Article 7(2) is replaced by the following:

'2. The action plan shall be open to participation of applicant countries on the following basis:

(a) those from central and eastern Europe (CEECs), in accordance with the conditions established in the Europe Agreements, in their additional protocols, and in the decisions of the respective Association Councils;

(b) Cyprus, Malta and Turkey, in accordance with bilateral agreements to be concluded.'

6. Annex I is amended as set out in the Annex I to this Decision.

7. Annex II is replaced by the text in the Annex II to this Decision.

Article 2

This Decision is addressed to the Member States.

ANNEX I

Annex I to Decision No 276/1999/EC is amended as follows:

1. Under the title Action Lines the following third subparagraph is added:

'Following the initial phase covering the period 1 January 1999 to 31 December 2002, a second phase will be organised during the period 1 January 2003 to 31 December 2004. This will build on the achievements of the initial phase while making the necessary adjustments to take account of experience gained and of the impact of new technology. In particular:

(i) The coverage of safer use will be extended to new online technologies, including mobile and broadband content, online games, peer-to-peer file transfer, text and enhanced messages and all forms of real-time communications such as chat rooms and instant messages;

(ii) Action will be taken to ensure that areas of illegal and harmful content and conduct of concern are covered, including racism and violence;

(iii) More active involvement of the content and media industry will be encouraged, and collaboration with government-backed bodies active in the area will be expanded;

(iv) Enhanced networking will be encouraged among project participants in the various action lines, particularly in the fields of hotlines, content rating, self-regulation and awareness-raising;

(v) Steps will be taken to associate candidate countries in ongoing activities and to share experience and know-how, and to increase links and encourage collaboration with similar activities in third countries and with international organisations.'

2. In paragraph 1.1 the following sixth subparagraph is added:

'During the second phase, the aim will be to improve yet further the operational effectiveness of the network, to work closely with safer Internet awareness actions, to adapt best practice guidelines to new technology, to complete the network's coverage in the Member States, to provide practical assistance to candidate countries wishing to set up hotlines and to expand links with hotlines outside Europe.'

3. In paragraph 1.2 the following fourth subparagraph is added:

'During the second phase, further advice and assistance will be provided so as to ensure co-operation at Community level through networking of the appropriate structures within Member States and through systematic review and reporting of relevant legal and regulatory issues, to help develop comparable assessment methodologies of the self-regulation framework, to help adapt self-regulatory practices to new technology by providing systematic information on relevant developments in such technology and the way it is used, to provide practical assistance to candidate countries wishing to set up self-regulatory bodies and to expand links with self-regulatory bodies outside Europe.'

4. In paragraph 2.1 the following seventh subparagraph is added:

'During the second phase, there will be a focus on benchmarking of filtering software and services (especially performance, usability, suitability for European markets and new forms of digital content). Assistance for developing filtering technology will be carried forward under the Community research programme in close liaison with activities relating to filtering under the Action Plan.'

5. In paragraph 2.2 the following third subparagraph is added:

'During the second phase, support will be given to bringing together the industries and parties concerned such as content providers, regulatory and self-regulatory bodies, software and Internet rating organisations and consumer associations, in order to foster conditions propitious for developing and implementing rating systems which are easy for content-providers and for consumers to understand and use, which provide European parents and educators with the necessary information to make decisions in accordance with their cultural and linguistic values, and which take account of the convergence of telecommunications, audiovisual media and information technology.'

6. Paragraph 3.2 is amended as follows:

(a) The fourth subparagraph is replaced by the following:

'The purpose of the Community support is to pump-prime broadly-based awareness actions and to provide overall coordination and exchange of experience so that lessons can be drawn from the results of the action on an ongoing basis (for instance by adapting the material distributed). The use of existing networks will permit cost saving, but additional financing is required to produce the relevant content and reach the intended target groups.'

(b) The following fifth subparagraph is added:

'During the second phase, support will be given to exchange of best practice on new-media education by means of a European network for raising awareness of safer use of the Internet and new online technologies, supported by

— a comprehensive trans-national repository (web portal) of relevant information and awareness resources;

— applied sociological research involving all interested parties (e.g. education, official and voluntary children's welfare bodies, parents associations, industry, law-enforcement) into children's use of new technologies to identify educational and technological means for protecting them from harm.

The network will also provide technical assistance to candidate countries wishing to set up awareness actions and expand links with awareness activities outside Europe.'

7. In paragraph 4.2 the second, third and fourth subparagraphs are replaced by the following:

'The Commission will therefore organise at frequent intervals seminars and workshops addressing the various themes covered by the action plan, or a combination of such themes. Participation should include industry, user, consumer and citizens rights groups and government bodies involved in industry regulation and law enforcement, as well as leading experts and researchers. The Commission will seek to ensure broad participation from the EEA countries, from third countries and international organisations.'

ANNEX II

INDICATIVE BREAKDOWN OF EXPENDITURE

1. Creating a safer environment	20-26 %
2. Developing filtering and rating systems	20-26 %
3. Encouraging awareness actions	42-46 %
4. Support actions	3-5 %
Total:	100 %

Proposal for a Regulation of the European Parliament and of the Council on additives for use in animal nutrition

(2002/C 203 E/03)

COM(2002) 153 final — 2002/0073(COD)

(Submitted by the Commission on 22 March 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37 and 152(4)(b) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The free movement of safe and wholesome food and feed is an essential aspect of the internal market and contributes significantly to the health and well being of citizens, and to their social and economic interests.

(2) A high level of protection of human life and health should be assured in the pursuit of Community policies.

(3) In order to protect human health, animal health and the environment, feed additives should undergo a safety assessment through a Community procedure before being placed on the market, used or processed within the Community.

(4) Action by the Community relating to human health, animal health and the environment should be based on the precautionary principle.

(5) In accordance with Article 153 of the Treaty, the Community is to contribute to promoting the right of consumers to information.

(6) Experience with the application of Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs [1] has shown that it is necessary to review all the rules on additives to take into account the need to ensure a greater degree of protection of animal and human health and of the environment. It is also necessary to take into account the fact that technological progress has made available new types of additives, such as those to be used on silage or in drinking water.

(7) The basic principle in this field should be that only those additives approved under the procedure set out in this Regulation may be placed on the market, used and processed in animal feeding under conditions foreseen by the authorisation.

(8) Categories of feed additives should be defined in order to facilitate the assessment procedure in view of the authorisation. Amino acids which are currently covered by Council Directive 82/471/EEC of 30 June 1982 concerning certain products used in animal nutrition [2] should be included as a category of feed additives, and therefore transferred from the scope of that Directive to this Regulation.

(9) In order to ensure a harmonised scientific assessment of feed additives such assessment should be carried out by the European Food Safety Authority. The applications should be supplemented by residue studies in order to assess the establishment of Maximum Residues Limits (MRLs).

(10) It is recognised that scientific risk assessment alone cannot, in some cases, provide all the information on which a risk management decision should be based, and that other factors relevant to the matter under consideration should legitimately be taken into account, including societal, economic or environmental factors, feasibility of controls and the benefit for the animal or for the consumer of animal products. Therefore, the authorisation of an additive should be granted by the Commission.

(11) Competence for authorising feed additives and establishing conditions for their use and for maintaining and publishing a register of authorised feed additives should be conferred on the Commission according to the procedure by which a close collaboration between Member States and the Commission is guaranteed in the framework of the Standing Committee on the Food Chain and Animal Health.

(12) It is necessary to introduce, where appropriate, an obligation to implement a post-market monitoring plan in order to trace and identify any direct or indirect, immediate, delayed, or unforeseen effect resulting from the use of feed additives on human or animal health or the environment.

[1] OJ L 270, 14.12.1970, p. 1.

[2] OJ L 213, 21.7.1982, p. 8.

(13) In order to allow technical and scientific progress to be taken into account it is necessary to revise regularly the authorisations of feed additives. Time limited authorisations will allow this review.

(14) A register of authorised feed additives should be established, including product specific information and sampling and detection methods. Non-confidential data should be made available to the public.

(15) It is necessary to establish rules to take into account additives which are already on the market and which were authorised under Directive 70/524/EEC, and amino acids currently authorised under Directive 82/471/EEC, as well as for additives for which the authorisation procedure is in progress.

(16) The Scientific Steering Committee stated in its opinion of 28 May 1999 that: 'regarding the use of antimicrobials as growth promoting agents, the use of agents from classes which are or may be used in human or veterinary medicine (i.e., where there is a risk of selecting for cross-resistance to drugs used to treat bacterial infections) should be phased out as soon as possible and ultimately abolished'. The second opinion of the Scientific Steering Committee on anti-microbial resistance adopted on 10-11 May 2001 confirmed the need to provide a sufficient time to replace those antimicrobials by alternative products: 'Thus, the phase-out process must be planned and coordinated since precipitous actions could have repercussions for animal health'. Therefore, it is necessary to set a date after which the use of the antibiotics still authorised for use as growth promoting agents will be forbidden, while allowing sufficient time for the development of alternative products to replace those antibiotics. Provision should also be made to forbid the authorisation of any further antibiotics for use as feed additives.

(17) Certain substances with coccidiostatic effects should be considered as feed additives for the purpose of this Regulation.

(18) Within the framework of the phasing out of antibiotics used as growth promoters and in order to ensure a high level of protection of animal health, the European Food Safety Authority will be asked to review the progress in the development of alternative substances and alternative rearing methods before 2005.

(19) Detailed labelling of the product should be required since it enables the final user to make a choice in full knowledge of the facts and creates fewest obstacles to trade and facilitates fairness of transactions.

(20) Regulation (EC) No . . . of the European Parliament and of the Council on genetically modified food and feed provides for an authorisation procedure for the placing on the market of genetically modified food and feed, including feed additives consisting of, containing or produced from genetically modified organisms. Since the objectives of Regulation (EC) No . . . of the European Parliament and of the Council on genetically modified food and feed are different from those of this Regulation, feed additives should undergo an authorisation procedure in addition to the authorisation procedure provided for by this Regulation prior to their placing on the market.

(21) Fees could be charged for the consideration of dossiers by the European Food Safety Authority, subject to the outcome of the report provided for in Article 45 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January laying down the general principles and requirements of food law, establishing the European Food Safety Authority, and laying down procedures in matters of food safety ([1]).

(22) Articles 53 and 54 of Regulation 178/2002 establish procedures for taking emergency measures in relation to feed of Community origin or imported from a third country. They allow the Commission to adopt such measures in situations where feed is likely to constitute a serious risk to human health, animal health or the environment and where such risk cannot be contained satisfactorily by measures taken by the Member State(s) concerned.

(23) Technological progress and scientific developments should be taken into account when implementing this Regulation.

(24) Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([2]), they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

(25) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

([1]) OJ L 31, 28.1.2002, p. 1.

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

(26) Directive 70/524/EEC should be repealed. However labelling provisions applicable to compound feedingstuffs incorporating additives should be maintained until a revision of Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs [1] will be completed. Points 3 and 4 of the Annex of Directive 82/471/EEC should be deleted in order to enable the transfer of amino acids and their salts to this Regulation.

(27) Guidelines addressed to the Member States for the presentation of an application dossier are contained in Directive 87/153/EEC. The verification of the conformity of dossiers is conferred to the European Food Safety Authority. It is therefore necessary to repeal Directive 87/153/EEC, maintaining however the Annex in place until implementing rules have been adopted.

(28) A transitional period is needed to avoid disruptions in the use of feed additives. Therefore, until the rules of this Regulation are applicable, the substances already authorised should be permitted to remain on the market and be used under the conditions of the current legislation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The purpose of this Regulation is to establish a Community procedure for authorisation and supervision of feed additives and to lay down rules to ensure labelling of feed additives in order to provide the basis for the assurance of a high level of protection of human health, animal health and welfare, environment and users' interests in relation to feed additives, whilst ensuring the effective functioning of the internal market.

Article 2

Scope

1. This Regulation shall apply to chemically defined substances or micro-organisms not normally used as feed materials which are intentionally added to feedingstuffs or drinking water, hereinafter referred to as 'feed additives'.

2. This Regulation shall not apply to:

(a) processing aids, nor to technological but unavoidable residues of processing aids in the final product;

(b) veterinary medicinal products as defined in Directive 2001/82/EC [2].

3. Where necessary, it may be determined, in accordance with the procedure referred to in Article 21(2), whether a substance or a micro-organism is a feed additive within the scope of this Regulation.

Article 3

Definitions

For the purpose of this Regulation, the definitions of 'feed' or 'feedingstuff', 'feed business', 'feed business operator', 'placing on the market' and 'traceability' laid down in Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority, and laying down procedures in matters of food safety shall apply.

The following definitions shall also apply:

(a) 'feed materials' means products as defined in Article 2(a) of Council Directive 96/25/EC [3];

(b) 'complementary feedingstuffs' means products as defined in Article 2(e) of Directive 79/373/EEC;

(c) 'premixtures of feed additives' means mixtures of feed additives or mixtures of one or more feed additives with feed materials used as carriers, not intended to direct feeding of animals but intended for distribution to establishments registered or approved according to Council Directive 95/69/EC [4];

(d) 'compound feedingstuffs' means products as defined in Article 2(b) of Directive 79/373/EEC;

(e) 'first placing on the market' means the initial placing on the market of an additive after its manufacture, the import of an additive, or, where an additive has been incorporated into feed without being placed on the market, the first placing on the market of that feed;

(f) 'processing aids' means any substances not consumed as a feedingstuff by itself, intentionally used in the processing of feedingstuffs or feed materials to fulfil a technological purpose during treatment or processing and which do not remain in the final product;

[1] OJ L 86, 6.4.1979, p. 30.

[2] OJ L 311, 28.11.2001, p. 1.

[3] OJ L 125, 13.5.1996, p. 35. Directive as last amended by Directive 2001/46/EC of the European Parliament and of the Council (OJ L 234, 1.9.2001, p. 55).

[4] OJ L 332, 30.12.1995, p. 15. Directive as last amended by Directive 1999/20/EC (OJ L 80, 25.3.1999, p. 20).

(g) 'antimicrobial agents' means substances produced either synthetically or naturally by bacteria, fungi or plants, used to kill or inhibit the growth of micro-organisms including bacteria, viruses and fungi, and of parasites, in particular protozoa;

(h) 'antibiotic' means antimicrobial produced by or derived from a micro-organism, which destroys or inhibits the growth of other micro-organisms;

(i) 'maximum residue limit' means the maximum concentration of residue resulting from the use of an additive in animal nutrition which may be accepted by the Community to be legally permitted or recognised as acceptable in or on a food;

(j) 'growth promoter' means a chemically defined substance which, when fed to animals, improves production performance parameters.

CHAPTER II

AUTHORISATION, USE, MONITORING AND TRANSITIONAL MEASURES APPLICABLE FOR EXISTING FEED ADDITIVES

Article 4

Placing on the market, processing and use

1. No person shall place on the market, process or use a feed additive unless:

(a) it is covered by an authorisation granted in accordance with this Regulation;

(b) the conditions for use set out in this Regulation and in the authorisation of the substance are met; and

(c) the conditions on labelling set out in this Regulation are met.

2. In the case of additives belonging to categories (d) and (e) as provided for in Article 7(1) and of additives consisting of, containing or produced from genetically modified organisms (GMOs), no person shall place the product on the market other than the authorisation holder named in the authorisation Regulation or a person acting under his written authority.

Article 5

Authorisation

1. Any person seeking an authorisation for a feed additive shall submit an application in accordance with Article 8.

2. An authorisation shall not be granted, refused, renewed, modified, suspended or revoked except on the grounds and under the procedures set out in this Regulation, or in accordance with Articles 53 and 54 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

3. The applicant for an authorisation shall be established in the Community.

Article 6

Conditions for authorisation

1. No feed additive shall be authorised unless the applicant for such authorisation has adequately and sufficiently demonstrated that, when used in accordance with conditions to be set out in the Regulation authorising the use of the additive, it satisfies the requirements of paragraph 2, and has at least one of the characteristics set out in paragraph 3.

2. The feed additive must not:

(a) present a risk to animal health, human health or the environment,

(b) mislead the user,

(c) harm the consumer by impairing the distinctive features of animal products.

3. The feed additive must:

(a) favourably affect the characteristics of feed,

(b) favourably affect the characteristics of animal products,

(c) satisfy the nutritional needs of animals,

(d) favourably affect the environmental consequences of animal production.

4. Antibiotics shall not be authorised as feed additives.

5. By derogation of paragraph 4 certain substances with a coccidiostatic effect and presented for continuous use mixed in feed or drinking water, referred to hereafter as coccidiostats, are considered as feed additives for the purpose of this Regulation.

Article 7

Categories of feed additives

1. A feed additive shall be allocated to one or more of the following categories, depending on its functions and properties, in accordance with the procedure set out at Articles 8 to 10:

(a) technological additives: any substance added to feed for a technological purpose;

(b) sensory additives: any substance, the addition of which to feed improves or changes the organoleptic properties of the feed, or the visual characteristics of the food derived from animals;

(c) nutritional additives: any substance used for nutritional purposes;

(d) zootechnical additives: any additive used to affect favourably the performance of animals in good health or used to affect favourably the environment;

(e) coccidiostats.

2. Within these categories referred to in paragraph 1, feed additives shall further be allocated within one or more of the functional groups mentioned in Annex I, according to their principal function, in accordance with the procedure specified in Articles 8 to 10.

3. Where necessary, as a result of scientific progress or technological development, additional feed additive categories and functional groups may be established in accordance with the procedure referred to in Article 21(2).

Article 8

Application for authorisation

1. An application for an authorisation as provided for in Article 5 shall be submitted to the European Food Safety Authority, hereinafter referred to as 'the Authority'.

2. The Authority shall acknowledge receipt of the application, in writing, to the applicant within 15 days of its receipt. The acknowledgement shall state the date of receipt of the application.

3. The application shall be accompanied by the following particulars and documents:

(a) the name and the address of the applicant;

(b) the designation of the feed additive, including a proposal for its classification by category and functional group under Article 7, and its specifications, including purity criteria;

(c) a description of the method of production, manufacturing and intended uses of the feed additive, of the method of analysis of the additive in feed and, where appropriate, of the analytical method for the determination of residues of the feed additive in food;

(d) a copy of the studies which have been carried out and any other material which is available to demonstrate that the feed additive satisfies the criteria laid down in Article 6(2) and (3);

(e) proposed conditions for placing the feed additive on the market, including labelling requirements and, where appropriate, specific conditions for use and handling, use levels in complementary feedingstuffs and animals species for which the feed additive is intended;

(f) a written statement that three samples of the feed additive have been sent by the applicant directly to the Community reference laboratory referred to in Article 20 for the purpose of validation of the method of analysis, in accordance with the requirements set out in Annex II;

(g) for additives proposed in paragraph (b) as not belonging to category (a) and (b) referred to in Article 7(1), and in the case of additives consisting of, containing or produced from GMOs, a proposal for post-market monitoring;

(h) a summary of the dossier;

(i) for additives consisting of, containing or produced from GMOs, details of the Community authorisation according to Regulation (EC) No . . .

4. After consultation of the Authority, rules for the implementation of this Article may be established in accordance with the procedure referred to in Article 21(2).

Until the adoption of these implementing rules the application shall be made in accordance with the Annex of Directive 87/153/EEC.

5. The Authority shall publish detailed guidance concerning the preparation, presentation, and validation of the applications, not later than one year after the entry into force of this Regulation.

Article 9

Opinion of the Authority

1. The Authority shall give an opinion within six months of the receipt of a valid application.

2. The Authority may, where appropriate, request the applicant to supplement the particulars accompanying the application within a time limit specified by the Authority. Where the Authority requests supplementary information, the time limit laid down in paragraph 1 shall be suspended until such time that the information has been provided. Likewise, the applicant may at the request of the Authority, or on his own initiative prepare oral or written explanations within a specified time limit.

3. In order to prepare its opinion, the Authority:

(a) shall verify that the particulars and documents submitted by the applicant are in accordance with Article 8, and undertake a risk assessment in order to determine whether the feed additive complies with the criteria laid down in Article 6(2) and (3);

(b) shall verify the report of the Community Reference Laboratory;

(c) shall make the application and any supplementary information supplied by the applicant available to Member States and to the Commission;

(d) shall make the summary of the dossier mentioned in Article 8(3)(h) available to the public;

(e) may ask any official scientific body of the Member States working in the field of animal nutrition to contribute to the assessment of the feed additive.

4. In the event of an opinion in favour of authorising the feed additive, the opinion shall also include the following elements:

(a) the name and address of the applicant;

(b) the designation of the feed additive including its categorisation and allocation within functional groups provided for in Article 7, its specification, including purity criteria and method of analysis;

(c) depending on the results of the risk assessment, specific conditions or restrictions in relation to handling, use levels, the proportion of incorporation when used in feed or drinking water, and animal species and categories of animal species for which the additive is to be used, and post-market monitoring requirements;

(d) specific additional requirements for the labelling of the feed additive necessary as result of conditions and restrictions imposed under (c);

(e) a proposal for the establishment of Maximum Residues Limits (MRLs) in the relevant foodstuffs of animal origin, unless the opinion of the Authority concludes that the establishment of MRLs is not necessary for the protection of the consumers or MRLs have already been established in Annex I or III of Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin [1].

5. The Authority shall forward its opinion to the Commission, the Member States and the applicant, including its assessment of the feed additive and stating the reasons for its conclusion.

6. The Authority shall make its opinion public, after deletion of any information identified as confidential in accordance with Article 18(2).

Article 10

Authorisation by the Community

1. Within three months of receipt of the opinion of the Authority, the Commission shall prepare a draft of the Regulation to be adopted in respect of the application, taking into account the requirements of Article 6(2) and (3), Community law and other legitimate factors relevant to the matter under consideration and in particular benefits for animal health and welfare and for the consumer of animal products.

Where the draft Regulation is not in accordance with the opinion of the Authority, the Commission shall provide an explanation of the reasons for the differences.

In exceptionally complex cases, the three-months deadline may be extended.

2. In the event of a draft Regulation which envisages the granting of authorisation, the draft Regulation shall include the elements mentioned in Article 9(4)(b), (c) and (d).

3. In the event of a draft Regulation which envisages the granting of authorisation for additives belonging to categories (d) and (e) referred to in Article 7(1) and also for additives consisting of, containing or produced from GMOs, the draft Regulation shall include the name of the authorisation holder, and, where appropriate, the unique code attributed to the GMO as referred to in the Regulation (EC) No ... [of the European Parliament and of the Council concerning traceability and labelling of genetically modified organisms and traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC].

4. Where the Commission considers that levels of residues of an additive in food from animals fed with that additive might have a detrimental effect on human health it shall include in the draft Regulation Maximum Residues Limits (MRLs) for the active substance or for its metabolites in the relevant foodstuffs of animal origin. In this case the active substance shall be considered for the purposes of Council Directive 96/23/EC [2] as falling under Annex I to that Directive. Where an MRL for the substance concerned has already been established in Community rules, that MRL shall also apply to residues of the active substance or its metabolites originating from the use of the substance as feed additive.

[1] OJ L 224, 18.8.1990, p. 1.

[2] OJ L 125, 23.5.1993, p. 10.

5. The Regulation concerning the application for authorisation of a feed additive shall be adopted in accordance with the procedure referred to in Article 21(2).

6. The Commission shall without delay inform the applicant of the decision taken.

7. The authorisation granted in accordance with the procedure laid down in this Regulation shall be valid throughout the Community for ten years and shall be renewable in accordance with Article 15. The authorised feed additive shall be entered in the Register referred to in Article 17 (hereinafter referred to as 'the Register'). Each entry in the Register shall state the date of authorisation and shall include the particulars referred to in paragraphs 2 and 3.

8. The granting of authorisation shall be without prejudice to the general civil and criminal liability of any feed operator in respect of the feed additive concerned.

Article 11

Status of existing products

1. By way of derogation from Article 4, a feed additive which has been placed on the market pursuant to Directive 70/524/EEC and an amino acid, salt of an amino acid, and analogous substance which was listed in points 3 and 4 of the Annex to Directive 82/471/EEC before the date referred to in the second paragraph of Article 26 of this Regulation, may be placed on the market and used in accordance with the conditions specified in the entries in the annexes to Directives 70/524/EEC or 82/471/EEC relating to that substance, provided that the following conditions are met:

(a) within one year of the entry into force of this Regulation, each person who places the feed additive on the market shall notify this fact to the Authority. This notification shall be accompanied by the particulars mentioned in Article 8(3)(a) to (c);

(b) within one year of the notification mentioned under (a), the Authority shall, after verification that all the information required has been submitted, notify the Commission that it has received the information required under this Article. The concerned products shall be entered in the Register. Each entry in the Register shall mention the date on which the concerned product was first entered in the Register and, where applicable, the expiry date of the existing authorisation.

2. An application shall be submitted in accordance with Article 8, at the latest one year before the expiry date of the authorisation given pursuant with Directive 70/524/EEC for additives with a limited authorisation period, and within a maximum of seven years after the entry into force of this Regulation for additives authorised without a time limit. For the substances belonging to the category of coccidiostats, an application shall be submitted within a maximum of four years after the entry into force of this Regulation. A detailed calendar listing the priority order for the re-evaluation of the different classes of additives may be adopted in accordance with the procedure referred to in Article 21(2).

3. Products entered in the Register shall be subject to the provisions of this Regulation, in particular Articles 13, 14, 15 and 16, which shall apply to such products as if they had been authorised pursuant to Article 10.

4. In case of authorisations not issued to a specific holder, any person who imports or manufactures the products referred to in this Article shall submit the information or the application to the Authority.

5. Where the notification and accompanying particulars referred to in paragraph 1(a) are not supplied within the period specified or are found to be incorrect, or where an application is not submitted as required by paragraph 2 within the period specified, a regulation shall be adopted, in accordance with the procedure referred to in Article 21(2), requiring the additives concerned to be withdrawn from the market. Such a measure may provide for a limited period of time within which existing stocks of the product may be used up.

Article 12

Phasing out

By derogation from Article 5 and Article 11, the placing on the market and use as antibiotic growth promoters of the following substances mentioned in Annex B under A of Chapters I and II of Directive 70/524/EEC: sodium monensin, sodium-salinomycin, flavophospholipol and avilamycin, shall be prohibited from 1 January 2006 and, from that date, those substances shall be deleted from the Register.

Article 13

Supervision

1. After an additive has been authorised in accordance with this Regulation, any person using or placing on the market that substance, or a feedingstuff into which it has been incorporated shall ensure that any conditions or restrictions which have been imposed on the placing on the market, use and handling of the additive or feedingstuffs containing it, are respected. Where monitoring requirements, as referred to in Article 9(4)(c) have been imposed, the authorisation holder shall ensure that it is carried out and shall submit reports to the Authority in accordance with the authorisation.

2. The authorisation holder shall forthwith communicate to the Authority any new information that might influence the evaluation of the safety in use of the feed additive, in particular health sensitivities of specific categories of consumers. The authorisation holder shall forthwith inform the Authority of any prohibition or restriction imposed by the competent authority of any third country in which the feed additive is placed on the market.

Article 14

Modification, suspension and revocation of authorisations

1. Where, on its own initiative or following a request from a Member State or from the Commission, the Authority concludes that an authorisation granted in accordance with this Regulation should be modified, suspended or revoked, it shall forthwith transmit this opinion to the Commission.

2. If the authorisation holder proposes to modify the terms of the authorisation, he shall submit an application to the Authority, which includes the relevant data supporting the request for the change. The Authority shall give an opinion on the proposal.

3. The Commission shall examine the opinion of the Authority without delay, and a final decision on the modification, suspension or revocation of an authorisation shall be adopted in accordance with the procedure referred to in Article 21(2).

4. The Commission shall without delay inform the applicant of the decision taken. The Register shall be amended as appropriate.

Article 15

Renewal of authorisations

1. Authorisations under this Regulation shall be renewable for ten-year periods, on application to the Authority by the applicant at the latest one year before the expiry date of the authorisation.

In case of authorisations not issued to a specific holder, any person who imports or produces the products referred to in this Article may submit the information or the application to the Authority and shall be considered as the applicant.

The Authority shall acknowledge receipt of the application, in writing, to the applicant within 15 days of its receipt. The acknowledgement shall state the date of receipt of the application.

2. The application shall be accompanied by the following particulars and documents:

(a) a copy of the authorisation for placing the feed additive on the market;

(b) a report on the results of the post-market monitoring, if such monitoring requirements are included in the authorisation;

(c) any other new information which has become available with regard to the evaluation of the safety in use and the efficacy of the feed additive and the risks of the feed additive to animals, humans or the environment;

(d) where appropriate, a proposal for amending or complementing the conditions of the original authorisation, inter alia the conditions concerning future monitoring.

3. The applicant shall also send to the Commission at the same time as he submits an application to the Authority the particulars and documents referred to in paragraph 2.

4. The procedure set out in Articles 9 and 10 shall apply in a like manner.

5. Where, for reasons beyond the control of the applicant, no decision is taken on the renewal of an authorisation before its expiry date, the period of authorisation of the product shall automatically be extended until the Commission takes a decision. The Commission shall inform the applicant of this extension of the authorisation.

6. The implementing rules for the application of this Article shall be established after consultation of the Authority, in accordance with the procedure referred to in Article 21(2).

7. The Authority shall publish detailed guidance concerning the preparation and the presentation of the application.

CHAPTER III

LABELLING

Article 16

Labelling of feed additives

1. No person shall place on the market a feed additive, a mixture of feed additives or a premixture of additives, unless its packaging or container bears the following information, in a conspicuous, clearly legible and indelible manner, in relation to each additive contained in the material:

(a) the specific name given to the additives upon authorisation preceded by the name of the functional group as mentioned in the authorisation;

(b) the name or business name and the address or registered place of business of the person responsible for the particulars referred to in this paragraph;

(c) the net weight, or in the case of liquid additives, either the net volume or the net weight;

(d) where appropriate, the approval number assigned to the establishment or the intermediary pursuant to Article 5 of Directive 95/69/EC or the registration number assigned to the establishment or the intermediary pursuant to Article 10 of that Directive;

(e) directions for use, and any safety recommendations regarding the use and, where applicable, the specific requirements mentioned in the authorisation, including animal species and categories for which the additive, additive mixture or premixture of additives is intended.

2. In addition to the information specified in paragraph 1, the packaging or container of an additive belonging to a functional group specified in Annex III must bear the information, presented in a conspicuous, clearly legible and indelible manner, indicated in that Annex.

3. In the case of premixtures, the word 'PREMIXTURE' must clearly appear on the label.

4. Amendments to Annex III to take technical and scientific development into account may be adopted in accordance with the procedure referred to in Article 21(2).

CHAPTER IV

GENERAL PROVISIONS

Article 17

Community Register of Feed additives

1. The Commission shall establish and maintain a Community Register of Feed additives.

2. The Register shall be made available to the public.

3. The Register shall be consolidated at least once a year.

Article 18

Confidentiality

1. The applicant may indicate which information submitted under this Regulation he wishes to be treated as confidential because its disclosure may significantly harm his competitive position. Verifiable justification must be given in such cases.

2. The Authority shall determine, after consultation with the applicant, which information other than that specified in paragraph 3 should be kept confidential and shall inform the applicant of its decision.

3. Information relating to the following shall not be considered confidential:

(a) name and composition of the feed additive and, where appropriate, indication of the substrate and the production strain;

(b) physico-chemical and biological characteristics of the feed additive;

(c) effects of the feed additive on human and animal health and on the environment;

(d) effects of the feed additive on the characteristics of animal products and its nutritional properties;

(e) methods for sampling, detection and identification of the feed additive and, where applicable, monitoring requirements and a summary of the results of the monitoring;

(f) information on waste treatment and emergency response.

4. Notwithstanding paragraph 2, the Authority shall, on request, supply the Commission and Member States with all information in its possession, including any identified as confidential pursuant to paragraph 2.

5. The Member States, the Commission and the Authority shall keep confidential all the information identified as confidential under paragraph 2 except where it is appropriate for such information to be made public in order to protect human health, animal health or the environment.

6. If an applicant withdraws or has withdrawn an application, the Authority, the Commission and the Member States shall respect the confidentiality of commercial and industrial information, including research and development information as well as information on which the Authority and the applicant disagree as to its confidentiality.

Article 19

Data protection

The scientific data and other information in the application dossier required under Article 8 may not be used for the benefit of another applicant for a period of ten years from the date of authorisation, unless the other applicant has agreed with the previous applicant that such data and information may be used. On expiry of the ten-year period, the findings of all or part of the evaluation conducted on the basis of the scientific data and information contained in the application dossier may be used by the Authority for the benefit of another applicant.

Article 20

Reference laboratories

The Community reference laboratory and its duties and tasks shall be those laid down in the Annex II.

National reference laboratories may be established in accordance with the procedure referred to in Article 21(2).

Detailed rules for implementing Annex II and any amendments to that Annex shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 21

Committee

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health, established by Regulation EC No 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law, establishing the European Food Safety Authority, and laying down procedures in matter of food safety.

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

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

Article 22

Repeals

1. Directive 70/524/EEC is repealed with effect from the date of application of this Regulation. However, Article 16 of Directive 70/524/EEC shall remain in force until Directive 79/373/EEC has been revised to include rules concerning the labelling of compound feedingstuffs incorporating additives.

2. Points 3 and 4 of the Annex of Directive 82/471/EEC are deleted with effect from the date of application of this Regulation.

3. Directive 87/153/EEC is repealed with effect from the date of application of this Regulation. However, the Annex to that Directive shall remain in force until the adoption of the implementing rules provided for in Article 8(4) of this Regulation.

4. References to Directive 70/524/EEC shall be construed as references to this Regulation.

Article 23

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

The Member States shall notify those rules and measures to the Commission at the latest six months after the date of publication of this Regulation and shall notify it without delay of any subsequent amendment affecting them.

Article 24

Transitional measures

1. Applications submitted under Article 4 of Directive 70/524/EEC before the entry into force of this Regulation shall be treated as applications under Article 8 of this Regulation where the initial comments provided for under Article 4(4) of Directive 70/524/EEC have not yet been forwarded to the Commission. Any Member States selected as rapporteur in respect of such an application shall immediately transmit the dossier submitted pursuant to that application to the Authority.

2. The labelling requirements laid down in Chapter III of this Regulation shall not apply to products which have been lawfully manufactured and labelled in the Community, or which have been lawfully imported into the Community and put into free circulation, before the date of application of this Regulation.

Article 25

Entry into force

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

It shall apply from [1 year after the date of publication of this Regulation].

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

ANNEX I

ADDITIVE GROUPS

1. In the category 'technological additives', the following functional groups are included:

   (a) preservatives: substances, including silage agents or, when applicable, micro-organisms which prolong the storage life of feedingstuffs and feed materials by protecting them against deterioration caused by micro-organisms;

   (b) antioxidants: substances which prolong the storage life of feedingstuffs and feed materials by protecting them against deterioration caused by oxidation;

   (c) emulsifiers: substances that make it possible to form or maintain a homogeneous mixture of two or more immiscible phases in feedingstuffs;

   (d) stabilisers: substances which make it possible to maintain the physico-chemical state of feedingstuffs;

   (e) thickeners: substances which increase the viscosity of feedingstuffs;

   (f) gelling agents: substances which give a feedingstuff texture through the formation of a gel;

   (g) anticaking agents: substances that reduce the tendency of individual particles of a feedingstuff to adhere to one another;

   (h) acidity regulators: substances which adjust the pH of feedingstuffs.

2. In the category 'sensory additives', the following functional groups are included:

   (a) colorants:

      (i) substances that add or restore colour in feedingstuffs, including natural constituents of feed materials and natural sources which are normally not consumed as feed materials;

      (ii) substances which, when fed to animals, add or restore colours to food of animal origin;

      (iii) denaturants: substances which, when used for the manufacture of processed feedingstuffs, allow the identification of the origin of specific food or feed materials;

   (b) flavouring and appetising compounds: natural products obtained by appropriate physical, chemical, enzymatic or microbiological processes from materials of vegetable or animal origin, or chemically defined substances, the inclusion of which in feedingstuffs increases feed palatability.

3. In the category 'nutritional additives', the following functional groups are included:

   (a) vitamins;

   (b) trace elements;

   (c) amino acids.

4. In the category 'zootechnical additives', the following functional groups are included:

   (a) digestibility enhancers: substances which, when fed to animals, increase the digestibility of the diet, through action on target feed materials;

   (b) gut flora improvers: micro-organisms forming colonies or other chemically defined substances, which, when fed to animals, have a positive effect on the gut flora;

   (c) growth promoters: chemically defined substances which, when fed to animals, improve production performance parameters.

ANNEX II

DUTIES AND TASKS OF THE COMMUNITY REFERENCE LABORATORY

1. The Community reference laboratory referred to in Article 20 is the Joint Research Centre of the Commission (JRC).

2. For the tasks outlined in this Annex, the Commission's Joint Research Centre shall be assisted by a consortium of national reference laboratories.

   The JRC shall be notably responsible for:

   — reception, preparation, storage and maintenance of the control samples;

   — testing and validation of the method for sampling and detection;

   — evaluating the data provided by the applicant for authorisation for placing the feed additive on the market, for the purpose of testing and validation of the method for sampling and detection;

   — submitting full evaluation reports to the Authority.

3. The Community reference laboratory shall play a role in dispute settlements between Member States concerning the results of the tasks outlined in this Annex.

ANNEX III

SPECIFIC LABELLING REQUIREMENTS FOR CERTAIN FEED ADDITIVES AND FOR PREMIXTURES

(a) Zootechnical additives: the expiry date of the guarantee or the storage life from the date of manufacture, the batch reference number and the date of manufacture, the directions for use and, where appropriate, a safety recommendation regarding the use in the case of additives which are the subject of special provisions upon authorisation.

(b) Enzymes, in addition of the abovementioned indications: the specific name of the active component or components in accordance with their enzyme activities, in conformity with the authorisation given, the International Union of Biochemistry identification number (IUB number).

(c) Micro-organisms, in addition to the abovementioned indications: the strain identification number of colony forming units (CFU per gram).

(d) Nutritional additives: the active-substance level and the expiry date of the guarantee of that level or storage life from the date of manufacture.

(e) Technological and sensory additives: the active-substance level.

Proposal for a Regulation of the European Parliament and of the Council on the prolongation of the ECSC steel statistics system after the expiry of the ECSC Treaty

(2002/C 203 E/04)

COM(2002) 160 final — 2002/0078(COD)

(Submitted by the Commission on 27 March 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) It is necessary to have statistics on the steel industry in order to implement Community policies on the steel industry.

(2) The European Coal and Steel Community (ECSC) Treaty expires on 23 July 2002.

(3) Community steel statistics are collected within the ECSC statistics system until the expiry of the ECSC Treaty.

(4) Users of steel statistics need continuous series for the second half of the year 2002.

(5) Declaration 24 annexed to the Final Act of 26 February 2001 of the Conference of the Representatives of the Governments of the Member States has invited the Council to ensure, under Article 2 of the Protocol on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel, the prolongation of the ECSC statistics system after the expiry of the ECSC Treaty until 31 December 2002.

(6) The Statistical Programme Committee (SPC), set up by Decision 89/382/EEC, Euratom [1] has been consulted in accordance with Article 3 of the aforesaid Decision,

HAVE ADOPTED THIS REGULATION:

Article 1

The aim of this Regulation is to ensure the prolongation of the ECSC statistics system after the expiry of the ECSC Treaty and until 31 December 2002.

Article 2

Undertakings engaged in the production of iron and steel in the steel sector, as defined in the ECSC Treaty, shall be required, with effect from 24 July 2002, to keep supplying the Commission, for the reference year 2002, with the statistics (questionnaires) drawn up by the decisions and recommendation listed in the Annex to this Regulation.

Article 3

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*. This Regulation shall apply from 24 July 2002.

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

[1] OJ L 181, 28.6.1989, p. 47.

ANNEX

STATISTICS

Statistics shall be supplied to the Commission as prescribed in the following questionnaires drawn up by the decisions and recommendation listed below and in accordance with the specified conditions:

1. Commission Decision No 1566/86/ECSC of 24 February 1986 on iron and steel statistics, as last amended by Commission Decision No 1273/2000/ECSC of 16 June 2000:

   — Questionnaire 2-10 on production of pig iron;

   — Questionnaire 2-11 on crude steel production;

   — Questionnaire 2-13 on production of flat and long steel products;

   — Questionnaire 2-14 on stocks of ingots, semi-finished, flat and long steel products;

   — Questionnaire 2-31 on changes of employment in the iron and steel industry (ECSC);

   — Questionnaire 2-32 on working hours in the iron and steel industry (ECSC);

   — Questionnaire 2-50 on steel and cast iron scrap balance;

   — Questionnaire 2-51 on consumption of raw materials for production of crude iron;

   — Questionnaire 2-54 on consumption of raw materials in steel works;

   — Questionnaire 2-56 on receipts of ECSC steel products direct or via merchants;

   — Questionnaire 2-58 on fuel and energy consumption and balance for electrical energy in the steel industry;

   — Questionnaire 2-71 on steel deliveries to Community countries and total deliveries;

   — Questionnaire 2-72 on steel deliveries to third countries;

   — Questionnaire 2-73 on deliveries of steel on the national market by product and by consumer industry;

   — Questionnaire 2-74 on deliveries of alloy and non-alloy special steels by categories in Community countries and third countries;

   — Questionnaire 2-76 on total deliveries of ECSC Treaty products by value;

   — Questionnaire 2-79 I on deliveries and new orders for sales of crude iron;

   — Questionnaire 2-80 on new orders of steel from Community countries and third countries;

   — Questionnaire 2-81 on new orders of steel from third countries;

2. Commission Decision No 81/3302/ECSC of 18 November 1981 on the information to be furnished by steel undertakings about their investments:

   — Questionnaire 2-60 on investment expenditure in the iron and steel industry (ECSC);

   — Questionnaire 2-61 on capacity in the iron and steel industry (ECSC);

3. Commission Recommendation No 780/94/ECSC of 16 November 1994 concerning steel merchants statistics:

   — Questionnaire 3-70 on receipts, deliveries and stocks of iron and steel products by stockholders.

Proposal for a Council Decision on a Community Position concerning the Rules of procedure of the Interim Committee established by the Interim Agreement between the European Community and the Republic of Croatia

(2002/C 203 E/05)

COM(2002) 161 final

(Submitted by the Commission on 27 March 2002)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Article 2(2) of Council Decision 2002/107/EC of 28 January 2002 concerning the conclusion of the Interim Agreement on trade and trade-related matters between the European Community, of the one part and the Republic of Croatia, of the other part [1],

Having regard to the proposal from the Commission,

Whereas:

(1) The Interim Agreement has been provisionally applied as from 1 January 2002 and has definitely entered into force on 1 March 2002.

(2) Article 38 of the said Agreement establishes an Interim Committee which shall supervise the application and the implementation of the Agreement.

(3) Article 39 of the said Agreement provides that the Interim Committee shall adopt its rules of procedure.

(4) Article 41 of the said Agreement provides that the Interim Committee may establish sub-committees; the designation, composition and terms of reference of the subcommittees should be laid down in the rules of procedure.

(5) The Community should determine the position to be taken within the Interim Committee with regard to the adoption of the rules of procedure,

HAS DECIDED AS FOLLOWS:

Sole Article

The position to be adopted by the Community within the Interim Committee established by Article 38 of the Interim Agreement between the European Community and the Republic of Croatia shall be based on the draft decision of the Interim Committee annexed to the present Decision.

[1] OJ L 40, 12.2.2002, p. 9.

DECISION No 1/2002

of the Interim Committee between the European Community of the one part and the Republic of Croatia of the other part

of . . .

concerning the adoption of its Rules of procedure

(. . .)

THE INTERIM COMMITTEE,

Having regard to the Interim Agreement between the European Community, of the one part, and the Republic of Croatia, of the other part, and in particular Articles 38, 39, 40 and 41 thereof,

Whereas that Agreement entered into force on 1 March 2002,

HAS DECIDED TO ADOPT THE FOLLOWING RULES OF PROCEDURE AND TO ESTABLISH THE SUBCOMMITTEES PROVIDED FOR UNDER THE RULES:

Article 1

Chairmanship

The Interim Committee shall be presided over alternately for periods of 12 months by a representative of the Commission of the European Communities on behalf of the European Community, hereinafter referred to as the 'Community', and a representative of the Government of the Republic of Croatia. However, the first period shall begin on the date of the first Interim Committee meeting and end on 31 December of the same year.

Article 2

Meetings

The Interim Committee shall meet regularly once a year. Special meetings of the Interim Committee may be held if the Parties so agree, at the request of either Party.

Each meeting of the Interim Committee shall be held at a time and place agreed by both Parties. The meetings are convened by the Chairman.

Unless otherwise agreed the meetings of the Interim Committee shall not be public.

Article 3

Delegations

Prior to each meeting, the Chairman shall be informed of the intended composition of the delegation of each Party.

A representative of the European Investment Bank may attend the meetings of the Interim Committee, as an observer, when matters which concern the Bank appear on the agenda.

The Interim Committee may invite non-members to attend its meetings in order to provide information on particular subjects.

Article 4

Secretariat

An official of the Commission of the European Communities and an official of the Republic of Croatia shall act jointly as Secretaries of the Interim Committee.

Article 5

Correspondence

All correspondence to and from the Chairman of the Interim Committee shall be forwarded to both Secretaries. The two Secretaries shall ensure that correspondence is circulated, where appropriate, to their respective representatives in the Interim Committee.

Article 6

Agenda of the meetings

1. The Chairman and the Secretaries shall draw up a provisional agenda for each meeting not later than 15 working days before the beginning of the meeting.

The provisional agenda shall include the items in respect of which a request for inclusion has been received by the Secretaries not later than 21 working days before the beginning of the meeting, save that items shall not be written into the provisional agenda unless the supporting documentation has been forwarded to the Secretaries not later than the date of dispatch of the agenda.

The agenda shall be adopted by the Interim Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be included in the agenda if the two Parties so agree.

2. The Chairman may, in agreement with the two Parties, shorten the time limits specified in paragraph 1 in order to take account of the requirements of a particular case.

Article 7

Minutes

Draft minutes of each meeting shall be drawn up by the two Secretaries. They shall indicate the decisions and recommendations taken and the conclusions adopted. The draft minutes shall be submitted to the Interim Committee for approval. When approved, the minutes shall be signed by the Chairman and the two Secretaries and one original copy shall be filed by each of the Parties.

Article 8

Deliberations

The Interim Committee shall take its decisions and recommendations by common agreement of the Parties.

During the inter-sessional period, the Interim Committee may take decisions or recommendations by written procedure if both Parties so agree.

The decisions and recommendations of the Interim Committee within the meaning of Article 39 of the Interim Agreement shall be entitled respectively 'Decision' and 'Recommendation' and followed by a serial number, by the date of their adoption and by a description of their subject.

The decisions and recommendations of the Interim Committee shall be signed by the chairman and authenticated by the two secretaries.

The decisions taken by the Interim Committee shall be published by the Parties in their respective official publications. Each Party may decide on the publication of any other act adopted by the Interim Committee.

Article 9

Languages

The official languages of the Interim Committee shall be the official languages of the two Parties.

Unless otherwise decided, the Interim Committee shall base its deliberations on documentation prepared in these languages.

Article 10

Expenses

The Community and the Republic of Croatia shall each defray the expenses they incur by reason of their participation in the meetings of the Interim Committee and of sub-committees, both in respect of staff, travelling and subsistence expenditure and of postal and telecommunications costs.

Expenditure in connection with interpretation at meetings, translation and reproduction of documents shall be borne by the Community, with the exception of expenditure in connection with interpretation or translation into or from Croatian, which shall be borne by the Republic of Croatia.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.

Article 11

Subcommittees

The subcommittees, including their respective terms of reference, hereby established in accordance with Article 41 of the Interim Agreement, are listed in the Annex to this Decision.

The subcommittees shall be composed of representatives of both Parties. They will be chaired alternately by the two Parties according to the rules of the Interim Committee. They will meet whenever circumstances require, on request of either Party.

Subcommittees shall work under the authority of the Interim Committee to which they shall report after each one of their meetings. They shall not take decisions but may make recommendations to the Interim Committee.

The Interim Committee may decide to abolish any existing subcommittees, modify their terms of reference or establish new subcommittees to assist it in carrying out its duties.

ANNEX

SUBCOMMITTEE ON ECONOMIC AND FINANCIAL MATTERS

Terms of reference

1. The general objectives of the subcommittee are the review of economic developments and policies as well as the monitoring and joint analysis of economic, technical and financial cooperation in accordance with Articles 33 and 34 of the Interim Agreement, with a view to contributing to the economic development of the Republic of Croatia and strengthening the economic links between the Republic of Croatia and the European Community.

2. The subcommittee shall deal in particular with the following specific subjects:

   — Macroeconomic developments and policies in the European Community and the Republic of Croatia;

   — Structural reforms including financial sector reform;

   — Facilitation of the movement of capital and its progressive liberalisation;

   — Statistical system.

SUBCOMMITTEE ON AGRICULTURE AND FISHERIES

Terms of reference

1. The general objective of the subcommittee is to deal with agricultural, processed agricultural and fishery products. The subcommittee shall monitor the implementation of the obligations of the Parties in these sectors and conduct a joint analysis of the co-operation in agriculture in accordance with Articles 11 to 18, Annexes III, IV and V and Protocol 3 of the Interim Agreement as well as the Wine protocol.

2. The subcommittee shall deal, in particular, with the following subjects:

   — Examination of problems related to the development of the agricultural sector and agricultural policy, as well as rural development in the Republic of Croatia and in the European Community;

   — Processed agricultural products;

   — Fisheries;

   — Veterinary and phytosanitary matters and the examination of the possibilities of developing cooperation in this area.

SUBCOMMITTEE ON INTERNAL MARKET

Terms of reference

1. The general objective of the subcommittee is the review of the legislative reform in the Republic of Croatia. The subcommittee will establish the priorities, identify the policies, monitor and analyse the approximation of the Croatian legislation to Community legislation in accordance with Article 69 of the Stabilisation and Association Agreement and Articles 35 and 36 of the Interim Agreement.

2. The subcommittee shall deal with the gradual approximation of the Croatian legislation with the Community *acquis* in the sectors linked to the internal market and in particular in the following specific areas:

   — Competition and State aid;

   — Intellectual, industrial and commercial property rights;

   — Public procurement;

   — Company law;

   — Accounting;

— Data protection;

— Standardisation, certification, conformity assessment and market surveillance;

— Consumer protection.

SUBCOMMITTEE ON TRADE, STEEL AND IRON PRODUCTS, CUSTOMS AND TAXATION

Terms of reference

1. The objectives of the subcommittee are the discussion and monitoring of all the questions related to the commercial policy as well as to the cooperation in customs matters, in accordance with Articles 2 to 10 and 19 to 31, Annexes I and II and Protocols 1, 2, 4 and 5 of the Interim Agreement.

2. The subcommittee shall deal in particular with the following issues:

— Free movement of goods: monitoring of the implementation of the obligations of the Parties and discussion of any difficulties which might arise in the commercial regime for industrial products, including textiles and steel and iron products;

— Trade related aspects of intellectual, industrial and commercial property rights;

— Trade related aspects of Public procurement;

— Trade related aspects of standardisation, certification, conformity assessment and market surveillance;

— Customs cooperation and discussion of all the questions related to the implementation of the rules of origin;

— Exchange of information on the compatibility and developments in the field of taxation.

SUBCOMMITTEE ON TRANSPORT

Terms of reference

1. The objective of the subcommittee is to monitor the implementation of the obligations of the Parties in the transport sector in accordance with Protocol 6 of the Interim Agreement.

2. The subcommittee shall deal in particular with the following issues:

— Discussion of any questions which might arise in the implementation of the agreement with regard to freedom of transit;

— Establishment of a system of ecopoints in accordance with Article 2 of Protocol 6 of the Interim Agreement.

Proposal for a Council Regulation establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Estonia

(2002/C 203 E/06)

COM(2002) 164 final — 80/2002(ACC)

(Submitted by the Commission on 2 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part [1], provides for certain concessions for certain agricultural products originating in Estonia.

(2) The first improvements to the preferential arrangements of the Europe Agreement with Estonia were provided for in the Protocol adjusting trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential agreements [2]. The Council approved the abovementioned Protocol on behalf of the Community by Council Decision 1999/86/EC [3].

(3) Improvements to the preferential arrangements of the Europe Agreement with Estonia were also provided for, in the form of an autonomous and transitional measure pending a second adjustment of the relevant provisions of the Europe Agreement, as a result of a first round of negotiations to liberalise the agricultural trade. The improvements entered into force as from 1 July 2000 in the form of Council Regulation (EC) No 1349/2000 of 19 June 2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Estonia [4]. The second adjustment of the relevant provisions in the Europe Agreement — which will take the form of another Additional Protocol to the Europe Agreement — has not yet entered into force.

(4) A new Additional Protocol to the Europe Agreement on trade liberalisation for agricultural products has been negotiated.

(5) A swift implementation of the adjustments forms an essential part of the results of the negotiations for the conclusion of a new Additional Protocol to the Europe Agreement with Estonia. It is therefore appropriate to provide for the adjustment, as an autonomous and transitional measure, of the agricultural concessions provided for in the Europe Agreement with Estonia.

(6) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [5], they should be adopted by use of the management procedure provided for in Article 4 of that Decision.

(7) Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [6] has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Tariff quotas under this Regulation should therefore be administered in accordance with those rules.

(8) As a result of the aforementioned negotiations, Regulation (EC) No 1349/2000 has effectively lost its substance and should therefore be repealed.

HAS ADOPTED THIS REGULATION:

Article 1

1. The arrangements for import into the Community applicable to certain agricultural products originating in Estonia as set out in Annex C(a) and Annex C(b) to this Regulation shall replace those set out in Annex Va to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, hereinafter the 'Europe Agreement'.

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[1] OJ L 68, 9.3.1998, p. 1.

[2] OJ L 29, 3.2.1999, p. 11.

[3] OJ L 29, 3.2.1999, p. 9.

[4] OJ L 155, 28.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 2677/2000 (OJ L 308, 8.12.2000, p. 7).

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

[6] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 933/2001 (OJ L 141, 28.5.2001, p. 1).

2. On the entry into force of the additional protocol adjusting the Europe Agreement to take into account the outcome of the negotiations between the parties on new mutual agricultural concessions, the concessions provided for in that Protocol shall replace those referred to in Annex C(a) and Annex C(b) to this Regulation.

3. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 3(2).

Article 2

Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EC) No 1766/92 [1] or, where appropriate, by the committee instituted by the relevant provisions of the other Regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 4

Council Regulation (EC) No 1349/2000 is hereby repealed.

Article 5

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

It shall apply from 1 July 2002.

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

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[1] OJ L 181, 1.7.1992, p. 21.

ANNEX C(a)

The following products originating in Estonia shall benefit from a preferential zero-duty within unlimited quantities (applicable duty 0 % of MFN) when imported into the Community.

CN code [1]	CN code	CN code	CN code	CN code
0101 10 90	0709 20 00	0802 90 50	1008 20 00	1602 10 00
0101 90 19	0709 30 00	0802 90 85	1008 90 90	1602 20 19
0101 90 30	0709 40 00	0806 20 11	1102 90 90	1602 20 90
0101 90 90	0709 52 00	0806 20 12	1103 19 90	1602 31
0104	0709 59	0806 20 91	1103 20 90	1602 32 19
0106 19 10	0709 60 10	0806 20 92	1105 10 00	1602 32 30
0106 39 10	0709 60 99	0806 20 98	1105 20 00	1602 32 90
0204	0709 70 00	0808 20 90	1106 10 00	1602 39 29
0205	0709 90 10	0809 40 90	1106 30	1602 39 40
0206 80 91	0709 90 20	0810 40 30	1107	1602 39 80
0206 90 91	0709 90 50	0810 40 50	1108 20 00	1602 41 90
0207 13 91	0709 90 90	0810 40 90	1208 10 00	1602 42 90
0207 14 91	0710 10 00	0810 60 00	1209	1602 49 90
0207 26 91	0710 21 00	0810 90 95	1210	1602 50 31
0207 27 91	0710 22 00	0811 90 39	1211 90 30	1602 50 39
0207 35 91	0710 29 00	0811 90 50	1212 10 10	1602 50 80
0207 36 89	0710 30 00	0811 90 70	1212 10 99	1602 90 10
0208	0710 80 51	0811 90 75	1214 90 10	1602 90 31
0210 91 00	0710 80 59	0811 90 80	1302 19 05	1602 90 41
0210 92 00	0710 80 61	0811 90 95	1501 00 90	1602 90 69
0210 93 00	0710 80 69	0812 10 00	1502 00 90	1602 90 72
0210 99 10	0710 80 70	0812 90 40	1503 00 19	1602 90 74
0210 99 21	0710 80 80	0812 90 50	1503 00 90	1602 90 76
0210 99 29	0710 80 85	0812 90 60	1504 10 10	1602 90 78
0210 99 31	0710 80 95	0812 90 99	1504 10 99	1602 90 98
0210 99 39	0710 90 00	0813 10 00	1504 20 10	1603 00 10
0210 99 59	0711 40 00	0813 20 00	1504 30 10	1703
0210 99 60	0711 59 00	0813 30 00	1507	1704 90 10
0210 99 79	0711 90 10	0813 40 10	1508 10 90	2001 10 00
0210 99 80	0711 90 50	0813 40 30	1508 90 10	2001 90 20
0407 00 90	0711 90 80	0813 40 95	1508 90 90	2001 90 50
0409 00 00	0711 90 90	0813 50 15	1511 10 90	2001 90 70
0410 00 00	0712 20 00	0813 50 19	1511 90 11	2001 90 75
0601	0712 31 00	0813 50 91	1511 90 19	2001 90 85
0602	0712 32 00	0813 50 99	1511 90 91	2001 90 93
0603	0712 33 00	0901 12 00	1511 90 99	2001 90 96
0604	0712 39 00	0901 21 00	1512	2003 20 00
0701 10 00	0712 90 05	0901 22 00	1513	2003 90 00
0701 90 10	0712 90 30	0901 90 90	1514	2004 10 10
0701 90 50	0712 90 50	0902 10 00	1515	2004 10 99
0701 90 90	0712 90 90	0904 12 00	1516 10 10	2004 90 30
0703 10	0713 50 00	0904 20 10	1516 20 91	2004 90 50
0703 90 00	0713 90 10	0904 20 90	1516 20 95	2004 90 91
0704 20 00	0713 90 90	0907 00 00	1516 20 96	2004 90 98
0704 90 90	0802 11 90	0910 40 13	1516 20 98	2005 10 00
0705 19 00	0802 12 90	0910 40 19	1517 10 90	2005 20 20
0705 21 00	0802 21 00	0910 40 90	1517 90 99	2005 20 80
0705 29 00	0802 22 00	0910 91 90	1518 00 31	2005 40 00
0706	0802 31 00	0910 99 99	1518 00 39	2005 51 00
0708 10 00	0802 32 00	1001 90 10	1522 00 91	2005 59 00
0708 90 00	0802 40	1008 10 00	1601 00 10	2005 60 00

CN code [1]	CN code	CN code	CN code	CN code
2005 90 10	2008 40 21	2008 80 50	2008 99 78	2009 80 99
2005 90 50	2008 40 29	2008 80 70	2008 99 99	2009 90 19
2005 90 60	2008 40 39	2008 80 91	2009 50 10	2009 90 29
2005 90 70	2008 40 51	2008 80 99	2009 50 90	2009 90 39
2005 90 75	2008 40 59	2008 92 14	2009 71 10	2009 90 51
2005 90 80	2008 40 71	2008 92 34	2009 71 91	2009 90 59
2006 00 99	2008 40 91	2008 92 38	2009 71 99	2009 90 96
2007 10 91	2008 40 99	2008 92 59	2009 79 19	2009 90 98
2007 10 99	2008 50 11	2008 92 74	2009 79 30	2204 30 10
2007 99 10	2008 60 11	2008 92 78	2009 79 93	2302 50 00
2007 99 91	2008 60 31	2008 92 93	2009 79 99	2306 90 19
2007 99 98	2008 60 39	2008 92 96	2009 80 19	2308 00 90
2008 11 92	2008 60 51	2008 92 98	2009 80 38	2309 10 51
2008 11 94	2008 60 59	2008 99 28	2009 80 50	2309 10 90
2008 11 96	2008 60 61	2008 99 37	2009 80 63	2309 90 10
2008 11 98	2008 60 71	2008 99 40	2009 80 69	2309 90 31
2008 19 19	2008 60 79	2008 99 45	2009 80 71	2309 90 41
2008 19 93	2008 60 91	2008 99 49	2009 80 79	2309 90 51
2008 19 95	2008 80 11	2008 99 55	2009 80 89	2309 90 91
2008 19 99	2008 80 31	2008 99 68	2009 80 95	2905 45 00
2008 40 11	2008 80 39	2008 99 72	2009 80 96	

[1] As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

ANNEX C(b)

Imports into the Community of the following products originating in Estonia shall be subject to the concessions set out below (MFN = Most Favoured Nation duty)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4598	0102 90 05	Live bovine animals of domestic species of a live weight not exceeding 80 kg	20	178 000 heads	0	(3)
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of domestic species of a live weight exceeding 80 kg but not exceeding 300 kg	20	153 000 heads	0	(3)
09.4563	ex 0102 90	Heifers and cows, not for slaughter, of the following mountain breeds: Grey, brown, yellow, spotted Simmental and Pinzgau	6 % ad valorem	7 000 heads	0	(4)
09.4851	0201 0202 1602 50 10	Meat of bovine animals, fresh or chilled Meat of bovine animals, frozen Uncooked; mixtures of cooked meat or offal and uncooked meat or offal of other prepared or preserved meat of bovine animals	free	1 100	350	
09.4583	ex 0203	Meat of domestic swine, fresh, chilled or frozen, excluding CN codes 0203 11 90, 0203 12 90, 0203 19 90, 0203 21 90, 0203 22 90, 0203 29 90	free	2 000	375	(6)
09.4852	0206 10 95 0206 29 91	Thick skirt and thin skirt of bovine animals, fresh, chilled or frozen	free	100	30	
09.6649	ex 0207	Meat and edible offal, of the poultry of heading No 0105, fresh, chilled or frozen, excluding CN codes 0207 13 91, 0207 14 91, 0207 26 91, 0207 27 91, 0207 34 10, 0207 34 90, 0207 35 91, 0207 36 81, 0207 36 85, 0207 36 89	free	1 005	250	
09.4853	0210 19	Meat of swine, salted or in brine, dried or smoked, other	free	100	30	
09.4578	0401	Milk and cream, not concentrated, nor containing added sugar or other sweetening matter	free	800	150	
09.4546	0402 10 19 0402 21 19	Skimmed milk powder Whole milk powder	free	14 000	0	
09.4579	 0403 10 11 0403 10 13 0403 10 19 0403 10 31 0403 10 33 0403 10 39	Yoghurt, not flavoured nor containing added fruit, nuts or cocoa: Not containing added sugar or other sweetening matter, with a fat content, by weight: Not exceeding 3 % Exceeding 3 % but not exceeding 6 % Exceeding 6 % Other, of a fat content, by weight Not exceeding 3 % Exceeding 3 % but not exceeding 6 % Exceeding 6 %	free	800	240	

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4580	0403 90 59 0403 90 61 0403 90 63 0403 90 69	Sour cream, of a fat content, by weight exceeding 6 % Sour cream, of a fat content, by weight not exceeding 3 % Sour cream, of a fat content, by weight exceeding 3 % but not exceeding 6 % Sour cream, of a fat content, by weight exceeding 6 %	free	1 120	210	
09.4547	0405 10 11 0405 10 19	Butter	free	4 800	900	
09.4582	0406 10	Fresh (unripened or uncured) cheese, including whey cheese, and curd	free	1 120	210	
09.4581	0406 20 0406 30 0406 40 0406 90	Other cheese	free	4 000	1 200	
09.6650	0407 00 11 0407 00 19 0407 00 30	Poultry eggs	free	600	180	
09.6651	ex 0408	Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter, excluding CN codes 0408 11 20, 0408 19 20, 0408 91 20, 0408 99 20	free	205	40	(9)
09.6603	0703 20 00	Garlic	free	60	5	
09.6454	0704 10 00 0704 90 10	Cauliflowers and headed broccoli White cabbages and red cabbages	free	270	10	
	0707 00 05 0707 00 90	Cucumbers, fresh or chilled Gherkins	free	unlimited		(8)
	0709 10 00	Fresh or chilled globe artichokes	free	unlimited		(8)
	0709 90 70	Fresh or chilled courgettes	free	unlimited		(8)
09.6605	0808 10	Apples, fresh	free	400	75	(8)
	0808 20 50	Fresh pears (excl. perry pears, in bulk, from 1 August to 31 December)	free	unlimited		(8)
	0809 20 05	Fresh sour cherries (*Prunus cerasus*)	free	unlimited		(8)
	0809 20 95	Fresh cherries (excl. sour cherries)	free	unlimited		(8)
	ex 0809 40 05	Fresh plums, from 1 July to 30 September	free	unlimited		(8)
	0810 10 00	Strawberries, fresh	free	unlimited		(7)
09.6609	0810 30	Black-, white- or red currants and gooseberries	free	130	30	(7)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.6467	0811 10 11	Strawberries, frozen, containing added sugar or other sweetening matter with a sugar content exceeding 13 % by weight	free	240	45	(7)
	0811 10 19	Strawberries, frozen, containing added sugar or other sweetening matter with a sugar content not exceeding 13 % by weight	free	unlimited		(7)
	0811 10 90	Strawberries, frozen, other	free	unlimited		(7)
09.6611	0811 20 11	Raspberries, blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries, frozen, with a sugar content exceeding 13 % by weight	free	640	120	
	0811 20 19	Raspberries, blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries, frozen, with a sugar content not exceeding 13 % by weight	free	unlimited		(7)
	0811 20 31	Other frozen raspberries	free	unlimited		(7)
	0811 20 39	Other frozen black currants	free	unlimited		(7)
	0811 20 51	Other frozen red currants	free	unlimited		(7)
	0811 20 59	Other frozen blackberries and mulberries	free	unlimited		(7)
	0811 20 90	Other	free	unlimited		(7)
09.6641	ex 1001	Wheat and meslin, excluding CN-code 1001 90 10	free	4 400	1 300	
09.6642	1002	Rye	free	1 500	500	
09.6643	1003 00 10 ex 1003 00 90	Barley, seed Barley, excluding barley for production of malt	free	6 500	2 000	
	ex 1003 00 90	Barley for production of malt	free	unlimited		
09.4588	1004 00	Oats	free	4 800	900	
09.6644	1101	Wheat or meslin flour	free	2 000	600	
09.6645	ex 1102	Cereals flours other than of wheat or meslin, excluding CN-code 1102 90 90	free	2 000	600	
09.6646	ex 1103	Cereal groats, meal and pellets, excluding CN-codes 1103 19 90 and 1103 20 90	free	100	30	
09.6647	1108 13	Potato starch	free	100	30	

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4584	ex 1601 00 ex 1602 41 ex 1602 42 ex 1602 49	Sausages and similar products, of meat offal or blood, excluding CN-code 1601 00 10 Other prepared or preserved meat, meat offal or blood: of swine: Hams and cuts thereof, excluding CN-code 1602 41 90 Other prepared or preserved meat, meat offal or blood: of swine: Shoulders and cuts thereof, excluding CN-code 1602 42 90 Other prepared or preserved meat, meat offal or blood: of swine: Other, including mixtures, excluding CN-code 1602 49 90	free	960	180	
09.6652	1602 32 11 1602 39 21	Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: of fowls of the species *Gallus domesticus*, uncooked Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: Other than of fowls of the species *Gallus domesticus*, uncooked	free	160	30	
09.6470	2207 10 00	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol. or higher	free	71	3	
09.6648	ex 2309	Preparations of the kind used in animal feeding, excluding CN-code 2309 10 51, 2309 10 90, 2309 90 10, 2309 90 20, 2309 90 31, 2309 90 41, 2309 90 51, 2309 90 91	free	200	50	

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

(2) In cases where an MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

(3) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania. In case imports into the Community of live bovine domestic animals may exceed 500 000 heads for any given year, the Community may take the management measures needed to protect its market, notwithstanding any other rights given under the Agreement.

(4) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania.

(5) The quota for this product is opened for Estonia, Latvia and Lithuania. The Community may take into account, in the framework of its legislation and when appropriate, the supply needs of its market and the need to maintain its market balance.

(6) Excluding tenderloin presented alone.

(7) Subject to minimum import price arrangements contained in the Annex to this Annex.

(8) The reduction applies only to the *ad valorem* part of the duty.

(9) In dried egg equivalent (100 kg liquid egg = 25,7 kg of dried eggs).

ANNEX to Annex C(b)

Minimum import price arrangement for certain soft fruit for processing

1. Minimum import prices are fixed as follows for the following products for processing originating in Estonia:

CN Code	Description	Minimum import price (EUR/t net)
ex 0810 10	Strawberries, fresh, intended for processing	514
ex 0810 30 10	Blackcurrants, fresh, intended for processing	385
ex 0810 30 30	Redcurrants, fresh, intended for processing	233
ex 0811 10 11	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content exceeding 13 % by weight: whole fruit	750
ex 0811 10 11	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content exceeding 13 % by weight: other	576
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	750
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	576
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	750
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	576
ex 0811 20 19	Frozen raspberries, containing additional sugar or other sweetening matter not exceeding 13 % by weight: whole fruit	995
ex 0811 20 19	Frozen raspberries, containing additional sugar or other sweetening matter not exceeding 13 % by weight: other	796
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	995
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	796
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	628
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	448
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	390
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	295

2. The minimum import prices, as set out in point 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.

3. If the import prices of a given product covered by this Annex show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Estonian authorities in order to enable them to correct the situation.

4. At the request of either the Community or Estonia, the Association Council shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Council shall take the necessary decisions.

5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting may be organised three months before the beginning of each marketing year in the European Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, on the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, on the other part.

   During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

Proposal for a Council Regulation confirming the definitive anti-dumping duty imposed on imports of cotton-type bed linen originating in India by Regulation (EC) No 2398/97, as amended and suspended by Council Regulation (EC) No 1644/2001

(2002/C 203 E/07)

COM(2002) 172 final

(Submitted by the Commission on 9 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995, on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'),

Having regard to the proposal made by the Commission after consultation of the Advisory Committee,

Whereas:

A. EXISTING MEASURES

(1) The Council, by Regulation (EC) No 2398/97 of 28 November 1997 [2] imposed a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan ('definitive Regulation'). The definitive Regulation was preceded by Commission Regulation (EC) No 1069/97 [3] imposing a provisional anti-dumping duty on imports of bed linen originating in Egypt, India and Pakistan ('provisional Regulation').

On 12 March 2001, the Dispute Settlement Body of the World Trade Organisation ('WTO') adopted an Appellate Body report and a panel report as modified by the Appellate Body report on the case 'European Communities — anti-dumping duties on imports of cotton-type bed linen from India' ('Reports') [4].

It is recalled that following the adoption of these Reports, the definitive Regulation was amended by Council Regulation (EC) No 1644/2001 [5], imposing a definitive anti-dumping duty on imports of bed linen originating in Egypt, India and Pakistan and suspending its application with regard to imports originating in India. The definitive Regulation was last amended by Council Regulation (EC) No 160/2002 [6], which suspended the application of the anti-dumping duty with regard to imports originating in Egypt and terminated the proceeding with regard to Pakistan. In accordance with Article 1(2) of Council Regulation (EC) No 160/2002, the anti-dumping duty on imports of bed linen originating in Egypt subsequently expired on 28 February 2002 since no review request was received by the Commission within the deadlines foreseen in that Regulation.

B. RE-ASSESSMENT OF FINDINGS

1. Preliminary remark

(2) Further to a duly documented request submitted by the Committee of the Cotton and allied textile Industries of the European Communities (EUROCOTON), the complainant in the original investigation, the Commission initiated a review concerning dumping only, in accordance with Article 11(3) of the basic Regulation. The notice of initiation was published on 13 February 2002 [7] and the application of the anti-dumping duty remains suspended pending the outcome of the review investigation pursuant to Article 2(2) of Regulation (EC) No 1644/2001.

(3) In view of the fact that the proceeding has been terminated with regard to imports originating in Pakistan and that measures concerning imports originating in Egypt expired on 28 February 2002, it is now considered appropriate to re-assess the findings. The re-assessment is limited to the determination of injury and causal link to the extent that this determination was previously based on an examination of the joint impact of imports from India, Egypt and Pakistan.

(4) It is recalled that the investigation of dumping covered the period from 1 July 1995 to 30 June 1996 ('IP'). The investigation relating to the parameters relevant in the context of injury covered the period from 1 January 1992 up to the end of the IP (30 June 1996). This period will be referred to as 'the period considered'.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 332, 4.12.1997 p. 1.

[3] OJ L 156, 13.6.1997, p. 11.

[4] Document WT/DS141/9 of 22 March 2001.

[5] OJ L 219, 14.8.2001, p. 1.

[6] OJ L 26, 30.1.2002, p. 1.

[7] OJ C 39, 13.2.2002, p. 17.

2. **Injury**

2.1. *Volume, market share and prices of the imports from India*

(5) The table shows how imports from India, taken in isolation, developed during the period considered.

Imports (tonnes)	1992	1993	1994	1995	IP
India (Volume)	11 845	12 424	13 113	17 998	18 428
Index	100	105	111	152	156
Market share	5,9 %	6,4 %	6,8 %	9,5 %	9,9 %
ECU/Kg	5,53	6,05	6,57	5,10	4,94
Eurostat					
Index	100				
Index 1993-IP		106	119	92	89
Index 1994-IP		100	109	84	82
			100	78	75

(6) Imports from India taken in isolation increased from 11 845 tonnes in 1992 to 18 428 tonnes during the IP, i.e. an increase of 56 % or of 6 583 tonnes during the period considered.

(7) If the imports from exporters found not to have dumped are excluded, the increase in volume of dumped imports from India remains significant. In the case of such exclusion, the dumped imports rose from 10 232 tonnes in 1992 to 15 816 tonnes during IP, namely an increase of 55 % or 5 584 tonnes. Their market share had increased by 66 % during the period considered and still represented 8,5 % of the Community market during the IP.

(8) It is worth noting that imports from India grew most in the period from 1994 to the IP (+ 5 315 tonnes and + 3,1 percentage points market share growth; 5 058 tonnes and + 2,9 percentage points market share growth if the imports from Indian exporters found not to have dumped are excluded). This development of dumped imports coincided with a fall in consumption by 4 % or by 7 849 tonnes on the Community market.

(9) Furthermore, the above table shows that prices of Indian bed linen had significantly decreased during the period considered. For instance, average prices decreased by 18 % in the period from 1993 to the IP and by 25 % between 1994 and the IP. The trends in sales prices are not significantly different if the imports from the Indian exporters found not to have dumped are excluded.

(10) During the IP, the level of undercutting of the dumped imports originating in India ranged from 13,8 % to 40,8 %, expressed as percentages of the adjusted average prices of the Community industry. Undercutting also remains significant if imports from the exporters found not to have dumped are excluded (see recital (24) of Regulation (EC) No 1644/2001). The weighted average undercutting margin is around 19 %.

2.2. *Situation of the Community industry*

(11) It is recalled that the situation of the Community industry was analysed in recitals (81) to (91) of the provisional Regulation as well as recitals (40) and (41) of the definitive Regulation. As shown in recitals (25) to (47) of Regulation (EC) No 1644/2001 all factors listed in Article 3(5) of the basic Regulation were analysed.

2.2.1. Growth

(12) The growth of the Community industry was particularly negative between 1994 and the IP in terms of sales volume (- 1 173 tonnes). The growth in market share was very limited in the same period (+ 0,2 percentage points) and was even negative between 1995 and the IP. At the same time, the growth of market share of low-priced imports from India remained always positive and was significant. Between 1994 and the IP, Indian imports increased by 40,5 % or 5 315 tonnes (47 % or 5 058 tonnes if imports from the Indian exporting producers found not to have dumped are excluded) and the growth in market share was as high as 3,1 percentage points (2,9 percentage points) during the same period.

2.2.2. Factors affecting Community prices

(13) When evaluating factors affecting domestic prices the analysis focussed primarily on the contraction of demand and raw cotton prices.

(14) The investigation clearly showed that the gap left by Community factory closures and the fall in imports from certain other third countries during the period considered was filled to an appreciated extent by imports from India, of which most were found to be dumped. Given that the prices of the dumped imports from India were amongst the lowest of all the operators selling bed linen on the Community market it is concluded that the contraction of demand in itself did not have an overriding impact on prices, notably those of the Community industry.

(15) The price of raw cotton, which can represent up to 15 % of the total cost of bed linen, increased significantly during the period considered. Normally, in fair market conditions, producers should have been able to pass on this cost increase to customers. The investigation has shown that the Community industry was not able to do so in this case.

(16) It is also noted that as described in recitals (9) and (10) above the investigation also established that prices of the imports concerned decreased considerably and that there was significant price undercutting by Indian exporting producers. Indian prices declined by up to 18 % and undercutting margins ranging from 13,8 % to 40,8 % were found to exist.

(17) Furthermore, between 1994 and the IP, the volume of imports from India increased the most: 5 315 tonnes (5 058 tonnes excluding the imports which were not made at dumped prices) and 3,1 percentage points growth in market share (2,9 percentage points). These imports represented 34 % of the Community industry's sales volume in 1994 and over 50 % during the IP.

2.2.3. Magnitude of the actual margin of dumping

(18) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports originating in India, this impact cannot be considered as negligible. Indeed, as outlined in recital (8) above, Indian imports increased significantly in absolute and in relative terms. They represented 33 % of the Community industry's sales volume in 1992 and over 50 % during the IP (respectively 28 % and 43 % if the imports from Indian exporters found not to have dumped are excluded).

(19) The Association of Indian exporters argued that where the dumping margins are much lower than the undercutting or underselling margins, the injury suffered by the Community industry must be due to other factors. Whilst it is noted that individual dumping margins and the weighted average dumping margin found for India are lower than the undercutting margins. However, the dumping margins found are still distinctly above *de minimis* levels. Indeed, at least one third of the undercutting would have disappeared if the imports from India had not been dumped and this would have made products from India clearly less attractive.

2.3. *Conclusion on injury*

(20) It follows from the reassessment carried out above that imports from India increased by 56 % or by 6 583 tonnes from 1992 to the IP, and their market share by 67 % (55 % or by 5 584 tonnes excluding the imports which were not made at dumped prices). If only dumped imports are taken into consideration, they increased by 3,4 percentage points in terms of market share and represented 8,5 % of the Community market during the IP. The increase in absolute and relative terms therefore remains significant, even if the imports from Indian exporters found not to have dumped are excluded. Moreover, average prices of Indian bed linen declined by up to 18 % during the period considered and undercutting by dumped imports was established on average at 19 % during the IP.

(21) Based on the above, it is concluded that the Community has suffered material injury.

3. **Causation**

3.1. *Introduction*

(22) Based on the above findings, the causal link analysis set out in recitals (54) to (58), of Regulation (EC) No 1644/2000 as well as in (100) and (101) of the provisional Regulation should likewise be re-assessed.

3.2. *Effect of the dumped imports from India*

(23) As shown in recitals (5) to (8) above, imports from India significantly increased by 6 583 tonnes in absolute terms and by 56 % in percentage terms (if the imports from the Indian exporters found not to be dumping are excluded, the volume increase would be 5 584 tonnes, meaning a percentage terms increase of 55 %). The market share held by these imports increased during the period considered from 5,9 % to 9,9 %, namely by 4,0 percentage points (5,1 % to 8,5 %, namely 3,4 percentage points if the imports from the Indian exporting producers found not to have dumped are excluded). During the IP, the weighted average undercutting margin (excluding the imports from the non-dumping Indian exporters) was established at around 19 %.

(24) During the period considered sales by the Community industry slightly increased by 348 tonnes and the Community industry's market share increased from 18,1 % to 19,7 %, namely by 1,6 percentage points. This has to be seen in the light of the fact that the Community industry managed to shift production and sales to higher value added products in order to maintain production and sales levels. Overall, this led to cost increases not covered by price increases. Indeed, the investigation showed that the Community industry's weighted average sales price remained by and large stable.

(25) It is also recalled that the market for bed linen is characterised by transparency and a certain product substitutability (recital (97) of the provisional Regulation). Large Community purchasers of bed linen, whose orders can ensure a high level of production capacity utilisation and therefore some economy of scale, are very sensitive to prices. On this basis, it can be concluded that the low prices of the Indian exporting, producers concerned, which were of the lowest available on the Community market, coupled with their substantial and increasing market share, have exercised continuous downward pressure on the prices on the Community market.

(26) As stated in recital (17) above it should further be noted that during the period 1994-IP the volume of imports from India increased the most, namely by 41 % or by 5 315 tonnes (47 % or 5 058 tonnes if the imports from the Indian exporting producers found not to have dumped are excluded). During that period, the market share of Indian imports increased by 3,1 percentage points (2,9 percentage points). It is recalled that the investigation showed that it was during that period that the financial situation of the Community industry deteriorated the most: in particular, profit fell by 1,4 percentage points and the return on investments by 7 percentage points.

As stated in recital (99) of the provisional Regulation, price suppression and consequent decreasing profitability (and the corresponding development of cash flow and return on investment) were the main indicators to conclude that the Community industry suffered material injury. In view of the coincidence in time between the significant increase in the low-priced dumped imports originating in India and the deterioration of the financial situation of the Community industry, it is confirmed that there was a direct link between these imports and the material injury found.

3.3. *Effects of other factors*

3.3.1. Preliminary remarks

(27) It should be recalled that the analysis set out in Regulation (EC) No 1644/2001 of the effects of factors other than dumped imports on the state of the Community industry confirmed the causal link between dumped imports originating in India, Egypt and Pakistan and the material injury found (recital (69) of Regulation (EC) 1644/2001). This analysis included an analysis of imports from other third countries not subject to measures, which obviously did not cover imports from Egypt and Pakistan. Given the termination of the proceeding with regard to imports originating in Pakistan (recital (13) of Regulation (EC) No 160/2002) and the expiry of the measures with regard to Egypt, the re-assessment of the effect of imports of bed linen from other third countries covers all imports other than Indian including those from Egypt and Pakistan.

(28) In addition, it is important to ensure that the injurious effects of imports from third countries not concerned, including those from Egypt and Pakistan, are not attributed to Indian imports taken in isolation. Therefore, a separate assessment and a distinction between the injurious effects of those imports were carried out.

(29) From the outset, the nature of the injury suffered by the Community industry, namely price suppression and declining and inadequate profitability which caused financial losses, should be underlined.

3.3.2. Effect of imports from third countries

(30) Firstly, it should be recalled that the impact of imports of bed linen from third countries excluding India, Egypt and Pakistan was analysed in recitals (100) and (101) of the provisional Regulation. It was found that these imports originated from a wide range of third countries with very limited market shares. As shown in the table below, during the IP, market shares of the most relevant third countries were: Turkey (4 %), Poland (2,4 %), Thailand (1,5 %), China (1,1 %) and Romania (1,7 %). All the other third countries had a market share below 1 % of Community consumption.

Imports from third countries not originally concerned (Eurostat)	1992	1993	1994	1995	IP
Turkey					
Market share	4,2 %	3,6 %	3,1 %	3,6 %	4 %
Price ECU/KG	6,7	7,1	7,6	8,1	7,9
Poland					
Market share	0,5 %	0,9 %	1,4 %	2,2 %	2,4 %
Price ECU/KG	7,2	7,2	7,5	8,3	8,4
Thailand					
Market share	2,1 %	1,6 %	2,2 %	1,8 %	1,5 %
Price ECU/KG	5,0	5,4	4,9	5,1	5,3
China					
Market share	0,9 %	1,2 %	1,4 %	1,3 %	1,1 %
Price ECU/KG	10,0	9,5	9,1	9,2	9,7
Romania					
Market share	0,3 %	0,2 %	0,7 %	1,0 %	1,7 %
Price ECU/KG	6,7	4,9	5,1	5,6	5,8
Other third countries with low Market Share	12,9 %	9,8 %	7,7 %	4,5 %	4,4 %
Price ECU/KG	6,0	6,6	11,6	14,9	14,7

(31) The analysis shows that Thailand, whose import price was 7 % higher than that of India, had the lowest level of prices of all the above third countries. However, the market share of Thailand (1,5 %) is just 15 % of the market share of India alone. All the other third country exporters sold their bed linen on the Community market at prices significantly above the prices of the Indian and Egyptian exporting producers. It follows from the foregoing that most of the above imports were undercut by imports from India, Egypt and even in some instances from Pakistan.

(32) As stated in recital (101) of the provisional Regulation, the cheap imports from third countries other than Egypt and Pakistan, which undercut the Community industry prices, could also have contributed to the injury suffered by the Community industry. However, given their limited market share and the level of their sales price, the consequent impact on the Community market, if any, is considered to be negligible.

(33) Secondly, imports attributable to Pakistani and Egyptian exporting producers were analysed in the context of the assessment of the impact of other imports into the Community originating in countries which were not under investigation. Overall, imports of bed linen from third countries including those from Egypt and Pakistan developed as follows:

Imports all other third countries	1992	1993	1994	1995	IP
Volume (tonnes)	63 694	65 094	67 552	65 473	64 078
Index	100	102	106	103	101
Price ECU/KG	6,0	6,1	6,3	6,5	6,7
Index	100	102	105	108	111
Market share	31,9 %	33,5 %	34,9 %	34,6 %	34,5 %
Index	100	105	109	109	108

(34) As shown in the table above the volume of imports from all other third countries slightly increased by 1 % or by 384 tonnes over the period considered. Thus, as compared to the findings set out in the provisional Regulation, which showed an overall decreasing trend during the period considered, imports from these other countries increased by 6 % up to 1994 and subsequently decreased by 5 %. At the end of the period considered, their volume was roughly at the same level as at the beginning. The aforementioned change in findings is also reflected in the market share. Their market share increased by 8 % or by 2,6 percentage points during the same period.

(35) It should be noted that in the most recent period prior to the IP, namely from 1994 up to the end of the IP, when the economic situation of the Community industry developed most negatively, imports from other third countries also followed a negative trend: their volume decreased by 5 % or by 3 474 tonnes and they also lost market share. The average price however continuously increased.

(36) It should be noted that the findings made in recitals (100) and (101) of the provisional Regulation concerning the trends in volume and average import price of other third countries are not overall altered by the inclusion of imports from Egypt and Pakistan. It is recalled that Pakistan is by far the largest exporting country amongst those 'other third countries' and average import prices rose consistently during the period considered. Moreover, during the IP, prices of sampled Pakistani producers were in many instances higher than those of imports from sampled exporting producers from India.

(37) Thirdly and for the sake of completeness, the information available on imports of bed linen originating in Egypt and Pakistan is given below and analysed separately in order to distinguish the injurious effects of these third countries' imports from the injurious effects of dumped imports from India:

Egypt	1992	1993	1994	1995	IP
Volume (tonnes)	1 759	2 428	4 319	5 974	6 714
Index	100	142	246	340	382
Market share	0,9 %	1,2 %	2,2 %	3,2 %	3,6 %
Index	100	142	253	359	410
ECU/Kg	4,38	4,46	4,16	4,21	4,28
Eurostat					
Index	100	102	95	96	98
Index 1993-IP		100	93	94	96
Index 1994-IP			100	101	103

Pakistan	1992	1993	1994	1995	IP
Volume (tonnes)	20 221	21 874	18 925	21 438	21 514
Index	100	111	94	106	106
Market share	10,1 %	11,2 %	9,8 %	11,3 %	11,6 %
Index	100	111	97	112	114
ECU/Kg	5,64	5,73	6,15	6,11	6,03
Eurostat					
Index	100	102	109	108	107
Index 1993-IP		100	107	107	105
Index 1994-IP			100	99	98

(38) The evolution of imports from Egypt and Pakistan contrasts with imports from India, the development of which is shown in recitals (5) to (7) above. Their combined volume was always higher than the volume of imports from India alone. However, while the volume of imports from India increased significantly both in absolute and in relative terms during the period considered, the volume of imports from Pakistan remained by and large stable during that period. The volume of imports from Egypt increased both in absolute and in relative terms but at the end of the period considered it remained still far below the Indian levels.

(39) As far as prices are concerned, according to Eurostat import statistics it emerged that whilst prices of Egyptian imports, which represented a fairly small market share as compared to Pakistan and India, had slightly decreased by 2 % during the period considered, Pakistani prices had risen (see recital (80) of the provisional Regulation). Moreover, Pakistani prices are on average higher than Indian prices. Furthermore, during the IP and based on data collected from sampled companies on similar types of bed linen it was found that in many instances and for large quantities, Pakistani products were sold at prices higher than those charged by Indian exporting producers.

(40) Based on Eurostat import statistics it emerged that in 1994 Indian prices were on average 7 % higher than Pakistani prices, but the trend significantly reversed during the IP and Indian prices became on average 18 % lower. This also means that in the period from 1994 to the IP Pakistani prices had decreased by 2 % whereas Indian prices decreased by as much as 25 %. In the same period, Egyptian prices had increased by 3 % on average.

(41) It is in the most recent part of the period considered, namely between 1994 and the IP, that Indian exporting producers gained most of the volume and market shares (see recitals (17) and (26) above). This period coincided with the deterioration of the financial situation of the Community industry.

(42) Low-priced Indian imports represented overall more than 50 % of the Community industry's sales during the IP and price undercutting by exporting producers located in that country was significant (see recitals (10) and (18) above). Between 1993 to the IP, Indian prices, which were amongst the lowest of all the operators present on the price-sensitive Community market, had decreased by 18 %. Indian prices had decreased by 25 % in the period from 1994 to the IP when the financial situation of the Community industry developed most negatively.

(43) When analysing the nature and extent of the injury caused by low-priced Indian imports on the Community market, it is necessary to take account of the dramatic increase of these imports as compared to Community industry's sales volume (see recital (18) above) and the negative trend in Indian sales prices during the period considered, as well as during the period from 1994 to the IP when, as mentioned, the deterioration of the situation of the Community was most marked. The impact of the increased volume and the trend in sales price described above on the state of the Community industry has also to be seen in the light of the transparency and the importance of prices in the bed linen market.

(44) The separate analysis of the effects of the import volume from Egypt and Pakistan and the effect of these imports on prices in the Community market for bed linen, and the consequent effect on the Community industry, indicates that although these imports had a negative impact, the negative impact of the dumped imports from India taken in isolation were nonetheless substantial. This finding takes account of the nature of the material injury found and the increased volumes and the low level of prices offered on the Community market by Indian exporting producers.

(45) As shown in recitals (5) to (10) above, imports from India continuously increased during the period considered. The table below shows the evolution of imports from Indian exporting producers not found to be dumping and their share in the total import of bed linen from India. The development of Indian imports thus remains significant even if imports made by Indian exporters found not to have dumped are excluded.

Non dumped imports India	1992	1993	1994	1995	IP
Volume (tonnes)	1 612	1 612	2 355	2 540	2 612
Index	100	100	146	158	162
% of Indian imports	16 %	15 %	22 %	16 %	17 %

(46) Finally, as shown above, bed linen from Indian exporting producers found not to have dumped was imported in limited quantities onto the Community market. These imports increased from 1 612 tonnes in 1992 to 2 611 tonnes during the IP. The information available also showed that prices for these imports had increased during the period considered. Therefore, even if these imports were to be included in the above analysis it would not reverse the trends as found in recital (34) above.

Based on the above, the conclusion reached in recital (44) is not altered if imports from Indian exporting producers found not to have dumped were included in the overall analysis of imports of bed linen from other third countries.

3.4. *Conclusion on causation*

(47) Based on the reasoning in recitals (52) to (70) of Regulation (EC) No 1644/2001 and the above re-assessment of the findings it can clearly be seen that there is a direct link between the increase in volume and the price effect of dumped imports from India taken in isolation and the material injury suffered by the Community industry.

(48) This link is demonstrated in particular by the degree of the increase in volume and market share of imports originating in India compared to other third country imports. This contributed to the suppression of sales prices and the deterioration of the Community industry's profitability from 3,6 % in 1992 to 1,6 % during the IP.

(49) Furthermore, the analysis of the situation of the Community industry between 1994 and the IP and the imports of bed linen from India indicates a clear coincidence in time between the marked deterioration of the financial situation of the Community industry and the increase, in both relative and absolute terms, in low-priced and dumped imports originating in India.

(50) Given the above analysis, it is considered that imports of bed linen originating in India had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third countries including Pakistan and Egypt was not such as to alter the finding of a genuine and substantial relationship of cause of and effect between the dumped imports from India and the material injury suffered by the Community industry. Indeed, the injurious effect of Indian imports on the Community market was greater than any other factor towards the latter part of the period considered. During this period imports originating in India gained most of the volume and market shares, decreased in price by 25 %, and the financial situation of the Community industry worsened considerably. Consequently, there is a causal link between the dumped imports from India and the material injury suffered by the Community industry.

C. **GENERAL CONCLUSION**

(51) As a result, the amended definitive duty introduced and suspended by Regulation (EC) No 1644/2001 as regards imports of bed linen originating in India should be confirmed.

(52) The Indian authorities, the Indian exporters and their association, all interested parties in the Community, in particular the Community industry, importers and users, received disclosure of the reassessed findings and were given an opportunity to comment and be heard. The oral and written comments submitted by these parties were considered but have not altered the conclusions reached in this Regulation.

(53) Notwithstanding its confirmatory nature, in the interests of transparency and legal certainty, this Regulation should enter into force as soon as possible,

HAS ADOPTED THIS REGULATION:

Article 1

The definitive anti-dumping duty imposed on imports of cotton type bed linen originating in India by Article 1 of Regulation (EC) No 2398/97, as amended and suspended by Regulation (EC) No 1644/2001, is hereby confirmed.

Article 2

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

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

Proposal for a Council Decision regarding the position to be taken by the Community within the ACP-EC Council of Ministers with a view to extend the Decision No 1/2000 of the ACP-EC Council of Ministers of 27 July 2000 regarding transitional measures valid from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement

(2002/C 203 E/08)

COM(2002) 174 final

(Submitted by the Commission on 10 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article 300(2) in conjunction with Article 310 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Article 30 of the fourth ACP-EC Convention, as amended by the agreement signed in Mauritius on 4 November 1995 (hereinafter referred to as 'the Convention'), establishes a Council of Ministers with decision-making powers determined by the Convention.

(2) In accordance with Article 366(3) of the Convention, the Council of Ministers must adopt any transitional measures that might be required until a new Convention enters into force.

(3) By decision of 27 July 2000, the ACP-EC Council of Ministers adopted transitional measures valid from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement, limited however till 1 June 2002. Considering the state of progress of the ratification process, an extension of the Decision is needed

(4) The Community's position within the Council of Ministers regarding the latter's adoption of a decision regarding extension of the transitional measures on the expiry of the transitional measures currently in force should be determined,

HAS DECIDED AS FOLLOWS:

Article 1

The Community's position within the Council of Ministers regarding the extension of the transitional measures to cover the period between 2 June 2002 and the entry into force of the ACP-EC Partnership Agreement shall be based on the draft Decision annexed hereto.

Draft of a Decision of the ACP-EC Council of Ministers extending Decision No 1/2000 of 27 July 2000 regarding transitional measures valid from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to the fourth ACP-EC Convention, signed in Lomé on 15 December 1989 and revised in Port Louis on 4 November 1995, hereinafter referred to as 'the Convention', and in particular Article 366(3) thereof,

Whereas:

(1) The new ACP-EC Partnership Agreement, hereinafter referred to as 'the Agreement', was signed in Cotonou on 23 June 2000. The Agreement will not enter into force until requirements set out in Article 93(3) have been fulfilled.

(2) The ACP-EC Council of Ministers took a decision on 27 July 2000 whereby transitional measures applicable from 2 August 2000 until the entry into force of the ACP-EC Partnership Agreement were adopted.

(3) In accordance with Article 7 of the Decision No 1/2000, the decision shall apply until the Agreement enters into force but no longer than 1 June 2002. Given that the Agreement will not have entered into force by that date, the Council of Ministers should decide to extend the application of Decision No 1/2000 for a limited period of time,

HAS ADOPTED THIS DECISION:

Article 1

Decision No 1/2000 is amended as follows:

Article 7, shall be replaced by the following:

'This Decision shall enter into force on 2 August 2000. It shall apply until the Agreement enters into force but no longer than 31 July 2003. The Council of Ministers may decide to extend its application'.

Article 2

This Decision shall enter into force on the day of its adoption.

Proposal for a Decision of the European Parliament and of the Council adopting a multiannual programme for action in the field of energy: 'Intelligent Energy for Europe' Programme (2003-2006)

(2002/C 203 E/09)

COM(2002) 162 final — 2002/0082(COD)

(Submitted by the Commission on 11 April 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure provided for in Article 251 of the Treaty,

Whereas:

(1) Natural resources, the prudent and rational utilisation of which is provided for in Article 174 of the Treaty, include, apart from renewable energy sources, oil, natural gas and solid fuels, which are essential energy sources but are also the main sources of carbon dioxide emissions. Promoting measures at international level to deal with regional or worldwide environmental problems is one of the aims of that Article.

(2) The Commission communication entitled 'A sustainable Europe for a better world: A European Union strategy for sustainable development' [1], presented to the Gothenburg European Council of 15 and 16 June 2001, includes greenhouse gas emissions and pollution caused by transport among the main obstacles to sustainable development. Overcoming these obstacles means adopting a new approach to Community policies to bring them closer to individual citizens and businesses in order to change patterns of consumption and investment.

(3) The Gothenburg European Council adopted a strategy for sustainable development and added an environmental dimension to the Lisbon process for employment, economic reform and social cohesion.

(4) Measures relating to energy efficiency and renewable energy sources are important elements of the action needed to comply with the provisions of the Kyoto Protocol, as provided for in the European Climate Change Programme (ECCP) [2].

(5) The Green Paper entitled 'Towards a European strategy for the security of energy supply' [3] notes that the European Union is becoming increasingly dependent on external energy sources and that its dependence could rise to 70 % in 20-30 years' time (compared with 50 % at present) and therefore stresses the need to balance supply policy against clear action for a demand policy and calls for a genuine change in consumers' behaviour so as to orientate demand towards better managed and more environmentally friendly consumption, particularly in the transport and building sectors, and to give priority to the development of new and renewable sources on the energy supply side in order to respond to the challenge of global warming.

(6) The Communication from the Commission on an action plan to improve energy efficiency in the European Community [4] provides for the improvement of energy efficiency by an additional 1 % a year compared with the figure of 0,6 % which corresponds to the trend recorded over the last ten years. If this target is met, two-thirds of the energy-saving potential, which is estimated at 18 % of total consumption, could be realised by 2010. The action plan proposes legislative measures and supporting actions. The implementation of the action plan also requires the setting-up of efficient systems for monitoring and follow-up.

[1] COM(2001) 264 final, 15.5.2001.

[2] COM(2000) 88 final, 8.3.2000.

[3] COM(2000) 769 final.

[4] COM(2000) 247 final.

(7) The Communication from the Commission entitled 'Energy for the future: renewable sources of energy' — White Paper for a Community strategy and action plan [1] — sets an indicative target of 12 % of energy from renewable sources in gross internal consumption in the EU by 2010. The Council, in its Resolution of 8 June 1998 on renewable energy sources [2], and the European Parliament, in its Resolution on the White Paper, underlined the need for a substantial, sustained increase in the utilisation of renewable energy sources in the Community and fully endorsed the strategy and action plan proposed by the Commission, including the strengthening of programmes to support renewable sources. The action plan provides for measures to support the promotion and development of renewable energy sources. The Communication from the Commission on the implementation of the Community strategy and action plan for renewable energy sources (1998-2000) [3] notes the progress which has been made, but stresses that further efforts are needed at EU and national level to attain these objectives, in particular new legislation on renewable energy sources and their promotion.

(8) Since most Community measures on energy efficiency, in particular the labelling of electrical, electronic, office and communications equipment and the standardisation of lighting, heating and air-conditioning equipment, are not binding on the Member States, there is a need for specific promotion programmes at Community level to create the conditions for moving towards sustainable energy systems.

(9) The same applies to the Community measures to achieve greater market penetration for renewable energy sources, in particular the standardisation of equipment which produces or consumes renewable energy sources.

(10) Council Decision 1999/21/EC, Euratom of 14 December 1998 adopting a multiannual framework programme for actions in the energy sector (1998-2002) and related measures [4], the Decisions on the specific programmes, namely Council Decision 1999/22/EC of 14 December 1998 adopting a multiannual programme of studies, analyses, forecasts and other related work in the energy sector (1998-2002) — ETAP programme [5], Council Decision 1999/23/EC of 14 December 1998 adopting a multiannual framework programme to promote international cooperation in the energy sector (1998-2002) — Synergy programme [6], Council Decision 1999/24/EC, Euratom of 14 December 1998 adopting a multiannual programme of technical actions promoting the clean and efficient use of solid fuels (1998-2002) — Carnot programme [7], Council Decision 1999/25/Euratom of 14 December 1999 adopting a multiannual programme (1998-2002) of actions in the nuclear sector relating to the safe transport of radioactive materials and to safeguards and industrial cooperation to promote certain aspects of the safety of nuclear installations in the countries currently participating in the TACIS Programme — SURE programme [8], European Parliament and Council Decision 646/2000/EC of 28 February 2000 adopting a multiannual programme for the promotion of renewable energy sources in the Community (1998-2002) — Altener programme [9], and European Parliament and Council Decision 647/2000/EC of 28 February 2000 adopting a multiannual programme for the promotion of energy efficiency (1998-2002) — SAVE programme [10] expire on 31 December 2002.

(11) In accordance with Article 5(2) of Decision 1999/21/EC, Euratom, the Commission has had independent experts carry out an external evaluation of the above framework programme and the specific programmes. In their report, the evaluators recognise the importance of, in particular, the Altener, SAVE, Synergy and ETAP programmes in the context of the implementation of the energy strategy and the Community strategy for sustainable development. They note the lack of resources for these programmes given the genuine needs and suggest they should be increased.

(12) Taking into account the Community strategy for sustainable development and the results of the framework programme evaluations, steps should be taken to strengthen Community support in those energy fields that contribute to sustainable development by grouping them in a single programme — 'Intelligent Energy for Europe' — comprising four specific areas.

(13) The importance and success of Community support for renewable energy sources in the framework of the Altener programme during the period 1993 to 2002 justifies the inclusion in the present programme of a specific field concerning renewable energy sources — 'Altener'.

(14) The need to strengthen Community support for the rational use of energy and the success of the SAVE programme during the period 1991-2002 justifies the inclusion in the present programme of a specific field concerning renewable energy efficiency — 'SAVE'.

[1] COM(97) 599 final.

[2] OJ C 198, 24.6.1998, p. 1.

[3] COM(2001) 69 final.

[4] OJ L 7, 13.1.1999, p. 16.

[5] OJ L 7, 13.1.1999, p. 20.

[6] OJ L 7, 13.1.1999, p. 23.

[7] OJ L 7, 13.1.1999, p. 28.

[8] OJ L 7, 13.1.1999, p. 31.

[9] OJ L 79, 25.10.2000, p. 1.

[10] OJ L 79, 25.10.2000, p. 6.

(15) Improving energy use in the transport sector is extremely important in Community efforts to reduce the negative effects of transport on the environment. This justifies the inclusion in the present programme of a specific field concerning the energy aspects of transport — 'STEER'.

(16) The need to promote the best practices developed in the Community in the fields of renewable energy sources and energy efficiency, and to transfer them to the developing countries in particular, is one of the Community's priorities as regards international commitments, along with strengthening cooperation on the use of the flexible mechanisms of the Kyoto Protocol. In order to ensure continuity with regard to the former Synergy programme concerning actions in the abovementioned areas, a specific field concerning the promotion of renewable energy sources and energy efficiency in the framework of international promotion — 'Coopener' — should be included in this programme.

(17) This Decision lays down for the entire duration of the programme an overall budget constituting the prime reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure.

(18) Given that the programme's objectives, which concern the implementation of the Community strategy in the fields of energy contributing to sustainable development, cannot be adequately achieved by the Member States acting individually since a promotion campaign and exchanges are required, based on close cooperation on a European scale between the various players at national, regional and local level, and can therefore be better achieved at Community level, the Commission may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the abovementioned Article, this Decision does not exceed what is necessary in order to achieve those objectives.

(19) The provisions of this Decision are without prejudice to Articles 87 and 88 of the EC Treaty, and in particular the Community guidelines on State aid for environmental protection.

(20) The measures needed to implement this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

HAVE ADOPTED THIS DECISION:

Article 1

1. A multiannual programme for actions in the field of energy, hereinafter referred to as 'Intelligent Energy for Europe', is hereby adopted for the period 2003-2006.

2. This programme will contribute to the implementation of the medium and long-term Community energy strategy and, in particular, to the achievement of the following general objectives:

(a) security of supply,

(b) competitiveness, and

(c) environmental protection.

The programme seeks to promote sustainable development, economic and social cohesion and environmental protection, thereby generating an effective link between these measures and actions carried out under other Community policies.

It also seeks to increase transparency, coherence and the coordination of all the activities and other measures in the energy sector.

Article 2

The specific objectives of this programme are as follows:

(a) to provide the elements needed for the development and implementation of a medium and long-term energy policy, notably with regard to demand management, increased use of renewable energy sources, energy diversification, including in transport, and strengthening the potential of the regions, in particular the outlying regions, and preparing the legislative measures needed to attain these strategic objectives;

(b) to develop the instruments and means needed to follow up, monitor and evaluate the impact of the measures adopted by the Community and by EU Member States in the fields of energy efficiency and renewable energy sources, including the energy aspects of transport;

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

(c) to bring about a genuine change in energy behaviour in the Community by raising awareness among the main players concerned, businesses and citizens in general, so that they move towards efficient and intelligent energy production and consumption patterns based on solid and sustainable foundations, by promoting exchanges of experience and know-how, by supporting actions intended to boost investment in emerging technologies, and by encouraging the spread of best practices and the best available technologies, including in the educational system, as well as by means of promotion at international level.

Article 3

1. This programme is structured in four specific fields:

(a) 'SAVE', which concerns the improvement of energy efficiency and demand management, in particular in the building and industry sectors, including the preparation of legislative measures and their application;

(b) 'Altener', which concerns the promotion of new and renewable energy sources for centralised and decentralised production and their integration into the urban environment, including the preparation of legislative measures and their application;

(c) 'Steer', which concerns support for initiatives relating to the energy aspects of transport, the diversification of fuels and the promotion of renewable fuels and energy efficiency in transport, including the preparation of legislative measures and their application;

(d) 'Coopener', which concerns support for initiatives relating to the promotion of renewable energy sources and energy efficiency in the developing countries.

2. Initiatives, referred to as 'key actions', combining several specific areas and/or relating to certain Community priorities, for example in the outermost regions as defined in Article 299(2) of the Treaty, may be launched.

Article 4

1. For each of the four specific areas referred to in Article 3(1), Community funding under the programme shall be for measures or projects concerned with:

(a) the implementation of medium and long-term strategies in the energy field to promote sustainable development, security of supply in the framework of the internal market, competitiveness and environmental protection, including the development of standards and labelling and certification systems, long-term voluntary commitments to be agreed with industry, as well as forward studies, strategic studies on the basis of shared analyses, and regular monitoring of the development of the markets and energy trends;

(b) the creation or enlargement of structures and instruments for sustainable energy development, including local and regional energy planning and management, and the development of adequate financial products and market instruments;

(c) the promotion of sustainable energy systems and equipment in order to accelerate their penetration of the market and stimulate investment to facilitate the transition from the demonstration to the marketing of more efficient technologies, including awareness campaigns and the creation of institutional capabilities aimed at implementing the clean development mechanism and joint implementation under the Kyoto Protocol.

(d) the development of information, education and training structures; the utilisation of results, the promotion and dissemination of know-how and best practices involving all consumers, and cooperation with the Member States through operational networks at Community and international level;

(e) the monitoring of the implementation and the impact of Community policy, and the support measures;

(f) the evaluation of the impact of actions and projects funded under the programme.

2. Under this programme, the financial assistance allocated to the actions and measures in the four specific fields referred to in Article 3(1) shall be established on the basis of the Community added value of the action proposed and will depend on its benefit and expected impact as well as on the origin of the initiative.

The aid may not exceed 50 % of the total cost of the measure, the rest being covered either by public or private funds, or a combination of the two. The aid may, however, cover all the cost of some actions, such as studies and other actions to prepare, supplement, implement and evaluate the impact of Community strategy and policy measures and any measures proposed by the Commission to encourage exchanges of experience and know-how to improve the coordination between Community, national, international and other initiatives.

All costs relating to actions and measures undertaken solely on the Commission's initiative will be borne by the Community.

Article 5

1. Within six months of the adoption of this Decision, the Commission shall establish a work programme, in consultation with the Committee referred to in Article 8(1). This work programme shall be prepared and updated in accordance with the procedure laid down in Article 8(2).

2. The work programme shall set out in detail:

(a) the guidelines, specific objectives and priorities for each of the specific areas referred to in Article 3(1), taking account of the added value that all the measures proposed will provide at Community level as compared with existing measures;

(b) the implementation arrangements, distinguishing between actions envisaged on the Commission's initiative and those where the initiative comes from the sector and/or the market concerned, as well as the funding arrangements and the type of and rules for participation;

(c) the selection criteria and the arrangements for applying them to each type of action and the method and instruments for monitoring and utilising the results of the actions and/or projects, including the definition of performance indicators;

(d) the indicative timetable for the implementation of the work programme, in particular as regards the contents of the calls for proposals;

(e) the detailed rules for coordination and linkage with other Community policies, and the procedure for the development and implementation of actions and measures coordinated with those carried out by the Member States in the field of sustainable energy in order to provide added value as compared with measures taken by each Member State acting on its own and in order to achieve an optimum combination of the various instruments at the disposal of both the European Union and the Member States;

(f) if necessary, the operational arrangements in order to encourage the participation of remote and outlying regions in the programme, and the participation of SMEs.

Article 6

1. The financial reference amount for implementing this programme is EUR 215 million.

Annual appropriations shall be authorised by the budgetary authority within the limit of the financial perspective.

Financial reference amounts shall be laid down on an indicative basis for each specific area. An indicative breakdown of this amount is given in the Annex. The budgetary allocation between areas shall be flexible in order to deal more effectively with changing needs in the sector.

2. The arrangements for the Community financial assistance for the actions undertaken under this programme shall be laid down in accordance with the provisions of the Financial Regulation of 21 December 1977.

Article 7

The Commission shall be responsible for the execution of this programme and for establishing draft guidelines applicable to the actions and measures to be undertaken for each of the specific areas referred to in Article 3(1). These guidelines shall be adopted in accordance with the procedure laid down in Article 8(2).

Article 8

1. The Commission shall be assisted by a Committee made up of the representatives of the Member States and chaired by the Commission representative.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, in conformity with the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its rules of procedure.

Article 9

1. The Commission shall carry out an annual examination of the progress made on this programme and the actions carried out in the four specific areas referred to in Article 3(1).

2. During the third year of the period of application of the programme and in any case before putting forward proposals on any subsequent programme, the Commission shall have independent experts carry out an external evaluation of the overall implementation of the Community actions carried out under this programme. The Commission shall communicate the conclusions of this evaluation to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

Article 10

1. Without prejudice to paragraphs 2 and 3, participation in this programme shall be open to any legal, public or private person established on the territory of the European Union.

2. This programme shall be open to the participation of the Central and Eastern European candidate countries, in accordance with the conditions laid down in the Europe association agreements, in the additional protocols relating thereto and in the decisions of the respective association councils. It shall also be open to the participation of Cyprus, Malta and Turkey on the basis of the bilateral agreements concluded with these countries.

3. Likewise, the programme shall be open to the participation of the EFTA/EEA countries on the basis of additional funds and in accordance with procedures to be agreed with these countries.

Article 11

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

Article 12

This Decision is addressed to the Member States.

ANNEX

INDICATIVE BREAKDOWN OF THE ESTIMATED AMOUNT NEEDED [1]

Areas of action	million EUR (2003-2006)
1. Rational use of energy and demand management	75
2. New and renewable energy sources and diversification of energy production	86
3. Energy aspects of transport	35
4. Promotion of renewable energy sources and energy efficiency at international level, particularly in the developing countries	19
Total	215 [2] [3] [4]

[1] This breakdown is indicative for the specific areas 'rational use of energy and demand management', 'new and renewable energy sources and diversification of energy production' and 'energy aspects of transport'. The budgetary allocation between areas is flexible in order to deal more effectively with changing needs in the sector.

[2] The appropriations earmarked for international promotion are a fixed amount representing 8,8 % of the total programme cost.

[3] An additional contribution is to be anticipated from 2004 onwards as a result of the enlargement of the Union to include new Member States.

[4] The budget for the Executive Agency is set by the budgetary authority as a percentage of the programme's overall financial allocation.

Proposal for a Council Decision on the signing of the Agreement for scientific and technological cooperation between the European Community and Ukraine

(2002/C 203 E/10)

COM(2002) 178 final

(Submitted by the Commission on 15 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170 (2) thereof, in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) A Partnership and Cooperation Agreement between the European Communities and their Member States of the one part, and Ukraine of the other part, was signed on 16 June 1994 and has entered into force on 1 March 1998 [1].

(2) A European Council Common Strategy on Ukraine was adopted on 11 December 1999 [2] at the Helsinki European Council.

(3) The European Community and Ukraine are pursuing specific RTD programmes in areas of common interest.

On the basis of past experience, both sides have expressed a desire to establish a deeper and broader framework for the conduct of collaboration in science and technology.

This cooperation agreement in the field of science and technology forms part of the global cooperation between the European Community and Ukraine.

(4) By its Decision of 8 October 2001, the Council authorised the Commission to negotiate on behalf of the European Community an agreement for scientific and technological cooperation between the European Community and Ukraine. The negotiations, conducted in line with the negotiating directives, resulted in the attached draft Agreement and its two annexes.

(5) Subject to its possible conclusion at a later date, the Agreement initialled on 13 November 2001 in Kiev should be signed,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Agreement for scientific and technological cooperation between the European Community and Ukraine.

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[1] OJ L 49, 19.2.1998, p. 3.

[2] OJ L 331, 23.12.1999.

AGREEMENT

on cooperation in science and technology between the European Community and Ukraine

THE EUROPEAN COMMUNITY (hereinafter 'the Community'),

of the one part,

and

UKRAINE,

of the other part,

hereinafter referred to as the 'Parties',

CONSIDERING the importance of science and technology for their economic and social development,

RECOGNISING that the Community and Ukraine are pursuing research and technological activities in a number of areas of common interest, and that participation in each other's research and development activities on a basis of reciprocity will provide mutual benefits,

HAVING REGARD to the Partnership and Cooperation Agreement concluded between the European Communities and their Member States of the one part, and Ukraine of the other part, signed on 16 June 1994, and in particular to Article 58 thereof,

DESIRING to establish a formal basis for cooperation in scientific and technological research which will extend and strengthen the conduct of cooperative activities in areas of common interest and encourage the application of the results of such cooperation to the economic and social benefits of the Parties,

HAVE AGREED AS FOLLOWS:

Article 1

Purpose

The Parties shall encourage, develop and facilitate cooperative activities in fields of common interest where they are pursuing research and development activities in science and technology.

Article 2

Definitions

For the purpose of this Agreement:

(a) 'Cooperative activity' means any activity which the Parties undertake or support pursuant to this Agreement, and includes joint research;

(b) 'Information' means scientific or technical data, results or methods of research and development stemming from joint research and any other data relating to cooperative activities;

(c) 'Intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967;

(d) 'Joint research' means research implemented with financial support from one or both Parties and that involves collaboration by participants from both the Community and Ukraine;

(e) 'Participant' means any person, legal entity, university, research institute or any other body participating in a cooperative activity, including, where appropriate, Agencies and official bodies of the Parties themselves.

Article 3

Principles

Cooperative activities shall be conducted on the basis of the following principles:

(a) mutual benefit;

(b) timely exchange of information which may affect cooperative activities;

(c) balanced realisation of economic and social benefits by the Community and Ukraine in view of the contribution made to cooperative activities by the respective participants and/or Parties.

Article 4

Areas of cooperative activities

(a) Cooperation may be pursued in research, technological development and demonstration activities, including basic research, in the following:

— environment and climate research, including earth observation,

— biomedical and health research,

— agriculture, forestry and fisheries research,

— industrial and production technologies,

— materials research and metrology,

— non-nuclear energy,

— transportation,

— information society technologies,

— social sciences research,

— science and technology policy,

— training and exchange of scientists.

(b) Other areas may be added to this list upon review and recommendation by the Joint Community-Ukraine Committee mentioned in Article 6 of this Agreement.

Article 5

Forms of cooperative activities

(a) Cooperation may include the following activities:

1. participation of Ukrainian entities in Community projects, in the areas of cooperative activities, and a reciprocal participation of entities established in the Community in Ukrainian projects in those areas. Such participation shall be subject to the laws, rules, regulations and procedures in force for each Party. Projects may also include a Party's scientific and technological organisations; projects may also be undertaken in cooperation with the Agencies and official bodies of the Parties;

2. free access to, and shared use of research facilities, including installations and sites for monitoring, observation and experimentation, as well as data collections, relevant to the cooperative activities;

3. visits and exchanges of scientists, engineers, or other appropriate personnel for the purposes of participating in seminars, symposia and workshops relevant to cooperation under this Agreement;

4. exchange of information on practices, legislation, regulations and programmes relevant to cooperation under this Agreement;

5. other activities as may be mutually determined by the Parties in accordance with the applicable policies and programmes of the Parties.

(b) Joint research projects shall proceed under this Agreement only after the participants in a project have concluded a joint technology management plan, as indicated in the Annex 1 to this Agreement which forms an integral part thereof.

(c) The Parties may jointly pursue cooperative activities with third parties.

Article 6

Coordination and promotion of cooperative activities

(a) In order to coordinate and facilitate cooperation activities under this Agreement the Parties will establish a Joint Community-Ukraine Committee on cooperation in the field of science and technology, hereinafter called the 'Committee'.

The Committee shall meet in the framework of the relevant Sub-Committee established under the Partnership and Cooperation Agreement between the European Comunities and their Member-States, and Ukraine.

(b) The function of the Committee shall include:

1. overseeing and promoting the activities envisaged under the Agreement;

2. making recommendations pursuant to Article 4(b);

3. proposing activities pursuant to Article 5, 5(a);

4. advising the Parties on ways of enhancing cooperation consistent with the principles set out in this Agreement;

5. providing an annual report on the status and effectiveness of cooperation undertaken under this Agreement;

6. reviewing the efficient and effective functioning of the Agreement;

7. taking account of the importance of regional aspects of the cooperation.

(c) The Committee shall meet once a year, meetings being held alternately in the Community and Ukraine. Extraordinary meetings may be held as mutually agreed.

(d) The Committee shall consist of a limited equal number of official representatives of each Party; it shall establish its own rules of procedure, subject to approval by the Parties. Decisions of the Committee shall be reached by consensus. Minutes, comprising a record of decisions and principal points discussed, shall be taken at each meeting and shall be agreed by those persons selected from each side to chair jointly the meeting. The Committee annual report will be submitted to the Cooperation Council and the Cooperation Committee established under the Partnership and Cooperation Agreement between the European Comunities and their Member States, and Ukraine, and appropiate authorities of each Party.

Article 7

Funding and taxes exemptions

(a) Cooperative scientific and technological activities shall be subject to the availability of funds and to the applicable laws and regulations, policies and programmes of the Community and Ukraine. As a rule, each Party shall bear the costs of discharging its responsibilities under this Agreement, including costs of participation in meetings of the Committee.

(b) When specific scientific and technological cooperative forms benefit from financial support of the European Community, either directly or indirectly through organisations set up with the participation of the European Community, provided to participants of Ukraine, any such grants, financial or other contributions from the European Community to participants of Ukraine in support of their scientific and technological activities, shall be granted tax and customs preferences. Any such grants shall be exempt by Ukraine from customs payments, any customs duties and fees, value added taxes, income taxes and any other taxes and duties of an equivalent effect.

Article 8

Entry of personnel and equipment

Each Party shall take all reasonable steps and use its best efforts, in accordance with its laws and regulations, to facilitate entry to, stay in and exit from its territory of persons, material, data and equipment involved in or used in cooperative activities under this Agreement.

Article 9

Information and intellectual property

The dissemination and utilisation of information, and management, allocation and exercise of intellectual property rights, resulting from joint research under this Agreement, shall be subject to the provisions of the Annex 2 to this Agreement.

Article 10

Other agreements and transitional provisions

1. This Agreement is without prejudice to other existing Agreements or arrangements between the Parties or any Agreement or arrangement between the Parties and third parties.

2. The Parties shall endeavour to bring under the terms of this Agreement those existing arrangements for scientific and technological cooperation between the Community and Ukraine that fall under the scope of Article 4 of this Agreement.

Article 11

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and on the other hand, to the territory of Ukraine. This shall not prevent the conduct of cooperative activities on the high seas, outer space on the territory of third countries, in accordance with international laws.

Article 12

Entry into force, termination, settlement of disputes

(a) This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

(b) This Agreement shall be concluded for an initial period ending 31 December 2002 and will be renewable by common agreement between the Parties for additional periods of five years.

(c) This Agreement can be terminated at any time by either Party upon a six month's written notice. The expiration or termination of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annexes.

(d) This Agreement may be amended by the written agreement of the Parties. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their respective internal procedures necessary for amending this Agreement have been completed.

(e) All disputes related to the interpretation or implementation of this Agreement shall be settled by mutual agreement between the Parties.

Article 13

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Ukrainian, Spanish and Swedish languages, each of these texts being equally authentic.

Done at . . . on the . . . day of . . . in the year . . .

For the European Community

For Ukraine

ANNEX 1

INDICATIVE FEATURES OF A TECHNOLOGY MANAGEMENT PLAN

The Technology Management Plan (TMP) is a specific agreement to be concluded between the participants about the implementation of joint research and the respective rights and obligations of the participants.

With respect to intellectual property, the TMP will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP may also address foreground and background information, licensing and deliverables.

The TMPs shall be developed taking into account the aims of the joint research, the relative financial or other contributions of the Parties or participants, the advantages and disadvantages of licensing by territory or for fields of use, the transfer of export-controlled data, goods or services, requirements imposed by the applicable laws and other factors deemed appropriate by the participants.

ANNEX 2

INTELLECTUAL PROPERTY RIGHTS

Pursuant to Article 9 of the present Agreement, rights to information and intellectual property created or furnished under the Agreement shall be allocated as provided in this Annex.

I. APPLICATION

This Annex is applicable to joint research undertaken pursuant to this Agreement, except as otherwise agreed by the Parties.

II. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. This Annex addresses the allocation of rights and interests of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to intellectual property allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and royalties between a Party and its nationals or participants, which shall be determined by the laws and practices applicable to each Party.

2. The following principles shall apply and shall be provided for in the contractual arrangements:

   (a) Adequate protection of intellectual property. The Parties and/or their participants, as appropriate, shall ensure that they notify one another within a reasonable time of the creation of any intellectual property arising under this Agreement or implementing arrangements and to seek protection for such intellectual property in a timely fashion.

   (b) Taking account of the contributions of the Parties or their participants in determining the rights and interests of the Parties and participants.

   (c) Effective exploitation of results.

   (d) Non-discriminatory treatment of participants from the other party as compared with the treatment given to its own participants.

   (e) Protection of confidential information.

3. The participants shall jointly develop a Technology Management Plan (TMP) in respect of the ownership and use, including publication, of information and intellectual property to be created in the course of joint research. The indicative features of a TMP are contained in the Annex 1 to this Agreement. The TMP shall be approved by the responsible funding agency or department of the Party involved in financing the research, before the conclusion of the specific research and development cooperation contracts to which they are attached.

4. Information or intellectual property created in the course of joint research and not addressed in the TMP shall be allocated, with the approval of the Parties, according to the principles set out in the TMP. In case of disagreement, such information or intellectual property shall be owned jointly by all the participants involved in the joint research from which the information or intellectual property results. Each participant to whom this provision applies shall have the right to use such information or intellectual property for his own exploitation with no geographical limitation.

5. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to this Agreement and arrangements made under it are exercised in such a way as to encourage, in particular:

   (a) the dissemination and use of information created, disclosed or otherwise made available, under the Agreement, and

   (b) the adoption and implementation of international technical standards.

6. Termination or expiry of this Agreement shall not affect rights or obligations under this Annex.

III. COPYRIGHT WORKS

Contractual and other implementing arrangements shall provide for treatment of copyright belonging to the Parties or to their participants consistent with the Berne Convention for the protection of literary and artistic work (Paris Act 1971).

IV. SCIENTIFIC LITERARY WORKS

Without prejudice to Section V, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants to that joint research. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of scientific and technical Journals, articles, reports, books, including video and software arising from joint research pursuant to this Agreement, the other Party or public bodies of that Party shall be entitled within the limits specified within the TMP to a worldwide, non-exclusive, irrevocable, royalty-free licence to translate, reproduce, adapt, transmit and publicly distribute such works.

2. The Parties shall ensure that literary works of a scientific character arising from joint research pursuant to this Agreement shall be disseminated as widely as possible.

3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author(s) explicitly declines to be named. They shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

V. UNDISCLOSED INFORMATION

A. *Documentary undisclosed information*

1. Each Party and its participants, as appropriate, shall identify at the earliest possible moment and preferably in the technology management plan the information that they wish to remain undisclosed, taking into account, inter alia, the following criteria:

   (a) confidentiality of the information in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the field;

   (b) the actual or potential commercial value of the information by virtue of its confidentiality;

   (c) previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its confidentiality.

   The Parties and their participants, as appropriate, may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research may not be disclosed.

2. Each Party shall ensure that it and its participants clearly identify undisclosed information, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

   A Party and a participant receiving undisclosed information shall respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under the Agreement and received from the other Party, may be disseminated by the receiving Party to persons within or employed by the receiving Party and other concerned departments or agencies of the receiving Party authorised for the specific purposes of the joint research underway, provided that any undisclosed information so disseminated shall be pursuant to an agreement of confidentiality and shall be readily recognisable as such, as set out above.

4. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in point 3 of the present section. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, regulations and laws.

B. *Non-documentary undisclosed information*

Non-documentary undisclosed or other confidential information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified for documentary information in this Annex provided however that the recipient of such undisclosed or other confidential or privileged information has been made aware of the confidential character of the information communicated at the time such communication is made.

C. *Control*

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of subsections A and B of the present Section, it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

Proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China

(2002/C 203 E/11)

COM(2002) 182 final

(Submitted by the Commission on 15 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE AND EXISTING MEASURES

(1) In March 1996, by Council Regulation No 600/96 [2] definitive anti-dumping measures were adopted with regard to imports of coumarin originating in the People's Republic of China. The measures imposed were in the form of a specific duty of ECU 3 479 per tonne.

B. PRESENT INVESTIGATION

1. Request for review

(2) Following the publication of a notice of impending expiry [3] of the anti-dumping measures in force on imports of coumarin originating in the People's Republic of China ('country concerned' or 'the PRC'), the Commission has received a request for review pursuant to Article 11(2) of Council Regulation (EC) 384/96 ('the basic Regulation').

(3) The request was lodged on 4 January 2001 by the European Chemical Industry Council (CEFIC) ('the applicant') on behalf of the sole producer in the Community representing the totality of the Community production of coumarin.

(4) The request for an expiry review was based on the grounds that injurious dumping of imports originating in the PRC would be likely to continue or to recur if measures were allowed to expire.

2. Notice of initiation

(5) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission initiated an investigation pursuant to Article 11(2) of the basic Regulation by a notice published in the *Official Journal of the European Communities* [4].

3. Period of investigation

(6) The investigation period ('IP') for the examination of continuation or recurrence of dumping and injury covered the period from 1 January 2000 to 31 December 2000. The examination of trends relevant for the assessment of continuation or recurrence of injury covered the period from 1 January 1996 up to the end of the IP ('period under review').

4. Parties concerned by the investigation

(7) The Commission officially advised the applicant Community producer, the exporting producers in the PRC and their representatives, the Chinese authorities and the importers, users and associations known to be concerned, of the initiation of the review. The Commission sent questionnaires to exporting producers, a producer in the United States (analogue country) the sole Community producer, importers, users and associations known to be concerned and to those parties who made themselves known within the time limit set in the notice of initiation of the review.

(8) The Community producer, the analogue country producer, one importers' association, and five users replied to the questionnaires. With respect to the PRC no reply to the questionnaire was received.

[1] OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 86, 4.4.1996, p. 1.

[3] OJ C 271, 22.9.2000, p. 3.

[4] OJ C 104, 4.4.2001, p. 5.

5. **Verification of information received**

(9) The Commission sought and verified all information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest. The Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(10) Verification visits were carried out at the premises of the following companies:

Community producer:

— Rhodia, (Lyon) France

Importers:

— Quest International, (Ashford) United Kingdom

Analogue country producer:

— Rhodia, (Cranbury NJ) USA

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(11) The product concerned is the same as in the original investigation i.e. coumarin, a whitish crystalline powder with the characteristic odour of newly mown hay. Its main uses are as an aroma chemical and as a fixative in the preparation of fragrance compounds, such compounds being used in the production of detergents, cosmetics and fine fragrances.

(12) Coumarin, which was originally a natural product obtained from tonka beans, is now produced synthetically. It can be obtained by a synthesis process starting from phenol to obtain salicilaldehyde (Perkin reaction) or by a synthesis from orthocresol (Raschig reaction). The main physical specification of coumarin is its purity, of which the melting point is the indicator. The standard quality coumarin marketed in the Community has a melting point varying between 68 °C and 70 °C which corresponds to 99 % purity.

(13) The product concerned falls within CN code ex 2932 21 00.

2. **Like product**

(14) As in the original investigation coumarin produced and sold on the domestic market in the analogue country (USA) and that exported to the Community from the PRC as well as coumarin produced and sold by the Community industry in the Community market were found to have effectively identical physical characteristics and uses and are thus like products within the meaning of Article 1(4) of the basic Regulation.

D. **LIKELIHOOD OF A CONTINUATION OF DUMPING OR RECURRENCE OF DUMPING**

(15) In accordance with Article 11(2) of the basic Regulation, it is necessary to examine whether the expiry of the measures would be likely to lead to a continuation of dumping.

(16) In examining whether there is a likelihood of a continuation of dumping, it is necessary to verify whether dumping exists at present and whether any such dumping is likely to continue.

1. **Preliminary remarks**

(17) The findings on dumping set out below should be viewed in the light of the fact that the Chinese exporting producers did not co-operate in the investigation and findings therefore had to be based on facts available, i.e. Eurostat data, Chinese export trade data and information contained in the complaint.

2. **Current level of dumping**

(a) *Analogue country*

(18) The existing measures provide for a single countrywide duty on all imports into the Community of coumarin from the PRC. In accordance with Article 11(9) of the basic Regulation, the Commission employed the same methodology as in the original investigation. Accordingly, normal value was determined on the basis of information obtained in a market economy third country (the 'analogue country').

(19) The United States had served as an analogue country in the original investigation. In the notice of initiation of this expiry review it was therefore envisaged to again choose the United States as analogue country for the purpose of establishing normal value. Since it was also found that the original reasons for selecting the USA, i.e. the size of its domestic market, the openness of its market and its degree of access to basic materials were still valid, the United States was considered to be an appropriate and not unreasonable choice of analogue country. Only one interested party objected to this choice of analogue country, in particular with regard to the difference in manufacturing the product, however they did not submit any alternative choice in due time. Therefore, since the United States producer which was contacted agreed to co-operate fully, and had sufficient representative domestic sales, the United States were, in accordance with Article 2(7) of the basic Regulation, considered to be an appropriate and not unreasonable choice of analogue country for establishing normal value in respect of the PRC for the product concerned.

(b) *Normal value*

(20) It was subsequently examined whether the domestic sales of the co-operating United States producer to independent customers could be considered to have been made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation. It was found that the weighted average selling price of all sales during the investigation period was above the weighted average unit cost of production, and that the volume of individual sales transactions below unit cost of production was more than 20 % but less than 90 % of the sales being used to determine normal value; therefore only all the profitable domestic sales were regarded as having been made in the ordinary course of trade, and used for comparison. Normal value was therefore determined, as set out in Article 2(1) of the basic Regulation, on the basis of the price paid or payable, in the ordinary course of trade, by independent domestic customers of the co-operating United States producer during the investigation period.

(c) *Export price*

(21) As regards the exports to the Community, for which there was no co-operation from the Chinese exporting producers, findings had to be based on the facts available, in accordance with Article 18(1) of the basic Regulation. An average export price for all transactions was thus determined on the basis of Chinese export trade data.

(d) *Comparison*

(22) For the purpose of a fair comparison, and in accordance with Article 2(10) of the basic Regulation, due allowance in the form of adjustments was made for differences in respect of inland freight, handling and loading, transport and credit costs, which affected prices and price comparability.

(23) Concerning inland transport, the relevant adjustments were based on the analogue country's costs.

(e) *Dumping margin*

(24) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value, on an ex-works basis, was compared to the weighted average export price on an Ex-works Chinese basis, at the same level of trade.

(25) The above comparison showed the existence of very significant dumping. The dumping margin found was substantial and just below the level found in the original investigation (around 50 %).

(26) The investigation did not reveal any reason why this dumping would disappear if the measures were to be repealed. It was therefore concluded that there is a likelihood of continuation of dumping. However, given the low level of imports originating in the PRC during the IP it was considered appropriate to examine whether there were a recurrence of dumping in increasing export volume should exhausting measures be repealed.

3. **Development of imports from the PRC**

(27) For the examination of a likelihood of recurrence of dumping the following factors were examined: existence of dumping, the evolution of production and capacity utilisation in the PRC, and the evolution of worldwide Chinese coumarin exports.

(a) *Existence of dumping*

(28) The dumping margin established in the initial investigation was high (more than 50 %, leading to a duty of ECU 3 479 per tonne). The investigation carried out under the present review indicates that dumping still persisted and was close to the level found in the initial investigation.

(b) *Evolution of production and capacity utilisation in the PRC*

(29) According to the information available, production capacity in the PRC is high, and could be even increased in a very short time due to the nature of the product and the production process. The information shows that the Chinese production capacity is about 1 900 tonnes (representing 40 % of the world-wide capacity with 7 producers, and 18 potential producers ready to re-enter in the markets. This is much larger than the entire EC consumption of 700 tonnes.

(30) Consequently, the enormous availability of unused production capacity (between 50 and 60 % of production capacity) gives Chinese exporting producers a very high degree of flexibility in the production process. These producers are therefore able to quickly increase production and direct it to any export market, including, were the measures to be repealed, the Community market.

(c) *Evolution of Chinese exports to third countries*

1. General trend of exports

(31) On the basis of Chinese export statistics, Chinese price behaviour on their other export markets shows that Chinese exporters' prices in those markets are on average 11 % lower than the prices offered in the Community, and even 16 % in certain third country markets, such as Hong Kong and India.

2. Possible deflection of Chinese exports due to the introduction of restrictions in third countries

(32) The USA imposed anti-dumping duties on import of coumarin from the PRC in 1995 and maintained the duties in May 2000 pursuant to an expiry review. The USA duties range from 31,02 % to 160,80 %.

(33) This shows that there is pressure on Chinese exporting producers to find alternative export markets. Should the Community repeal the current anti-dumping measures, exports to the Community market would be an attractive option for Chinese exporting producers.

3. Chinese exports to representative export markets

(34) It is important to note that, after the Council imposed anti-dumping duties in 1995, exporting producers in the PRC were not able to penetrate other export markets or to expand the exports in the other existing markets.

(d) *Conclusion*

(35) The investigation has shown that the quantities imported into the Community from the PRC during the investigation period were dumped.

(36) The investigation has also shown that the volume of Chinese coumarin exports to the Community would in all probability reach substantial levels if the current measures were to be repealed. This conclusion was arrived at in view of the substantial spare capacity available in the PRC, and in view of the pressure on Chinese exporting producers to find alternative export markets to the USA and to others export markets. All this illustrates the strong continued interest of Chinese exporting producers in selling to the Community.

(37) It was also concluded that such substantially increased exports to the Community would most likely be made at dumped prices. This is demonstrated by the low prices found for Chinese exports to other main third country markets.

(38) In summary, it is most probable that imports to the Community from the PRC will resume in significant quantities and at significantly dumped prices, should measures be repealed.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(39) The company represented by the applicant was the only producer of coumarin in the Community during the investigation period.

(40) During the IP, the Community producer imported coumarin from a country other than the PRC. The purpose of such imports was to compensate shortages of the product concerned from the producer's Community production due to technical reasons. These imports represented a minor part of the total sales volume by the producer in the Community. Thus, despite these sales of imported coumarin, the primary activity of the company remained in the Community and the import of this producer did not affect its status as Community producer. This Community producer is therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

F. ANALYSIS OF THE SITUATION IN THE COMMUNITY MARKET

1. Community consumption [1]

(41) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market as reported in the questionnaire reply, the import volumes into the Community from the country concerned and all other third countries, on the basis of Eurostat.

(42) On this basis, the apparent consumption of coumarin increased by 92 % during the period under review. The most significant increase took place between 1996 and 1997 i.e. + 82 %. However, this should be seen in the light of large volumes of coumarin which were imported mainly from the PRC, in 1994 and 1995, i.e. before the imposition of the anti-dumping measures. These large imported volumes have been stocked and then sold/used in 1996 thus reducing artificially the demand for coumarin this year and consequently the apparent consumption. In 1997, total import volumes went back to a level comparable with the one in 1993.

2. Imports from the country concerned

(a) *Volume and market share*

(43) With respect to the volume of the Chinese imports, it drastically decreased over the period under review i.e. – 89 %, in particular between 1996 and 1998, i.e. – 87 %. This coincided with the imposition of the anti-dumping measures and the emergence of other countries that increased their exports to the Community. In this respect, it would appear that, certain imports from Japan were in fact of Chinese origin thereby circumventing the measures. This can be noticed in particular as from 1997 when imports from Japan suddenly surged. Afterwards, given that the USA took action to prevent such circumvention activities on the US market, the Japanese exporter concerned also ceased its exports to the EC and imports from Japan as reported by Eurostat on the Community market have steadily decreased until the end of the IP.

(44) The market share of the imports from the PRC decreased by 25 percentage points during the period under review and were to be found between 1,5 and 3 %.

(b) *Prices*

(45) After the imposition of the measures in 1995, the average cif prices of the imports concerned, as reported by Eurostat, increased by 23 %, between 1996 and the IP, but remained below the average cif prices of all other imports during the period under review, and also below the Community industry's prices.

3. Economic situation of the Community industry

(a) *Production*

(46) The Community industry's production doubled between 1996 and the IP. A significant increase took place between 1996 and 1997. Subsequently, production slightly decreased until 1999 and went up again between 1999 and the IP.

(b) *Capacity and capacity utilisation*

(47) The total production capacity of the Community industry increased by 29 % over the period under review. The increase is due to an upgrade of the existing installation made in 1999.

(48) Capacity utilisation increased by 56 % between 1996 and the IP. The increase was particularly marked between 1996 and 1997 as well as between 1999 and the IP.

(c) *Sales in the Community*

(49) The sales volume of the Community industry significantly increased during the period under review. It trebled between 1996 and the IP. This development was made possible at a time when production doubled, because exports decreased in the same time. The sales increase was most remarkable between 1996 and 1997 even though the sales steadily increased between 1997 and the IP. However, as already explained under recital (42), the demand on the Community market was particularly low in 1996, thus distorting the comparison. Taking 1997 as a basis of comparison, the increase of the sales volume of the Community industry between 1997 and the IP is 41 %. Several reasons explain this evolution, such as the imposition of the anti-dumping measures in 1995 and the decrease of imports from certain third countries as already mentioned in recital (43).

[1] For confidentiality reasons, given that one single Community producer constitutes the Community industry, the figures contained in this Regulation will be indexed or only given approximately.

(d) *Stocks*

(50) The Community industry's end of year stocks decreased by 8 % during the period under review. They firstly increased between 1996 and 1997, and then decreased until 1999 before raising again between 1999 and the IP.

(e) *Market share*

(51) The market share of the Community industry rose by 27 percentage points during the period under review. This increase was especially marked between 1996 and 1998 when market share gained 20 percentage points. Afterwards, market share slightly decreased in 1999 and regained around 12 percentage points between 1999 and the IP.

(f) *Prices*

(52) The Community producer's average net sales price decreased by 14 % between 1996 and the IP. The fall was particularly marked between 1996 and 1997 and then between the 1999 and the IP.

(53) This can be explained partly by the price level of the Chinese products which, as already mentioned under recital (45), remained below the average cif prices of all other imports during the period under review. Even though the import volume remained relatively low during the IP, the investigation has shown that prices offers by the Chinese exporters have continued to be made at low prices. In addition, the price pressure of imports from Japan, cannot be considered negligible during the period under review, even if volumes have decreased since 1997. However, this evolution should also be seen in the light of the efforts made by the Community producer to improve the efficiency of the production process. The increase of the production capacity, coupled with the effect of the anti-dumping measures, permitted the Community producer to increase the volume sold and thus to reduce the unit cost of goods sold.

(g) *Profitability*

(54) The weighted average profitability of the Community industry markedly improved during the period under review since it passed from a significant loss in 1996 to a profit which ranged between 5 and 10 % in the IP. This increase which was particularly marked between 1998 and the IP, should be seen in the light of the upgrade of the capacity already mentioned under recital (47), which permitted the Community industry to significantly reduce its costs of production.

(h) *Cash flow and ability to raise capital*

(55) The development of the cash flow generated by the Community industry in relation to sales of coumarin is very similar to that of the profitability since it passed from a negative to a positive figure as from 1999.

(56) The investigation established that the Community industry was not experiencing difficulties in its ability to raise capital. However, this is not considered as a meaningful indicator given that the Community industry is a large group whose coumarin production represents a relatively small part of the total production, and that the ability to raise capital is closely linked to the performance of the whole group.

(i) *Employment, productivity and wages*

(57) Employment of the Community industry slightly increased during the period under review and gained 9 % between 1996 and the IP. The productivity of the Community industry's workforce, measured as production volume per person employed markedly increased during the same period, improving by more than 80 %. The wages as a whole increased by 27 % between 1996 and the IP, thus leading to an increase of the average wage per employee by 16 % between 1996 and the IP.

(j) *Investment and return on investment*

(58) The level of investments significantly increased between 1996 and 1999 and went down again in the IP. The investigation showed that most of this capital expenditure was related to the upgrade of the capacity already mentioned under recital (47), as well as to the maintenance of the equipment.

(59) The return on investment, expressed as the relation between the net profits of the Community industry and the net book value of its investments, followed very closely the profitability trend since it turned out to be positive as from 1999 and gained 23 percentage points between 1996 and the IP.

(k) *Growth*

(60) As mentioned above, while Community consumption almost doubled during the period under review, the sales volume and the market share of the Community industry followed an even more marked trend. The Community industry could therefore fully benefit from the growth of the market.

(l) *Magnitude of the dumping margin*

(61) As concerns the impact on the Community industry of the magnitude of the dumping margin found (see recital (28)), given the low volume of imports during the IP, this cannot have an impact.

4. **Conclusion**

(62) The imposition of the anti-dumping measures on imports of coumarin originating from the PRC had a positive impact on the Community industry, which could recover from its weakened economic situation. All injury indicators except sales prices developed positively. However, this trend should also be seen in the light of the efforts made by the Community industry in order to improve its efficiency and to reduce its cost of production. Finally, it should be noted that such improvement only permitted the Community industry to get back to the situation prevailing just before the dumping practice started.

G. **LIKELIHOOD OF RECURRENCE OF INJURY**

Likelihood of recurrence of injury

(63) With regard to the likely effect on the Community industry of the expiry of the measures in force the following factors were considered, in line with the elements summarised in recitals (35) to (38).

(64) There are clear indications that imports originating in the PRC will continue at dumped prices. Moreover, there is a likelihood that import volumes would increase significantly given that the Chinese exporting producers have the potential to raise their production and export volume in view of their large unused production capacity. In addition, even though the world coumarin consumption is forecast to slightly increase in the next three years, it is unlikely to absorb the unused Chinese capacity.

(65) Having regard to the Chinese exporters' export price behaviour on third country markets which are around 10 % lower than on the Community market, namely Hong Kong, India, Japan and Singapore, it is likely that the Chinese exporting producers will adopt an aggressive price behaviour in the Community in order to regain their lost market shares. Indeed, these low prices on third countries markets show that Chinese exporters consider it to be in their interest to sell at such prices. This in turn would lead to a recurrence of injury in terms of decreasing sales prices of the Community industry and decreasing sales volumes as well as the consequent negative impact on profitability.

(66) The Community market is also likely to be attractive for the Chinese exporters. On the one hand, it is recalled that the Community market absorbed 46 % of the Chinese exports in 1995 i.e. before the imposition of the measures currently in force compared to 10 % in 1999.

(67) On the other hand, the comparison between the total Chinese exports on the world market, and the Chinese exports on the Community market during the same period, shows that Chinese exporters did not manage to find new markets that would be likely to replace their sales in the EC. Indeed, the strong decrease of the Chinese exports to the Community market between 1995 and 1999 (363 tonnes) was only compensated by an increase of Chinese exports to other third countries of around 100 tonnes.

(68) In addition, as the Community market and the US market stand for around 50 % of the world consumption of coumarin and given that the USA have imposed anti-dumping measures on imports of coumarin from the PRC, it is very likely that should the measures be repealed, the Community market would be attractive for exporters from the PRC.

(69) One importers' association argued that the existence of capacity in the PRC does not imply in itself likely recurrence of injury.

(70) In relation to this particular point, it is recalled that this investigation should evaluate the likelihood of recurrence of dumping and injury in case the measures are removed. Even if the existence of large production capacity in the PRC does not in itself mean that injurious dumping will recur, this is nevertheless a meaningful indicator that should be taken into consideration. This indicator, when combined with the analysis of the Chinese exporters' behaviour on other third markets and the ongoing dumping found, constitutes an indicator of the likely behaviour of the exporters in case the measures are repealed and thus the likely effect thereof.

(71) On the basis of the above, it is concluded that, should the measures be repealed, there is a likelihood of a recurrence of injury from imports of coumarin from the PRC.

H. COMMUNITY INTEREST

1. Introduction

(72) According to Article 21 of the basic Regulation, the Commission examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved i.e. those of the Community industry, the importers/traders as well as the users of the product under consideration. In order to assess the likely impact of maintaining or not maintaining the measures, the Commission requested information from all interested parties mentioned above.

(73) It should be recalled that, in the previous investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, would allow the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(74) On this basis it was examined whether, despite the conclusions on the likelihood of a recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interest of the Community industry

(75) It is considered that should the anti-dumping measures imposed in the previous investigation be repealed, injurious dumping is likely to recur and that the situation of the Community industry, which improved during the period under review, would deteriorate.

3. Interest of importers

(76) From the 26 questionnaires sent, only one reply was received by the Commission services from an importers' association.

(77) This association argued that the anti-dumping measures led to the exclusion of both the Chinese and other third countries producers from the Community market, thus, leading to a dependence of the users on the sole Community producer.

(78) First of all, it should be recalled that the coumarin world market is very concentrated with only few producers whose most important in terms of capacity are located in China and in the Community. Therefore, any market share lost by one of these two countries producers is likely to be regained by the other. However, it is recalled that the purpose of the anti-dumping measures is not to restrict supply, but to re-establish fair competition on the Community market and that coumarin originating in the PRC can still be imported in the Community market. In addition, it should be noted that during the IP, around 25 % of all imports of coumarin was imported from countries other than China notably from Japan and India, thus showing that alternative sources of supply continue to exist. Furthermore, in view of the low level of co-operation and the fact that importers generally deal with a wide range of chemical products, of which coumarin is only one, it was concluded that any possible negative impact of the continuation of measures on importers would not be a compelling reason not to impose the continuation of measures.

4. Interest of users

(79) Questionnaires and/or information were received from five users (out of the 23 questionnaires sent).

(80) One of these companies is clearly in favour of the continuation of the measures while another does not expect any change for its business should the measures be removed or maintained. This latter company also underlined the fact that it would not be in the industry's interest that the Community producer stops production in case of recurrence of dumped imports.

(81) Two users, of which only one imported the product concerned from the country concerned during the period under review, were against the continuation of the measures, but both stated in their responses to the questionnaire that they both do not expect any effect on their business, should the measures be removed or maintained.

(82) One other user was also against the prolongation of the measures. This user argued that the competition by Chinese exporters is indispensable in order to guarantee the security of supply at competitive prices. Should competitive prices not be guaranteed, this user may consider moving part of its fragrance compounding to the PRC resulting in job losses in the Community. However, given that coumarin represents about 1,5 % of the total cost of production of this user, it is considered unlikely that a transfer of the production of certain compounds outside the Community would occur simply as a result of the continuation of the existing anti-dumping measures, especially since such transfer did not occur during the five years the measures are in force.

(83) The same user also mentioned the production difficulties suffered by the Community producer resulting in significant delivery delays. Although the Community producer faced production difficulties during the period under review, these were due to particular circumstances that are unlikely to recur on a regular basis, amongst which, the upgrade of the existing installation mentioned under recital (47). In addition, the impact of delivery problems on users was found to be minor since, as mentioned under recital (40), the Community producer was able to import the like product to compensate for the shortage of its production of the product concerned.

(84) On the basis of the above, and in view of the low level of co-operation, which in itself appears to confirm that users did not suffer any substantial negative effect on their economic situation as a result of the measures currently in force, the impact on users was considered not to constitute a compelling reason against the continuation of the measures, as a possible negative effect on users is unlikely to offset the positive effect on the Community industry.

5. **Competition aspects**

(85) Several interested parties argued that the current measures have led to the elimination of Chinese coumarin on the Community market, leading to a monopoly position of the Community industry. The prolongation of the measures would thus be against the interest of the Community.

(86) As already mentioned under recital (51), the Community industry increased its market share and thus can benefit from a strong position on the Community market. However, the current investigation also established that the effect of the measures was to permit the Community industry to recover that share of the Community market which it held before the Chinese dumping practices began.

(87) Moreover, it should be noted that the world market for coumarin is characterised by operation of only few producers. In such situation, competition aspects have to be followed with particular care given that the effect of the measures on these suppliers can have a considerable importance. However, the investigation has found no indication as to any anti-competitive practices of the Community producer. In this context it should be underlined that its sales prices decreased over the period under review. Furthermore, several alternative sources of supply still exist since coumarin is or can be imported from several countries amongst which Japan and India which still hold non negligible shares of the Community market.

(88) On the basis of the above, it has been concluded that any competition related concerns were considered not to constitute a compelling reason against the continuation of the measures.

6. **Conclusion on Community interest**

(89) Given the above, it was concluded that there are no compelling reasons of Community interest against the continuation of the measures.

I. **ANTI-DUMPING MEASURES**

(90) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the maintenance of the existing anti-dumping duty in respect of imports of coumarin originating in the PRC. They were also granted a period within which to make representations subsequent to this disclosure. No comments were received which were of a nature to change the above conclusions.

(91) It follows from the above that the anti-dumping measures currently in force with regard to imports of coumarin originating in the People's Republic of China should be maintained,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of coumarin falling within CN code ex 2932 21 00 (Taric code 2932 21 00 10) originating in the People's Republic of China.

2. The rate of the duty is set at 3 479 EUR per tonne.

Article 2

Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

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

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

Amended proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings [1]

(2002/C 203 E/12)

(Text with EEA relevance)

COM(2002) 192 final — 2001/0098(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 16 April 2002)

[1] OJ C 213 E, 31.7.2001, p. 266.

INITIAL PROPOSAL	AMENDED PROPOSAL
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	Unchanged
Having regard to the Treaty establishing the European Community, and in particular Article 175 thereof,	
Having regard to the proposal from the Commission,	
Having regard to the opinion of the Economic and Social Committee,	
Having regard to the opinion of the Committee of the Regions,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty,	
Whereas:	
(1) Article 6 of the Treaty requires environmental protection requirements to be integrated into the definition and implementation of Community policies and actions.	
(2) The natural resources, to whose prudent and rational utilisation Article 174 of the Treaty refers, include oil products, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions.	(2) Natural resources, to whose prudent and rational utilisation Article 174 of the Treaty refers, include oil products, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions.
(3) Increased energy efficiency constitutes an important part of the package of policies and measures needed to comply with the Kyoto Protocol, and should appear in any policy package to meet further commitments.	Unchanged
(4) Demand management of energy is an important tool enabling the Community to influence the global energy market and hence the security of energy supply in the medium and long term.	

INITIAL PROPOSAL	AMENDED PROPOSAL
(5) The Council in its Conclusions of 30 May 2000 and of 5 December 2000 [1] endorsed the Commission's Action Plan on Energy Efficiency and requested specific measures in the building sector.	(5) The Council in its Conclusions 8835/2000 of 30 May 2000 and 14000/2000 of 5 December 2000 endorsed the Commission's Action Plan on Energy Efficiency and requested specific measures in the building sector.
(6) The residential and tertiary sector, the major part of which is buildings, accounts for more than 40 % of final energy consumption in the Community and is expanding, a trend which is bound to increase its energy consumption and hence also its carbon dioxide emissions.	(6) The residential and tertiary sector, covering the greater part of the Community's building stock, accounts for more than 40 % of final energy consumption in the Community and is expanding, a trend which is bound to increase its energy consumption and hence also its carbon dioxide emissions.
(7) Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE) [2], which requires Member States to develop, implement and report on programmes in the field of energy efficiency in the building sector, is now starting to show some important benefits. However, a complementary legal instrument is needed to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings and reducing the large differences between Member States' results in this sector.	(7) Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE) [1], which requires Member States to develop, implement and report on programmes in the field of energy efficiency in the building sector, is now starting to show some important benefits. However, a complementary legal instrument is needed to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings and reducing the large differences between Member States' results in this sector.
(8) Directive 89/106/EEC [3] on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products requires that the construction works and its heating, cooling and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, having regard to the climatic conditions of the location and the occupants.	(8) Council Directive 89/106/EEC [2] of 21 September 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products requires that the construction works and its heating, cooling and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, having regard to the climatic conditions of the location and the occupants.
(9) The energy performance of buildings should be calculated on the basis of a methodology that integrates, in addition to thermal insulation also other factors that play an increasingly important role such as heating/air-conditioning installations, application of renewable energy sources and design of the building. A common approach to this process, carried out by qualified personnel, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and would introduce transparency for prospective owners or users with regard to the energy performance in the Community property market.	(9) The energy performance of buildings should be calculated on the basis of a methodology that integrates, in addition to thermal insulation, other factors that play an increasingly important role such as heating/air-conditioning installations, application of renewable energy sources and design of the building. A common approach to this process, carried out by qualified personnel, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and would introduce transparency for prospective owners or users with regard to the energy performance in the Community property market.

[1] Council Conclusions 8835/2000 (30 May 2002) and Council Conclusion 14000/2000 (5 December 2000).

[2] OJ L 237, 22.9.1993, p. 28.

[3] OJ L 40, 11.2.1989, p. 12.

[1] OJ L 237, 22.9.1993, p. 28.

[2] OJ L 40, 11.2.1989, p. 12.

INITIAL PROPOSAL	AMENDED PROPOSAL
(10) Buildings will have an impact on long-term energy consumption and new buildings should therefore meet minimum energy performance standards tailored to the local climate. As the application of alternative energy supply systems is generally not explored to its full potential, a systematic assessment of the feasibility of such systems for new buildings above a certain size is appropriate.	Unchanged
(11) Major renovations of existing buildings above a certain size should be regarded as an opportunity to take cost effective measures to enhance energy performance.	(11) Major renovations of existing buildings above a certain size should be regarded as an opportunity to take cost effective measures to enhance energy performance. The investments required should be economically viable, which is to say that they should offer a rate of return within a reasonable timescale.
(12) By providing objective information on the energy performance of buildings when they are constructed, sold or rented out, energy certification will help to improve transparency of the property market and thus encourage investment in energy savings. It should also facilitate the use of incentive systems. Public authority buildings and buildings frequently visited by the public should set an example by taking environmental and energy considerations into account and therefore, should be subject to energy certification on a regular basis. The dissemination to the public of this information on energy performance should be enhanced by clearly displaying these energy certificates. Moreover, the displaying of officially recommended indoor temperatures, together with the actual measured temperature, should discourage the misuse of heating, air-conditioning and ventilation systems. This will contribute to avoiding unnecessary use of energy and to safeguard comfortable indoor climatic conditions (thermal comfort) in relation to the outside temperature.	(12) By providing objective information on the energy performance of buildings when they are constructed, sold or rented out, energy certification will help to improve transparency of the property market and thus encourage investment in energy savings. The certification process may be supported by publicly funded programmes to guarantee equal access to improved energy performance, notably in the case of residential buildings constructed or administered as part of a social welfare policy. It should also facilitate the use of incentive systems. Public authority buildings and buildings frequently visited by the public should set an example by taking environmental and energy considerations into account and should therefore be subject to energy certification on a regular basis. The dissemination to the public of this information on energy performance should be enhanced by clearly displaying these energy certificates. Moreover, the displaying of officially recommended indoor temperatures, together with the actual measured temperature, should discourage the misuse of heating, air-conditioning and ventilation systems. This should contribute to avoiding unnecessary use of energy and to safeguarding comfortable indoor climatic conditions (thermal comfort) in relation to the outside temperature.
	(13) Recent years have seen a rise in the number of air-conditioning systems in southern European countries. This creates considerable problems at peak load times, increasing the cost of electricity and disrupting the energy balance in those countries. Priority should be given to strategies which enhance the thermal performance of buildings during the summer period. To this end there should be further development of passive cooling techniques, primarily those that improve indoor climatic conditions and the microclimate around buildings.

INITIAL PROPOSAL	AMENDED PROPOSAL
(13) Regular maintenance of boilers and of central air conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way will ensure optimal performance from an environmental, safety and energy point of view. An independent assessment of the total heating installation is appropriate whenever replacement could be considered on the basis of cost effectiveness.	(14) Regular maintenance of boilers and of central air conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way will ensure optimal performance from an environmental, safety and energy point of view. An independent assessment of the total heating installation is appropriate whenever replacement could be considered on the basis of cost effectiveness.
	(15) Air conditioning and lighting systems are not included in the EN 832 or prEN 13790 efficiency standards; the Commission should therefore enlarge EN 832 and prEN 13790 so that they include air conditioning and lighting.
(14) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing for a system of energy performance standards and its objectives should be established at Community level, but the detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.	Deleted
	(16) Member States should employ a number of means to encourage enhanced energy performance such as interest tax deductions, low interest credits and the inclusion of energy performance as an important factor in public purchasing and procurement policies.
	(17) The billing, to occupiers of buildings, of the costs of heating, air-conditioning and hot water, calculated in proportion to actual consumption, will contribute towards energy saving in the residential sector. It is desirable that occupants of such buildings should be enabled to regulate their own consumption of heat and hot water in so far as measures to do so are cost effective. In this connection, regard should be had to Article 3 of Directive 93/76/EEC and also to Council Recommendations 76/493/EEC [1] and 77/712/EEC [2] and to Council Resolutions of 9 June 1980 [3] and of 15 January 1985 [4] on the billing of such costs.

[1] OJ L 140, 28.5.1976, p. 12.
[2] OJ L 295, 18.11.1977, p. 1.
[3] OJ C 149, 18.6.1980, p. 3.
[4] OJ C 20, 22.1.1985, p. 1.

INITIAL PROPOSAL	AMENDED PROPOSAL
(15) Provision should be made for the possibility of rapidly adapting the methodology of calculation in the field of energy performance of buildings to technical progress and to future developments in standardisation.	(18) Provision should be made for the possibility of rapidly adapting the methodology of calculation and of regularly revising minimum standards in the field of energy performance of buildings in order to reflect technical progress and [future] developments in standardisation.
(14) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing for a system of energy performance standards and its objectives should be established at Community level, but the detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.	(19) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing for a system of energy performance standards and its objectives should be established at Community level, but the detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
(16) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision,	(20) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1],
HAVE ADOPTED THIS DIRECTIVE:	Unchanged
Article 1	
A common framework is hereby created to promote the improvement of the energy performance of buildings within the Community, taking into account climatic and local conditions	The objective of this Directive is to promote the improvement of the energy performance of buildings within the Community, taking into account outdoor climatic conditions and indoor climatic requirements, local conditions and cost-effectiveness.
This Directive lays down requirements as regards:	Unchanged
(a) the general framework of a common methodology for calculating the integrated energy performance of buildings,	
(b) the application of minimum standards on the energy performance of new buildings,	
(c) the application of minimum standards on the energy performance of large existing buildings that are subject to major renovation,	
(d) energy certification of buildings, and for public buildings, prominent display of this certification and other relevant information, and	

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

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

INITIAL PROPOSAL	AMENDED PROPOSAL
(e) regular inspection, of boilers and of central air-conditioning systems in buildings and in addition an assessment of the heating installation in which the boilers are older than 15 years.	
Article 2	
For the purpose of this Directive, the following definitions shall apply:	
1. *building:* a building as a whole or, in the residential sector, parts of the building which have been designed to be used separately such as apartments or semi-detached houses;	1. *building:* a roofed construction having walls, for which energy is used to condition the indoor climate; 'building' can refer to a building as a whole or to parts of the structure that have been designed or altered to be used separately;
2. *energy performance of a building:* the total energy efficiency of a building, reflected in one or more numeric indicators which have been calculated, taking into account insulation, installation characteristics, design and positioning, own energy generation and other factors that influence the net energy demand;	2. *energy performance of a building:* the total energy efficiency of a building as reflected in the relative amount of energy estimated and actually consumed to meet the different needs associated with the standardised use of the building including *inter alia* heating, water heating, cooling, ventilation and lighting. This amount shall be reflected in one or more numeric indicators that have been calculated, taking into account factors that influence energy demand, namely insulation, air tightness, technical and installation characteristics, design and positioning in relation to climatic aspects, solar exposure and use, influence of neighbouring structures, own and renewable energy generation and other factors, including indoor climate;
3. *minimum energy performance standard of a building:* a regulated minimum requirement as regards the energy performance of buildings;	Unchanged
4. *energy performance certificate of a building:* an officially recognised certificate in which the result of the calculation of the energy performance of a building according to the methodology set out in the Annex has been laid down;	
5. *public buildings:* buildings occupied by public authorities or frequently visited and used by the general public, such as: schools, hospitals, public transport buildings, indoor sports centres, indoor swimming pools and retail trade services buildings larger than 1 000 m^2;	5. *public buildings:* buildings occupied by public authorities or frequently visited and used by the general public, such as: schools, hospitals, public transport buildings, indoor sports centres, indoor swimming pools and retail trade buildings larger than 1 000 m^2;
6. *CHP (combined heat and power):* the simultaneous conversion of primary fuels into mechanical or electrical energy and heat;	Unchanged
7. *air conditioning system:* installation designed to cool and condition the ambient air;	
8. *boiler:* the combined boiler body and burner-unit designed to transmit to water the heat released from burning;	8. *boiler:* the combined boiler body and burner-unit designed to transmit to water the heat released from combustion;
9. *effective rated output (expressed in kW):* the maximum calorific output laid down and guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
10. *useful efficiency (expressed in %):* the ratio between the heat output transmitted to the boiler water and the product of the net calorific value at constant fuel pressure and the consumption expressed as a quantity of fuel per unit time;	
11. *heat pump:* installation that extracts heat from the surrounding environment and supplies it to the controlled environment.	
Article 3	
Member States shall adopt a methodology of calculation of the energy performance of buildings of which the general framework is set out in the Annex.	1. Member States shall apply a methodology of calculation of the energy performance of buildings on the basis of the framework set out under heading A in the Annex. The energy performance of a building shall be expressed in a transparent and simple manner and may include a CO_2 emission indicator.
This methodology shall be further developed and defined in accordance with the procedure referred to in Article 11(2).	2. Parts 1 and 2 of this framework shall be adapted to technical progress in accordance with the procedure referred to in Article 12. Such adaptation shall take into account those standards and norms at national level which may usefully serve in the promotion at best practices within the community.
The energy performance of a building shall be expressed in a transparent and simple manner and may include a CO_2 emission indicator.	Deleted
Article 4	Unchanged
Member States shall take the necessary measures to ensure that new buildings which are intended to be regularly used meet minimum energy performance standards, calculated according to the methodology framework set out in the Annex.	1. Member States shall take the necessary measures to ensure that new buildings which are intended to be regularly used meet minimum energy performance standards, calculated according to the general framework set out under heading A in the Annex. When setting requirements, Member States may differentiate between new and existing buildings and different categories of buildings. These requirements shall take account of general indoor climate conditions in order to avoid possible negative effects and of best practice.
These standards should include general indoor climate requirements in order to avoid possible negative effects such as inadequate ventilation. These energy performance standards shall be updated at least every five years in order to reflect technical progress in the building sector. Member States may exclude historic buildings, temporary buildings, industrial sites, workshops and residential buildings which are not used as normal residences.	These energy performance requirements shall be reviewed at regular intervals which shall not be longer than 5 years and, if necessary, updated in order to reflect technical progress in the building sector.

INITIAL PROPOSAL	AMENDED PROPOSAL
	2. Member States may decide not to set or apply the requirements referred to in paragraph 1 for the following categories:
	(a) buildings and monuments officially protected as part of a designated environment or because of their special architectural or historical merit, where compliance would unacceptably alter their character or appearance;
	(b) buildings used as places of worship and for religious activities;
	(c) temporary buildings with a planned time of use of 2 years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
	(d) residential buildings which are intended to be used less than 4 months of the year;
	(e) stand-alone buildings with a total useful floor area of less than 50 m^2.
	Article 5
For new buildings with a total surface area over 1 000 m^2, Member States shall ensure that the technical, environmental and economic feasibility of installing decentralised energy supply systems based on renewable energy, CHP, district heating or, under certain conditions, heat pumps, is assessed before the building permit is granted. The result of such an assessment shall be available to all stakeholders for consultation.	1. For new buildings with a total surface area over 1 000 m^2, Member States shall ensure that the technical, environmental and economic feasibility of installing decentralised energy supply systems based on renewable energy, CHP, district heating or, under certain conditions, heat pumps, is assessed before the building permit is granted. The result of such an assessment shall be available to all stakeholders for consultation.
Article 5	Deleted
Member States shall take the necessary measures to ensure that the energy performance of existing buildings with a total surface area over 1 000 m^2 which are being renovated, are upgraded in order to meet minimum energy performance standards in so far as these are technically feasible and involve additional costs that can on the basis of the current average mortgage rate be recovered within a period of 8 years by the accrued energy savings.	2. Member States shall take the necessary measures to ensure that when buildings with a total useful floor area over 1 000 m^2 undergo major renovation, their energy performance is upgraded in order to meet minimum requirements in so far as this is technically, functionally and economically feasible, with the requisite investment being economically viable. Member States shall derive these minimum energy performance requirements on the basis of the energy performance requirements set for buildings in accordance with Article 3. The requirements may be set either for the renovated building as a whole or for the energy-consuming systems or components when these are part of a renovation to be carried out within a limited time period, with the objective of improving the overall energy performance of the building.

INITIAL PROPOSAL	AMENDED PROPOSAL
This principle shall apply in all those cases where the total cost of the renovation is higher than 25 % of the existing insured value of the building.	3. Paragraphs 1 and 2 shall apply in all those cases where the total cost of the renovation is higher than 25 % of the existing insured value of the building.
Article 6	Unchanged
1. Member States shall ensure that, when buildings are constructed, sold or rented out, an energy performance certificate, being not older than 5 years, is made available to the prospective buyer or tenant.	
	Certification for apartments or units designed for separate use in blocks can be based: (a) on a common certification of the whole building for blocks with a common heating system; (b) on the assessment of another representative apartment in the same block.
Member States may exclude historic buildings, temporary buildings, industrial sites, workshops and residential buildings which are not used as normal residences.	Member States may exclude from the application of the first sub-paragraph the categories referred to in Article 4(2).
2. The energy performance certificate for buildings shall provide relevant information for prospective users. It shall include reference values such as current legal standards and best practice in order to make it possible for consumers to compare and assess the energy performance of the building.	2. The energy performance certificate for buildings shall include information in the form of reference values such as current legal standards and benchmarks in order to make it possible for consumers to compare and assess the energy performance of the building.
The certificate shall be accompanied by recommendations for the improvement of the energy performance.	Unchanged
	The information and recommendations shall be open to amendment in accordance with the procedure referred to in Article 12(2).
3. Member States shall require for public buildings an energy performance certificate, which is not older than 5 years, to be placed in a prominent place clearly visible to the general public.	3. Member States shall require for public buildings an energy performance certificate which is not older than 5 years to be placed in a prominent place clearly visible to the general public.
In addition, for public buildings the following information shall be clearly displayed: (a) the range of indoor temperatures and, when appropriate, other relevant climatic factors such as relative humidity, that are recommended by the authorities for that specific type of building. (b) the current indoor temperature and other relevant climatic factors indicated by means of a reliable device or devices.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 7	
Member States shall lay down the necessary measures to establish a regular inspection of boilers of an effective output of more than 10 kW of which the requirements are set out in the Annex.	Member States shall lay down the necessary measures to establish a regular inspection: (a) of boilers of an effective output of more than 10 kW of which the requirements are set out under heading B in the Annex, (b) of central air conditioning systems of an effective output of more than 12 kW of which the requirements are set out under heading C in the Annex,
These requirements shall be further developed and defined in accordance with the procedure referred to in article 11(2).	Those requirements shall be amended in accordance with the procedure referred to in article 12(2).
Article 8	
Member States shall lay down the necessary measures to establish a regular inspection of central air conditioning systems of an effective output of more than 12 kW of which the requirements are set out in the Annex. These requirements shall be further developed and defined in accordance with the procedure referred to in article 11(2).	Deleted
Article 9	
Member States shall ensure that the certification of buildings, and inspection of heating and air-conditioning systems are carried out by qualified and independent personnel.	*Article 8* Member States shall ensure that the certification of buildings, the drafting of the accompanying recommendations and the inspection of boilers and air-conditioning systems — whether performed by public bodies or by private-entreprise bodies authorised to do so — are carried out in an independent manner by qualified and/or accredited experts.
	Article 9 The Commission shall, assisted by the committee referred to in Article 12(1), evaluate the Directive in the light of the experience gained during its operation no later than five years after its entry into force, and shall, if necessary, propose to the European Parliament and Council the appropriate amendments. As a part of this evaluation the Commission shall consider: (a) measures making existing buildings with a total surface area of less than 1 000 m^2 which are being renovated subject to the requirements laid down in Article 5; (b) general incentives for energy efficiency investments in buildings not undergoing major renovations, in order to reconcile the disparate interests of landlord and tenant.

INITIAL PROPOSAL	AMENDED PROPOSAL
	Article 10
	Member States shall take the necessary measures to inform the users of buildings as to the different methods and practices that serve to enhance energy performance.
	The Commission shall assist Member States in staging the information campaigns concerned, which may be dealt with in Community programmes.
Article 10	*Article 11*
Any amendments necessary in order to adapt the Annex to technical progress shall be adopted in accordance with the procedure referred to in Article 11(2).	Any amendments necessary in order to adapt the Annex to technical progress shall be adopted in accordance with the procedure referred to in Article 12(2).
Article 11	*Article 12*
1. The Commission shall be assisted by the committee established by Article 10 of Council Directive 92/75/EEC [1], hereinafter referred to as the 'committee', composed of representatives of the Member States and chaired by the representative of the Commission.	1. The Commission shall be assisted by the committee established by Article 10 of Council Directive 92/75/EEC [1] composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.	2. Where reference is made to this paragraph, Article 5 of Decision 1999/468/EC, having regard to the provisions of Article 7 and Article 8 thereof, shall apply.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.	The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
	3. The Committee shall adopt its rules of procedure.
Article 12	*Article 13*
1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 31 December 2003 at the latest.	1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by [date to be provided].
When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	Unchanged
2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.	
Article 13	*Article 14*
This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.	Unchanged
Article 14	*Article 15*
This Directive is addressed to the Member States.	Unchanged

[1] OJ L 297, 13.10.1992, p. 16.

[1] OJ L 297, 13.10.1992, p. 16.

INITIAL PROPOSAL	AMENDED PROPOSAL
ANNEX	
A. **Framework for the calculation of energy performances of buildings (Article 3)**	Unchanged
1. The methodology of calculation of energy performances of buildings shall integrate the following aspects:	
(a) thermal insulation (of building shell and installations)	
(b) heating installation and hot water supply	
(c) air-conditioning installation	
(d) ventilation system	
(e) lighting installation	
(f) position and orientation of houses and apartments	
	(g) indoor climatic conditions
	(h) elements, products or components whose thermal or energy characteristics are determined in accordance with the methodology adopted in the framework of the 'Construction Products Directive' (89/106/EEC) or national standards when European standards do not yet exist.
2. The positive influence of the following aspects shall in this calculation be taken into account:	Unchanged
(a) solar systems and other heating and electricity systems based on renewable energy sources	
(b) electricity produced by CHP and/or district heating systems	
3. Buildings should for the purpose of this calculation at least be classified into the following categories:	
(a) single family houses of different types	
(b) apartment blocks	
(c) offices	
(d) education buildings	
(e) hospitals	
(f) hotels and restaurants	
	(g) sports facilities
(g) wholesale and retail trade services buildings	(h) wholesale and retail trade services buildings
(h) other types of energy consuming buildings	(i) other types of energy consuming buildings

INITIAL PROPOSAL	AMENDED PROPOSAL
B. **Requirements for the inspection of boilers (Article 7)**	B. **Requirements for the inspection of boilers (Article 7, point (a))**
The inspection of boilers shall have regard to energy consumption and limiting carbon dioxide emissions.	Unchanged
Boilers of an effective output of more than 100 kW shall be inspected at least every 2 years	
For heating installations with boilers of an effective rated output of more than 10 kW which are older than 15 years, Member States shall lay down the necessary measures to establish a one-off inspection of the whole heating installation. On the basis of this inspection, which shall include an assessment of the boiler efficiency at full and part load and the boiler sizing compared to the heating requirements of the building, the competent authorities shall provide advice to the users on the replacement of the boilers and on alternative solutions.	
C. **Requirements for the inspection of central air conditioning systems (Article 8)**	C. **Requirements for the inspection of central air conditioning systems (Article 7, point (b))**
The inspection of central air conditioning systems shall have regard to energy consumption and limiting carbon dioxide emissions.	Unchanged
On the basis of this inspection, which shall include an assessment of the air-conditioning efficiency at full and part load and the sizing compared to the cooling requirements of the building, the competent authorities shall provide advice to the users on possible improvement or replacement of the air-conditioning system and on alternative solutions.	

Proposal for a Council Regulation laying down transitional provisions concerning anti-dumping and anti-subsidy measures adopted pursuant to Commission Decisions No 2277/96/ECSC and No 1889/98/ECSC as well as pending anti-dumping and anti-subsidy investigations, complaints and applications pursuant to those Decisions

(2002/C 203 E/13)

COM(2002) 194 final

(Submitted by the Commission on 16 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Treaty establishing the European Coal and Steel Community ('ECSC Treaty') will expire on 23 July 2002.

(2) Products which are currently covered by the ECSC Treaty will be subject to the Treaty establishing the European Community as of 24 July 2002.

(3) The Commission has adopted a number of anti-dumping measures pursuant to Commission Decision No 2277/96/ECSC on protection against dumped imports from countries not members of the European Coal and Steel Community ('Basic Anti-Dumping Decision') [1]. Measures are normally imposed for a 5-year-period in accordance with Article 11(2) of the Basic Anti-Dumping Decision. However, some of these measures will not, at the date of the expiry of the ECSC Treaty, have reached the end of that 5-year-period ('ECSC anti-dumping measures'). Some investigations, initiated pursuant to the Basic Anti-Dumping Decision, may also be pending at the date of the expiry of the ECSC Treaty ('pending anti-dumping investigations'). Similarly, complaints or other applications for the initiation of an investigation filed pursuant to the provisions of the Basic Anti-Dumping Decision may be pending at the the date of the expiry of the ECSC Treaty ('pending anti-dumping applications').

(4) It is therefore appropriate to provide for the continued application of ECSC anti-dumping measures under Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community ('Basic Anti-Dumping Regulation') [2] after the date of the expiry of the ECSC Treaty and to apply from then onwards the provisions of the Basic Anti-Dumping Regulation to such measures. Any pending anti-dumping investigation should after the date of the expiry of the ECSC Treaty be continued and concluded pursuant to the provisions of the Basic Anti-Dumping Regulation and any anti-dumping measures resulting from such an investigation should be subject to the provisions of the Basic Anti-Dumping Regulation. Similarly, after the date of the expiry of the ECSC Treaty pending anti-dumping applications should be dealt with pursuant to the provisions of the Basic Anti-Dumping Regulation.

(5) In this context, it should be noted that the provisions of the Basic Anti-Dumping Decision are, with the exception of those on the Community's decision-making procedure, practically identical to those of the Basic Anti-Dumping Regulation.

(6) The Commission has also adopted a number of countervailing measures pursuant to Commission Decision No 1889/98/ECSC on protection against subsidised imports from countries not members of the European Coal and Steel Community ('Basic Anti-Subsidy Decision') [3]. Measures are normally imposed for a 5-year-period in accordance with Article 18(1) of the Basic Anti-Subsidy Decision. However, some of these measures will not, at the date of the expiry of the ECSC Treaty, have reached the end of that 5-year-period ('ECSC countervailing measures'). Some investigations, initiated pursuant to the Basic Anti-Subsidy Decision, may also be pending at the date of the expiry of the ECSC Treaty ('pending anti-subsidy investigations'). Similarly, complaints or other applications for the initiation of an investigation filed pursuant to the provisions of the Basic Anti-Subsidy Decision may be pending at the date of the expiry of the ECSC Treaty ('pending anti-subsidy applications').

[1] OJ L 308, 29.11.1996, p. 11. Decision as last amended by Commission Decision No 435/2001/ECSC (OJ L 63, 3.3.2001, p. 14).

[2] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[3] OJ L 245, 4.9.1998, p. 3.

(7) It is therefore also appropriate to provide for the continued application of ECSC countervailing measures under Council Regulation (EC) No 2026/97 on protection against subsidised imports from countries not members of the European Community ('Basic Anti-Subsidy Regulation') [1] after the date of the expiry of the ECSC Treaty and to apply from then onwards the provisions of the Basic Anti-Subsidy Regulation to such measures. Any pending anti-subsidy investigation should after the date of the expiry of the ECSC Treaty be continued and concluded pursuant to the provisions of the Basic Anti-Subsidy Regulation and any countervailing measures resulting from such an investigation should be subject to the provisions of the Basic Anti-Subsidy Regulation. Similarly, after the date of the expiry of the ECSC Treaty pending anti-subsidy applications should be dealt with pursuant to the provisions of the Basic Anti-Subsidy Regulation.

(8) In this context, it should be noted that the provisions of the Basic Anti-Subsidy Decision are, with the exception of those on the Community's decision-making procedure, practically identical to those of the Basic Anti-Subsidy Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Anti-dumping measures which have been adopted pursuant to Commission Decision No 2277/96/ECSC and which are still in force on 23 July 2002 (the anti-dumping measures mentioned in Annex I), shall be continued and shall be governed by the provisions of Council Regulation (EC) No 384/96 with effect from 24 July 2002.

2. In calculating the date on which the anti-dumping measures in Annex I shall expire pursuant to Article 11(2) of Council Regulation (EC) No 384/96, regard shall be had to the original date of entry into force of those measures.

3. Any investigation, which has been initiated pursuant to Commission Decision No 2277/96/ECSC and which is still pending on 23 July 2002, or any complaint or application for the initiation of such an investigation which is still pending on that date shall be continued and shall be governed by the provisions of Council Regulation (EC) No 384/96 with effect from 24 July 2002. Any anti-dumping measures resulting from such pending anti-dumping investigations, complaints or applications shall be governed by the provisions of Council Regulation (EC) No 384/96.

Article 2

1. Countervailing measures which have been adopted pursuant to Commission Decision No 1898/98/ECSC and which are still in force on 23 July 2002 (the countervailing measures mentioned in Annex II), shall be continued and shall be governed by the provisions of Council Regulation (EC) No 2026/97 with effect from 24 July 2002.

2. In calculating the date on which the anti-subsidy measures in Annex II shall expire pursuant to Article 18(1) of Council Regulation (EC) No 2026/97, regard shall be had to the original date of entry into force of those measures.

3. Any investigation which has been initiated pursuant to Commission Decision No 1898/98/ECSC and which is still pending on 23 July 2002, or any complaint or application for the initiation of such an investigation, which is still pending on 23 July 2002 shall be continued and shall be governed by the provisions of Council Regulation (EC) No 2026/97 with effect from 24 July 2002. Any countervailing measures resulting from such pending anti-subsidy investigations, complaints or applications shall be governed by the provisions of Council Regulation (EC) No 2026/97.

Article 3

This Regulation shall enter into force on 24 July 2002.

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

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[1] OJ L 288, 21.10.1997, p. 1.

ANNEX I

ECSC anti-dumping measures in force on 23 July 2002

Product	Regulation	CN-Code (TARIC code)	Origin	Manufacturers (additional TARIC code)	Level of duty
Coke of coal in pieces with a diameter of more than 80 mm	Commission Decision No 2730/2000/ECSC 14.12.2000 (OJ L 316, 15.12.2000)	2704 00 19 (2704 00 19 10)	P.R. China	All companies	EUR 32,6 per tonne of dry net weight
Flat rolled products of iron or non-alloy steel (hot rolled coils)	Commission Decision No 283/2000/ECSC 4.2.2000 (OJ L 31, 5.2.2000) (corrected by Decision No 2009/2000/ECSC 22.9.2000) (OJ L 240, 23.9.2000) as last amended by Commission Decision No 1357/2001/ECSC 4.7.2001 (OJ L 182, 5.7.2001)	7208 10 00 7208 25 00 7208 26 00 7208 27 00 7208 36 00 7208 37 10 7208 37 90 7208 38 10 7208 38 90 7208 39 10 7208 39 90	Bulgaria	All companies (A999) Kremikovtzi Corp. (A082)	7,5 % Undertaking
			India	Tata Iron & Steel Company Ltd (A078) All other companies (A999) Essar Steel Ltd (A083) Steel Authority of India Ltd (A084) Jindal Vijayanagar Steel Ltd (A270) Ispat Industries Ltd (A204)	0 10,7 % Undertaking/1,5 % Undertaking/11,5 % 18,1 % Undertaking/15 %
			South Africa	Iscor Ltd. (A079) All other companies (A999) Highveld Steel & Vanadium Corp. (A085)	5,2 % 37,8 % Undertaking
			Taiwan	China Steel Corp. (A080) Yieh Loong Enterprise Co., Ltd (A081) All other companies (A999)	2,7 % 2,1 % 24,9 %
			Yugoslavia (FR)	All companies	15,4 %
Grain-oriented electrical steel sheets	Commission Decision No 303/96/ECSC 19.2.1996 (OJ L 42, 20.2.1996)	7225 11 00 7226 11 10	Russia	All companies (8877) Novolipetsk Iron and Steel Corp. (8878) OOO VIZ-STAL (8878) VO 'Promsyrioimport' (8878)	40,1 % Undertaking Undertaking Undertaking
Hot-rolled flat products of non-alloy steel (quarto plates)	Commission Decision No 1758/2000/ECSC 9.8.2000 (OJ L 202, 10.8.2000)	ex 7208 51 30 (7208 51 30 10) ex 7208 51 50 (7208 51 50 10) ex 7208 51 91 (7208 51 91 10) ex 7208 51 99 (7208 51 99 10) ex 7208 52 91 (7208 52 91 10)	P.R. China	All companies	8,1 %
			India	All companies (A999) Steel Authority of India (A178)	22,3 % Undertaking
			Romania	Sidex SA (A069) All other companies (A999) Sidex Trading SRL (A179) Metalexportimport SA (A179) Metanef SA (A 179) Metagrimex Business Group SA (A179) Uzinsider SA (A179) Uzinexport SA (A179) Shiral Trading Impex SRL (A179) Metaltrade International '97 SRL (A179) Romilexim Trading Limited SRL (A179) Metal SA (A179)	Undertaking/5,7 % 11,5 % Undertaking Undertaking Undertaking Undertaking Undertaking Undertaking Undertaking Undertaking Undertaking Undertaking

ANNEX II

ECSC anti-subsidy measures in force on 23 July 2002

Product	Regulation	CN-Code	Origin	Manufacturers and/or TARIC code (additional TARIC code)	Level of duty
Flat rolled products of iron or non-alloy steel (hot rolled coils)	Commission Decision No 284/2000/ECSC 4.2.2000 (OJ L 31, 5.2.2000) corrected by Commission Decision No 2071/2000/ECSC 29.9.2000 (OJ L 246, 30.9.2000)	7208 10 00 7208 25 00 7208 26 00 7208 27 00 7208 36 00 7208 37 10 7208 37 90 7208 38 10 7208 38 90 7208 39 10 7208 39 90	India	Essar Steel Ltd (A119) The Steel Authority of India Ltd (A120) Tata Iron & Steel Company Ltd (A121) All other companies (A999) Essar Steel Ltd (A083) The Steel Authority of India Ltd (A084) Tata Iron & Steel Company Ltd (A075)	4,9 % 12,3 % 6,4 % 13,1 % Undertaking Undertaking Undertaking
			Taiwan	China Steel Corp. (A071) Yieh Loong Enterprise Co., Ltd. (A072) All other companies (A999)	4,4 % 0 4,4 %

Proposal for a Council Regulation creating a European enforcement order for uncontested claims

(2002/C 203 E/14)

COM(2002) 159 final — 2002/0090(CNS)

(Submitted by the Commission on 18 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (the Vienna Action Plan ([1])).

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.

(4) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters ([2]). This programme includes in its first stage the abolition of *exequatur*, that is to say the creation of a European Enforcement Order for uncontested claims.

(5) The concept of 'uncontested claims' should cover all situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a settlement approved by a court or an authentic instrument.

(6) Access to enforcement in a Member State other than that in which the judgement has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgement that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought.

(7) Such a procedure should offer significant advantages as compared with the *exequatur* procedure provided for in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters ([3]), in that there is no need for the involvement of the judiciary in a second Member State with the resulting delays and expenses. It should also generally dispense with the need for translation since multilingual standard forms are to be used for certification.

(8) Where a court in a Member State has given judgement on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of the observance of the rights of the defence.

(9) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

(10) Minimum standards should be established for the proceedings leading to the judgement in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim at stake and about the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.

([1]) OJ C 19, 23.1.1999, p. 1.

([2]) OJ C 12, 15.1.2001, p. 1.

([3]) OJ L 12, 16.1.2001, p. 1.

(11) Due to considerable differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to be specific and detailed in an autonomous definition of these minimum standards. In particular, any method of service that is based on a legal fiction or on a presumption without proof as regards the fulfillment of these minimum standards cannot be considered sufficient for the certification of a judgement as a European Enforcement Order.

(12) The courts competent for the proceedings leading to the judgement should be entrusted with the task of scrutinising full compliance with the minimum procedural standards before delivering a standardised European Enforcement Order certificate that makes this examination and its result transparent.

(13) Mutual trust in the administration of justice in the Community justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable the enforcement of a judgement in all other Member States without judicial review of the proper application of the procedural minimum standards in the Member State where the judgement is to be enforced.

(14) This Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards as set out therein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgements in other Member States only if these minimum standards are met.

(15) The application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor who may instead choose the system of recognition and enforcement under Regulation (EC) No 44/2001 or other Community instruments.

(16) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(18) [The United Kingdom and Ireland, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are not participating in the adoption of this Regulation, and are therefore not bound by it nor subject to its application.]/[The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.]

(19) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit the free circulation of judgements, court settlements and authentic instruments throughout all Member States by laying down minimum standards whose observance renders unnecessary any intermediate proceedings to be taken in the Member State of enforcement prior to recognition and enforcement.

Article 2

Scope

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

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

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(c) social security;

(d) arbitration.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark. [United Kingdom, Ireland]

Article 3

Definitions

For the purposes of this Regulation:

1. 'judgement' means any judgement given by a court or tribunal of a Member State, whatever the judgement may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;

2. in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande), the expression 'court' includes the 'Swedish enforcement service' (kronofogdemyndighet);

3. 'claim' means a pecuniary claim for a specific amount that has fallen due;

4. a claim is to be regarded as 'uncontested' if the debtor has:

   (a) expressly agreed to it in the course of the court proceedings by admission or by concluding a settlement which has been approved by the court; or

   (b) never objected to it in the course of the court proceedings; a statement by the debtor exclusively based on factual difficulties to honour a debt cannot be regarded as an objection in this respect; or

   (c) not appeared or been represented at a court hearing regarding that claim after having initially contested the claim in the course of the court proceedings; or

   (d) expressly agreed to it in an authentic instrument;

5. a judgement has 'acquired the authority of a final decision' if:

   (a) no ordinary appeal lies against the judgement; or

   (b) the time limit for an ordinary appeal against the judgement has expired and no such appeal has been lodged;

6. 'ordinary appeal' means any appeal which may result in the annulment or the amendment of the judgement which is the subject matter of the procedure of being certified as a European Enforcement Order the lodging of which is bound, in the Member State of origin, to a period which is laid down by the law and starts to run by virtue of that same judgement;

7. 'authentic instrument' means:

   (a) a document which has been formally drawn up or registered as an authentic instrument, and whose authenticity:

      (i) relates to the content of the instrument; and

      (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or

   (b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;

8. 'Member State of origin' means the Member State in which the judgement to be certified as a European Enforcement Order has been delivered;

9. 'Member State of enforcement' means the Member State in which enforcement of the judgement certified as a European Enforcement Order is sought;

10. 'court of origin' means the court that delivered the judgement to be certified as a European Enforcement Order.

CHAPTER II

EUROPEAN ENFORCEMENT ORDER

Article 4

Abolition of exequatur

A judgement on an uncontested claim which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without any special procedure being required in the Member State of enforcement.

Article 5

Requirements for certification as a European Enforcement Order

Where a judgement on an uncontested claim has been delivered in a Member State, the court of origin shall, upon application by the creditor, certify it as a European Enforcement Order if:

(a) the judgement is enforceable and has acquired the authority of a final decision in the Member State of origin; and

(b) the judgement does not conflict with sections 3, 4 or 6 of Chapter II of Regulation (EC) No 44/2001; and

(c) where a claim is uncontested within the meaning of Article 3(4)(b) or (c) of this Regulation, the court proceedings in the Member State of origin meet the procedural requirements as set out in Chapter III; and

(d) where the service of documents required under Chapter III of this Regulation has to be effected in a Member State other than the Member State of origin, such service has taken place in conformity with Article 31.

Article 6

Partial European Enforcement Order

1. The court of origin shall issue a partial European Enforcement Order certificate for those parts of the judgement that meet the requirements of this Regulation where a judgement has been given:

(a) on several matters and not all of them concern pecuniary claims for a specific amount that have fallen due; or

(b) on a pecuniary claim for a specific amount that has fallen due and not all of it is uncontested or meets the requirements for certification as a European Enforcement Order.

2. An applicant may request certification as a European Enforcement Order limited to parts of a judgement.

Article 7

Content of the European Enforcement Order certificate

1. The court of origin shall issue the European Enforcement Order certificate using the standard form in Annex I.

2. The European Enforcement Order certificate shall be issued in the language of the judgement.

3. The number of authenticated copies of the European Enforcement Order certificate which shall be supplied to the creditor shall correspond to the number of authenticated copies of the judgement to be supplied to the creditor in accordance with the law of the Member State of origin.

Article 8

Appeal

No appeal shall lie against the decision on an application for a European Enforcement Order certificate.

Article 9

European Enforcement Order certificate for protective measures

1. Where a judgement on an uncontested claim has not acquired the authority of a final decision yet but all other conditions of Article 5 are fulfilled, the court of origin shall, upon application by the creditor, give a European Enforcement Order certificate for protective measures using the standard form in Annex II.

2. The European Enforcement Order certificate for protective measures carries with it the power to proceed to any protective measures against the property of the debtor in the Member State of enforcement.

3. Nothing shall prevent the creditor from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a European Enforcement Order certificate being required.

CHAPTER III

MINIMUM STANDARDS FOR UNCONTESTED CLAIMS PROCEDURES

Article 10

Scope of application of minimum standards

A judgement on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because of the absence of objections or because of the default of appearance at a court hearing can be certified as a European Enforcement Order only if the court proceedings in the Member State of origin met the procedural requirements as set out in this Chapter.

Article 11

Methods of service of the document instituting the proceedings

1. The document instituting the proceedings or an equivalent document must have been served on the debtor by one of the following methods:

(a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor; or

(b) personal service attested by a certificate by the competent official who effected the service that the debtor has received the document; or

(c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor; or

(d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.

2. For the purpose of paragraph 1, the document may have been served on the debtor's statutory legal representative or on the debtor's authorised representative.

Article 12

Substitute service

1. If reasonable efforts to serve the document instituting the proceedings or an equivalent document on the debtor personally under Article 11(1)(a) or (b) have been unsuccessful, substitute service may have been effected by one of the following methods:

(a) personal service at the debtor's personal domicile on adults who are domiciled in the same household as the debtor or are employed in that household;

(b) in the case of a self-employed debtor, a company or other legal person, personal service at the debtor's professional domicile on adults who are employed by the debtor;

(c) in the case of a self-employed debtor, a company or other legal person, deposit of the document in the debtor's mailbox at his domicile if the mailbox is suitable for the safe keeping of mail;

(d) in the case of a self-employed debtor, a company or other legal person, deposit of the document at a post office or with competent public authorities and written notification of that deposit in the debtor's mailbox at his domicile if the mailbox is suitable for the safe keeping of mail and the written notification clearly states the character of the document as a court document and the legal effect of the notification as effecting service and setting in motion the running of time for time limits.

2. For the purpose of paragraph 1, the document may have been served on the debtor's statutory legal representative or on the debtor's authorised representative.

3. For the purposes of this Regulation, substitute service under paragraph 1 is not admissible if the address of the debtor's domicile is not certain.

Article 13

Proof of service

Proof of service in compliance with Articles 11 and 12 shall be supplied to the court of origin. Such proof shall be established:

(a) by an acknowledgement of receipt by the debtor under Article 11(1)(a), (c) and (d);

(b) in all other cases by a document signed by the competent official who effected service which states:

(i) the time and place of service;

(ii) the method of service;

(iii) if the document has been served on a person other than the debtor, the name of that person and his relation to the debtor.

Article 14

Methods of service of the summons to a court hearing

In case of a judgement on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because the debtor has not appeared or been represented at a court hearing, if the summons to that hearing has not been served together with the document instituting the proceedings or an equivalent document it must have been served on the debtor:

(a) in compliance with Articles 11, 12 and 13; or

(b) orally in a previous court hearing on the same claim and proven by the minutes of that previous court hearing.

Article 15

Service in sufficient time to arrange for defence

1. The debtor must have been allowed a time period to arrange for his defence and react to the claim of at least 14 calendar days, or, if the debtor is domiciled in a Member State other than the Member State of origin, of at least 28 calendar days, starting from the date of service of the document which institutes the proceedings or of an equivalent document on him.

2. In case of a judgement on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because the debtor has not appeared or been represented at a court hearing, if the summons to that hearing has not been served together with the document instituting the proceedings or an equivalent document, the debtor must have been served with it at least 14 calendar days, or, if the debtor is domiciled in a Member State other than the Member State of origin, at least 28 calendar days before the court hearing to enable him to appear or to arrange for his representation.

Article 16

Due information of the debtor about the claim

In order to ensure due information of the debtor about the claim, the document instituting the proceedings or the equivalent document must have contained:

(a) the names and the domiciles of the parties;

(b) the amount of the claim;

(c) if interest on the claim is demanded, the interest rate and the time period that interest is demanded for unless a statutory interest is added to the principal without demand under the law of the Member State of origin;

(d) the cause of action, including at least a brief description of the circumstances invoked as the basis of the claim.

Article 17

Due information of the debtor about the procedural steps necessary to contest the claim

In order to ensure due information of the debtor about the procedural steps necessary to contest the claim, the following features must have been clearly stated in or together with the document instituting the proceedings or the equivalent document:

(a) the time limit for contesting the claim and the address to which the statement of opposition was to be sent, as well as the formal requirements to contest including representation by a lawyer where that is mandatory;

(b) the possibility of a judgement in favour of the creditor in case of non-compliance with the requirements to contest the claim;

(c) the fact, in Member States where that is the case, that in the absence of opposition by the debtor a judgement in favour of the creditor can be handed down:

— without an examination of the justification of the claim by the court; or

— after a limited examination of the justification of the claim by the court;

(d) the fact, in Member States where that is the case, that:

— there is no ordinary appeal against such a judgement; or

— that the scope of judicial review of an ordinary appeal is limited;

(e) the possibility of certifying such judgement as a European Enforcement Order without a possibility to appeal such certification and the resulting possibility of enforcement in all other Member States without any intermediate measure in the Member State of enforcement.

Article 18

Due information of the debtor about the procedural steps necessary to avoid a judgement in default of appearance at a court hearing

In order to ensure due information of the debtor about the procedural steps necessary to avoid a judgement on a claim that is uncontested because of his default of appearance at a court hearing, the court must have clearly stated in or together with the summons:

(a) when and where the hearing was to take place;

(b) the possible consequences as listed in Article 17(b), (c), (d) and (e) in the case of his default of appearance.

Article 19

Cure of non-compliance with minimum standards

1. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 11-18, this non-compliance is cured and a judgement can be certified as a European Enforcement Order if:

(a) the judgement has been served on the debtor in compliance with the requirements pursuant to Articles 11 to 14; and

(b) it was possible for the debtor to challenge the judgement by means of an ordinary appeal; and

(c) the time limit for lodging such an ordinary appeal is at least 14 calendar days or, if the debtor is resident in a Member State other than the Member State of origin, at least 28 calendar days from the date of service of the judgement; and

(d) the debtor has been duly informed in or together with the judgement about:

(i) the possibility of an ordinary appeal; and

(ii) the time limit for such an ordinary appeal; and

(iii) where and how the ordinary appeal has to be lodged; and

(e) the debtor has failed to lodge an ordinary appeal against the judgement within the time limit.

2. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 11 to 14, this non-compliance is cured and a judgement can be certified as a European Enforcement Order if it is established that the debtor has personally received the document to be served in sufficient time to arrange for his defence pursuant to Article 15 and in compliance with Articles 16, 17 and 18.

Article 20

Minimum standards for relief from the effects of the expiration of time

1. If a judgement on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because of the absence of objections or because of the default of appearance at a court hearing has been certified as a European Enforcement Order, the debtor shall be entitled to be relieved from the effects of the expiration of the time for ordinary appeal against the judgement by the competent court of the Member State of origin upon application at least if the following conditions are fulfilled:

(a) the debtor, without any fault on his part:

(i) did not have knowledge of the judgement in sufficient time to lodge an ordinary appeal; or

(ii) did not have knowledge of the document instituting the proceedings or equivalent document in sufficient time to defend unless the conditions of Article 19(1) are fulfilled; or

(iii) did not have knowledge of the summons in sufficient time to appear at a court hearing unless the conditions of Article 19(1) are fulfilled; and

(b) the debtor has disclosed a prima facie defence to the action on the merits.

2. If a judgement under paragraph 1 is not open to full judicial review upon ordinary appeal in the Member State of origin, the debtor shall be entitled upon application to be relieved from the effects of the expiration of time for contesting the claim or from the effects of not having appeared at a court hearing at least if the conditions as set out in paragraph 1(a)(ii) or (iii) and (b) are fulfilled.

3. For the purposes of this Article, the debtor shall be allowed a time limit for the application for relief of at least 14 calendar days or, if the debtor is domiciled in a Member State other than the Member State of origin, of at least 28 calendar days after the debtor has knowledge of the judgement.

CHAPTER IV

ENFORCEMENT

Article 21

Enforcement procedure

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

(a) a copy of the judgement which satisfies the conditions necessary to establish its authenticity; and

(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a translation, into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement has indicated it can accept, of those parts of the European Enforcement Order certificate that do not consist of names, addresses and numbers entered or boxes ticked. Each Member State shall indicate the official languages of the European Union other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No additional fee, security, bond or deposit, however described, shall be required of a creditor who in one Member State applies for enforcement of a judgement certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

4. The creditor shall not be required to provide a mailing address in the Member State of enforcement or to have an authorised representative for the enforcement of a judgement certified as a European Enforcement Order in another Member State.

Article 22

Access to justice during enforcement proceedings

1. The Member State of enforcement shall make judicial review available to the debtor if the judgement is irreconcilable with an earlier judgement given in any Member State or in a third country provided that:

(a) the earlier judgement involved the same cause of action and was between the same parties;

(b) the earlier judgement fulfils the conditions necessary for its recognition in the Member State of enforcement;

(c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Under no circumstances may the judgement or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

Article 23

Stay or limitation of enforcement

If the debtor has lodged an application for relief under Article 20 or for retrial or for the annulment of the judgement in the Member State of origin or for judicial review under Article 22(1) in the Member State of enforcement, the competent court or authority in the Member State of enforcement may, upon application by the debtor:

(a) stay the enforcement proceedings; or

(b) limit the enforcement proceedings to protective measures; or

(c) make enforcement conditional on the provision of such security as it shall determine.

Article 24

Information on enforcement procedures

1. The Member States shall, in order to facilitate access to enforcement procedures in the Member State of enforcement for a creditor who has obtained a European Enforcement Order certificate, cooperate to provide the general public and professional circles with information on:

(a) the methods and procedures of enforcement in the Member States; and

(b) the competent authorities for enforcement in the Member States.

2. This information shall be made available to the public in particular within the framework of the European Judicial Network in civil and commercial matters as established by Council Decision 2001/470/EC [1].

CHAPTER V

COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 25

Court settlements

1. A settlement concerning a claim which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall, upon application by the creditor, be certified as a European Enforcement Order by the court that has approved it.

2. The court shall issue the European Enforcement Order certificate using the standard form in Annex III.

3. The provisions of Chapter II, with the exception of Article 5, and of Chapter IV, with the exception of Article 22(1), shall apply as appropriate.

Article 26

Authentic instrument

1. An authentic instrument concerning a claim which is enforceable in one Member State shall, upon application by the creditor, be certified as a European Enforcement Order by the authority which has given authenticity to the instrument.

2. The authority which has given authenticity to the instrument shall issue the European Enforcement Order certificate using the standard form in Annex IV.

[1] OJ L 174, 27.6.2001, p. 25.

3. An authentic instrument can be certified as a European Enforcement Order only if:

(a) the authority giving authenticity to that document duly informed the debtor, before he consented to the drawing up or registration of the document, of its direct enforceability throughout all Member States; and

(b) the fact that such information was provided is attested to by a clause in the document signed by the debtor.

4. The provisions of Chapter II, with the exception of Article 5, and of Chapter IV, with the exception of Article 22(1), shall apply as appropriate.

CHAPTER VI

GENERAL PROVISIONS

Article 27

Determination of domicile

1. In order to determine whether a debtor is domiciled in the Member State of origin, the court of origin shall apply its internal law.

2. If the debtor is not domiciled in the Member State of origin, then, in order to determine whether the debtor is domiciled in another Member State, the court of origin shall apply the law of that Member State.

Article 28

Domicile of a company or other legal person

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

(a) statutory seat; or

(b) central administration; or

(c) principal place of business.

[2. For the purposes of Ireland and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.]

3. In order to determine whether a trust is domiciled in the Member State of origin, the court of origin shall apply its rules of private international law.

CHAPTER VII

TRANSITIONAL PROVISION

Article 29

Transitional provision

1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. For the purposes of paragraph 1, legal proceedings shall be deemed to be instituted:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the creditor has not subsequently failed to take the steps he was required to take to have service effected on the debtor; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

CHAPTER VIII

RELATIONSHIP WITH OTHER INSTRUMENTS

Article 30

Relationship with Regulation (EC) No 44/2001

1. Nothing shall prevent the creditor from seeking recognition and enforcement of:

(a) a judgement on an uncontested claim, a settlement approved by a court or an authentic instrument under Chapters III and IV of Regulation (EC) No 44/2001; or

(b) a judgement under the provisions governing the recognition and enforcement of judgements in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments in accordance with Article 67 of Regulation (EC) No 44/2001; or

(c) a judgement under conventions to which the Member States are parties and which in relation to particular matters, govern the recognition and enforcement of judgements in accordance with Article 71 of Regulation (EC) No 44/2001.

2. If the creditor applies for certification of a judgement, authentic instrument or settlement approved by a court as a European Enforcement Order, for the purposes of the pertinent proceedings, this Regulation shall supersede Chapters III, IV and V of Regulation (EC) No 44/2001 as well as the provisions on the recognition and enforcement of judgements, authentic instruments and court settlements in the conventions and treaty as listed in Article 69 of Regulation (EC) No 44/2001.

Article 31

Relationship with Regulation (EC) No 1348/2000

1. Subject to paragraph 2, this Regulation shall not prejudice the application of Council Regulation (EC) No 1348/2000 [1] where in the proceedings in the Member State of origin a judicial document has to be transmitted from one Member State to another for service there.

2. A judgement given under Article 19(2) of Regulation (EC) No 1348/2000 cannot be certified as a European Enforcement Order.

3. If a document instituting the proceedings or an equivalent document, a summons to a court hearing or a judgement has to be transmitted from one Member State to another for service there, service under Regulation (EC) No 1348/2000 shall meet the requirements set out in Chapter III of this Regulation insofar as necessary to enable certification as a European Enforcement Order.

4. In a situation as covered by paragraph 3, the certificate of service under Article 10 of Regulation (EC) No 1348/2000 shall be replaced by the standard form in Annex V to this Regulation.

CHAPTER IX

FINAL PROVISIONS

Article 32

Implementing rules

The standard forms set out in the Annexes shall be updated or amended in accordance with the procedure referred to in Article 33(2).

Article 33

Committee

1. The Commission shall be assisted by the committee provided for by Article 75 of Regulation (EC) No 44/2001.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Article 34

Entry into force

This Regulation shall enter into force on 1 January 2004.

This Regulation is binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

[1] OJ L 160, 30.6.2000, p. 37.

ANNEX I

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — JUDGEMENT

1. Member State of origin: A ☐ B ☐ D ☐ E ☐ EL ☐ F ☐ FIN ☐
   I ☐ [IRL] ☐ L ☐ NL ☐ P ☐ S ☐ [UK] ☐
2. Issuing Court:

   Address:

   Tel./fax/e-mail
3. Judgement

   3.1. Date:

   3.2. Reference number:

   3.3. The parties

      3.3.1. Name and adress of creditor(s):

      3.3.2. Name and address of debtor(s):
4. Monetary claim as certified

   4.1. Amount of Principal:

      4.1.1. Currency ☐ Euro

      ☐ Swedish kronor

      ☐ [British pounds]

      4.1.2. If the claim is a periodic payment

         4.1.2.1. Principal of every instalment

         4.1.2.2. Expiry date of first instalment

         4.1.2.3. Expiry dates of following instalments

            weekly ☐ monthly ☐ other (explain) ☐

         4.1.2.4. Life term of the claim

            4.1.2.4.1. Indefinite ☐

            4.1.2.4.2. Expiry date of last instalment

      4.1.3. The claim concerns a joint and several liability of the debtors ☐

   4.2. Interest

      4.2.1. Interest rate

         4.2.1.1. %

         4.2.1.2. % above the base rate of the ECB

      4.2.2. Interest to be collected as from:

   4.3. Amount of reimbursable cost if specified in the judgement:
5. Judgement is enforceable in the Member State of origin.

   Yes ☐ No ☐
6. Judgement has acquired the authority of a final decision in accordance with Article 5(a)

   Yes ☐ No ☐
7. Judgement is on an uncontested claim under Article 3(4)

   Yes ☐ No ☐
8. Judgement is in compliance with Article 5(b)

   Yes ☐ No ☐

9. Where necessary, judgement is in compliance with Article 5(c)

Yes ☐ No ☐ Not necessary ☐

10. Where necessary, judgement is in compliance with Article 5(d)

Yes ☐ No ☐ Not necessary ☐

11. Service of the document instituting the proceedings under Chapter III where necessary

Yes ☐ No ☐

11.1. Date and address of service:

11.1.1. Domicile of debtor unknown ☐

11.2. The document was delivered by

11.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt ☐

11.2.2. Personal, service on the debtor certified by the competent official ☐

11.2.3. Postal service on the debtor with acknowledgement of receipt ☐

11.2.4. Fax or e-mail with acknowledgement of receipt ☐

11.3. Substitute service

11.3.1. Has personal service under 11.2.1 or 11.2.2 been unsuccessfully attempted

Yes ☐ No ☐

11.3.2. If yes, document was

11.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

11.3.2.1.1. Name

11.3.2.1.2. Relation to debtor

11.3.2.1.2.1. Family ☐

11.3.2.1.2.2. Employee in the household ☐

11.3.2.1.2.3. Other (explain) ☐

11.3.2.2. handed to an adult at debtor's professional domicile ☐

11.3.2.2.1. Name

11.3.2.2.2. Employee of debtor Yes ☐ No ☐

11.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12 (1)(c) ☐

11.3.2.4. deposited with public authorities in accordance with Art. 12 (1)(d) ☐

11.3.2.4.1. Name and address of public authority:

11.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

11.4. Proof of service

11.4.1. Has service been effected under 11.2.2 or 11.3 Yes ☐ No ☐

11.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

11.5. Cure of service under Art. 19(2) in case of non-compliance with 11.2-11.4

11.5.1. It is established that the debtor has personally received the document

Yes ☐ No ☐

11.6. Service in due time

The time limit set for the debtor to react to the claim was in compliance with Art. 15(1)

Yes ☐ No ☐

11.7. Due information

The debtor was informed in compliance with Art. 16 and 17

Yes ☐ No ☐

12. Service of summons where necessary pursuant to Article 14

Yes ☐ No ☐

12.1. Date and address of service:

12.1.1. Domicile of debtor unknown ☐

12.2. The summons was delivered

12.2.1. By personal service on the debtor (including his representative) with acknowledgement of receipt ☐

12.2.2. By personal service on the debtor certified by the competent official ☐

12.2.3. By postal service on the debtor with acknowledgement of receipt ☐

12.2.4. By Fax or e-mail with acknowledgement of receipt ☐

12.2.5. Orally in a previous court hearing ☐

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes ☐ No ☐

12.3.2. If yes, summons was

12.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

12.3.2.1.1. Name

12.3.2.1.2. Relation to debtor

12.3.2.1.2.1. Family ☐

12.3.2.1.2.2. Employee in the household ☐

12.3.2.1.2.3. Other (explain) ☐

12.3.2.2. handed to an adult at debtor's professional domicile ☐

12.3.2.2.1. Name

12.3.2.2.2. Employee of debtor Yes ☐ No ☐

12.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c) ☐

12.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d) ☐

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

12.4. Proof of service

12.4.1. Has service been effected under 12.2.2 or 12.3 Yes ☐ No ☐

12.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

12.5. Cure of service under Art. 19(2) in case of non-compliance with 12.2-12.4

12.5.1. It is established that the debtor has personally received the document

Yes ☐ No ☐

12.6. Service in due time

The time period between the service of the summons and the court hearing was in compliance with Art. 15(2)
Yes ☐ No ☐

12.7. Due information

Debtor was informed in compliance with Art. 18

Yes ☐ No ☐

13. Cure of non-compliance with procedural minimum standards under Art. 19(1)

13.1. Date and address of service of judgement:

Domicile of debtor unknown ☐

13.2. The judgement was delivered by

13.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt ☐

13.2.2. Personal, service on the debtor certified by a public official ☐

13.2.3. Postal service on the debtor with acknowledgement of receipt ☐

13.2.4. Fax or e-mail with acknowledgement of receipt ☐

13.3. Substitute service

13.3.1. Has personal service under 13.2.1 or 13.2.2 been unsuccessfully attempted

Yes ☐ No ☐

13.3.2. If yes, judgement was

13.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

13.3.2.1.1. Name

13.3.2.1.2. Relation to debtor

13.3.2.1.2.1. Family ☐

13.3.2.1.2.2. Employee in the household ☐

13.3.2.1.2.3. Other (explain) ☐

13.3.2.2. handed to an adult at debtor's professional domicile ☐

13.3.2.2.1. Name

13.3.2.2.2. Employee of debtor Yes ☐ No ☐

13.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c) ☐

13.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d) ☐

13.3.2.4.1. Name and address of public authority:

13.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

13.4. Proof of service

13.4.1. Has service been effected under 13.2.2 or 13.3 Yes ☐ No ☐

13.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

13.5. Was it possible for debtor to challenge the judgement by ordinary appeal

Yes ☐ No ☐

13.6. Time limit for such a challenge in compliance with Art. 19(1)(c)

Yes ☐ No ☐

13.7. Due information of debtor about the possibility to challenge the judgement under Art. 19(1)(d)

Yes ☐ No ☐

Done at date

Signature and/or stamp

ANNEX II

EUROPEAN ENFORCEMENT ORDER CERTIFICATE FOR PROTECTIVE MEASURES

1. Member State of origin: A ☐ B ☐ D ☐ E ☐ EL ☐ F ☐ FIN ☐
   I ☐ [IRL] ☐ L ☐ NL ☐ P ☐ S ☐ [UK] ☐
2. Issuing Court:

   Address:

   Tel./fax/e-mail
3. Judgement

   3.1. Date:

   3.2. Reference number:

   3.3. The parties

      3.3.1. Name and address of creditor(s):

      3.3.2. Name and address of debtor(s):
4. Monetary claim as certified

   4.1. Amount of Principal:

      4.1.1. Currency ☐ Euro

      ☐ Swedish kronor

      ☐ [British pounds]

      4.1.2. If the claim is a periodic payment

         4.1.2.1. Principal of every instalment

         4.1.2.2. Expiry date of first instalment

         4.1.2.3. Expiry dates of following instalments

            weekly ☐ monthly ☐ bimonthly ☐ other (explain) ☐

         4.1.2.4. Life term of the claim

            4.1.2.4.1. Indefinite ☐ or

            4.1.2.4.2. Expiry date of last instalment

      4.1.3. The claim concerns a joint and several liability of the debtors ☐

   4.2. Interest

      4.2.1. Interest rate

         4.2.1.1. % or

         4.2.1.2. % above the base rate of the ECB

      4.2.2. Interest to be collected as from:

   4.3. Amount of reimbursable cost if specified in the judgement
5. Judgement is enforceable in the Member State of origin.

   Yes ☐ No ☐
6. The enforceability of the judgement is limited in time Yes ☐ No ☐

   6.1. If yes, last day of enforceability
7. Judgement is on an uncontested claim under Article 3(4)

   Yes ☐ No ☐
8. Judgement is in compliance with Article 5(b)

   Yes ☐ No ☐

9. Where necessary, judgement is in compliance with Article 5(c)

Yes ☐ No ☐ Not necessary ☐

10. Where necessary, judgement is in compliance with Article 5(d)

Yes ☐ No ☐ Not necessary ☐

11. Service of the document instituting the proceedings under Chapter III where necessary

Yes ☐ No ☐

11.1. Date and address of service:

11.1.1. Domicile of debtor unknown ☐

11.2. The document was delivered by

11.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt ☐

11.2.2. Personal service on the debtor certified by the competent official ☐

11.2.3. Postal service on the debtor with acknowledgement of receipt ☐

11.2.4. Fax or e-mail with acknowledgement of receipt ☐

11.3. Substitute service

11.3.1. Has personal service under 11.2.1 or 11.2.2 been unsuccessfully attempted

Yes ☐ No ☐

11.3.2. If yes, document was

11.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

11.3.2.1.1. Name

11.3.2.1.2. Relation to debtor

11.3.2.1.2.1. Family ☐

11.3.2.1.2.2. Employee in the household ☐

11.3.2.1.2.3. Other (explain) ☐

11.3.2.2. handed to an adult at debtor's professional domicile ☐

11.3.2.2.1. Name

11.3.2.2.2. Employee of debtor Yes ☐ No ☐

11.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c) ☐

11.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d) ☐

11.3.2.4.1. Name and address of public authority:

11.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

11.4. Proof of service

11.4.1. Has service been effected under 11.2.2 or 11.3 Yes ☐ No ☐

11.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

11.5. Cure of service under Art. 19(2) in case of non-compliance with 11.2-11.4

11.5.1. It is established that the debtor has personally received the document

Yes ☐ No ☐

11.6. Service in due time

The time limit set for the debtor to react to the claim was in compliance with Art. 15(1)

Yes ☐ No ☐

11.7. Due information

The debtor was informed in compliance with Art. 16 and 17

Yes ☐ No ☐

12. Service of summons where necessary pursuant to Article 14

Yes ☐ No ☐

12.1. Date and address of service:

12.1.1. Domicile of debtor unknown ☐

12.2. The summons was delivered

12.2.1. By personal service on the debtor (including his representative) with acknowledgement of receipt ☐

12.2.2. By personal service on the debtor certified by the competent official ☐

12.2.3. By postal service on the debtor with acknowledgement of receipt ☐

12.2.4. By Fax or e-mail with acknowledgement of receipt ☐

12.2.5. Orally in a previous court hearing ☐

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes ☐ No ☐

12.3.2. If yes, summons was

12.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

12.3.2.1.1. Name

12.3.2.1.2. Relation to debtor

12.3.2.1.2.1. Family ☐

12.3.2.1.2.2. Employee in the household ☐

12.3.2.1.2.3. Other (explain) ☐

12.3.2.2. handed to an adult at debtor's professional domicile ☐

12.3.2.2.1. Name

12.3.2.2.2. Employee of debtor Yes ☐ No ☐

12.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c) ☐

12.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d) ☐

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

12.4. Proof of service

12.4.1. Has service been effected under 12.2.2 or 12.3 Yes ☐ No ☐

12.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

12.5. Cure of service under Art. 19(2) in case of non-compliance with 12.2-12.4

12.5.1. It is established that the debtor has personally received the document

Yes ☐ No ☐

12.6. Service in due time

The time period between the service of the summons and the court hearing was in compliance with Art. 15(2) Yes ☐ No ☐

12.7. Due information

Debtor was informed in compliance with Art. 18

Yes ☐ No ☐

13. Cure of non-compliance with procedural minimum standards under Art. 19(1)

13.1. Date and address of service of judgement:

Domicile of debtor unknown ☐

13.2. The judgement was delivered by

13.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt ☐

13.2.2. Personal service on the debtor certified by a public official ☐

13.2.3. Postal service on the debtor with acknowledgement of receipt ☐

13.2.4. Fax or e-mail with acknowledgement of receipt ☐

13.3. Substitute service

13.3.1. Has personal service under 13.2.1 or 13.2.2 been unsuccessfully attempted

Yes ☐ No ☐

13.3.2. If yes, judgement was

13.3.2.1. handed to an adult domiciled in the same household as the debtor ☐

13.3.2.1.1. Name:

13.3.2.1.2. Relation to debtor

13.3.2.1.2.1. Family ☐

13.3.2.1.2.2. Employee in the household ☐

13.3.2.1.2.3. Other (explain) ☐

13.3.2.2. handed to an adult at debtor's professional domicile ☐

13.3.2.2.1. Name

13.3.2.2.2. Employee of debtor Yes ☐ No ☐

13.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c) ☐

13.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d) ☐

13.3.2.4.1. Name and address of public authority:

13.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d) ☐

13.4. Proof of service

13.4.1. Has service been effected under 13.2.2 or 13.3 Yes ☐ No ☐

13.4.2. If yes, has service been certified in compliance with Art. 13

Yes ☐ No ☐

13.5. Was it possible for debtor to challenge the judgement by ordinary appeal

Yes ☐ No ☐

13.6. Time limit for such a challenge in compliance with Art. 19(1)(c)

Yes ☐ No ☐

13.7. Due information of debtor about the possibility to challenge the judgement under Art. 19(1)(d)

Yes ☐ No ☐

Done at date

Signature and/or stamp

ANNEX III

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — COURT SETTLEMENT

1. Member State of origin: A ☐ B ☐ D ☐ E ☐ EL ☐ F ☐ FIN ☐
   I ☐ [IRL] ☐ L ☐ NL ☐ P ☐ S ☐ [UK] ☐
2. Issuing Court:

   Address:

   Tel./fax/e-mail
3. Court settlement

   3.1. Date:

   3.2. Reference number:

   3.3. The parties

      3.3.1. Name and address of creditor(s):

      3.3.2. Name and address of debtor(s):
4. Monetary claim as certified

   4.1. Amount of Principal:

      4.1.1. Currency ☐ Euro

      ☐ Swedish kronor

      ☐ [British pounds]

      4.1.2. If the claim is a periodic payment

         4.1.2.1. Principal of every instalment

         4.1.2.2. Expiry date of first instalment

         4.1.2.3. Expiry dates of following instalments

            weekly ☐ monthly ☐ other (explain) ☐

         4.1.2.4. Life term of the claim

            4.1.2.4.1. Indefinite ☐

            4.1.2.4.2. Expiry date of last instalment

      4.1.3. The claim concerns a joint and several liability of the debtors ☐

   4.2. Interest

      4.2.1. Interest rate

         4.2.1.1. % or

         4.2.1.2. % above the base rate of the ECB

      4.2.2. Interest to be collected as from:

   4.3. Amount of reimbursable cost if specified in the court settlement
5. The court settlement is enforceable in the Member State of origin

   Yes ☐ No ☐

Done at date

Signature and/or stamp

ANNEX IV

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — AUTHENTIC INSTRUMENT

1. Member State of origin: A ☐ B ☐ D ☐ E ☐ EL ☐ F ☐ FIN ☐
   I ☐ [IRL] ☐ L ☐ NL ☐ P ☐ S ☐ [UK] ☐

2. Issuing Authority
   - 2.1. Name:
   - 2.2. Address:
   - 2.3. Tel./fax/e-mail
   - 2.4. Notary public ☐
   - 2.5. Administrative authority ☐
   - 2.6. Court ☐
   - 2.7. Other (explain) ☐

3. Authentic instrument
   - 3.1. Date:
   - 3.2. Reference number:
   - 3.3. The parties
     - 3.3.1. Name and address of creditor(s):
     - 3.3.2. Name and address of debtor(s):

4. Monetary claim as certified
   - 4.1. Amount of Principal:
     - 4.1.1. Currency ☐ Euro
       ☐ Swedish kronor
       ☐ [British pounds]
     - 4.1.2. If the claim is a periodic payment
       - 4.1.2.1. Principal of every instalment
       - 4.1.2.2. Expiry date of first instalment
       - 4.1.2.3. Expiry dates of following instalments
         weekly ☐ monthly ☐ other (explain) ☐
       - 4.1.2.4. Life term of the claim
         - 4.1.2.4.1. Indefinite ☐ or
         - 4.1.2.4.2. Expiry date of last instalment
     - 4.1.3. The claim concerns a joint and several liability of the debtors ☐
   - 4.2. Interest
     - 4.2.1. Interest rate
       - 4.2.1.1. % or
       - 4.2.1.2. % above the base rate of the ECB
     - 4.2.2. Interest to be collected as from
   - 4.3. Amount of reimbursable cost if specified in the authentic instrument

5. The debtor has been informed about the direct enforceability of the authentic instrument prior to his consent according to Art. 26(3) Yes ☐ No ☐

6. The authentic instrument is enforceable in the Member State of origin
   Yes ☐ No ☐

Done at date

Signature and/or stamp

ANNEX V

CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS

(Article 10 of Council Regulation (EC) No 1348/2000)

12. COMPLETION OF SERVICE

12.1. Date and address of service:

12.2. The document was delivered by

12.2.1. Personal service on the addressee with the debtor's acknowledgement of receipt ☐

12.2.2. Personal service on the addressee certified by a competent official ☐

12.2.3. Postal service on the addressee with the enclosed acknowledgement of receipt ☐

12.2.4. By other means of telecommunications with the enclosed acknowledgement of receipt ☐

12.2.4.1. Fax ☐

12.2.4.2. e-Mail ☐

12.2.4.3. Other (explain) ☐

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes ☐ No ☐

12.3.2. If yes, document was

12.3.2.1. handed to an adult domiciled in the same household as the addressee ☐

12.3.2.1.1. Name

12.3.2.1.2. Relation to addressee

12.3.2.1.2.1. Family ☐

12.3.2.1.2.2. Employee in the household ☐

12.3.2.1.2.3. Other (explain) ☐

12.3.2.2. handed to an adult at addressee's professional domicile ☐

12.3.2.2.1. Name

12.3.2.2.2. Employee of addressee Yes ☐ No ☐

12.3.2.3. deposited in the addressee's mailbox ☐

12.3.2.4. deposited with public authorities ☐

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in addressee's mailbox? ☐

12.3.2.5. served by the following particular method (please say how)

12.4. The document was delivered by one of the methods mentioned in 12.2 or 12.3 (please mark the exact method there) not on the addressee but his representative Yes ☐ No ☐

12.4.1. If yes, name and address of the representative

12.4.2. Status of the representative

12.4.2.1. Authorised representative, lawyer ☐

12.4.2.2. Statutory legal representative of a legal person ☐

12.4.2.3. Other (explain) ☐

12.5. Has service been effected in compliance with the law of the Member State where it was effected Yes ☐ No ☐

12.6. The addressee of the document was informed (orally) (in writing) that he or she may refuse to accept it if it was not in an official language of the place of service or in an official language of the State of transmission which he or she understands Yes ☐ No ☐

13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2)

It was not possible to effect service within one month of receipt ☐

14. REFUSAL OF DOCUMENT

The addressee refused to accept the document on account of the language used. The documents are annexed to this certificate ☐

15. REASON FOR NON-SERVICE OF DOCUMENT

15.1. Address unknown ☐

15.2. Addressee cannot be located ☐

15.3. Document could not be served before the date or time limit stated in point 6.2 ☐

15.4. Others (please specify) ☐

The documents are annexed to this certificate

Done at Date

Signature and/or stamp

Proposal for a Council Regulation amending Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology

(2002/C 203 E/15)

COM(2002) 184 final — 2002/0085(ACC)

(Submitted by the Commission on 18 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Council Regulation (EC) No 1334/2000 of 22 June 2000 [1], dual-use items (including software and technology) must be subject to effective control when they are exported from the Community.

(2) Under Article 21 of Regulation (EC) No 1334/2000, an authorisation is required for intra-Community transfers of the dual-use items and technology listed in Annex IV to that Regulation. That Annex includes in particular items subject to control in the context of the Nuclear Suppliers Group (NSG) and the Wassenaar Arrangement.

(3) The political commitments made by the Member States in the context of the NSG or the Wassenaar Arrangement must be applied in strict compliance with the principles established by Community law, particularly the EC Treaty and the Euratom Treaty. Both Treaties establish the principle of the free movement of goods within the Community, and dual-use items are subject to this principle.

(4) Annex IV to Regulation (EC) No 1334/2000 constitutes an exception to the principle of the free movement within the Community of dual-use items. This exception arises from the political commitments made by the Member States and the sensitivity of the items concerned.

(5) Since some of the items are less sensitive in terms of proliferation, control of their transfer within the Community under Regulation (EC) No 1334/2000 does not seem justified.

(6) Regulation (EC) No 1334/2000 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EC) No 1334/2000 is amended as follows:

1. In part I, headings 3A002.g.2., 6A001.a.1.b.2., 6A001.a.1.b.3., 6A001.a.1.b.4., 6A001.a.1.b.5., 6A001.a.2.d., 8A002.o.3.a., 8A002.p. and 8D002 are deleted.

2. Part II is amended as follows:

   (a) Headings 1C012.a., 3A201.a., 3A228.c., 6A203.b. and 6E201 are deleted.

   (b) Heading 1E001 is replaced by the following:

   '1E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials specified in 1C012.b.'

   (c) Heading 3E201 is replaced by the following:

   '3E201 "Technology" according to the General Technology Note for the "use" of equipment specified in 3A228.a., 3A228.b., 3A229, 3A231 or 3A232.'

Article 2

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

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

[1] OJ L 159, 30.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 2432/2001 (OJ L 338, 20.12.2001, p. 2).

Proposal for a Council Framework Decision on attacks against information systems

(2002/C 203 E/16)

COM(2002) 173 final — 2002/0086(CNS)

(Submitted by the Commission on 19 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 30(1)(a), 31 and 34(2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) There is evidence of attacks against information systems, in particular as a result of the threat from organised crime, and increasing concern at the potential of terrorist attacks against information systems which form part of the critical infrastructure of the Member States. This constitutes a threat to the achievement of a safer Information Society and an Area of Freedom, Security and Justice, and therefore requires a response at the level of the European Union.

(2) An effective response to those threats requires a comprehensive approach to network and information security, as underlined in the eEurope Action Plan, in the Communication by the Commission 'Network and Information Security: Proposal for a European Policy Approach' [1] and in the Council Resolution of 6 December 2001 on a common approach and specific actions in the area of network and information security.

(3) The need to further increase awareness of the problems related to information security and provide practical assistance has also been stressed in the European Parliament Resolution of 5th September 2001 [2].

(4) Significant gaps and differences in Member States' laws in this area hamper the fight against organised crime and terrorism, and act as a barrier to effective police and judicial cooperation in the area of attacks against information systems. The trans-national and borderless character of modern electronic communication networks means that attacks against information systems are often international in nature, thus underlining the urgent need for further action to approximate criminal laws in this area.

(5) The Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice [3], the Tampere European Council on 15-16 October 1999, the Santa Maria da Feira European Council on 19-20 June 2000, the Commission in the Scoreboard [4] and the European Parliament in its Resolution of 19 May 2000 [5] indicate or call for legislative action against high technology crime, including common definitions, incriminations and sanctions.

(6) It is necessary to complement the work performed by international organisations, in particular the Council of Europe's work on approximating criminal law and the G8's work on transnational cooperation in the area of high tech crime, by providing a common approach in the European Union in this area. This call was further elaborated by the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on 'Creating a Safer Information Society by Improving the Security of Information Infrastructures and Combating Computer-related Crime' [6].

(7) Criminal law in the area of attacks against information systems should be approximated in order to ensure the greatest possible police and judicial cooperation in the area of criminal offences related to attacks against information systems, and to contribute to the fight against organised crime and terrorism.

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[1] COM(2001) 298.

[2] (2001/2098(INI)).

[3] OJ C 19, 23.1.1999.

[4] COM(2001) 278 final.

[5] A5-0127/2000.

[6] COM(2000) 890.

(8) The Framework Decision on the European Arrest Warrant, the Annex to the Europol Convention and the Council Decision setting up Eurojust contain references to computer-related crime which needs to be defined more precisely. For the purposes of such instruments, computer-related crime should be understood as including attacks against information systems as defined in this Framework Decision which provides a much greater level of approximation of the constituent elements of such offences. This Framework Decision also complements the Framework Decision on combating terrorism which covers terrorist actions causing extensive destruction of an infrastructure facility, including an information system, likely to endanger human life or result in major economic loss.

(9) All Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data. The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the principles of the said Convention.

(10) Common definitions in this area, particularly of information systems and computer data, are important to ensure a consistent approach in Member States in the application of this Framework Decision.

(11) There is a need to achieve a common approach to the constituent elements of criminal offences by providing for a common offence of illegal access to an information system, and illegal interference with an information system.

(12) There is a need to avoid over-criminalisation, particularly of trivial or minor conduct, as well as the need to avoid criminalising right-holders and authorised persons such as legitimate private or business users, managers, controllers and operators of networks and systems, legitimate scientific researchers, and authorised persons testing a system, whether a person within the company or a person appointed externally and given permission to test the security of a system.

(13) There is a need for Member States to provide penalties for attacks against information systems which are effective, proportionate and dissuasive, including custodial sentences in serious cases;

(14) It is necessary to provide for more severe penalties when certain circumstances accompanying an attack against an information system make it an even greater threat to society. In such cases, sanctions on perpetrators should be sufficient to allow for attacks against information systems to be included within the scope of instruments already adopted for the purpose of combating organised crime such as the 98/733/JHA Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union [1].

(15) Measures should be taken to enable legal persons to be held liable for the criminal offences referred to by this act which are committed for their benefit, and to ensure that each Member State has jurisdiction over offences committed against information systems in situations where the offender is physically present on its territory or where the information system is on its territory.

(16) Measures should also be foreseen for the purposes of cooperation between Member States with a view to ensuring effective action against attacks against information systems. Operational contact points should be established for the exchange of information.

(17) Since the objectives of ensuring that attacks against information systems be sanctioned in all Member States by effective, proportionate and dissuasive criminal penalties and improving and encouraging judicial cooperation by removing potential obstacles, cannot be sufficiently achieved by the Member States individually, as rules have to be common and compatible, and can therefore be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to in Article 2 of the EU Treaty and as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

(18) This Framework Decision is without prejudice to the powers of the European Community.

(19) This Framework Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Scope and objective of the Framework Decision

The objective of this Framework Decision is to improve cooperation between judicial and other competent authorities, including the police and other specialised law enforcement services of the Member States, through approximating rules on criminal law in the Member States in the area of attacks against information systems.

[1] OJ L 351, 29.12.1998, p. 1.

Article 2

Definitions

For the purposes of this Framework Decision, the following definitions shall apply:

(a) 'Electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed

(b) 'Computer' means any device or group of inter-connected or related devices, one or more of which, pursuant to a program, performs automatic processing of computer data.

(c) 'Computer data' means any representation of facts, information or concepts which has been created or put into a form suitable for processing in an information system, including a program suitable for causing an information system to perform a function.

(d) 'Information System' means computers and electronic communication networks, as well as computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance.

(e) 'Legal person' means any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.

(f) 'Authorised person' means any natural or legal person who has the right, by contract or by law, or the lawful permission, to use, manage, control, test, conduct legitimate scientific research or otherwise operate an information system and who is acting in accordance with that right or permission.

(g) 'Without right' means that conduct by authorised persons or other conduct recognised as lawful under domestic law is excluded.

Article 3

Illegal access to Information Systems

Member States shall ensure that the intentional access, without right, to the whole or any part of an information system is punishable as a criminal offence where it is committed:

(i) against any part of an information system which is subject to specific protection measures; or

(ii) with the intent to cause damage to a natural or legal person; or

(iii) with the intent to result in an economic benefit.

Article 4

Illegal interference with Information Systems

Member States shall ensure that the following intentional conduct, without right, is punishable as a criminal offence:

(a) the serious hindering or interruption of the functioning of an information system by inputting, transmitting, damaging, deleting, deteriorating, altering, suppressing or rendering inaccessible computer data;

(b) the deletion, deterioration, alteration, suppression or rendering inaccessible of computer data on an information system where it is committed with the intention to cause damage to a natural or legal person.

Article 5

Instigation, aiding, abetting and attempt

1. Member States shall ensure that the intentional instigation of, aiding or abetting an offence referred to in Articles 3 and 4 is punishable.

2. Member States shall ensure that attempt to commit the offences referred to in Articles 3 and 4 is punishable.

Article 6

Penalties

1. Member States shall ensure that offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive penalties including a custodial sentence with a maximum term of imprisonment of no less than one year in serious cases. Serious cases shall be understood as excluding cases where the conduct resulted in no damage or economic benefit.

2. Member States shall provide for the possibility of imposing fines in addition to or as an alternative to custodial sentences.

Article 7

Aggravating circumstances

1. Member States shall ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a custodial sentence with a maximum term of imprisonment of no less than four years when they are committed under the following circumstances:

(a) the offence has been committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, apart from the penalty level referred to therein;

(b) the offence caused, or resulted in, substantial direct or indirect economic loss, physical harm to a natural person or substantial damage to part of the critical infrastructure of the Member State;

(c) the offence resulted in substantial proceeds; or

2. Member States shall ensure that the offences referred to in Articles 3 and 4 are punishable by custodial sentences greater than those foreseen under Article 6, when the offender has been convicted of such an offence by a final judgement in a Member State.

Article 8

Particular circumstances

Notwithstanding Articles 6 and 7, Member States shall ensure the penalties referred to in Articles 6 and 7 can be reduced, where, in the opinion of the competent judicial authority, the offender caused only minor damage.

Article 9

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for conducts referred to in Articles 3, 4 and 5, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person, or

(b) an authority to take decisions on behalf of the legal person, or

(c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, Member States shall ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who commit offences or engage in the conduct referred to in Articles 3, 4 and 5.

Article 10

Sanctions for legal persons

1. Member States shall ensure that a legal person held liable pursuant to Article 9(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision; or

(d) a judicial winding-up order.

2. Member States shall ensure that a legal person held liable pursuant to Article 9(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 11

Jurisdiction

1. Each Member State shall establish its jurisdiction with regard to the offences referred to in Articles 3, 4 and 5 where the offence has been committed:

(a) in whole or in part within its territory; or

(b) by one of its nationals and the act affects individuals or groups of that State; or

(c) for the benefit of a legal person that has its head office in the territory of that Member State.

2. When establishing jurisdiction in accordance with paragraph (1)(a), each Member State shall ensure that it includes cases where:

(a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or

(b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.

3. A Member State may decide not to apply, or to apply only in specific cases or circumstances, the jurisdiction rule set out in paragraphs 1(b) and 1(c).

4. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 3 to 5 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

5. Where an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action.

6. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 3, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 12

Exchange of information

1. For the purpose of exchange of information relating to the offences referred to in Articles 3, 4 and 5, and in accordance with data protection rules, Member States shall ensure that they establish operational points of contact available twenty four hours a day and seven days a week.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information on offences relating to attacks against information systems. The General Secretariat shall notify that information to the other Member States.

Article 13

Implementation

1. Member States shall bring into force the measures necessary to comply with this Framework Decision by 31 December 2003.

2. They shall communicate to the General Secretariat of the Council and to the Commission the text of any provisions they adopt and information on any other measures taken to comply with this Framework Decision.

3. On that basis, the Commission shall, by 31 December 2004, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied where necessary by legislative proposals.

4. The Council shall assess the extent to which Member States have complied with this Framework Decision.

Article 14

Entry into force

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

Proposal for a Council Regulation establishing additional customs duties on imports of certain products originating in the United States of America

(2002/C 203 E/17)

COM(2002) 202 final — 2002/0095(ACC)

(Submitted by the Commission on 19 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The United States of America has imposed a safeguard measure in the form of tariff increases or tariff quotas on imports of steel products from, inter alia, the European Community as from 20 March 2002.

(2) This measure is causing considerable injury to the Community producers concerned and disturbs the balance of concessions and obligations resulting from the WTO Agreement; the measure will significantly limit Community exports of the steel products concerned to the United States of America affecting Community exports worth at least 2 407 million euro per year.

(3) The consultations which were held between the United States of America and the Community as envisaged in the WTO Agreement did not reach any satisfactory solution.

(4) The WTO Agreement gives any affected exporting Member the right to suspend the application of substantially equivalent concessions or other obligations, provided the WTO Council for Trade in Goods does not disapprove.

(5) The imposition of additional customs duties of 100 %, 30 %, 15 %, 13 % and 8 % on selected products originating in the United States of America imported each year into the Community represents the suspension of a substantially equivalent trade concessions, in that the duties collected will not exceed the amount of duties to be collected on Community exports of the products covered by the US safeguard measure, i.e. 626 million euro per year.

(6) The suspension of substantially equivalent concessions should be applied by priority with respect to the steel sector, and to other sectors where appropriate; in particular, the manufactured products originating in the United States of America which have been selected are those on which the Community is not substantially dependent for its supply, but on which the imposition of additional customs duties will have an impact substantially equivalent to the impact on Community exports of the safeguard measure imposed by the United States of America.

(7) For some products designated as 'certain flat steel products' the safeguard measure adopted by the United States of America has not been taken as a result of an absolute increase in imports.

(8) As allowed by the WTO Agreement, a part of the Community's concessions corresponding to that part of the safeguard measure that was not taken as a result of an absolute increase of imports and representing an amount of applicable duties of 377 million euro should therefore be suspended on products of particular relevance to the United States of America from 18 June 2002 until the safeguard measure imposed by the United States of America is lifted.

(9) This Regulation is without prejudice to the question of the compatibility of the safeguard measure applied by the United States of America with the WTO Agreement; in any event, the suspension of concessions should apply in full from 20 March 2005 until the safeguard measure imposed by the United States of America is lifted; it should however apply immediately after a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement;

(10) The Community provided written notice of such suspension to the Council for Trade in Goods on 17 May 2002; the Council for Trade in Goods has not disagreed with such suspension,

HAS ADOPTED THIS REGULATION:

Article 1

The customs duties applicable to selected products originating in the United States of America listed in Annex I and II shall be increased by an additional ad valorem duty of 100 %, 30 %, 15 %, 13 % or 8 % respectively, as indicated in the Annexes.

Article 2

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

2. Annex I shall apply from 18 June 2002 until Annex II applies.

3. Annex II shall apply

(i) from 20 March 2005, or

(ii) from the fifth day following the date of a decision by the WTO Dispute Settlement Body that the safeguard measure imposed by the United States of America is incompatible with the WTO Agreement, if that is earlier. In this event, the Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date of the decision of the WTO Dispute Settlement Body.

4. This Regulation shall apply until the United States of America's safeguard measure is lifted. The Commission shall publish in the *Official Journal of the European Communities* a notice indicating the date on which the safeguard measure imposed by the United States of America is lifted.

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

ANNEX I

LIST OF PRODUCTS ON THE IMPORT OF WHICH ADDITIONAL CUSTOMS DUTIES WILL APPLY AS FROM 18 JUNE 2002

The products covered are determined, within the Annex, by CN codes only.

Description and CN codes	Additional duty
Citrus fruit, fresh or dried falling under CN code:	
0805 40 00	100 %
Apples, pears and quinces, fresh falling under CN code:	
0808 10 90	100 %
Rice falling under CN code:	
1006 20 98	100 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	100 %
6109 90 10	100 %
6109 90 30	100 %
6109 90 90	100 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 42 90	100 %
6203 43 11	100 %
6203 43 19	100 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN code:	
6204 62 90	100 %
Men's or boys' shirts falling under CN code:	
6205 30 00	100 %
Blankets and travelling rugs falling under CN code:	
6301 30 10	100 %
Bed linen, table linen, toilet linen and kitchen linen falling under CN codes:	
6302 32 10	100 %
6302 32 90	100 %

Description and CN codes	Additional duty
Flat-rolled products of stainless steel, of a width of 600 mm or more falling under CN codes:	
7219 32 10	100 %
7219 33 10	100 %
7219 33 90	100 %
7219 34 10	100 %
7219 34 90	100 %
7219 35 10	100 %
7219 35 90	100 %
7219 90 90	100 %
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 10	100 %
7220 20 31	100 %
7220 20 51	100 %
7220 20 59	100 %
7220 20 91	100 %
7220 90 11	100 %
7220 90 39	100 %
7220 90 90	100 %
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 11	100 %
7222 20 21	100 %
7222 20 81	100 %
7222 20 89	100 %
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	100 %
9004 10 99	100 %
Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns) falling under CN code:	
9303 30 00	100 %
Seats (other than those of heading No. 9402), whether or not convertible into beds, and parts thereof falling under CN code:	
9401 61 00	100 %
Other furniture and parts thereof falling under CN code:	
9403 60 10	100 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	100 %
Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609 falling under CN code:	
9608 10 10	100 %

ANNEX II

OTHER ARTICLES

The products covered are determined, within the Annex, by CN codes only.

Description and CN codes	Additional duty
Dried leguminous vegetables, shelled, whether or not skinned or split falling under CN codes:	
0713 33 90	13 %
0713 40 00	13 %
Other nuts, fresh or dried, whether or not shelled or peeled falling under CN codes:	
0802 32 00	15 %
0802 50 00	15 %
Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried falling under CN code:	
0804 50 00	13 %
Citrus fruit, fresh or dried falling under CN code:	
0805 40 00	15 %
Apples, pears and quinces, fresh falling under CN codes:	
0808 10 90	15 %
0808 20 50	8 %
Apricots, cherries, peaches (including nectarines), plums and sloes, fresh falling under CN code:	
0809 20 95	15 %
Rice falling under CN codes:	
1006 20 98	8 %
1006 30 98	8 %
1006 40 00	8 %
Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter falling under CN codes:	
2009 11 99	15 %
2009 12 00	15 %
2009 19 98	15 %
2009 21 00	15 %
2009 29 99	15 %
2009 80 79	13 %
Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size falling under CN codes:	
4810 13 19	15 %
4810 13 99	15 %
4810 14 99	15 %
4810 22 99	15 %
4810 29 19	15 %
4810 29 99	15 %
Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810 falling under CN code:	
4811 59 00	15 %

Description and CN codes	Additional duty
Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like falling under CN codes:	
4819 10 00	15 %
4819 20 10	15 %
4819 40 00	15 %
4819 50 00	15 %
Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres falling under CN code:	
4823 90 14	15 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6103 falling under CN codes:	
6101 30 10	30 %
6101 30 90	30 %
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, knitted or crocheted, other than those of heading 6104 falling under CN codes:	
6102 30 10	30 %
6102 30 90	30 %
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6103 42 10	30 %
6103 42 90	30 %
6103 43 10	30 %
6103 43 90	30 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted falling under CN codes:	
6104 43 00	30 %
6104 62 90	30 %
6104 63 10	30 %
6104 63 90	30 %
Men's or boys' shirts, knitted or crocheted falling under CN codes:	
6105 10 00	30 %
6105 20 10	30 %
6105 20 90	30 %
Women's or girls' blouses, shirts and shirt-blouses, knitted or crocheted falling under CN codes:	
6106 10 00	30 %
Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN codes:	
6107 11 00	30 %
Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing gowns and similar articles, knitted or crocheted falling under CN codes:	
6108 22 00	30 %
T-shirts, singlets and other vests, knitted or crocheted falling under CN codes:	
6109 10 00	30 %
6109 90 10	30 %
6109 90 30	30 %
6109 90 90	30 %

Description and CN codes	Additional duty
Jerseys, pullovers, cardigans, waistcoats and similar articles, knitted or crocheted falling under CN codes:	
6110 11 10	30 %
6110 11 30	30 %
6110 11 90	30 %
6110 12 10	30 %
6110 12 90	30 %
6110 19 10	30 %
6110 19 90	30 %
6110 20 10	30 %
6110 20 91	30 %
6110 20 99	30 %
6110 30 10	30 %
6110 30 91	30 %
6110 30 99	30 %
6110 90 10	30 %
6110 90 90	30 %
Track suits, ski suits and swimwear, knitted or crocheted falling under CN codes:	
6112 41 10	30 %
6112 41 90	30 %
Garments, made up of knitted or crocheted fabrics of heading 5903, 5906, or 5907 falling under CN codes:	
6113 00 10	30 %
6113 00 90	30 %
Other garments, knitted or crocheted falling under CN codes:	
6114 20 00	30 %
6114 30 00	30 %
6114 90 00	30 %
Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins and footwear without applied soles, knitted or crocheted falling under CN codes:	
6115 11 00	30 %
6115 12 00	30 %
6115 19 00	30 %
6115 92 00	30 %
6115 93 10	30 %
6115 93 30	30 %
6115 93 91	30 %
6115 93 99	30 %
6115 99 00	30 %
Gloves, mittens and mitts, knitted or crocheted falling under CN codes:	
6116 10 20	30 %
6116 93 00	30 %
Men's or boys' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6203 falling under CN codes:	
6201 12 10	30 %
6201 12 90	30 %
6201 13 10	30 %
6201 13 90	30 %
6201 92 00	30 %
6201 93 00	30 %
Women's or girls' overcoats, car-coats, capes, cloaks, anoraks (including ski-jackets), wind-cheaters, wind-jackets and similar articles, other than those of heading 6204 falling under CN codes:	
6202 11 00	30 %
6202 93 00	30 %

Description and CN codes	Additional duty
Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6203 11 00	30 %
6203 39 19	30 %
6203 39 90	30 %
6203 42 11	30 %
6203 42 31	30 %
6203 42 35	30 %
6203 42 90	30 %
6203 43 11	30 %
6203 43 19	30 %
6203 43 90	30 %
Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear) falling under CN codes:	
6204 29 18	30 %
6204 29 90	30 %
6204 31 00	30 %
6204 33 90	30 %
6204 42 00	30 %
6204 43 00	30 %
6204 44 00	30 %
6204 49 10	30 %
6204 62 11	30 %
6204 62 31	30 %
6204 62 39	30 %
6204 62 90	30 %
6204 63 11	30 %
6204 63 18	30 %
6204 63 90	30 %
6204 69 18	30 %
6204 69 90	30 %
Men's or boys' shirts falling under CN codes:	
6205 20 00	30 %
6205 30 00	30 %
Women's or girls' blouses, shirts and shirt-blouses falling under CN codes:	
6206 30 00	30 %
6206 40 00	30 %
Garments, made up of fabrics of headings 5602, 5603, 5903, 5906 or 5907 falling under CN codes:	
6210 10 99	30 %
6210 40 00	30 %
6210 50 00	30 %
Track suits, ski suits and swimwear; other garments falling under CN codes:	
6211 32 10	30 %
6211 32 90	30 %
6211 33 10	30 %
6211 33 41	30 %
6211 33 90	30 %
6211 42 10	30 %
6211 42 90	30 %
6211 43 10	30 %
6211 43 41	30 %
6211 43 90	30 %
6211 49 00	30 %
Brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted falling under CN codes:	
6212 10 10	30 %
6212 10 90	30 %
6212 20 00	30 %
6212 90 00	30 %
Ties, bow ties and cravats falling under CN code:	
6215 10 00	30 %
Gloves, mittens and mitts falling under CN code:	
6216 00 00	30 %

Description and CN codes	Additional duty
Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212 falling under CN codes:	
6217 10 00	30 %
6217 90 00	30 %
Blankets and travelling rugs falling under CN codes:	
6301 30 10	30 %
6301 30 90	30 %
6301 40 10	30 %
6301 40 90	30 %
Bed linen, table linen, toilet linen and kitchen linen falling under CN codes:	
6302 10 10	30 %
6302 10 90	30 %
6302 31 10	30 %
6302 31 90	30 %
6302 32 10	30 %
6302 32 90	30 %
6302 60 00	30 %
6302 91 90	30 %
Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods falling under CN code:	
6306 29 00	30 %
Other made up articles, including dress patterns falling under CN codes:	
6307 10 10	30 %
6307 10 90	30 %
6307 90 10	30 %
6307 90 99	30 %
Other footwear with outer soles and uppers of rubber or plastics falling under CN codes:	
6402 19 00	30 %
6402 99 10	30 %
6402 99 39	30 %
6402 99 93	30 %
6402 99 96	30 %
6402 99 98	30 %
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather falling under CN codes:	
6403 19 00	30 %
6403 51 11	30 %
6403 51 15	30 %
6403 51 19	30 %
6403 51 95	30 %
6403 51 99	30 %
6403 59 35	30 %
6403 59 39	30 %
6403 59 95	30 %
6403 59 99	30 %
6403 91 11	30 %
6403 91 13	30 %
6403 91 16	30 %
6403 91 18	30 %
6403 91 93	30 %
6403 91 98	30 %
6403 99 11	30 %
6403 99 33	30 %
6403 99 36	30 %
6403 99 38	30 %
6403 99 50	30 %
6403 99 91	30 %
6403 99 93	30 %
6403 99 96	30 %
6403 99 98	30 %
Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials falling under CN codes:	
6404 11 00	30 %
6404 19 10	30 %
6404 19 90	30 %

Description and CN codes	Additional duty
Other footwear falling under CN codes:	
6405 90 10	30 %
6405 90 90	30 %
Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof falling under CN codes:	
6406 99 50	30 %
6406 99 80	30 %
Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated falling under CN codes:	
7210 12 11	30 %
7210 30 10	30 %
Flat-rolled products of stainless steel, of a width of 600 mm or more falling under CN codes:	
7219 32 10	30 %
7219 33 10	30 %
7219 33 90	30 %
7219 34 10	30 %
7219 34 90	30 %
7219 35 10	30 %
7219 35 90	30 %
7219 90 90	30 %
Flat-rolled products of stainless steel, of a width of less than 600 mm falling under CN codes:	
7220 20 10	30 %
7220 20 31	30 %
7220 20 51	30 %
7220 20 59	30 %
7220 20 91	30 %
7220 90 11	30 %
7220 90 39	30 %
7220 90 90	30 %
Other bars and rods of stainless steel; angles, shapes and sections of stainless steel falling under CN codes:	
7222 20 11	30 %
7222 20 21	30 %
7222 20 81	30 %
7222 20 89	30 %
Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel falling under CN codes:	
7308 30 00	30 %
7308 90 99	30 %
Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment falling under CN code:	
7310 29 90	30 %
Containers for compressed or liquefied gas, of iron or steel falling under CN codes:	
7311 00 10	30 %
7311 00 91	30 %
Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel falling under CN codes:	
7318 14 99	30 %
7318 15 10	30 %
7318 15 59	30 %
7318 15 90	30 %
7318 16 99	30 %

Description and CN codes	Additional duty
Springs and leaves for springs, of iron or steel falling under CN code:	
7320 90 90	30 %
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel falling under CN codes:	
7321 11 90	30 %
7321 13 00	30 %
Other cast articles of iron or steel falling under CN code:	
7325 99 90	30 %
Other articles of iron or steel falling under CN codes:	
7326 20 90	30 %
7326 90 93	30 %
7326 90 97	30 %
Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing falling under CN codes:	
8443 11 00	30 %
8443 19 90	30 %
Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor falling under CN code:	
8467 21 99	15 %
Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530 falling under CN code:	
8531 10 30	30 %
Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1 000 volts falling under CN codes:	
8536 20 10	15 %
8536 30 10	15 %
8536 41 90	30 %
8536 49 00	30 %
Electric filament or discharge lamps, including sealed-beam lamp units and ultraviolet or infra-red lamps; arc-lamps falling under CN codes:	
8539 21 30	30 %
8539 21 92	30 %
8539 21 98	30 %
Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) falling under CN codes:	
8705 10 00	30 %
8705 90 90	30 %
Yachts and other vessels for pleasure or sports; rowing boats and canoes falling under CN codes:	
8903 10 10	30 %
8903 10 90	30 %
8903 91 10	30 %
8903 91 91	30 %
8903 91 93	30 %
8903 91 99	30 %
8903 92 10	30 %
8903 92 99	30 %
8903 99 10	30 %
8903 99 91	30 %
8903 99 99	30 %
Frames and mountings for spectacles, goggles or the like, and parts thereof falling under CN code:	
9003 19 30	30 %

Description and CN codes	Additional duty
Spectacles, goggles and the like, corrective, protective or other falling under CN codes:	
9004 10 91	30 %
9004 10 99	30 %
Photocopying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus falling under CN codes:	
9009 11 00	30 %
9009 12 00	30 %
Wrist-watches, pocket-watches and other watches, including stop-watches, other than those of heading 9101 falling under CN code:	
9102 11 00	30 %
Percussion musical instruments (for example, drums, xylophones, cymbals, castanets, maraccas) falling under CN code:	
9206 00 00	30 %
Revolvers and pistols, other than those of heading 9303 or 9304 falling under CN code:	
9302 00 10	30 %
Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns) falling under CN code:	
9303 30 00	30 %
Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads falling under CN code:	
9306 90 90	30 %
Seats (other than those of heading No 9402), whether or not convertible into beds, and parts thereof falling under CN codes:	
9401 61 00	30 %
9401 71 00	30 %
Other furniture and parts thereof falling under CN codes:	
9403 60 10	30 %
9403 60 90	30 %
Articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment falling under CN code:	
9504 10 00	30 %
Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees) falling under CN code:	
9603 21 00	30 %
Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609 falling under CN code:	
9608 10 10	30 %

Proposal for a Council Regulation amending Regulation (EC) No 1255/96 temporarily suspending the autonomous common customs tariff duties on certain industrial, agricultural and fishery products

(2002/C 203 E/18)

COM(2002) 198 final

(Submitted by the Commission on 22 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 26 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) It is in the interest of the Community to suspend partially or totally the autonomous common customs tariff duties for a number of new products not listed in the Annex to Council Regulation (EC) No 1255/96 [1].

(2) A number of products should be withdrawn from the list in the Annex to the said Regulation because it is no longer in the Community's interest to maintain suspension of autonomous common customs tariff duties or because the description needs to be altered in the light of technical developments.

(3) Products whose description needs to be altered should be regarded as new products.

(4) Council Regulation (EC) No 1255/96 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1255/96 is amended as follows:

1. the products set out in Annex I to this Regulation are inserted;

2. the products for which the codes are set out in Annex II to this Regulation are deleted.

Article 2

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

It shall apply with effect from 1 July 2002.

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

[1] OJ L 158, 29.6.1996, p. 1. Regulation last amended by Regulation (EC) No 2499/2001 (OJ L 340, 21.12.2001, p. 1).

ANNEX I

CN code & TARIC		Description	Rate of autonomous duty (%)
0017	ex 0811 90 95 30	Pineapple (Ananas comosus), in pieces, frozen	0
0018	ex 0811 90 95 20	Boysenberries, frozen, not containing added sugar, not put up for retail sale	0
0021	ex 1511 90 19 10 ex 1511 90 91 10 ex 1513 11 10 10 ex 1513 19 30 10 ex 1513 21 11 10 ex 1513 29 30 10	Palm oil, coconut (copra) oil, palm kernel oil, for the manufacture of: — industrial monocarboxylic fatty acids of subheading 3823 19 10, — mixtures of methyl esters of fatty acids of subheading 3824 90 95, — methyl esters of fatty acids of heading 2915 or 2916, — stearic acid of subheading 3823 11 00 or — goods of heading No 3401 [a]	0
0028	ex 2005 90 80 70	Bamboo shoots, prepared or preserved, shredded, not put up for retail sale	0
0060	ex 2850 00 20 20	Arsine	0
0117	ex 2914 29 00 20	Cyclohexadec-8-enone	0
0182	ex 2921 30 99 20	Cyclohex-1,3-ylenebis(methylamine), for the manufacture of products for dishwashing machine [a]	0
0193	ex 2921 49 80 20	N-1-Naphthylaniline	0
0219	ex 2922 39 00 40	1,4-Diamino-2,3-dichloroanthraquinone	0
0234	ex 2924 29 95 65	2-(4-Hydroxyphenyl)acetamide	0
0321	ex 2932 29 80 70	3',6'-Bis(ethylamino)-2',7'-dimethylspiro[isobenzofuran-1(3H),9'-=[9H]-xanthen]-3-one	0
0322	ex 2933 99 90 75	2,3-Dichloropyrazine	0
0327	ex 2933 29 90 50	1,3-Dimethylimidazolidin-2-one	0
0341	ex 2933 59 95 60	2,6-Dichloro-4,8-dipiperidinopyrimido[5,4-d]pyrimidine	0
0342	ex 2933 59 95 70	N-(4-Ethyl-2,3-dioxopiperazin-1-ylcarbonyl)-D-2-phenylglycine	0
0343	ex 2933 59 95 80	N-(4-Ethyl-2,3-dioxopiperazin-1-ylcarbonyl)-D-2-(4-hydroxyphenyl)glycine	0
0354	ex 2933 99 90 80	1-Methyltetrazole-5-thiol	0
0371	ex 2934 20 80 20	S-(1,3-Benzothiazol-2-yl) (Z)-2-(2-aminothiazol-4-yl)-2-(methoxyimino)thioacetate	0
0372	ex 2934 99 90 60	DL-Homocysteine thiolactone hydrochloride	0
0398a	ex 3204 19 00 15	4-{4-[3-(4-Methoxyphenyl)-13,13-dimethyl-3,13-dihydrobenzo=[h]indeno[2,1-f]chromen-3-yl]phenyl}morpholine [a]	0
0398b	ex 3204 19 00 25	Cyclohexyl 8-methyl-2,2-diphenyl-2H-benzo[h]chromene-5-carboxylate [a]	0
0398c	ex 3204 19 00 35	13-Butyl-13-ethoxy-6,11-dimethoxy-3,3-bis(4-methoxyphenyl)-3,13-dihydrobenzo=[h]indeno[2,1-f]chromene [a]	0
0398d	ex 3204 19 00 45	6,7-Dimethoxy-3,3-bis(4-methoxyphenyl)-13,13-dimethyl-3,13-dihydrobenzo=[h]indeno[2,1-f]chromene [a]	0
0406	ex 3206 19 00 10	Preparation based on titanium dioxide, containing by weight 66 % or more but not more than 71 % of titanium dioxide and 1 % or more but not more than 2 % of isopropoxytitanium triisostearate	0

CN code & TARIC		Description	Rate of autonomous duty (%)
0416	ex 3208 90 99 20	Solution based on chemically modified natural polymers, containing two or more of the following dyes: — 4-[4-(13,13-dimethyl-3-phenyl-3,13-dihydrobenzo= [h]indeno[2,1-f]chromen-3-yl)phenyl]morpholine, — 4-{4-[3-(4-methoxyphenyl)-13,13-dimethyl-3,13-dihydrobenzo= [h]indeno[2,1-f]chromen-3-yl]phenyl}morpholine, — cyclohexyl 8-methyl-2,2-diphenyl-2H-benzo[h]chromene-5-carboxylate, — ethoxycarbonylmethyl 6-acetoxy-2,2-diphenyl-2H-benzo[h]chromene-5-carboxylate, — 2-pentyl-7,7-diphenyl-7,8-benzochromeno[6,5-d]-1,3-dioxin-4(7H)-one, — 13-butyl-13-ethoxy-6,11-dimethoxy-3,3-bis(4-methoxyphenyl)-3,13-dihydrobenzo= [h]indeno[2,1-f]chromene, — 3-(4-methoxyphenyl)-13,13-dimethyl-3-phenyl-3,13-dihydrobenzo= [h]indeno[2,1-f]chromene, — 6,7-dimethoxy-3,3-bis(4-methoxyphenyl)-13,13-dimethyl-3,13-dihydrobenzo= [h]indeno[2,1-f]chromene	0
0443	ex 3808 20 80 30	Preparation consisting of a suspension of pyrithione zinc (INN) in water, containing by weight 24 % or more but not more than 26 % of pyrithione zinc (INN)	0
0498	ex 3824 90 99 81	Calcium oxide stabilised zirconia in the form of lumps of which 94 % or more by weight is retained on a 16 mm sieve, containing by weight: — 92 % or more of zirconium dioxide and — 2 % or more but not more than 6 % of calcium oxide	0
0499	ex 3824 90 99 82 ex 3907 40 00 20	α-(2,4,6-Tribromphenyl)-ω-(2,4,6-tribromphenoxy)poly[oxy(2,6-dibromo-=1,4-phenylene)isopropylidene(3,5-dibromo-1,4-phenylene)oxycarbonyl]	0
0600	ex 3905 29 00 91	Copolymer of vinyl acetate, dibutyl maleate and acrylic acid, in the form of a solution in isopropyl acetate and toluene	0
0609	ex 3906 90 90 70	Copolymer of ethylene dimethacrylate with either methyl methacrylate or dodecyl methacrylate	0
0617	ex 3906 90 90 50	Polymers of esters of acrylic acid with one or more of the following monomers in the chain: — chloromethyl vinyl ether, — chloroethyl vinyl ether, — chloromethylstyrene, — vinyl chloroacetate, — methacrylic acid, containing by weight not more than 5 % of each of the monomeric units	0
0631	ex 3907 60 80 10	Copolymer of terephthalic acid and isophthalic acid with ethylene glycol, butane-1,4-diol and hexane-1,6-diol	0
0632	ex 3907 60 80 20	Oxygen binding copolymer (as determined by the ASTM D 1434 and 3985 methods), obtained from benzenedicarboxylic acids, ethylene glycol and polybutadiene substituted by hydroxy groups	0
0639	ex 3906 90 90 80	Polydimethylsiloxane-graft-(polyacrylates; polymethacrylates)	0
0643	ex 3911 90 99 60	Hydrocarbon prepolymer, obtained by the reaction of cyclopentadiene and 1,3-pentadiene	0
0660	ex 3917 32 31 91 ex 3917 32 99 10 ex 3926 90 99 45	Assembly of heat-shrinkable tubing of polyethylene with poly(vinyl acetate), arranged in parallel at equally spaced intervals and attached at one or both ends by perforated plastic strips, in rolls	0
0676	ex 3926 90 99 55	Flat product of polyethylene, perforated in opposing directions, of a thickness of 600 μm or more but not exceeding 1 200 μm and of a weight of 21 g/m^2 or more but not exceeding 42 g/m^2	0
0731	ex 3921 14 00 10	Cellular film of regenerated cellulose, of a thickness not exceeding 350 μm	0

CN code & TARIC		Description	Rate of autonomous duty (%)
0744	ex 4007 00 00 20	Extruded natural rubber thread, free from nitrosamine, for use in the food industry [a]	0
0745	ex 4007 00 00 30	Extruded natural rubber thread, coated with silicone and talc	0
0753	ex 4803 00 90 10 ex 5603 13 90 80 ex 5603 93 90 30	Polyethylene non-woven, covered on both sides with a non-woven of polypropylene and wood pulp, containing by weight 45 % or more but not more than 56 % of wood pulp, of a weight of 70 g/m^2 or more but not exceeding 90 g/m^2, in rolls, for use in the manufacture of wet wipes [a]	0
0784	ex 5503 90 10 10 ex 5503 90 90 30	Acetalized, multicomponent spun fibres with a matrix fibril structure, consisting of emulsion-polymerized poly(vinyl alcohol) and poly(vinyl chloride)	0
0826	ex 7019 12 00 15	Rovings, measuring 650 tex or more but not more than 2 500 tex, coated with a layer of polyurethane whether or not mixed with other materials	0
0844	ex 7419 99 00 91 ex 7616 99 90 60	Disc (target) with deposition material, consisting of molybdenum silicide: — containing 1 mg/kg or less of sodium and — mounted on a copper or aluminium support	0
0002	ex 8408 90 31 10	Diesel engines of a power not exceeding 15 kW, with 2 or 3 cylinders, for use in the manufacture of vehicle mounted temperature control systems [a]	0
0003	ex 8408 90 33 10	Diesel engines of a power not exceeding 30 kW, with 4 cylinders, for use in the manufacture of vehicle mounted temperature control systems [a]	0
0004	ex 8414 30 99 10	Open shaft reciprocating compressor, for use in the manufacture of vehicle mounted temperature control systems [a]	0
0018	ex 8454 30 90 10	Machines for injection moulding of metal alloys in thixotropic form (semi-solid), for the manufacture of metal parts of subheading 8473 30 90 or 8529 90 40 [a]	0
0049	ex 8507 80 91 80	Cylindrical nickel-hydride accumulator, of a diameter not exceeding 14,5 mm, for the manufacture of rechargeable batteries [a]	0
0073	ex 8522 90 98 44	Assembly for optical discs, comprising at least an optical unit and DC motors, not capable of double layer recording	0
0113	ex 8537 10 99 93	Electronic control units for a voltage of 12 V, for use in the manufacture of vehicle mounted temperature control systems [a]	0
0159	ex 8543 90 80 40	Stainless steel cathode in the form of a plate with a hanger bar, whether or not with plastic side strips	0
0192	ex 9027 10 90 10	Sensor element for gas or smoke analysis in motor vehicles, essentially consisting of a zirconium-ceramic element in a metal housing	0
0193	ex 9031 80 34 30 ex 9031 80 39 50	Apparatus for measuring the angle and direction of rotation of motor vehicles, consisting of at least one yaw rate sensor in the form of a monocrystalline quartz, whether or not combined with one or more measuring sensors, the whole contained in a housing	0
0211	ex 9613 90 00 20	Piezo-electric ignition mechanism, whether or not with complementary elements	0
0300	ex 8543 89 95 60	Temperature compensated oscillator, comprising a printed circuit on which are mounted at least a piezo-electric crystal and an adjustable capacitor, contained in a housing	0
0301	ex 8543 89 95 61	Voltage controlled oscillator (VCO), other than temperature compensated oscillators, consisting of active and passive elements mounted on a printed circuit, contained in a housing	0

[a] Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions.

ANNEX II

CN code	Taric
ex 1511 90 19	10
ex 1511 90 91	10
ex 1513 11 10	10
ex 1513 19 30	10
ex 1513 21 11	10
ex 1513 29 30	10
ex 2005 90 80	70
ex 2922 19 80	20
ex 3815 90 90	55
ex 3901 90 90	97
ex 3906 90 90	50
ex 3911 90 19	20
ex 5503 90 10	10
ex 5503 90 90	30
ex 7019 12 00	15
ex 7019 12 00	20
ex 7019 12 00	25
ex 7419 99 00	91
ex 7616 99 90	60
ex 8507 80 91	20
ex 8507 80 91	30
ex 8507 80 91	40
ex 8507 80 91	50
ex 8507 80 91	60
ex 8507 80 91	70
ex 8522 90 98	32
ex 8522 90 98	40
ex 8522 90 98	41
ex 8522 90 98	42
ex 8543 89 95	57
ex 8543 90 80	40
ex 9031 80 34	20
ex 9613 90 00	20

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

(2002/C 203 E/19)

COM(2002) 199 final — 2002/0094(ACC)

(Submitted by the Commission on 22 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In view of the Community's interest in developing harmonious trade relations with third countries and the major economic and social difficulties currently facing some supplier countries, provision should be made for opening, as an autonomous measure and on a temporary basis, a Community import tariff quota of 10 000 tonnes of high-quality fresh, chilled or frozen beef.

(2) The beef market is now on the way to becoming more stable. Demand of consumers in the Community is increasing, especially for high-quality beef. An additional reduced-tariff-quota for high-quality beef would satisfy at the same time the consumer interests as well as supplier interests.

(3) Equal and continuous access to the quota should be offered to all operators concerned in the Community and appropriate monitoring of the quota should be ensured. To this end, the utilisation of the quota should be based on the presentation of a certificate of authenticity guaranteeing the type and origin of the products.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. An annual Community import tariff quota of 10 000 tonnes, expressed in product weight, of high-quality fresh, chilled or frozen beef falling within CN codes 0201 30 00, 0202 30 90, 0206 10 95 and 0206 29 91 of the Common Customs Tariff is opened.

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

3. The quota shall run from 1 July 2002 to 30 June 2003.

Article 2

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

Article 3

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

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

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

Proposal for a Council Decision on the Community position in relation to the establishment of a Joint Consultative Committee to be decided on by the Association Council established by the Europe Agreement between the European Communities and the Slovak Republic

(2002/C 203 E/20)

COM(2002) 200 final — 2002/0093(ACC)

(Submitted by the Commission on 23 April 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a European Community, the Treaty establishing a European Coal and Steel Community and the Treaty establishing a European Atomic Energy Community (Euratom),

Having regard to Article 300, paragraph 2, second and third indent, of the Treaty establishing the European Community,

Having regard to Article 2(1) of the Council and Commission Decision of 19 December 1994 concerning the conclusion of a Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part,

Having regard to the Commission proposal,

Whereas:

(1) Article 109 of the said Europe Agreement provides that the Association Council may decide to set up any special committee or body that can assist it in carrying out its duties.

(2) Dialogue and cooperation between regional and local authorities in the European Community and the Slovak Republic can make a major contribution to the full implementation of the Europe Agreement.

(3) It seems appropriate that such cooperation should be organised between the members of the Committee of the Regions of the European Communities and of the Slovak Liaison Committee for Cooperation with the Committee of the Regions of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

The position to be adopted by the Community within the Association Council established by Article 104 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, in relation to the establishment of a Joint Consultative Committee shall be based on the draft decision of the said Association Council which is annexed to the present decision.

DRAFT

Decision No .../2002 of the Association Council between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Slovak Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/95 adopting the rules of procedure of the Association Council

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part [1], and in particular Article 109 thereof;

Whereas:

(1) Dialogue and cooperation between regional and local authorities in the European Community and those in the Slovak Republic can make a major contribution to the development of their relations and to the integration of Europe.

(2) It seems appropriate that such cooperation should be organised at the level of the Committee of the Regions, of the one part, and of the Slovak Liaison Committee for Cooperation with the Committee of the Regions, of the other part, by the setting up of a Joint Consultative Committee.

(3) This means that the rules of procedure of the Association Council, adopted by Decision 1/95, need to be amended accordingly,

[1] OJ L 360, 31.12.1994, p. 2.

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be added to the rules of procedure of the Association Council:

'*Article 19*

A Joint Consultative Committee (hereinafter referred to as "Committee") is hereby established with the task of assisting the Association Council with a view to promoting dialogue and cooperation between the regional and local authorities in the European Community and those in the Slovak Republic. Such dialogue and cooperation shall be aimed in particular at:

1. preparing Slovak regions and local authorities for activity in the framework of future membership of the European Union;

2. preparing Slovak regions and local authorities for their participation in the work of the Committee of the Regions after accession of the Slovak Republic;

3. exchanging information on current issues of mutual interest, in particular on up-to-date state of play concerning EU regional policy and accession process as well as preparation of Slovak regions and local authorities for these policies;

4. encouraging multilateral structured dialogue between (a) Slovak regions and local authorities and (b) regions and local authorities from EU Member States, including through networking in specific areas where direct contacts and cooperation between regions and local authorities from the Slovak Republic and EU Member States might prove the most effective way of solving particular problems;

5. providing regular exchange of information on inter-regional cooperation between regional and local authorities from the Slovak Republic and Member States;

6. encouraging exchange of experience and knowledge in the field of regional policy and structural interventions, between (a) Slovak regions and local authorities and (b) regions and local authorities from EU Member States, in particular know-how and techniques concerning preparation of regional and local development plans or strategies and most efficient use of Structural Funds;

7. assisting Slovak regional and local authorities by means of information exchange in practical implementation of the principle of subsidiarity in all aspects of life on regional and local level;

8. discussing any other relevant matters proposed by any side, as they can arise in the context of implementation of the Europe Agreement and in the framework of the Pre-accession Strategy.

Article 20

The Committee shall comprise eight representatives of the Committee of the Regions, on the one hand, and eight representatives of the Slovak Liaison Committee for Cooperation with the Committee of the Regions, on the other hand. An equal number of alternate members shall be appointed.

The Committee shall carry out its activities on the basis of consultation by the Association Council or, as concerns the promotion of the dialogue between the regional and local authorities, on its own initiative.

The Committee may make recommendations to the Association Council.

Members shall be chosen to ensure that the Committee is as faithful a reflection as possible of the various levels of regional and local authorities in both the European Community and the Slovak Republic.

The Committee shall adopt its own Rules of Procedure.

The Committee shall meet at intervals, which it shall itself determine in its Rules of Procedure.

The Committee shall be co-chaired by a member of the Committee of the Regions of the European Community and a member of the Slovak Liaison Committee for Cooperation with the Committee of the Regions.

Article 21

The Committee of the Regions, on the one hand, and the Slovak Liaison Committee for Cooperation with the Committee of the Regions, on the other hand, shall each defray the expenses they incur by reason of their participation in the meetings of the Committee with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Committee of the Regions, with the exception of expenditure in connection with interpreting or translation into or from Slovak, which shall be borne by the Slovak Liaison Committee for Cooperation with the Committee of the Regions.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.'

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Proposal for a Decision of the European Parliament and of the Council amending Decision No 253/2000/EC establishing the second phase of the Community action programme in the field of education 'Socrates'

(2002/C 203 E/21)

COM(2002) 193 final — 2002/0101(COD)

(Submitted by the Commission on 29 April 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 149 and 150 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Section IV Point B.2 of the Annex to Decision No 253/2000/EC of the European Parliament and of the Council [1] establishes that Community assistance towards the realisation of projects selected for funding under the programme will not normally exceed 75 %, except in the case of accompanying measures.

(2) Decision No 819/95/EC of the European Parliament and of the Council of 14 March 1995 establishing the Community action programme 'Socrates' [2] did not stipulate a minimum level of cofinancing.

(3) Projects within the decentralised actions of the programme cannot be realised without a significant contribution in the form of staff time and infrastructure support from the organisations involved in the project partnership. The Community grant awarded to these projects does not support the costs of the contributions of such staff, but may cover up to 100 % of the other costs incurred in realising the project.

(4) The target group for such projects is primarily small institutions such as schools and adult education institutes, which generally have limited administrative resources.

(5) The Community has not previously required institutions participating in projects within the decentralised actions of the programme to provide information about the cost of the contribution of the staff they employ towards the realisation of the projects.

(6) The sums awarded as Community grant to projects within the decentralised actions of the programme are small, averaging EUR 3 315 in 2000.

(7) The European Parliament in its Resolution of 28 February 2002 on the implementation of the Socrates Programme has expressed concern about the disproportionately onerous administrative procedures for beneficiaries of small grants, especially under the Comenius action, and has called on the Commission to propose any legislative changes necessary to abolish the cofinancing requirement for such grants.

(8) The Commission in its White Paper — Part II — Action Plan entitled Reforming the Commission [3] committed itself to improving and simplifying its internal and external procedures, as far as they relate to other institutions, Member States and citizens.

(9) It is not consistent with the principles of simplification and proportionality to apply a new requirement on the institutions participating in projects within the decentralised actions of the programme to account for the contribution towards their realisation made by staff employed by these institutions, solely in order to demonstrate that the Community grant does not normally exceed 75 % of the total costs of the project.

(10) There is a need therefore to amend the provision contained in the first paragraph of Section IV Point B.2 of the Annex to Decision No 253/2000/EC in order to permit appropriate flexibility in the application of this cofinancing requirement,

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[1] OJ L 28, 3.2.2000, p. 1.

[2] OJ L 87, 20.4.1995, p. 10. Decision as last amended by Decision No 68/2000/EC (OJ L 10, 14.1.2000, p. 1).

[3] COM(2000) 200 final.

HAVE DECIDED AS FOLLOWS:

Article 1

The first paragraph of Section IV Point B.2 of the Annex to Decision No 253/2000/EC is replaced by the following:

'As a general rule, Community financial assistance granted for projects under this programme is intended partially to offset the estimated cost necessary to carry out the activities concerned and may cover a maximum period of three years, subject to a periodic review of progress achieved. In accordance with the cofinancing principle, the beneficiary's contribution may take the form of the provision of the personnel and/or infrastructure necessary for the realisation of the project. Assistance may be granted in advance to enable preparatory visits to take place in respect of the projects in question.'

Article 2

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

Proposal for a Council Decision amending Decision 97/788/EC as regards the period of validity

(2002/C 203 E/22)

COM(2002) 216 final

(Submitted by the Commission on 2 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species [1], and in particular Article 21(1)(b) thereof,

Having regard to Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed [2], and in particular Article 32(1)(b) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Decision 97/788/EC of 17 November 1997 on the equivalence of checks on practices for the maintenance of varieties carried out in third countries [3] determined that the official checks on practices for the maintenance of varieties carried out in certain third countries afford the same guarantees as those carried out by the Member States. That Decision expired in the case of certain third countries on 30 June 1999, and in the case of other third countries it will expire on 30 June 2002.

(2) It appears that the checks carried out in the third countries in accordance with the Decision 97/788/EC continue to afford the same guarantees as those carried out by the Member States.

(3) Decision 97/788/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Decision 97/788/EC is replaced by the following:

'*Article 3*

This Decision shall apply from 1 July 1997 to 30 June 1999 and from (the date of adoption of Decision . . ./2002/EC) to 30 June 2005 in the case of the Republic of Korea and the Federal Republic of Yugoslavia and from 1 July 1997 to 30 June 2005 in the case of the other third countries listed in the Annex.'

Article 2

This Decision is addressed to the Member States.

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[1] OJ L 225, 12.10.1970, p. 1. Directive as last amended by Directive 98/96/EC (OJ L 25, 1.2.1999, p. 27).

[2] OJ L 225, 12.10.1970, p. 7. Directive as last amended by Directive 98/96/EC.

[3] OJ L 322, 25.11.1997, p. 39.

Amended proposal for a Council Directive on the right to family reunification [1]

(2002/C 203 E/23)

COM(2002) 225 final — 1999/0258(CNS)

(Submitted by the Commission on 2 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.

(2) Article 63(3) of the Treaty provides that the Council is to adopt measures on immigration policy. Article 63(3)(a) provides, in particular, that the Council is to adopt measures relating to the conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunification.

(3) Measures concerning family reunification must be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(4) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third-country nationals, to be based on a common evaluation both of economic and demographic trends within the Union and of the situation in countries of origin. The European Council accordingly asked the Council rapidly to adopt decisions on the basis of Commission proposals. Those decisions were to take account not only of the absorption capacity of each Member State but also their historical and cultural links with countries of origin.

(5) In order to evaluate migration flows and to prepare for the adoption of measures by the Council, the Commission needs to have access to statistical data and information on the legal immigration of third-country nationals in each Member State, and in particular on the number of permits issued, and on their type and validity; to this end, Member States must regularly and rapidly make the necessary data and information available to the Commission.

(6) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union.

(7) The Laeken European Council on 14 and 15 December 2001 reaffirmed its commitment to the policy guidelines and objectives defined at Tampere and noted that there was a need for new impetus and guidelines to make up for delays in some areas. It confirmed that a genuine common policy on immigration implied the establishment of common standards on procedures for family reunification and called on the Commission to present a new amended proposal.

(8) Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in Article 2 and Article 3(1)(k) of the Treaty.

(9) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

[1] OJ C 62 E, 27.2.2001, p. 99.

(10) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(11) Family reunification applies to members of the nuclear family, that is to say the spouse and the minor children. It is for States to decide whether they wish to extend this category and authorise family reunification for relatives in the ascending line, children who are of full age and unmarried partners.

(12) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(13) The integration of family members should be promoted. To that end, they should be granted a status independent of that of the applicant after a period of residence in the Member State. They must enjoy access to education, employment and vocational training on the same terms as the person with whom they are reunited.

(14) Effective, proportionate and dissuasive measures should be taken to prevent and penalise breaches of the rules and procedures relating to family reunification.

(15) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the establishment of a right to family reunification for third-country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions in which the right to family reunification may be exercised by third-country nationals residing lawfully in the territory of the Member States.

Article 2

For the purpose of this Directive:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons;

(b) 'refugee' means any third-country national or stateless person enjoying refugee status within the meaning of the Convention on the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) 'applicant for reunification' or 'applicant' means either a third-country national residing lawfully in a Member State and applying to be joined by members of his family;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) 'residence permit' means an authorisation of whatever type issued by a Member State which grants right of residence within its territory. This definition shall not include temporary permission to reside in the territory of a Member State for the purposes of processing an application for asylum or a residence permit.

Article 3

1. This Directive shall apply where the person applying for reunification is a third-country national residing lawfully in a Member State and holding a residence permit issued by that Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third-country nationals of whatever status.

2. This Directive shall not apply where the applicant is:

(a) a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) a third-country national authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) a third-country national authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or retain more favourable provisions for persons to whom it applies.

6. Article 4(1), (2) and (3), the second subparagraph of Article 7(1)(c) and Article 8 may not have the effect of introducing less favourable conditions than those which already exist in each Member State on the date of adoption of this Directive.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) the applicant's spouse;

(b) the minor children of the applicant and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the applicant or his/her spouse where one of them has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in points (b) and (c) must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of adoption of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the person applying for reunification or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the applicant or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third-country national, with whom the applicant is in a duly attested stable long-term relationship, or of a third-country national who is bound to the applicant by a registered partnership in accordance with Article 5(2), and the unmarried minor children, including adopted children, of such persons.

4. In the event of a polygamous marriage, where the applicant already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the entry and residence of a further spouse, nor the children of such spouse, without prejudice to the provisions of the 1989 Convention on the Rights of the Child.

5. Member States may require the applicant and his/her spouse to be of a minimum age, and in any event the age of legal majority, before the spouse is able to join him/her.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the applicant or by the family member or members.

2. The application shall be accompanied by family member(s)' travel documents and documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, 7 and 8.

In order to obtain evidence that a family relationship exists, Member States may carry out interviews with the applicant and his/her family members and conduct other investigations that are found necessary.

When examining an application concerning the unmarried partner of the applicant, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted when the family members are outside the territory of the Member State in which the applicant resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the applicant/family member(s) written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended, but shall in no case exceed twelve months.

Reasons shall be given for the decision rejecting the application. The consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children, in accordance with the 1989 Convention on the Rights of the Child.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, domestic security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or domestic security.

3. The grounds of public policy or domestic security must be based exclusively on the personal conduct of the family member concerned.

4. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may ask the applicant or family member(s) to provide evidence that the applicant has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks in the Member State concerned for himself and the members of his family;

(c) stable resources which are higher than or equal to the level of resources below which the Member State concerned may grant social assistance. Where this subparagraph cannot be applied, resources must be no less than the level of the minimum social security pensions paid by the Member State. The stable resources criterion shall be evaluated by reference to the nature and regularity of the resources.

The Member State may require the applicant to satisfy the conditions set out in paragraph 1 when renewing the residence permits of his family members for the first time.

Where the applicant does not meet the said conditions, Member States shall take into account family members' contributions to the household income.

2. The Member States may set the conditions relating to accommodation, sickness insurance and resources provided for by paragraph 1 solely in order to ensure that the applicant for family reunification will be able to satisfy the needs of his reunified family members without further recourse to public funds. They may not have the effect of discriminating between nationals of the Member State and third-country nationals.

Article 8

The Member States may require the applicant to have stayed lawfully in their territory for a period not exceeding two years, before having his family members join him.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive has regard for its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their refugee status.

Article 10

1. Article 4 shall apply to the definition of family members, except that the third subparagraph of paragraph 1(c) shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States shall:

(a) authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) authorise the entry and residence for the purposes of family reunification of his legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Subject to paragraph 2, Article 6 shall apply to the submission and examination of the application.

2. Where a refugee cannot provide documentary evidence of the family relationship, the Member States shall have regard to other evidence of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee/family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements of accommodation, sickness insurance and stable resources.

2. By way of derogation from Article 8, the Member States may not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, Member States shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a renewable residence permit of the same duration as that held by the applicant.

If the applicant has long-term resident status, the Member States shall issue to family members a renewable residence permit of at least one-year's duration, until they satisfy the conditions laid down by Directive .../.../EC for obtaining long-term resident status in their own right.

Article 14

1. The applicant's family members shall be entitled, in the same way as the applicant, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may restrict access to employment or self-employed activity by relatives in the ascending line or children of full age to whom Article 4(2) applies.

Article 15

1. At the latest after five years of residence, and provided the family relationship still exists, the spouse or unmarried partner and a child who has reached majority shall be entitled to an autonomous residence permit, independent of that of the applicant.

2. The Member States may issue an autonomous residence permit to children of full age and to relatives in the ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of relatives in the ascending or descending line, an independent residence permit may be issued to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an independent residence permit in the event of particularly difficult circumstances.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may also reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied;

(b) where the applicant and his family member(s) do not or no longer live in a full marital or family relationship.

(c) where it is found that the applicant or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the applicant's residence comes to an end and the family member does not yet enjoy the autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall have proper regard for the nature and solidity of the person's family relationships and the duration of his residence in the Member State and to the existence of family, cultural and social ties with his country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the applicant or members of his family.

Article 18

The Member States shall ensure that the applicant and/or the members of his/her family have the *de facto* and *de jure* right to apply to the courts where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions

Article 19

From time to time, and for the first time no later than two years after the deadline set by Article 20, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than (31 December 2003). They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 21

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

Article 22

This Directive is addressed to the Member States.

Proposal for a Council Decision on the conclusion of the Convention between the European Community and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) concerning aid to refugees in the countries in the Near East for 2002-2005

(2002/C 203 E/24)

COM(2002) 238 final — 2002/0104(CNS)

(Submitted by the Commission on 3 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181 in conjunction with Article 300(3) first subparagraph, and paragraph 4, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The tenth Convention [1] concluded with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) expired on 31 December 2001.

(2) The current crisis in the Middle East has put additional burden on UNRWA.

(3) The Community assistance to UNRWA is an important element in stabilising the situation in the Middle East and furthermore forms part of the campaign against poverty in developing countries and therefore contributes to the sustainable economic and social development of the population concerned and the host countries in which the population lives.

(4) Support of UNRWA operations would be likely to contribute to the attainment of the Community objectives described in the above paragraph.

(5) A new Convention should be concluded with UNRWA so that the Community's aid can continue to be provided as part of a comprehensive programme offering a measure of continuity,

(6) The appropriate internal procedure should be established to ensure the proper functioning of the agreement. It is therefore necessary to delegate to the Commission the power to proceed to modifications where the convention provides for modifications to be adopted by simplified procedure (exchange of letters),

HAS DECIDED AS FOLLOWS:

Article 1

The Convention between the European Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) concerning aid to refugees in the countries of the Near East is hereby approved on behalf of the Community.

The text of this Convention is attached to this Decision.

Article 2

The execution of the Community programme of food aid to UNRWA shall be governed by the procedure defined in Regulation (EC) No 1292/96 [2].

Article 3

The Commission shall be approve, in consultation with a special committee, modifications to the Convention where the Convention provides for modifications to be adopted by way of simplified procedure (exchange of letters).

Article 4

The President of the Council is hereby authorised to designate the persons empowered to sign the Convention in order to bind the Community.

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[1] OJ L 261, 7.11.1996, p. 69.

[2] OJ L 166, 5.7.1996, p. 1.

CONVENTION

between the European Community and the United Nations Relief and Works Agency for Palestine Refugees (UNWRA) concerning aid to refugees in the countries of the Near East

Article 1

The European Community (hereinafter referred to as 'the Community') hereby concludes this Convention with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as 'UNRWA') in order to confirm its commitment to financial support to UNRWA. This funding, extending over a four-year period (2002-2005), shall take the form of cash contributions for use under the UNRWA General Fund.

The financial commitment will be made subject to budgetary availability and with respect to the financial perspectives of the European Communities until the year 2006.

Article 2

Community contribution

1. The Community shall pay to UNRWA annually a cash contribution towards the General Fund.

Notwithstanding Article 3 of this Convention, the size of this contribution shall not exceed EUR 55 million in 2002, EUR 57,75 million in 2003, EUR 60 637 500 in 2004, and EUR 63 669 375 in 2005.

2. The contribution to the General Fund will be made by means of grant agreements to be concluded between the European Commission and UNRWA covering the years 2002-2005. The grant agreements will be concluded fully in accordance with the provisions of the 'Agreement between the United Nations and the European Community on the Principles Applying to the Financing or Co-financing by the Community of Programmes and Projects Administered by the United Nations of 9 August 1999'.

3. The contribution shall be subject to the internal and external auditing procedures laid down in the Financial Regulations, Rules and directives of UNRWA, the result of which will be duly communicated to the European Commission.

Article 3

Food aid

Taking into account the annual evaluation of the needs of the refugee population, other Community resources can also be mobilised for UNRWA's food aid programme to meet the specific needs of vulnerable groups. The amounts, quantities and characteristics of the commodities, cash and services provided and all other conditions related to support to the food aid programme will be subject to separately agreed conditions, based on annual requests from UNRWA.

Article 4

Adjustment

If necessary, during the life of the Convention, the parties can by mutual agreement increase or decrease those parts of the contributions otherwise fixed under this Convention, on the basis of an exchange of letters between the Community and UNRWA.

By the end of 2003, political developments regarding the refugees will be reviewed by the parties, and an evaluation made of any plans UNRWA has formulated, and, if this is the case, put into effect, for the hand-over of its functions to the Palestinian Authority and/or any other body.

If, during the life of the Convention, any or all of the functions of UNRWA are transferred to the Palestinian Authority or to any other body, necessary adjustments will be made to those parts of the Community contribution to UNRWA under the Convention, on the basis of an exchange of letters between the Community and UNRWA.

Article 5

Arbitration clause

1. Any dispute, controversy or claim arising out of or relating to the interpretation, application or fulfilment of this Convention, including its existence, validity or termination, which cannot be settled amicably between the Parties shall be referred to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration for International Organisations and States in force at the date of the signature of this Convention.

2. There shall be one arbitrator.

3. The language to be employed during arbitration is English.

4. In the absence of agreement between the two Parties, the arbitrator shall be designated by the President of the International Court of Justice following written request submitted by either Party.

5. The Arbitrator shall reach his/her decision in accordance with the terms and conditions of the contract in the light of the general principles of law recognised by States.

Article 6

Agreement on global arrangements

Following agreement in the discussions being held between the United Nations and the Commission on global arrangements covering the donation of voluntary contributions, the relevant provisions of such agreement and this Convention shall be promptly reviewed and any necessary amendments agreed to

by UNRWA and the Commission shall be made to the applicable provisions of this Convention.

Article 7

Duration of the Convention

The Convention shall cover a period of four calendar years (2002, 2003, 2004, and 2005).

Article 8

The Convention shall be approved by the parties in accordance with their own procedures.

This Convention shall enter into force on the first day of the month following the date on which the Parties notify each other that the procedures referred to in the first paragraph of this article have been completed.

Article 9

This Convention shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each version being equally authentic.

Proposal for a Council Decision establishing the position to be adopted on behalf of the Community in the Food Aid Committee

(2002/C 203 E/25)

COM(2002) 219 final

(Submitted by the Commission on 3 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181 in conjunction with Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

The Food Aid Convention, 1999 was concluded by the Community by Council Decision 2000/421/EC. That Agreement remains in force until 30 June 2002, unless it is extended beyond that date by decision of the Food Aid Committee for a period of no more than two years. The extension of that agreement is in the interest of the Community. The Commission, which represents the Community in the Food Aid Committee, should therefore be authorised by a Council Decision to vote in favour of such extension,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The European Community is in favour of the extension of the Food Aid Convention, 1999 for a further two-year period.

2. The Commission is hereby authorised to express this position within the Food Aid Committee.

Proposal for a Council Regulation establishing concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Lithuania

(2002/C 203 E/26)

COM(2002) 221 final — 2002/0102(ACC)

(Submitted by the Commission on 3 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part [1], provides for certain concessions for certain agricultural products originating in Lithuania.

(2) The first improvements to the preferential arrangements of the Europe Agreement with Lithuania were provided for in the Protocol adjusting trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part, to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential agreements [2].

(3) Improvements to the preferential arrangements of the Europe Agreement with Lithuania were also provided for, in the form of an autonomous and transitional measure pending a second adjustment of the relevant provisions of the Europe Agreement, as a result of a first round of negotiations to liberalise the agricultural trade. The improvements entered into force as from 1 January 2001 in the form of Council Regulation (EC) No 2766/2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Lithuania [3]. The second adjustment of the relevant provisions in the Europe Agreement — which will take the form of another Additional Protocol to the Europe Agreement — has not yet entered into force.

(4) A new Additional Protocol to the Europe Agreement on trade liberalisation for agricultural products has been negotiated.

(5) A swift implementation of the adjustments forms an essential part of the results of the negotiations for the conclusion of a new Additional Protocol to the Europe Agreement with Lithuania. It is therefore appropriate to provide for the adjustment, as an autonomous and transitional measure, of the agricultural concessions provided for in the Europe Agreement with Lithuania.

(6) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4], they should be adopted by use of the management procedure provided for in Article 4 of that Decision.

(7) Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [5] has codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Tariff quotas under this Regulation should therefore be administered in accordance with those rules.

(8) As a result of the aforementioned negotiations, Regulation (EC) No 2766/2000 has effectively lost its substance and should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. The conditions for import into the Community applicable to certain agricultural products originating in Lithuania as set out in Annex C(a) and Annex C(b) to this Regulation shall replace those set out in Annex Va to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lithuania, of the other part, hereinafter the 'Europe Agreement'.

2. On the entry into force of the additional protocol adjusting the Europe Agreement to take into account the outcome of the negotiations between the parties on new mutual agricultural concessions, the concessions provided for in that Protocol shall replace those referred to in Annex C(a) and Annex C(b) to this Regulation.

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

[2] OJ L 321, 30.11.1998, p. 1.

[3] OJ L 321, 19.12.2000, p. 8.

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

[5] OJ L 253, 11.10.1993, p. 1. Regulation last amended by Regulation (EC) No 993/2001 (OJ L 144, 28.5.2001 p. 1).

3. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 3(2).

Article 2

Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308(a), 308(b) and 308(c) of Regulation (EEC) No 2454/93.

Article 3

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 [1] or, where appropriate, by the committee instituted by the relevant provisions of the other Regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 4

Council Regulation (EC) No 2766/2000 is hereby repealed.

Article 5

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

It shall apply from 1 July 2002.

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

[1] OJ L 181, 1.7.1992, p. 21.

ANNEX C(a)

The following products originating in Lithuania shall benefit from a preferential zero-duty within unlimited quantities (applicable duty 0 % of MFN) when imported into the Community.

CN code [1]	CN code	CN code	CN code	CN code
0101 10 90	0210 99 80	0709 52 00	0711 90 10	0806 20 11
0101 90 19	0407 00 90	0709 59 00	0711 90 50	0806 20 12
0101 90 30	0409 00 00	0709 60 10	0711 90 80	0806 20 91
0101 90 90	0410 00 00	0709 60 99	0711 90 90	0806 20 92
0104 20 10	0601	0709 70 00	0712 20 00	0806 20 98
0106 19 10	0602	0709 90 10	0712 31 00	0808 20 90
0106 39 10	0603	0709 90 20	0712 32 00	0809 40 90
0205	0604	0709 90 50	0712 33 00	0810 40 30
0206 80 91	0701 10 00	0709 90 90	0712 39 00	0810 40 50
0206 90 91	0701 90 10	0710 10 00	0712 90 05	0810 40 90
0207 13 91	0703 10	0710 21 00	0712 90 30	0811 90 39
0207 14 91	0703 90 00	0710 22 00	0712 90 50	0811 90 50
0207 26 91	0704 20 00	0710 29 00	0712 90 90	0811 90 75
0207 27 91	0704 90 90	0710 30 00	0713 50 00	0811 90 80
0207 35 91	0705 19 00	0710 80 51	0713 90 10	0811 90 85
0207 36 89	0705 21 00	0710 80 59	0713 90 90	0811 90 95
0208	0705 29 00	0710 80 61	0802 11 90	0812 10 00
0210 91 00	0706	0710 80 69	0802 12 90	0812 90 40
0210 92 00	0707 00 90	0710 80 70	0802 21 00	0812 90 50
0210 93 00	0708 10 00	0710 80 80	0802 22 00	0812 90 60
0210 99 10	0708 90 00	0710 80 85	0802 31 00	0812 90 99
0210 99 31	0709 20 00	0710 80 95	0802 32 00	0813 10 00
0210 99 39	0709 30 00	0710 90 00	0802 40 00	0813 20 00
0210 99 59	0709 40 00	0711 40 00	0802 90 50	0813 30 00
0210 99 79	0709 51 00	0711 59 00	0802 90 85	0813 40 10

CN code (1)	CN code	CN code	CN code	CN code
0813 40 30	1508 90 90	2001 90 75	2008 40 71	2009 50 90
0813 40 95	1511 10 90	2001 90 85	2008 40 79	2009 71 10
0813 50 15	1511 90 11	2003 20 00	2008 40 91	2009 71 91
0813 50 19	1511 90 19	2003 90 00	2008 40 99	2009 71 99
0813 50 91	1511 90 91	2004 10 10	2008 50 11	2009 79 19
0813 50 99	1511 90 99	2004 10 99	2008 60 11	2009 79 30
0901 12 00	1512	2004 90 30	2008 60 31	2009 79 93
0901 21 00	1513	2004 90 50	2008 60 39	2009 79 99
0901 22 00	1514	2004 90 91	2008 60 51	2009 80 19
0901 90 90	1515	2004 90 98	2008 60 59	2009 80 38
0902 10 00	1516 10 10	2005 10 00	2008 60 61	2009 80 50
0904 12 00	1516 10 90	2005 20 20	2008 60 69	2009 80 63
0904 20 10	1516 20 91	2005 20 80	2008 60 71	2009 80 69
0904 20 90	1516 20 95	2005 40 00	2008 60 79	2009 80 71
0907 00 00	1516 20 96	2005 51 00	2008 60 91	2009 80 79
0910 40 13	1516 20 98	2005 59 00	2008 60 99	2009 80 89
0910 40 19	1517 10 90	2005 60 00	2008 80 11	2009 80 95
0910 40 90	1517 90 99	2005 90 10	2008 80 31	2009 80 96
0910 91 90	1518 00 31	2005 90 50	2008 80 39	2009 80 99
0910 99 99	1518 00 39	2005 90 60	2008 80 50	2009 90 19
1001 90 10	1522 00 91	2005 90 70	2008 80 70	2009 90 29
1105	1602 10 00	2005 90 75	2008 80 91	2009 90 39
1106 10 00	1602 20 11	2005 90 80	2008 80 99	2009 90 51
1106 30	1602 20 19	2006 00 99	2008 92 14	2009 90 59
1108 20 00	1602 20 90	2007 10 91	2008 92 34	2009 90 96
1208 10 00	1602 31	2007 10 99	2008 92 38	2009 90 98
1209	1602 41 90	2007 99 10	2008 92 59	2204 30 10
1210	1602 42 90	2007 99 91	2008 92 74	2206 00 39
1211 90 30	1602 49 90	2007 99 98	2008 92 78	2206 00 59
1212 10 10	1602 90 10	2008 11 92	2008 92 93	2302 50 00
1212 10 99	1602 90 31	2008 11 94	2008 92 96	2306 90 19
1214 90 10	1602 90 41	2008 11 96	2008 92 98	2308 00 90
1501 00 90	1602 90 72	2008 11 98	2008 99 28	2309 10 51
1502 00 90	1602 90 74	2008 19 19	2008 99 37	2309 10 90
1503 00 19	1602 90 76	2008 19 93	2008 99 40	2309 90 10
1503 00 90	1602 90 78	2008 19 95	2008 99 45	2309 90 31
1504 10 10	1602 90 98	2008 19 99	2008 99 49	2309 90 41
1504 10 99	1603 00 10	2008 40 11	2008 99 55	2309 90 51
1504 20 10	1704 90 10	2008 40 21	2008 99 68	2309 90 91
1504 30 10	2001 10 00	2008 40 29	2008 99 72	
1507	2001 90 20	2008 40 39	2008 99 78	
1508 10 90	2001 90 50	2008 40 51	2008 99 99	
1508 90 10	2001 90 70	2008 40 59	2009 50 10	

(1) As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

ANNEX C (b)

Imports into the Community of the following products originating in Lithuania shall be subject to the concessions set out below (MFN = Most Favoured Nation duty).

Order No	CN code	Description [1]	Applicable duty (% of MFN) [2]	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4598	0102 90 05	Live bovine animals of domestic species of a live weight not exceeding 80 kg	20	178 000 heads	0	[3]
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of domestic species of a live weight exceeding 80 kg but not exceeding 300 kg	20	153 000 heads	0	[3]
09.4563	ex 0102 90	Heifers and cows, not for slaughter, of the following mountain breeds: Grey, brown, yellow, spotted Simmental and Pinzgau	6 % ad valorem	7 000 heads	0	[4]
09.4861	0201	Meat of bovine animals, fresh or chilled	free	2 000	200	[8]
	0202	Meat of bovine animals, frozen				
	0206 10 95	Edible offal of bovine animals, fresh or chilled, thick skirt and thin skirt				
	0206 29 91	Edible offal of bovine animals, frozen, other, thick skirt and thin skirt				
	0210 20	Meat of bovine animals, salted, in brine, dried or smoked				
	0210 99 51	Thick skirt and thin skirt of bovine animals				
	0210 99 90	Edible flours and meals of meat or meat offal				
	1602 50	Other prepared or preserved meat or meat offal of bovine animals				
09.4542	ex 0203	Meat of domestic swine, fresh, chilled or frozen, excluding CN codes 0203 11 90, 0203 12 90, 0203 19 90, 0203 21 90, 0203 22 90, 0203 29 90	free	1 800	150	[5] [8]
	0104 10 30	Live sheep, lambs up to a year old	free	unlimited		[8]
	0104 10 80	Live sheep, other				
	0104 20 90	Live goats, other				
	0204	Meat of sheep or goats, fresh, chilled or frozen				
	0210 99 21	Edible meat of sheep and goats with bone in				
	0210 99 29	Edible meat of sheep and goats, boneless				
	0210 99 60	Edible meat offal of sheep and goats				
09.6661	ex 0207	Meat and edible offal, of the poultry of heading No 0105, fresh, chilled or frozen excluding CN codes 0207 13 91, 0207 14 91, 0207 26 91, 0207 27 91, 0207 34 10, 0207 34 90, 0207 35 91, 0207 36 81, 0207 36 85, 0207 36 89	free	1 200	100	[8]

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4862	0401	Milk and cream, not concentrated, nor containing added sugar or other sweetening matter	free	3 000	300	(8)
09.4863	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter	free	6 350	635	(8)
09.4864	0403 10 11 to 0403 10 39 0403 90 11 to 0403 90 69	Yoghurt, not flavoured nor containing added fruit, nuts or cocoa Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, not flavoured nor containing added fruit nuts or cocoa	free	300	30	(8)
09.4865	0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included	free	2 000	200	(8)
09.4866	0405 10 11 0405 10 19 0405 10 30 0405 10 50 0405 10 90 0405 20 90 0405 90	Natural butter of a fat content, by weight, not exceeding 85 %, in immediate packings of a net content not exceeding 1 kg Natural butter of a fat content by weight not exceeding 85 %, other Recombined butter, of a fat content, by weight, not exceeding 85 % Whey butter Butter, other Dairy spreads of a fat content, by weight, of more than 75 % but less than 80 % Other fats and oils derived from milk	free	2 100	210	(8)
09.4557	0406	Cheese and curd	free	7 200	600	(8)
09.6662	0407 00 11 0407 00 19 0407 00 30	Poultry eggs	free	700	70	(8)
09.6663	0408 91 80	Dried eggs, other	free	140	15	(8) (9)
09.6452		Tomatoes, fresh or chilled				(7) (8)
	ex 0702 00 00	15 May to 31 October	free	400	40	
	ex 0702 00 00	1 November to 14 May	free	unlimited		
09.6453	0703 20 00	Garlic, fresh or chilled	free	60	5	
09.6664	ex 0707 00 05	Cucumbers, fresh or chilled, 1 March to 31 October	free	100	10	(7)
	ex 0707 00 05	Cucumbers, fresh or chilled, 1 November to end of February	free	unlimited		(7)
	0709 10 00	Globe artichokes, fresh or chilled	free	unlimited		(7)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	0709 90 70	Courgettes, fresh or chilled	free	unlimited		(7)
09.6631	0808 10	Apples, fresh	free	2 760	230	(7) (8)
	0808 20 50	Fresh pears (excl. perry pears, in bulk, 1 August to 31 December)	free	unlimited		(7)
	0809 20	Cherries, fresh	free	unlimited		(7)
	ex 0809 40 05	Fresh plums, from 1 July to 30 September	free	unlimited		(7)
	0810 10 00	Strawberries, fresh	free	unlimited		(6)
	0810 30	Black-, white- or redcurrants and gooseberries, fresh	free	unlimited		(6)
	0811 10 19	Strawberries, frozen, containing added sugar or other sweetening matter with a sugar content not exceeding 13 % by weight	free	unlimited		(6)
	0811 10 90	Strawberries, frozen, other	free	unlimited		(6)
	0811 20 19	Raspberries, blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries, frozen, with a sugar content not exceeding 13 % by weight	free	unlimited		(6)
	0811 20 31	Other frozen raspberries	free	unlimited		(6)
	0811 20 39	Other frozen blackcurrants	free	unlimited		(6)
	0811 20 51	Other frozen redcurrants	free	unlimited		(6)
	0811 20 59	Other frozen blackberries and mulberries	free	unlimited		
	0811 20 90	Other, frozen	free	unlimited		
09.6665	1001 10 00	Durum wheat	free	25 000	2 500	(8)
	1001 90 91	Common wheat and meslin seed				
	1001 90 99	Other				
	1101 00 11	Durum wheat flour				
	1101 00 15	Flour of common wheat and spelt				
	1101 00 90	Meslin flour				
	1103 11 10	Durum wheat groats and meal				
	1103 11 90	Common wheat and spelt groats and meal				
	1103 20 60	Wheat pellets				

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.6666	1002 00 00	Rye	free	6 000	600	(8)
	1102 10 00	Rye flour				
	1103 19 10	Rye groats and meal				
	1103 20 10	Rye pellets				
09.6667	1004 00 00	Oats	free	500	50	(8)
	1102 90 30	Oat flour				
	1103 19 40	Groats and meal of oats				
	1103 20 30	Pellets of oats				
	1008 10 00	Buckwheat	free	unlimited		(8)
	1008 20 00	Millet				
	1008 30 00	Canary seed				
	1008 90 10	Triticale				
	1008 90 90	Other cereals, other				
	1102 90 90	Cereals flour, other				
	1103 19 90	Groats and meal of other cereals				
	1103 20 90	Cereal pellets, other				
09.6668	1104 29 19	Grains of cereals, hulled (shelled or husked), whether or not sliced or kibbled, other than of oats, maize (corn), barley, wheat and rye	free	1 000	100	
	1104 29 39	Grains of cereals, pearled, other than of oats, maize (corn), barley, wheat and rye				
	1104 29 59	Grains of cereals, not otherwise worked than kibbled, other than of oats, maize (corn), barley, wheat and rye				
09.4569	1601 00	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products	free	360	30	(8)
	ex 1602 41	Other prepared or preserved meat, meat offal or blood: of swine: Hams and cuts thereof, excluding CN 1602 41 90				
	ex 1602 42	Other prepared or preserved meat, meat offal or blood: of swine: Shoulders and cuts thereof, excluding CN 1602 42 90				
	ex 1602 49	Other prepared or preserved meat, meat offal or blood: of swine: Other, including mixtures, excluding CN 1602 49 90				
09.6669	1602 32	Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: of fowls of the species *Gallus domesticus*	free	240	20	(8)
	1602 39	Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: Other than of fowls of the species *Gallus domesticus* and other than of turkeys				

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
	1703	Molasses resulting from the extraction or refining of sugar	free	unlimited		(8)
09.6670	2001 90 93	Onions, prepared or preserved by vinegar or acetic acid	free	100	10	
	2001 90 96	Other vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid				
	2002	Prepared or preserved tomatoes, otherwise than by vinegar or acetic acid	free	unlimited		(8)
09.6671	ex 2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals of leguminous plants	free	300	30	
	2302 30	— of wheat				
	2302 40	— of other cereals				
09.6672	ex 2309 90	Preparations of a kind used in animal feeding, other than dog or cat food, put up for retail sale:	free	200	20	
	2309 90 33	Other, containing no starch or containing 10 % or less by weight of starch, containing not less than 10 % but less than 50 % by weight of milk products				
	2309 90 43	Other, containing more than 10 % but not more than 30 % by weight of starch, containing not less than 10 % but less than 50 % by weight of milk products				
	2309 90 53	Other, containing more than 30 % by weight of starch, containing not less than 10 % but less than 50 % by weight of milk products				

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

(2) In cases where an MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

(3) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania. In case imports into the Community of live bovine domestic animals may exceed 500 000 heads for any given year, the Community may take the management measures needed to protect its market, notwithstanding any other rights given under the Agreement.

(4) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania.

(5) Excluding tenderloin presented alone.

(6) Subject to minimum import price arrangements contained in the Annex to this Annex.

(7) The reduction applies only to the *ad valorem* part of the duty.

(8) This concession is only applicable to products not benefiting from export refunds.

(9) In dried egg equivalent (100 kg liquid egg = 25,7 kg of dried eggs).

Annex to Annex C(b)

Minimum import price arrangement for certain soft fruit for processing

1. Minimum import prices are fixed as follows for the following products for processing originating in Lithuania:

CN Code	Description	Minimum import price (EUR/t net)
ex 0810 10	Strawberries, fresh, intended for processing	514
ex 0810 30 10	Blackcurrants, fresh, intended for processing	385
ex 0810 30 30	Redcurrants, fresh, intended for processing	233
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	750
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	576
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	750
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	576
ex 0811 20 19	Frozen raspberries, containing additional sugar or other sweetening matter not exceeding 13 % by weight: whole fruit	995
ex 0811 20 19	Frozen raspberries, containing additional sugar or other sweetening matter not exceeding 13 % by weight: other	796
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	995
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	796
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	628
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	448
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	390
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	295

2. The minimum import prices, as set out in point 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.

3. If the import prices of a given product covered by this Annex show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Lithuanian authorities in order to enable them to correct the situation.

4. At the request of either the Community or Lithuania, the Association Council shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Council shall take the necessary decisions.

5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting may be organised three months before the beginning of each marketing year in the European Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, on the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, on the other part.

   During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

Proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance

(2002/C 203 E/27)

COM(2002) 222 final — 2002/0110(CNS)

(Submitted by the Commission on 3 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.

(3) Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses [1] sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings.

(4) On 3 July 2000 France presented an initiative for a Council Regulation on the mutual enforcement of judgments on rights of access to children [2].

(5) For purposes of facilitating the application of the rules on parental responsibility that often arises in the context of matrimonial proceedings, it is more appropriate to have a single instrument for matrimonial matters and matters of parental responsibility.

(6) The scope of this Regulation should cover civil proceedings, including proceedings considered equivalent to judicial proceedings, and excluding purely religious proceedings. Therefore the reference to 'courts' should include all authorities, judicial or otherwise, with jurisdiction in the matters covered by this Regulation.

(7) Authentic instruments and court settlement that are enforceable in one Member State should be treated as equivalent to 'judgments'.

(8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should only apply to the dissolution of matrimonial ties, and should not affect issues such as the fault of the spouses, property consequences of the marriage, maintenance obligations or any other ancillary measures.

(9) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, excluding matters relating to maintenance, which are covered by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [3] and measures taken as a result of penal offences committed by children.

(10) The grounds of jurisdiction in matters of parental responsibility accepted in this Regulation should be shaped in the light of the best interests of the child. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

[1] OJ L 160, 30.6.2000, p. 19.

[2] OJ C 234, 15.8.2000, p. 7.

[3] OJ L 12, 16.1.2001, p. 1.

(11) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters [1] should apply to the service of documents in proceedings instituted pursuant to this Regulation.

(12) This Regulation should not prevent the courts of a Member State from taking provisional, including protective, measures, in urgent cases, with regard to persons or property situated in that State.

(13) In cases of child abduction, the courts of the Member State to which the child has been removed or is retained should have the possibility to take a provisional protective measure not to return the child, which should be superseded by a judgment on custody issued by the courts of the child's former habitual residence. Should that judgment entail the return of the child, the child should be returned without any special procedure being required for recognition and enforcement in the Member State to which the child has been abducted.

(14) Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters [2] may be used for the hearing of the child.

(15) The recognition and enforcement of judgments given in a Member State are based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required. These relate to observing public policy in the Member State of enforcement, safeguarding the rights of the defence and those of the parties, including the rights of the child, and withholding recognition of irreconcilable judgments.

(16) No special procedure should be required in the Member State of enforcement for the recognition and enforcement of judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of this Regulation.

(17) Central authorities should cooperate both as a general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes. To this end central authorities should avail themselves to participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters [3].

(18) The Commission should be empowered to amend Annexes I, II and III relating to the courts and redress procedures on the basis of the information communicated by the Member State concerned.

(19) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4], amendments to Annexes IV to VII should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.

(20) In the light of the foregoing, Regulation (EC) No 1347/2000 should be repealed and replaced.

(21) Regulation (EC) No 44/2001 should be amended as to allow the court having jurisdiction in matters of parental responsibility in accordance with the provisions of this Regulation to decide on maintenance.

(22) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

(23) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

(24) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation does not go beyond what is necessary to achieve those objectives.

(25) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the fundamental rights of the child as recognised in Article 24 of the Charter of Fundamental Rights of the European Union,

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[1] OJ L 160, 30.6.2000, p. 37.

[2] OJ L 174, 27.6.2001, p. 1.

[3] OJ L 174, 27.6.2001, p. 25.

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE, DEFINITIONS AND BASIC PRINCIPLES

Article 1

Scope

1. This Regulation shall apply to civil proceedings relating to:

(a) divorce, legal separation or marriage annulment

and

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. Notwithstanding paragraph 1 this Regulation shall not apply to civil proceedings relating to:

(a) matters relating to maintenance

and

(b) measures taken as a result of penal offences committed by children.

3. Other proceedings officially recognised in a Member State shall be regarded as equivalent to judicial proceedings.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. The term 'court' shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;

2. the term 'Member State' shall mean all Member States with the exception of Denmark;

3. the term 'judgment' shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

4. the term 'Member State of origin' shall mean the Member State where the judgment to be enforced was issued;

5. the term 'Member State of enforcement' shall mean the Member State where enforcement of the judgment is sought;

6. the term 'parental responsibility' shall mean rights and duties given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect and relating to the person or the property of a child. In particular, the term shall include rights of custody and rights of access;

7. the term 'holder of parental responsibility' shall mean any person having parental responsibility over a child;

8. the term 'rights of custody' shall include rights and duties relating to the care of the person of a child, and in particular the right to have a say in determining the child's place of residence;

9. the term 'rights of access' shall include the right to take a child to a place other than his or her habitual residence for a limited period of time;

10. the term 'child abduction' shall mean a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

(b) provided that, at the time of removal or retention the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Article 3

Right of the child to contact with both parents

A child shall have the right to maintain on a regular basis a personal relationship and direct contact with both parents, unless this is contrary to his or her interests.

Article 4

Right of the child to be heard

A child shall have the right to be heard on matters relating to parental responsibility over him or her in accordance with his or her age and maturity.

CHAPTER II

JURISDICTION

Section 1

Divorce, legal separation and marriage annulment

Article 5

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

— the spouses are habitually resident, or

— the spouses were last habitually resident, in so far as one of them still resides there, or

— the respondent is habitually resident, or

— in the event of a joint application, either of the spouses is habitually resident, or

— the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or

— the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses.

2. For the purpose of this Regulation, 'domicile' shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

Article 6

Counterclaim

The court in which proceedings are pending on the basis of Article 5 shall also have jurisdiction to examine a counterclaim, in so far as the latter comes within the scope of this Regulation.

Article 7

Conversion of legal separation into divorce

Without prejudice to Article 5, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Article 8

Exclusive nature of jurisdiction under Articles 5 to 7

A spouse who:

(a) is habitually resident in the territory of a Member State; or

(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her 'domicile' in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 5 to 7.

Article 9

Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 5 to 7, jurisdiction shall be determined, in each Member State, by the laws of that State.

2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his 'domicile' within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

Section 2

Parental responsibility

Article 10

General jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized.

2. Paragraph 1 shall be subject to the provisions of Articles 11, 12 and 21.

Article 11

Continuing jurisdiction of the Member State of the child's former residence

1. In the case of a change of residence of a child, the courts of the Member State of the former residence of the child shall continue to have jurisdiction where:

(a) there is a judgment issued by these courts in accordance with Article 10;

(b) the child has resided in the State of his or her new residence for a period of less than six months at the time the court is seized;

and

(c) one of the holders of parental responsibility continues to reside in the Member State of the former residence of the child.

2. Paragraph 1 shall not apply if the child's new residence has become his/her habitual residence and if the holder of parental responsibility referred to in paragraph 1, point (c) has accepted the jurisdiction of the courts of this Member State.

3. For the purposes of this Article the appearance of a holder of parental responsibility before a court shall not be deemed in itself to constitute acceptance of the court's jurisdiction.

Article 12

Prorogation of jurisdiction

1. The courts of a Member State exercising jurisdiction by virtue of Article 5 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses:

(a) if the child is habitually resident in one of the Member States;

(b) if at least one of the spouses has parental responsibility in relation to the child;

and

(c) if the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.

2. The courts of a Member State shall have jurisdiction where:

(a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized;

(b) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(c) jurisdiction is in the best interests of the child.

3. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

or

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

or

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

4. For the purposes of this Article the appearance of a holder of parental responsibility before a court shall not be deemed in itself to constitute acceptance of the court's jurisdiction.

Article 13

Jurisdiction based on the child's presence

1. Where a child's habitual residence cannot be established and no court of a Member State has jurisdiction pursuant to Articles 11 or 12, the courts of the Member State where the child is present shall have jurisdiction.

2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

Article 14

Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 10 to 13 or 21, jurisdiction shall be determined, in each Member State, by the laws of that State.

Article 15

Transfer to a court better placed to hear the case

1. On the basis of an application by a holder of parental responsibility, the courts of a Member State having jurisdiction as to the substance of the matter may, in exceptional circumstances where this is in the best interests of the child, transfer the case to the courts of another Member State which:

(a) was the former habitual residence of the child, or

(b) is the place of the child's nationality, or

(c) is the habitual residence of a holder of parental responsibility, or

(d) is the place where property of the child is located.

To this end, the courts of the Member State having jurisdiction as to the substance of the matter shall stay the proceedings and prescribe a period of time during which the courts of that other Member State must be seized.

The courts of that other Member State may, where this is in the best interests of the child, accept jurisdiction within one month from the time they are seized. In this case, the court first seized shall decline jurisdiction. Otherwise, the court first seized shall exercise jurisdiction.

2. The courts shall cooperate for purposes of this Article, either directly or through the central authorities designated pursuant to Article 55.

Section 3

Common provisions

Article 16

Seizing of a Court

A court shall be deemed to be seized:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Article 17

Examination as to jurisdiction

Where a court of a Member State is seized of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 18

Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defense, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19

***Lis pendens* and dependent actions**

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

2. Where proceedings relating to parental responsibility over the same child are brought before courts of different Member States, the court second seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

3. Where the jurisdiction of the court first seized is established, the court second seized shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seized may bring that action before the court first seized.

Article 20

Provisional, including protective, measures

1. Without prejudice to Chapter III, in urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the courts of the Member State having jurisdiction as to the substance of the matter have issued a judgment.

CHAPTER III

CHILD ABDUCTION

Article 21

Jurisdiction

1. In cases of child abduction, the courts of the Member State in which the child was habitually resident immediately before the removal or retention shall continue to have jurisdiction.

2. Paragraph 1 shall not apply if the child has acquired a habitual residence in another Member State, and:

(a) if each holder of rights of custody has acquiesced in the removal or retention;

or

(b) if all of the following conditions are fulfilled:

(i) the child has resided in that other Member State for a period of at least one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child;

(ii) within the period referred to under (i) no application for return has been lodged pursuant to Article 22, paragraph 1, or a judgment that does not entail return has been issued in accordance with Article 24, paragraph 3, or no judgment on custody has been issued one year after the court has been seized pursuant to Article 24, paragraph 2;

and

(iii) the child is settled in his or her new environment.

Article 22

Return of the child

1. Without prejudice to any other legal means available, a holder of rights of custody may apply for the return of an abducted child to the central authority of the Member State to which the child has been abducted, either directly or through another central authority.

2. Upon receipt of an application for return pursuant to paragraph 1, the central authority of the Member State to which the child has been abducted shall:

(a) take the necessary measures for locating the child;

and

(b) ensure that the child has been returned within one month from locating him or her, unless proceedings instituted pursuant to paragraph 3 are pending.

The central authority of the Member State to which the child has been abducted shall forward to the central authority of the Member State of the child's habitual residence immediately before the removal or retention all useful information and make recommendations, as appropriate, for facilitating his or her return, or shall provide all useful information and remain in contact during the proceedings pursuant to paragraph 3.

3. The return of the child may be refused only by applying to the courts of the Member State to which the child has been abducted for a protective measure within the time period indicated in paragraph 2.

Article 23

Provisional protective measure not to return the child

1. The courts of the Member State to which the child has been abducted shall decide without delay on an application for a protective measure pursuant to Article 22, paragraph 3.

The child shall be heard during the procedure, unless this appears inappropriate having regard to his or her age or degree of maturity.

2. The courts may take a protective measure not to return the child pursuant to paragraph 1 only if:

(a) there is a grave risk that return would expose the child to physical or psychological harm or otherwise place him or her in an intolerable situation;

or

(b) the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.

3. The measure taken pursuant to paragraph 1 shall be provisional. The courts having issued this measure may at any time decide that it shall cease to apply.

The measure taken pursuant to paragraph 1 shall be superseded by a judgment on custody issued pursuant to Article 24, paragraph 3.

Article 24

Judgment on custody

1. The central authority of the Member State to which the child has been abducted shall inform the central authority of the Member State of the child's habitual residence immediately before the removal or retention of any protective measure taken pursuant to Article 23, paragraph 1 within two weeks from taking the measure, and shall forward all useful information, in particular a transcript of the hearing of the child, if any.

2. The central authority of the Member State of the child's habitual residence immediately before the removal or retention shall seize the courts of that Member State within one month from receiving the information referred to in paragraph 1 for a decision on custody.

Any holder of parental responsibility may also apply to the courts for the same purpose.

3. The courts seized pursuant to paragraph 2 shall issue a judgment on custody without delay.

During the procedure the court shall remain in contact, directly or through the central authorities, with the court that took the protective measure not to return the child pursuant to Article 23, paragraph 1, for purposes of monitoring the child's situation.

The child shall be heard during the procedure, unless this appears inappropriate having regard to his or her age or degree of maturity. For this purpose the court shall take into account the information forwarded pursuant to paragraph 1 and, where appropriate, use the cooperation provisions of Regulation (EC) No 1206/2001.

4. The central authority of the Member State of the child's habitual residence immediately before the removal or retention shall inform the central authority of the Member State to which the child has been abducted of the judgment issued pursuant to paragraph 3, and shall forward all useful information and make recommendations, as appropriate.

5. A judgment given pursuant to paragraph 3 that entails the return of the child and has been certified in accordance with the provisions of Chapter IV, Section 3 shall be recognised and enforced without any special procedure being required for the limited purpose of returning the child.

For purposes of this paragraph the judgment given pursuant to paragraph 3 shall be enforceable notwithstanding any appeal.

Article 25

Fees and other costs

1. The assistance provided by the central authorities shall be free of charge.

2. The courts may direct a person who has abducted a child to pay any costs incurred, including legal fees, for locating and returning the child.

CHAPTER IV

RECOGNITION AND ENFORCEMENT

Section 1

Recognition

Article 26

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

The provisions of this Chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also settlements which have been approved by a court in the course of proceedings and are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for up-dating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 3 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list in Annex I shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 27

Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defense unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 28

Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;

(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

(c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense unless it is determined that such person has accepted the judgment unequivocally;

(d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

or

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 29

Prohibition of review of jurisdiction of court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 27 point (a) and 28 point (a) may not be applied to the rules relating to jurisdiction set out in Articles 5 to 9, 10 to 14 and 21.

Article 30

Differences in applicable law

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 31

Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 32

Stay of proceedings

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

Section 2

Application for a declaration of enforceability

Article 33

Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 34

Jurisdiction of local courts

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list in Annex I.

2. The local jurisdiction shall be determined by reference to the place of the habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 35

Procedure

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.

2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Articles 42 and 44 shall be attached to the application.

Article 36

Decision of the court

1. The court applied to shall give its decision without delay. The person against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

2. The application may be refused only for one of the reasons specified in Articles 27, 28 and 29.

3. Under no circumstances may a judgment be reviewed as to its substance.

Article 37

Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 38

Appeal against the decision

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court appearing in the list in Annex II.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 39

Courts of appeal and means of contest

The judgment given on appeal may be contested only by the proceedings referred to in Annex III.

Article 40

Stay of proceedings

1. The court with which the appeal is lodged under Articles 38 or 39 may, on the application of the party against whom enforcement is sought, stay the enforcement proceedings if an ordinary appeal has been lodged in the Member State of origin or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Article 41

Partial enforcement

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

2. An applicant may request partial enforcement of a judgment.

Article 42

Documents

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) a certificate referred to in Article 44.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

(a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;

or

(b) any document indicating that the defendant has accepted the judgment unequivocally.

Article 43

Absence of documents

1. If the documents specified in Article 42(1) point (b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2. If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 44

Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

The competent court or authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form set up in Annex IV (judgments in matrimonial matters) or in Annex V (judgments on parental responsibility).

Section 3

Enforcement concerning rights of access and the return of a child

Article 45

Scope

1. This Section shall apply to:

(a) rights of access granted to one of the parents of a child

and

(b) the return of a child entailed by a judgment on custody given pursuant to Article 24, paragraph 3.

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement in accordance with the provisions in Sections 1 and 2 of this Chapter.

Article 46

Rights of access

1. The rights of access referred to in Article 45, paragraph 1, point (a) granted in an enforceable judgment given in a Member State shall be recognised and enforced in all other Member States without any special procedure being required if the judgment fulfils the procedural requirements and has been certified in the Member State of origin in accordance with paragraph 2 of this Article.

2. The court of origin shall issue the certificate referred to in paragraph 1 only if:

(a) the judgment was not given in default of appearance;

and

(b) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate is issued by the court of origin at the request of a holder of rights of access and using the standard form in Annex VI (certificate concerning rights of access).

It shall be completed in the language of the judgment.

Article 47

Return of the child

1. The return of a child referred to in Article 45, paragraph 1, point (b) entailed by an enforceable judgment given in a Member State shall be recognised and enforced in all other Member States without any special procedure being required if the judgment fulfils the procedural requirements and has been certified in the Member State of origin in accordance with paragraph 2 of this Article.

2. The court of origin shall issue the certificate referred to in paragraph 1 only if the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The court of origin shall issue that certificate at its own initiative and using the standard form in Annex VII (certificate concerning return).

The certificate shall be completed in the language of the judgment.

Article 48

Appeal

No appeal shall lie against the issuing of a certificate pursuant to Articles 46(1) or 47(1).

Article 49

Documents

1. A party seeking enforcement of a judgment shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) the certificate referred to in Article 46(1) or Article 47(1).

2. For the purposes of this Article, the certificate referred to in Article 46(1) shall be accompanied, where necessary, by a translation of its point 10 relating to the arrangements for exercising the rights of access.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

No translation of the certificate referred to in Article 47(1) shall be required.

Section 4

Other provisions

Article 50

Enforcement procedure

The enforcement procedure is governed by the law of the Member State of enforcement.

Article 51

Practical arrangements for the exercise of rights of access

1. The courts of the Member State of enforcement may make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not been made in the judgment of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.

2. The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

Article 52

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 26, 33 and 51 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

Article 53

Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the following grounds:

(a) that he or she is not habitually resident in the Member State in which enforcement is sought; or

(b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her 'domicile' in either of those Member States.

Article 54

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 42, 43 and 49 or in respect of a document appointing a representative *ad litem*.

CHAPTER V

COOPERATION BETWEEN CENTRAL AUTHORITIES

Article 55

Designation

Each Member State shall designate a central authority to assist with the application of this Regulation.

In addition to the central authority designated pursuant to paragraph 1, a Member State where two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units may designate one authority for each territorial unit and specify their territorial competence. In these cases, communications may be sent either directly to the territorially competent authority, or to the central authority, which shall be responsible for forwarding them to the territorially competent authority and informing the sender thereof.

Article 56

General functions

The central authorities shall establish an information system on national laws and procedures and take general measures for improving the application of this Regulation and strengthening their cooperation, including developing cross-border cooperation mechanisms on mediation.

For this purpose the European Judicial Network in civil and commercial matters created by Decision 2001/470/EC shall be used.

Article 57

Cooperation on specific cases

The central authorities shall cooperate on specific cases, in particular for the purpose of ensuring the effective exercise of parental responsibility over a child. To this end, they shall, acting directly or through public authorities or other bodies in accordance with their laws:

(a) exchange information:

(i) on the situation of the child,

(ii) on any procedures under way, or

(iii) on decisions taken concerning the child;

(b) make recommendations, as appropriate, in particular with a view to coordinate a protective measure taken in the Member State where the child is present with a decision taken in the Member State that has jurisdiction as to the substance of the matter;

(c) take all necessary measures for locating and returning the child, including instituting proceedings to this end pursuant to Articles 22 to 24;

(d) provide information and assistance to holders of parental responsibility seeking to recognise and enforce decisions on their territory, in particular concerning rights of access and the return of the child;

(e) support communications between courts, in particular for the purpose of transferring a case pursuant to Article 15 or deciding in cases of child abduction pursuant to Articles 22 to 24;

and

(f) promote agreement between holders of parental responsibility through mediation or other means, and organise cross-border cooperation to this end.

Article 58

Working method

1. A holder of parental responsibility may submit a request for assistance to the central authority of the Member State of his or her habitual residence, or to the central authority of the Member State where the child is habitually resident or present. If the request for assistance makes reference to a judgment given pursuant to this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 44, 46(1) or 47(1).

2. Each Member State shall communicate to the Commission the official language(s) of the European Union other than its own which it can accept for communications to the central authorities.

3. The assistance provided by the central authorities pursuant to Article 57 shall be free of charge.

4. Each central authority shall bear its own costs.

Article 59

Meetings

The Commission shall convene meetings of central authorities, using the European Judicial Network in civil and commercial matters created by Decision 2001/470/EC.

CHAPTER VI

RELATIONS WITH OTHER INSTRUMENTS

Article 60

Relation with other instruments

1. Subject to the provisions of Article 63 and paragraph 2 of this Article, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.

2. (a) Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the *Official Journal of the European Communities*. They may be withdrawn, in whole or in part, at any moment by the said Member States.

(b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

(c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

(d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapters II and III of this Regulation, shall be recognised and enforced in the other Member States under the rules laid down in Chapter IV of this Regulation.

3. Member States shall send to the Commission:

(a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 2 points (a) and (c);

(b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 61

Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

(a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;

(b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;

(c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;

(d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;

(e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;

and

(f) the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.

Article 62

Treaties with the Holy See

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 7 May 1940.

2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Chapter IV, Section 1.

3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (Concordats) with the Holy See:

(a) Concordato lateranense of 11 February 1929 between Italy and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984;

(b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979.

4. Recognition of the decisions provided for in paragraph 2 may, in Italy or in Spain, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.

5. Member States shall send to the Commission:

(a) a copy of the treaties referred to in paragraphs 1 and 3;

(b) any denunciations of or amendments to those treaties.

CHAPTER VII

TRANSITIONAL PROVISIONS

Article 63

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to settlements that have been approved by a court in the course of proceedings after its date of application in accordance with Article 71.

2. Judgments given after the date of application of this Regulation in proceedings instituted before that date but after the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter IV of this Regulation if jurisdiction was founded on rules which accorded with those provided for either in Chapters II or III of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

3. Judgments given before the date of application of this Regulation in proceedings instituted after the entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter IV of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings.

4. Judgments given before the date of application of this Regulation but after the date of entry into force of Regulation (EC) No 1347/2000 in proceedings instituted before the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter IV of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapters II or III of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VIII

FINAL PROVISIONS

Article 64

Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

(a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;

(b) any reference to nationality, or in the case of the United Kingdom 'domicile', shall refer to the territorial unit designated by the law of that State;

(c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that State which is concerned;

(d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Article 65

Information on central authorities and languages

The Member States shall communicate to the Commission within three months following the entry into force of this Regulation

(a) the names, addresses and means of communication for the central authorities designated pursuant to Article 55;

(b) the languages accepted for communications to central authorities pursuant to Article 58, paragraph 2;

and

(c) the languages accepted for the certificate concerning rights of access pursuant to Article 49, paragraph 2.

The Member States shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

Article 66

Amendments to Annexes I, II and III

The Member States shall notify the Commission of the texts amending the lists of courts and redress procedures in Annexes I to III.

The Commission shall adapt the Annexes concerned accordingly.

Article 67

Amendments to Annexes IV to VII

Any amendments to the standard forms in Annexes IV to VII shall be adopted in accordance with the procedure set out in Article 68(2).

Article 68

Committee

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

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

3. The committee shall adopt its rules of procedure.

Article 69

Repeal of Regulation (EC) No 1347/2000

1. Regulation (EC) No 1347/2000 shall be repealed as from the date of application of this Regulation in accordance with Article 71.

2. Any reference to Regulation (EC) No 1347/2000 shall be construed as a reference to this Regulation according to the comparative table in Annex VIII.

Article 70

Amendment of Regulation (EC) No 44/2001

Article 5, point 2 of Regulation (EC) No 44/2001 shall be replaced by the following:

'2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or, if the matter is ancillary to proceedings concerning parental responsibility, in the court which according to Council Regulation (EC) No . . . (on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility) (*), has jurisdiction to entertain those proceedings

(*) OJ L . . .'

Article 71

Entry into force

This Regulation shall enter into force on 1 July 2003.

The Regulation shall apply from 1 July 2004, with the exception of Article 65, which shall apply from 1 July 2003.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

ANNEX I

The applications provided for by Articles 26 and 33 shall be submitted to the following courts:

— in Belgium, the 'tribunal de première instance'/'rechtbank van eerste aanleg'/'erstinstanzliches Gericht',

— in Germany:

  — in the district of the 'Kammergericht' (Berlin), the 'Familiengericht Pankow/Weißensee',

  — in the districts of the remaining 'Oberlandesgerichte' to the 'Familiengericht' located at the seat of the respective 'Oberlandesgericht'

— in Greece, the 'Μονομελές Πρωτοδικείο',

— in Spain, the 'Juzgado de Primera Instancia',

— in France, the presiding Judge of the 'Tribunal de grande instance',

— in Ireland, the High Court,

— in Italy, the 'Corte d'apello',

— in Luxembourg, the presiding Judge of the 'Tribunal d'arrondissement',

— in the Netherlands, the presiding Judge of the 'arrondissementsrechtbank',

— in Austria, the 'Bezirksgericht',

— in Portugal, the 'Tribunal de Comarca' or 'Tribunal de Familia',

— in Finland, the 'käräjäoikeus'/'tingsrätt',

— in Sweden, the 'Svea hovrätt',

— in the United Kingdom:

  (a) in England and Wales, the High Court of Justice;

  (b) in Scotland, the Court of Session;

  (c) in Northern Ireland, the High Court of Justice;

  (d) in Gibraltar, the Supreme Court.

ANNEX II

The appeal provided for by Article 38 shall be lodged with the courts listed below:

— in Belgium:

  (a) a person applying for a declaration of enforceability may lodge an appeal with the 'cour d'appel' or the 'hof van beroep';

  (b) the person against whom enforcement is sought may lodge opposition with the 'Tribunal de première instance'/'rechtbank van eerste aanleg'/'erstinstanzliches Gericht',

— in Germany, the 'Oberlandesgericht',

— in Greece, the 'Εφετείο',

— in Spain, the 'Audiencia Provincial',

— in France, the 'Cour d'appel',

— in Ireland, the High Court,

— in Italy, the 'Corte d'appello',

— Luxembourg, the 'Cour d'appel',

— in the Netherlands:

(a) if the applicant or the respondent who has appeared lodges the appeal: with the 'gerechtshof';

(b) if the respondent who has been granted leave not to appear lodges the appeal: with the 'arrondissements-rechtbank',

— in Austria, the 'Bezirksgericht',

— in Portugal, the 'Tribunal da Relação',

— in Finland, the 'hovioikeus'/'hovrätt',

— in Sweden, the 'Svea hovrätt',

— in the United Kingdom:

(a) in England and Wales, the High Court of Justice;

(b) in Scotland, the Court of Session;

(c) in Northern Ireland, the High Court of Justice;

(d) in Gibraltar, the Court of Appeal.

ANNEX III

The appeals provided for by Article 39 may be brought only:

— in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,

— in Germany, by a 'Rechtsbeschwerde',

— in Ireland, by an appeal on a point of law to the Supreme Court,

— in Austria, by a 'Revisionsrekurs',

— in Portugal, by a 'recurso restrito à matéria de direito',

— in Finland, by an appeal to 'korkein oikeus'/'högsta domstolen',

— in Sweden, by an appeal to the 'Högsta domstolen',

— in the United Kingdom, by a single further appeal on a point of law.

ANNEX IV

Certificate referred to in Article 44 concerning judgments in matrimonial matters

1. Country of origin
2. Court or authority issuing the certificate
   - 2.1. Name
   - 2.2. Address
   - 2.3. Tel./fax/E-mail
3. Marriage
   - 3.1. Wife
     - 3.1.1. Full name
     - 3.1.2. Country and place of birth
     - 3.1.3. Date of birth
   - 3.2. Husband
     - 3.2.1. Full name
     - 3.2.2. Country and place of birth
     - 3.2.3. Date of birth
   - 3.3. Country, place (where available) and date of marriage
     - 3.3.1. Country of marriage
     - 3.3.2. Place of marriage (where available)
     - 3.3.3. Date of marriage
4. Court which delivered the judgment
   - 4.1. Name of Court
   - 4.2. Place of Court
5. Judgment
   - 5.1. Date
   - 5.2. Reference number
   - 5.3. Type of judgment
     - 5.3.1. Divorce
     - 5.3.2. Marriage annulment
     - 5.3.3. Legal separation
   - 5.4. Was the judgment given in default of appearance?
     - 5.4.1. No
     - 5.4.2. Yes [1]
6. Names of parties to whom legal aid has been granted
7. Is the judgment subject to further appeal under the law of the Member State of origin?
   - 7.1. No
   - 7.2. Yes
8. Date of legal effect in the Member State where the judgment was given
   - 8.1. Divorce
   - 8.2. Legal separation

Done at . . ., date . . . Signature and/or stamp

[1] Documents referred to in Article 42(2) must be attached.

ANNEX V

Certificate referred to in Article 44 concerning judgments on parental responsibility

1. Country of origin
2. Court or authority issuing the certificate
   - 2.1. Name
   - 2.2. Address
   - 2.3. Tel./Fax/E-mail
3. Holders of parental responsibility
   - 3.1. Mother
     - 3.1.1. Full name
     - 3.1.2. Date and place of birth
   - 3.2. Father
     - 3.2.1. Full name
     - 3.2.2. Date and place of birth
   - 3.3. Other
     - 3.3.1. Full name
     - 3.3.2. Date and place of birth
4. Court which delivered the judgment
   - 4.1. Name of Court
   - 4.2. Place of Court
5. Judgment
   - 5.1. Date
   - 5.2. Reference number
   - 5.3. Was the judgment given in default of appearance?
     - 5.3.1. No
     - 5.3.2. Yes [1]
6. Children who are covered by the judgment [2]
   - 6.1. Full name and date of birth
   - 6.2. Full name and date of birth
   - 6.3. Full name and date of birth
   - 6.4. Full name and date of birth
7. Names of parties to whom legal aid has been granted
8. Attestation of enforceability and service
   - 8.1. Is the judgment enforceable according to the law of the Member State of origin?
     - 8.1.1. Yes
     - 8.1.2. No
   - 8.2. Has the judgment been served on the party against whom enforcement is sought?
     - 8.2.1. Yes
       - 8.2.1.1. Full name of the party
       - 8.2.1.2. Date of service
     - 8.2.2. No

Done at . . ., date . . . Signature and/or stamp

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[1] Documents referred to in Article 42(2) must be attached.

[2] If more than four children are covered, use a second form.

ANNEX VI

Certificate referred to in Article 46(1) concerning judgments on rights of access

1. Country of origin
2. Court or authority issuing the certificate
   - 2.1. Name
   - 2.2. Address
   - 2.3. Tel./Fax/E-mail
3. Parents
   - 3.1. Mother
     - 3.1.1. Full name
     - 3.1.2. Date and place of birth
   - 3.2. Father
     - 3.2.1. Full name
     - 3.2.2. Date and place of birth
4. Court which delivered the judgment
   - 4.1. Name of Court
   - 4.2. Place of Court
5. Judgment
   - 5.1. Date
   - 5.2. Reference number
6. Children who are covered by the judgment [1]
   - 6.1. Full name and date of birth
   - 6.2. Full name and date of birth
   - 6.3. Full name and date of birth
   - 6.4. Full name and date of birth
7. The judgment is enforceable according to the law of the Member State of origin ☐
8. The judgment was not given in default of appearance ☐
9. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity ☐
10. Arrangements for the exercise of rights of access
    - 10.1. Date
    - 10.2. Place
    - 10.3. Specific obligations on holders of parental responsibility for picking up/returning the children
      - 10.3.1. Responsibility for transport costs
      - 10.3.2. Other
    - 10.4. Any restrictions attached to the exercise of rights of access
11. Names of parties to whom legal aid has been granted

Done at . . ., date . . . Signature and/or stamp

---

[1] If more than four children are covered, use a second form.

ANNEX VII

Certificate referred to in Article 47(1) concerning return

1. Country of origin
2. Court or authority issuing the certificate
   - 2.1. Name
   - 2.2. Address
   - 2.3. Tel./Fax/E-mail
3. Holders of parental responsibility
   - 3.1. Mother
     - 3.1.1. Full name
     - 3.1.2. Date and place of birth
   - 3.2. Father
     - 3.2.1. Full name
     - 3.2.2. Date and place of birth
   - 3.3. Other
     - 3.3.1. Full name
     - 3.3.2. Date and place of birth
4. Court which delivered the judgment
   - 4.1. Name of Court
   - 4.2. Place of Court
5. Judgment
   - 5.1. Date
   - 5.2. Reference number
6. Children who are covered by the judgment ([1])
   - 6.1. Full name and date of birth
   - 6.2. Full name and date of birth
   - 6.3. Full name and date of birth
   - 6.4. Full name and date of birth
7. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity ☐
8. The judgment entails the return of the children ☐
9. Person who has custody over the children
10. Names of parties to whom legal aid has been granted

Done at . . ., date . . . Signature and/or stamp

([1]) If more than four children are covered, use a second form.

ANNEX VIII

Comparative table with Regulation (EC) No 1347/2000

Articles repealed	Corresponding articles of new text
1	1, 2
2	5
3	12
4	
5	6
6	7
7	8
8	9
9	17
10	18
11	16, 19
12	20
13	2, 26
14	26
15	27, 28
16	
17	29
18	30
19	31
20	32
21	33
22	26, 34
23	35
24	36
25	37
26	38
27	39
28	40
29	41
30	52
31	53
32	42
33	44
34	43
35	54
36	60
37	61
38	
39	
40	62
41	64
42	63
43	
44	66, 67
45	68
46	71
Annex I	Annex I
Annex II	Annex II
Annex III	Annex III
Annex IV	Annex IV
Annex V	Annex V

Proposal for a Council Regulation amending Regulation (EC) No 2505/96 opening and providing for the administration of autonomous Community tariff quotas for certain agricultural and industrial products

(2002/C 203 E/28)

COM(2002) 224 final

(Submitted by the Commission on 6 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 26 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council opened by virtue of Regulation (EC) No 2505/96 [1] Community tariff quotas for certain agricultural and industrial products; Community demand for the products in question should be met under the most favourable conditions; Community tariff quotas should therefore be opened at reduced or zero rates of duty for appropriate volumes, and increased or extended in the case of certain existing tariff quotas, while avoiding any disturbance to the markets for these products.

(2) Regulation (EC) No 2505/96 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article1

For the quota period from 1 January to 30 June 2002, Annex I to Regulation (EC) No 2505/96 shall be amended as follows:

— order number 09.2935: the amount of the tariff quota shall be altered to 80 000 tonnes.

Article 2

For the quota period from 1 January to 31 December 2002, Annex I to Regulation (EC) No 2505/96 shall be amended as follows:

— order number 09.2799: the amount of the tariff quota shall be altered to 50 000 tonnes;

— order number 09.2950: the amount of the tariff quota shall be altered to 6 500 tonnes.

Article 3

With effect from 1 July 2002, the tariff quotas listed in the Annex to this Regulation shall be added to Annex I to Regulation (EC) No 2505/96.

Article 4

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

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

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[1] OJ L 345, 31.12.1996, p. 1, as last amended by Regulation (EC) No 2559/2001 (OJ L 344, 28.12.2001, p. 5).

ANNEX

Order No	CN code	TARIC code	Description	Amount of quota	Quota duty (%)	Quota period
09.2882	ex 2908 90 00	20	2,4-Dichloro-3-ethyl-6-nitrophenol, powdered	43 tonnes	0	1.7.-31.12.2002
09.2890	ex 4819 40 00	10	Sack of paper, printed, having dimensions of 139 × 303 mm (± 5 mm), for use in the packaging of microwave-popcorn [a]	33 000 000 units	0	1.7.-31.12.2002
09.2902	ex 8540 11 15	91	Flat screen colour cathode-ray tube with a screen width/height ratio of 4/3, a diagonal measurement of the screen of 59 cm or more but not exceeding 61 cm and a curvature radius of 50 m or more	13 000 units	7	1.7.-31.12.2002
09.2904	ex 8540 11 19	95	Flat screen colour cathode-ray tube with a screen width/height ratio of 4/3, a diagonal measurement of the screen of 79 cm or more but not exceeding 81 cm and a curvature radius of 50 m or more	3 600 units	0	1.7.-31.12.2002
09.2995	ex 8536 90 85 ex 8538 90 99	95 93	Keypads, — comprising a layer of silicone and polycarbonate keytops or — wholly of silicone or wholly of polycarbonate, including printed keys, for the manufacture or repair of mobile radio-telephones of subheading 8525 20 91 [a]	10 000 000 units	0	1.7.-31.12.2002
09.2998	ex 2924 29 95	80	5'-Chlor-3-hydroxy-2',4'-dimethoxy-2-naphthanilid	8 tonnes	0	1.7.-31.12.2002

[a] Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions

Proposal for a Council Regulation terminating the anti-dumping proceeding concerning imports of bicycles originating in Indonesia, Malaysia and Thailand

(2002/C 203 E/29)

COM(2002) 226 final

(Submitted by the Commission on 6 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('Basic Regulation'), and in particular Articles 9 and 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) By Regulation (EC) No 648/96 of 28 March 1996 [2] the Council imposed a definitive anti-dumping duty on imports of bicycles and other cycles (including delivery tricycles), not motorised, falling within CN codes 8712 00 10, 8712 00 30 and 8712 00 80 and originating in Indonesia, Malaysia and Thailand.

(2) Following the publication of a notice of impending expiry of the anti-dumping measures in force on imports of bicycles originating in Indonesia, Malaysia and Thailand [3], the Commission received on 12 January 2001 a request to review these measures pursuant to Article 11(2) of the Basic Regulation.

(3) The request was lodged by the European Bicycle Manufacturers Association 'EBMA' on behalf of producers representing a major proportion of the total Community production.

(4) The request contained *prima facie* evidence showing that there would be a continuation or recurrence of injurious dumping should measures be allowed to lapse, which was considered sufficient to justify the initiation of an expiry review.

(5) Accordingly, the Commission, after consulting the Advisory Committee, initiated on 11 April 2001 by notice published in the *Official Journal of the European Communities* [4] an expiry review concerning the anti-dumping measures in force with regard to imports of bicycles originating in Indonesia, Malaysia and Thailand.

(6) The Commission officially advised the exporting producers, importers known to be concerned, the representatives of the exporting country and the Community producers of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

B. **WITHDRAWAL OF THE REQUEST AND TERMINATION OF THE PROCEEDING**

(7) By letter of 6 February 2002 to the Commission, EBMA formally withdrew its request for review of the anti-dumping measures applicable to imports of bicycles originating in Indonesia, Malaysia and Thailand.

(8) In accordance with Article 9(1) and Article 11(2) of the Basic Regulation, the proceeding may be terminated where the request is withdrawn, unless such termination would not be in the Community interest.

(9) It was considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Community interest. Interested parties were informed accordingly and were given the opportunity to comment, however, only a few comments were received. After examination of these comments, there is no indication that the termination of the measures would not be in the Community interest.

(10) It was therefore concluded that the anti-dumping proceeding concerning imports into the Community of bicycles originating in Indonesia, Malaysia and Thailand should be terminated and that the existing measures should be allowed to expire,

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[1] OJ L 56, 6.3.1996, p. 1, as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

[2] OJ L 91, 12.4.1996, p. 1.

[3] OJ C 271, 22.9.2000, p. 5.

[4] OJ C 110, 11.4.2001, p. 6.

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures concerning imports of bicycles, currently classifiable within CN codes 8712 00 10, 8712 00 30 and 8712 00 80 and originating in Indonesia, Malaysia and Thailand, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

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

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

Amended proposal for a European Parliament and Council Directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors [1]

(2002/C 203 E/30)

(Text with EEA relevance)

COM(2002) 235 final — 2000/0117(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 6 May 2002)

1. **Background**

Proposal submitted to the Council and the European Parliament (COM(2000) 276 final — 2000/0117(COD)) pursuant to Article 175(1) of the Treaty: 11 July 2000

Economic and Social Committee Opinion: 26 April 2001

Committee of the Regions Opinion: 13 December 2000

Opinion of the European Parliament at first reading: 17 January 2002

2. **Objective of the Commission proposal**

The Directive coordinating the procurement procedures of entities operating in the water, energy and transport sectors pursues a threefold objective of modernising, simplifying and rendering more flexible the existing legal framework. Modernisation is required in order to take account of new technologies and changes in the economic environment, including the liberalisations under way or set to take place in some of the activities covered. The purpose of simplification is to make the current texts more easily comprehensible for users, so that contracts are awarded in complete conformity with the standards and principles governing this area, and the entities involved (whether purchasers or suppliers) are in a better position to know their rights. Procedures need to be flexible in order to meet the needs of purchasers and economic operators.

3. **Commission opinion on Parliament's amendments**

The Commission has accepted, either in their entirety or in part, and with reformulations where appropriate, 47 of the 83 amendments adopted by the European Parliament.

3.1. *Amendments accepted by the Commission in their entirety or reformulated for purely formal reasons (Amendments 111, 7, 8, 67, 68 and 69)*

Amendment 111 introduces a new recital stating that nothing in this Directive shall prevent any contracting entity from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health. The Commission accepts this amendment, stressing that it is drafted in such a way as to reflect the provisions of the Treaty (Article 30):

Recital: '(2c) Nothing in this Directive shall prevent any contracting entity from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health, in particular with a view to sustainable development, provided that these measures are not discriminatory and do not conflict either with the objective of opening up markets in the sector of public contracts or with the Treaty.'

Amendment 7 modifies recital 34 in order to specify that tenders based on solutions other than those envisaged by the contracting entity must be taken into account if they are equivalent, and that contracting entities must give reasons for any decision concluding that there is no equivalence.

It is necessary to combine Amendment 7 with other amendments concerning the same problems — see comments on Amendments 35, 36, 38, 40, 95 and 99/118.

Amendment 8 modifies recital 42. It adds engineers' services to the examples of services whose remuneration is governed by national laws and which must not be affected.

Amendments 67, 68 and 69 remove the very detailed provisions concerning the arrangements for indicating the weighting given to each of the criteria applied in determining the most economically advantageous tender. The deletion of the three paragraphs is acceptable in order to simplify the arrangements for indicating weighting.

[1] OJ C 29 E, 30.1.2001, p. 112.

3.2. *Amendments accepted by the Commission with reformulation, in part or in substance (Amendments 89-96, 4, 33, 9, 70, 35, 36, 38, 40, 95, 99-118, 64, 18, 57, 109, 60, 43, 47, 13, 16, 21, 22, 26, 27, 29, 30, 117, 51, 53, 56, 66, 75, 76, 78, 79, 80, 81, 82, 83, 85 and 86)*

Amendments 89-96 introduce a new recital designed to emphasise the integration of environmental policy into public procurement policy. Article 6 of the Treaty stipulates that environmental protection requirements must be integrated into other policies: this means that the respective policies on the environment and public contracts must be reconciled. The Commission therefore considers that contracting entities must be enabled to procure 'green' products/services at the best value for money. It therefore takes up the amendment and reformulates it as follows:

Recital: '(2b) Under Article 6 of the Treaty establishing the European Community, environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development.

This Directive therefore clarifies how the contracting entities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that the contracting entities are in a position to obtain the best value for money for their contracts.'

Amendment 4 introduces a new recital specifying that contracting entities may require particular conditions concerning the performance of contracts, especially concerning the promotion of social objectives, provided that these clauses are compatible with Community law. In order to ensure consistency between the two public procurement Directives, it is appropriate to extend this possibility to conditions relating to environmental protection [1].

Amendment 33, modifying Article 33, third subparagraph, specifies that conditions concerning performance of the contract may include conditions linked to the promotion of social policy objectives; it is also intended to further reinforce compliance with the principles of equal treatment, non-discrimination and transparency, where contracting entities require particular conditions concerning performance of contracts. This amendment actually clarifies in a specific provision what is already contained in the generally valid provision set out in Article 9.

The Commission therefore incorporates Amendments 4 and 33 by means of the following texts:

Recital: '(32) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice used to call for competition, or in the specifications. They may be aimed at promoting on-the-job training and the employment of people who are facing particular difficulties in finding work, at combating unemployment or protecting the environment and give rise to obligations — applicable to contract performance — such as, in particular to recruit the long-term unemployed or implement training schemes for the unemployed and young persons, to comply with the substance of the provisions of the ILO core conventions in the event that these have not been implemented in national law, and to recruit a number of handicapped persons above that required under national legislation.'

'*Article 37a*

Contract performance conditions

Contracting entities may lay down special conditions relating to the performance of a contract, provided such conditions are compatible with Community law and indicated in the contract notice used as a means of calling for competition or in the contract documents. Contract performance conditions may relate in particular to social and environmental considerations.'

Amendment 9 introduces a new recital 42a specifying that contracting authorities may reject tenders which are abnormally low owing to non-compliance with social legislation. As this possibility already exists under existing law, it suffices to clarify it in an appropriate way.

Amendment 70 modifies Article 55 concerning abnormally low tenders by changing the words 'in relation to the service to be provided' into 'in relation to the supply, service or works to be provided'. The underlying intention (that this provision should also apply to supplies and works, and not just to services) clearly shows that this amendment is based on a misunderstanding due to a translation problem. The provision is in fact applicable to the three types of contract. With a view to consistency with the 'classic' Directive and in order to avoid subsequent differences of interpretation, it would be inappropriate to amend the existing legislation in the French version, which makes it sufficiently clear that the provision is applicable to the three types of contract. What is more, care should be taken to ensure that this is also the case in all language versions [2].

[1] Refer to European Parliament Amendment 10 to the Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts.

[2] The English version should therefore refer to 'goods, works or services'.

The Commission incorporates Amendments 9 and 70 as follows:

'*Article 55*

Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

(a) the economics of the manufacturing process, of the services provided and of the construction method;

(b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;

(c) the originality of the supplies, services or works proposed by the tenderer;

(ca) compliance with provisions on health and safety at work and working conditions in force at the place of performance;

(d) the possibility of the tenderer obtaining State aid.

2. The contracting entity shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting entity establishes that a tender is abnormally low on the grounds that the tenderer has obtained a State aid, the tender can be rejected on such grounds alone only after consultation with the tenderer, where the latter is unable to prove, within an adequate timeframe fixed by the contracting entity, that the aid in question was lawfully granted. Where the contracting entity rejects a tender in these circumstances, it shall inform the Commission of that fact.'

Amendments 35, 36, 38, 40, 95 and 99/118 relate to Article 34 concerning technical specifications.

Amendment 35 provides that technical specifications may be formulated in terms of requirements with regard to the environmental impact of the product throughout its lifetime. The Commission shares this approach.

Amendment 36 introduces a new definition, namely the 'equivalent standard', at a place where, on the contrary, a tender ensuring an equivalent solution is what is meant. Even if the amendment is understood to be concerned with equivalent solutions, the inclusion of costs in the definition of equivalent solutions is not acceptable, as the price element must come into play at the stage where tenders are evaluated on the basis of the award criteria, and not in order to enable tenders based on other solutions to be excluded for non-compliance with the technical specifications of the contracting entity.

Amendments 99-118 modify Article 34 to clarify that a contracting entity cannot reject a tender if the tenderer has proven to it that the tender satisfies contract requirements in an equivalent manner.

Amendment 38 specifies, on the one hand, that a test report from a recognised body may constitute an appropriate means of proof and, on the other, that a contracting entity that rejects a solution on grounds of non-equivalence must state the reasons for that decision and inform economic operators thereof on request. The obligation to communicate the reasons is taken into account in general terms in Article 48(2).

Amendment 40 permits reference to be made to particular production processes or to specific producers or suppliers in exceptional cases.

The possibility of referring to a particular production process may be acceptable provided that it does not have the effect of reserving the contract for a particular supplier.

Amendment 95, modifying Annex XX, alters the definition of technical specifications by adding the taking into account of environmental impact, user-instructions and production processes or methods.

This part of the amendment clarifies the text in line with the Commission Communication of 4 July 2001 on public procurement and the environment [1] and is thus acceptable with reformulation.

It also brings in design for all requirements, including accessibility for disabled people.

[1] 'Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement', COM(2001) 274 final (OJ C 333, 29.11.2001, p. 13).

Also taking into account Amendment 7, dealt with in point 3.1 above, the Commission incorporates Amendments 35, 36, 38, 40, 95 and 99/118 in recital 32, Article 34, Article 48(2) and Annex XX, reformulated as follows:

Recital: '(34) The technical specifications drawn up by public procurers must allow public procurement to be opened up to competition. To this end, it must be possible to submit bids which reflect the diversity of possible technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements; and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent arrangements meeting the requirements of the contracting entities and equivalent in terms of security must be taken into account by contracting entities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting entities must be able to provide a reason for any decision that equivalence does not exist in a given case.

Contracting entities that wish to lay down environmental requirements for the technical specifications of a given contract may specify the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications to specify the supplies or services sought, as defined by eco-labels such as the European eco-label, the (pluri)national eco-label or any other eco-label or parts of those specifications. However, this possibility must be admissible only if the requirements for the label are drawn up on the basis of scientific information and adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, retail and environmental organisations can participate, and providing the label is accessible to all interested parties.'

'Article 34

Technical specifications

1. The technical specifications as defined in point 1 of Annex XX shall be set out in the contract documentation, such as contract notices, contract documents or additional documents.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening-up of public procurement to competition.

3. Without prejudice to legally binding technical rules, insofar as they are compatible with Community legislation, the technical specifications must be formulated:

(a) by referring to specifications defined in Annex XX and, by order of preference, to national standards implementing European standards, European technical approvals, common technical specifications, international standards, other technical reference material produced by European standardisation bodies or, where these do not exist, national standards, national technical approvals or national technical specifications relating to design and the method of calculation and execution of works and use of material. Each reference shall be accompanied by the words "or equivalent";

(b) or in terms of performance or of functional requirements; these may include environmental characteristics. However, they must be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting entities to award the contract;

(c) or in terms of performance or functional requirements as referred to in point (b), referring as a means of presumption of conformity with these requirements or performance capabilities to the specifications cited in point (a);

(d) or by referring to the specifications in point (a) for certain characteristics, and to the performance capabilities or functional requirements in point (b) for other characteristics.

4. Where contracting entities avail themselves of the possibility of referring to the specifications referred to in paragraph 3, point (a), they may not reject a bid on the grounds that the products and services offered are not in conformity with the specifications to which they have made reference, provided that the tenderer proves in its tender to the satisfaction of the contracting entity, by any appropriate means, that the solutions it proposes meet the requirements defined by the technical specifications in an equivalent fashion.

An appropriate means may be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5. Where a contracting entity uses the option provided under paragraph 3 to formulate specifications in terms of performance or functional requirements, it may not reject a tender for products, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference produced by a European standardisation body if these specifications address the same functional and performance requirements.

In its tender, the tenderer must prove to the satisfaction of the contracting entity, by any appropriate means, that the products, services and works in compliance with the standard meet the functional or performance requirements of the contracting entity.

An appropriate means may be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5a. Where a contracting entity specifies environmental characteristics in terms of performance or functional requirements, it may use detailed specifications, or parts thereof, defined by European, (pluri)national or any other eco-labels, provided they are suitable for defining the characteristics of the supplies or services forming the object of the contract, and that the requirements for the label are drawn up on the basis of scientific information and that the label is adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, retail and environmental organisations can participate, and providing the label is accessible to all interested parties.

The contracting entities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

6. "Recognised bodies" within the meaning of the present article shall be understood to mean test and calibration laboratories, and inspection and certification bodies which are in compliance with the applicable European standards.

Contracting entities shall accept certificates from recognised bodies established in other Member States.

7. Unless justified by the object of the contract, the technical specifications shall not refer to a specific make or source, or to a particular process, or to a trade mark, patent, type or specific origin or production which would have the effect of favouring or eliminating certain enterprises or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of the contract is not possible in terms of paragraphs 3 and 4; such reference shall be accompanied by the words "or equivalent".'

'*Article 48*

Information to applicants for qualification, candidates and tenderers

1. . . .

2. The contracting entity shall, upon request, inform any unsuccessful candidate or tenderer as soon as possible of the reasons for the rejection of his application or his tender, and shall inform any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as of the name of the successful tenderer or the parties to the framework agreement. Under no circumstances may the time taken to provide such information exceed fifteen days, counting from receipt of the written request.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement, referred to in the first subparagraph, is to be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of public or private economic operators, including those of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

3. . . .

4. . . .

5. . . .'

'*ANNEX XX*

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive:

1. (a) "technical specification", in the case of public service or supply contracts, means a specification in a document defining the required characteristics of a product or service, such as quality and environmental performance levels, design for all requirements (including accessibility for disabled people) and use of the product, its safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production methods and procedures, as well as conformity assessment procedures;

(b) "technical specifications", in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting entity. These characteristics includes environmental performance levels, design for all requirements (including accessibility for disabled people) and conformity assessment levels, use of the product, safety or dimensions, including procedures relating to quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production procedures and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

2. "standard" means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

— international standard: a standard adopted by an international standards organisation and made available to the general public;

— European standard: a standard adopted by a European standards organisation and made available to the general public;

— national standard: a standard adopted by a national standards organisation and made available to the general public;

3. "European technical approval" means a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European approval shall be issued by an approval body designated for this purpose by the Member State;

4. "common technical specifications" means a technical specification drawn up in accordance with a procedure recognised by the Member States and published in the *Official Journal of the European Communities*;

5. "technical reference" means any product produced by European standardisation bodies, other than official standards, according to procedures adapted in line with market developments.'

Amendment 64 introduces a new Article 53a which provides that, should a contracting entity require the production of a certificate relating to an environmental management system, it must accept EMAS certificates, certificates attesting to compliance with international standards, as well as any other equivalent means of proof. In some appropriate cases — e.g. where the ability to comply with an eco-management scheme during the realisation of a public work is concerned [1] — an environmental management system may attest to technical capacity. For such cases, it is appropriate to make provision for the possible means of proof and for the recognition of equivalence, so as to ensure that contracts are not reserved for holders of certain certificates only. This amendment broadly takes over the provisions of Article 51(2) concerning quality assurance certificates. Given this affinity, this amendment may be inserted into Article 51 and be reformulated as follows in order to guarantee parallelism between these two provisions. The Commission therefore takes over Amendment 64 as follows:

Recital: '(39a) In appropriate cases, where the nature of the works and/or services justifies the application of environmental management measures or systems for the performance of the public contract, the application of such measures or systems may be required. Independently of their registration in accordance with the Community instruments (EMAS), environmental management systems may demonstrate the technical capacity of the economic operator to perform the contract. Moreover, a description of the measures taken by the economic operator to ensure the same level of environmental protection must be accepted as an alternative means of proof to the registered environmental management systems.'

'*Article 51*

Mutual recognition concerning administrative, technical or financial conditions, and certificates, tests and evidence

1. . . .

2. Where they request production of certificates produced by independent bodies, certifying that the economic operator satisfies certain quality guarantee standards, contracting entities shall refer to quality assurance systems based on the series of European standards on the subject and certified by bodies meeting European standards of certification.

They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality guarantees produced by economic operators.

3. For public works and service contracts, and in appropriate cases only, contracting entities may require an indication of the environmental management measures which the economic operator will be able to take during performance of the contract. If, in these cases, contracting entities require the production of certificates drawn up by independent bodies attesting to the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification.

They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures produced by economic operators.'

[1] Cf. the Interpretative Communication referred to above.

Amendment 18 is designed to enable economic operators tendering as a group to bring their collective capacities to bear for selection purposes, as regards: suitability to pursue the professional activity concerned, economic and financial capacity and technical and/or professional capability. However, the length of any professional experience required may not be cumulated. Moreover, the amendment provides that there may be a requirement for minimum criteria to be met by the head of the group.

The amendment is line with case law. However, it must be possible to apply the requirement 'suitability to pursue the professional activity' to each participant in a group, depending on the activity which the participant concerned will be called upon to carry out in the performance of the contract. As regards the minimum criteria which the contracting authority may require the head of the group to meet, it has to be ensured that the word 'minimum' is interpreted in such a way as to guarantee to the contracting authority that at least one participant in the group has the skills required for the performance of the contract.

This problem may arise in various contexts (both in the management of a qualification system and in open, restricted or negotiated procedures with a prior call for competition, and for each of these situations both for groupings of economic operators in the true sense and for economic operators acting alone but intending to draw on the capacity of other entities such as controlled enterprises, subcontractors, etc.). It must, therefore, be taken into account in the reformulation of Articles 52 and 53.

This reformulation must also take account of Amendments 57 and 109 which, without making any distinction between compulsory and optional exclusion criteria, make all the exclusion criteria provided for under Article 46 of the proposal for a classic Directive compulsory in the management of qualification systems and in the selection of participants in open, restricted or negotiated procedures with a prior call for competition.

Concerning the application of the optional criteria provided for under Article 46(2) of the classic Directive (bankruptcy, grave professional misconduct, etc.), these amendments need to be reformulated in order to retain the optional nature of these exclusion criteria.

As far as the compulsory exclusion criteria provided for under Article 46(1) of the classic Directive are concerned (convictions by final judgment, e.g. for participation in a criminal organisation), it is acceptable to make these provisions applicable where contracting authorities award contracts which are subject to the Utilities Directive, all the more so as it is often the case that one and the same contracting authority operates in both the utilities and the 'classic' sectors.

As regards contracting entities other than public authorities (e.g. public and private undertakings operating on the basis of special or exclusive rights), by contrast, such an obligation to apply these criteria is not acceptable, as compliance with these obligations by entities other than contracting authorities would necessarily presuppose that these entities can have access to information in the judicial record, which could give rise to serious problems in terms of data protection. What is more, account has to be taken of the fact that such information may relate to competing companies.

Amendment 60 would introduce a list of exclusion criteria in Article 53 concerning the selection of participants in open, restricted or negotiated procedures with a prior call for competition. The amendment cannot be taken over as it stands, as some of the cases would create unjustified differences to those referred to in the 'classic' Directive (e.g. the list includes the possibility of exclusion because of convictions for 'environmental' offences, whereas this case does not feature explicitly in Article 46(2) of the classic Directive). In order to ensure consistency between the two Directives, therefore, the substance of this amendment needs to be incorporated by way of a referral to Article 46(2).

To the extent indicated above, therefore, the Commission can take over Amendments 18, 57, 109 and 60 in Articles 52 (redrafted) and 53, formulated as follows:

'Article 52

Qualification systems

1. Contracting entities which so wish may establish and operate a system of qualification of economic operators.

Entities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of objective criteria and rules to be established by the contracting entity.

Where those criteria and rules include technical specifications, the provisions of Article 34 shall apply. The criteria and rules may be updated as required.

2a. The rules and criteria referred to in paragraph 2 may include the exclusion criteria listed in Article 46 of Directive . . ./. . ./EC (concerning the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts).

Where a contracting entity is a public authority within the meaning of Article 2(1)(a), these criteria and rules shall include the compulsory exclusion criteria listed in Article 46 of Directive . . ./. . ./EC.

2b. Where the criteria and rules of qualification referred to in paragraph 2 include requirements relating to the economic and financial standing of an economic operator, the economic operator may, where appropriate, bring to bear the resources of other entities, regardless of the legal links which it has with them. It must in that case prove to the contracting entity that it will have those resources at its disposal during the entire period of validity of the qualification system, e.g. by producing an undertaking given by those entities to that effect.

Under the same conditions, a grouping of economic operators, such as referred to in Article 10, may bring to bear the resources of the group participants or of other entities.

2c. Where the criteria and rules of qualification referred to in paragraph 2 include requirements relating to the technical and professional capabilities of an economic operator, the economic operator may, where appropriate, bring to bear the resources of other entities, regardless of the legal links which it has with them. It must in that case prove to the contracting entity that it will have those resources at its disposal during the entire period of validity of the qualification system, e.g. by producing an undertaking given by those entities to place the necessary resources at the disposal of the economic operator.

Under the same conditions, a grouping of economic operators, such as referred to in Article 10, may bring to bear the resources of the group participants or of other entities.

3. The criteria and rules for qualification referred to in paragraph 2 shall be made available, on request, to the economic operators concerned. The updating of these criteria and rules shall be communicated to the economic operators concerned.

Where a contracting entity considers that the qualification system of certain other entities or bodies meets its requirements, it shall communicate to the economic operators concerned the names of such other entities or bodies.

4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

5. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.'

'Article 53

Criteria for qualitative selection

1. Contracting entities which establish selection criteria in an open procedure shall do so in accordance with objective rules and criteria which are available to economic operators.

2. Contracting entities which select candidates for restricted or negotiated procedures shall do so according to objective criteria and rules which they have laid down and which are available to interested economic operators.

3. In restricted or negotiated procedures, the criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the procurement procedure with the resources required to conduct it. The number of candidates selected shall, however, take account of the need to ensure adequate competition.

4. The criteria set out in paragraphs 1 and 2 may include the exclusion criteria listed in Article 46 of Directive . . ./. . ./EC [on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts].

Where a contracting entity is a public authority within the meaning of Article 2(1)(a), the criteria referred to in paragraphs 1 and 2 of this Article shall include the compulsory exclusion criteria listed in Article 46(1) of Directive . . ./. . ./EC.

5. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the economic and financial standing of an economic operator, the economic operator may, where appropriate, and for a particular contract, bring to bear the resources of other entities, regardless of the legal links which it has with them. It must in that case prove to the contracting entity that it will have at its disposal the resources necessary, e.g. by producing an undertaking given by those entities to that effect.

Under the same conditions, a grouping of economic operators, such as referred to in Article 10, may bring to bear the resources of the group participants or of other entities.

6. Where the criteria referred to in paragraphs 1 and 2 include requirements relating to the technical and professional capabilities of an economic operator, the economic operator may, where appropriate, and for a particular contract, bring to bear the capabilities of other entities, regardless of the legal links which it has with them. It must in that case prove to the contracting entity that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking given by those entities to place the necessary resources at the disposal of the economic operator.

Under the same conditions, a grouping of economic operators, such as referred to in Article 10, may bring to bear the resources of the group participants or of other entities.'

Amendment 43 modifies the title of Article 38, adding a reference to obligations relating to environmental protection. The implication is that entities may state the authorities from which operators can obtain information concerning the relevant obligations in force at the place where the works or services are to be executed.

Although the modification of the title provided for in this amendment does not correspond to the content of the provision on account of the amendments modifying the content of this article having been rejected, its substance can nevertheless be accepted, given that the content of Article 38 will have to be altered in order to avoid unjustified discrepancies between this provision and those of the classic Directive (Article 27), as amended (see Amendment 50 to the 'classic' Directive).

Amendment 47 introduces a new subparagraph in Article 41(1) with the aim of increasing transparency regarding the information to be provided to economic operators on obligations under social legislation, in accordance with Article 38. Although the amendment would have required the adoption of the (rejected) amendments to Article 38, the principle that economic operators must be aware of the legislation to be complied with during execution of the contract in order to take it into account during the tender preparation phase is acceptable. However, such information cannot be limited solely to obligations deriving from social legislation, as other (environmental or tax) legislation — covered by Article 38 — must also be taken into account. There is, however, a risk of this information becoming so extensive that it could not be included in the notice where the call for competition is made by means of a periodic indicative notice or a notice on the existence of a qualification system, which may not only relate to a large number of individual contracts, but may also be published so far in advance of the launch of a particular contract (sometimes one or two years) that the information is at risk of becoming obsolete. It is preferable, therefore, to limit the obligation to provide this information to contracts for which the call for competition is made by means of a contract notice. Where this is not the case, the necessary transparency will nevertheless be assured, as the contract documents relating to individual contracts must contain the particulars needed to enable economic operators to obtain relevant and up-to-date information.

The Commission can incorporate Amendment 43 and Amendment 47 into Article 38(1) and Annex XII as reformulated below:

'*Article 38*

Obligations relating to taxes, environmental protection, health and safety at work and working conditions

The contracting entity shall state in the contract documents the body or bodies from which a candidate or tenderer may obtain the appropriate information on obligations relating to the provisions on health and safety at work and the working conditions which are in force in the Member State, region or locality in which works are to be carried out or services provided and which shall be applicable to works carried out or services provided on site during the performance of the contract.'

'*ANNEX XII*

INFORMATION TO BE INCLUDED IN CONTRACT NOTICES

A. **OPEN PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax numbers of the contracting entity.

1a. Where public works and supply contracts involve siting and installation operations: name, address, telephone and fax numbers, and electronic address of the departments from which information can be obtained concerning the provisions on taxes, environmental protection, health and safety at work and working conditions applicable in the place where the contract is to be performed.

. . .

B. **RESTRICTED PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax numbers of the contracting entity.

1a. Where public works and supply contracts involve siting and installation operations: name, address, telephone and fax numbers, electronic address of the departments from which information can be obtained concerning the provisions on taxes, environmental protection, health and safety at work and working conditions applicable in the place where the contract is to be performed.

. . .

C. **NEGOTIATED PROCEDURES**

1. Name, address, telegraphic address, electronic address, telephone number, telex and fax numbers of the contracting entity.

1a. Where public works and supply contracts involve siting and installation operations: name, address, telephone and fax numbers, electronic address of the departments from which information can be obtained concerning the provisions on taxes, environmental protection, health and safety at work and working conditions applicable in the place where the contract is to be performed.

. . .'

Amendment 13 is linked to Amendment 16. They are intended to ensure that contracting authorities in the postal sector currently subject to the classic Directive are subject to the more flexible rules of the 'Utilities Directive' in order to take account of the liberalisation under way in that sector.

Amendment 13 would thus add a reference to postal activities in the definition of the scope of this Directive, both for contracting authorities and for public and private undertakings engaged in a postal activity on the basis of exclusive or special rights.

Amendment 16, paragraph 2, provides moreover that the Directive is not applicable to postal services which can be supplied by other agencies on an unrestricted basis or are simply subject to a licensing procedure. Paragraph 3 is difficult to summarise, as there are substantial differences between the various language versions. On the basis of what appears to be the common denominator of the majority of versions, paragraph 3 would add to the amendment by providing that the Directive would not apply to contracts awarded by entities engaged in a postal activity (not excluded under paragraph 2) for their own undertaking, where the possibility exists that other undertakings could offer, on broadly the same terms and in the same geographic zone, all postal services whose economic importance is not secondary or negligible.

The principle of treating the postal sector in the same way as other forms of activity covered by this Directive is acceptable to the Commission. This is, in effect, a sector which is characterised by an activity carried out by both public and private entities operating across a network, often in monopolistic or oligopolistic situation, and for which the opening-up of postal services in the Community to competition is ongoing. When making the transfer, it has to be ensured that the definition of the activities referred to guarantees, on the one hand, that all activities linked directly or indirectly to the postal activity are included and, on the other, that the definition does not give a carte blanche for a transfer of activities linked neither directly nor indirectly to traditional postal services. To this end, the definitions contained in Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service [1] are a good starting point. It should be noted that the partial acceptance of Amendment 16 in Article 6a renders superfluous the modifications proposed by Amendment 13 to Article 2(2), without any change being made to the substance.

[1] OJ L 15, 21.1.1998, p. 14.

The Commission cannot accept the exceptions proposed in Amendment 16, given that paragraph 2 contrasts starkly with the overall approach of the proposal by seeking to ensure that there is a single mechanism for removal from the field of application, applicable under identical conditions to all activities covered by this Directive. However, the idea that operators might — whatever their legal status — be excluded from the field of application once the liberalisation process currently under way has produced adequate results can be accepted. Concerning the proposed changes to Article 29 aimed at making it applicable to public authorities engaged in a liberalised activity, see the comments on Amendment 117. Recital 14 is therefore deleted. It should also be pointed out that the general scheme of the text ensures that private entities operating in the postal sector will be subject to these rules only to the extent that they have exclusive or special rights for the exercise of the activities referred to. Paragraph 3 is not acceptable in the form proposed, as its application would appear to be linked solely to the possibility of other entities being able to offer postal services with a certain level of economic importance. It should be emphasised, however, that the existing exceptions, including in particular that provided for in Article 20 concerning contracts awarded for purposes of resale or hire to third parties, will also apply to the postal sector.

The Commission can, therefore, accept the substance of Amendments 13 and 16 as follows:

Title: 'EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors'

Recital: '(2) The procedures for the award of contracts which are applied by entities operating in the water, energy, transport and postal services sectors call for coordination based on the requirements inferable from Articles 14, 28 and 49 of the EC Treaty and from Article 97 of the Euratom Treaty, namely the principles of equality of treatment, of which the principle of non-discrimination is no more than a specific expression, mutual recognition, transparency and the opening-up of public procurement to competition. Whilst ensuring the application of those principles, this coordination should establish a framework for sound commercial practice and should allow a maximum of flexibility.'

Recital: '(2a) In view of the further opening-up of postal services to competition, and given that such services are provided across a network by public authorities, public undertakings and other undertakings, it is necessary to provide that contracts awarded by contracting entities offering postal services are subject to rules which, whilst ensuring the application of the principles referred to in recital 2, establish a framework for sound commercial practice and allow greater flexibility than offered by the provisions of Directive 2002/00/EC of the European Parliament and of the Council of ... [title of the works Directive etc.], while waiting for the liberalisation process to reach such a level as to make exclusion under the general mechanism envisaged to that effect possible. For the definition of the activities referred to, account has to be taken, when adapting them in line with the objectives of this Directive, of the provisions of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service [1], as amended by Directive .../.../EC of the European Parliament and of the Council amending Directive 97/67/EC insofar as concerns the further opening to competition of Community postal services.'

Recital: '(8) The need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in the water, energy, transport and postal services sectors requires that the entities to be covered must be identified on a basis other than by reference to their legal status. It has to be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.'

Recital (14): deleted.

'*Article 5a*

Provisions relating to postal services

1. This Directive shall apply to activities concerned with the provision of basic postal services, other postal services and auxiliary postal services.

2. For the purposes of this Article, and without prejudice to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service [1], as amended by Directive .../.../EC of the European Parliament and of the Council of ... amending Directive insofar as concerns the further opening to competition of Community postal services the following definitions shall apply:

(a) "postal item": an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight. Also included are other forms of mail such as unaddressed direct mail;

(b) "Basic postal services": services which are or may be reserved on the basis of Article 7 of Directive 97/67/EC, comprising the clearance, sorting, transport and delivery of postal items;

(c) "Other postal services": services other than those referred to in point (b) comprising the clearance, sorting, transport and delivery of postal items; and

(d) "auxiliary postal services": service provided in the following areas:

— mail management services (both upstream and downstream of posting such as mailroom management services); and

— value-added services associated with e-mail (including secure transmission of encrypted documents);

— financial services; and

— logistical services,

where these services are provided by an entity also providing postal services within the meaning of points (b) or (c).'

'*ANNEX Va*

CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

BELGIUM

De Post/La Poste

DENMARK

Post Danmark

GERMANY

Deutsche Post AG

GREECE

ELTA

[1] OJ L 15, 21.1.1998, p. 14.

SPAIN

Correos y Telégrafos, SA

FRANCE

La Poste

IRELAND

An Post

ITALY

Poste Italiane SpA

LUXEMBOURG

Entreprise des Postes et Télécommunications Luxembourg

NETHERLANDS

TNT Post Groep (TPG)

AUSTRIA

Österreichische Post AG

PORTUGAL

CTT — Correios de Portugal

FINLAND

Suomen Posti OYJ

SWEDEN

Posten Sverige AB

Posten Logistik AB

UNITED KINGDOM

Consignia plc'

List to be completed

'*ANNEX X*

LIST OF LEGISLATION REFERRED TO IN ARTICLE 29(3)

Ga CONTRACTING ENTITIES IN THE POSTAL SERVICES SECTOR

Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ([1]).'

Amendments 21 and 22 modify Article 19 regarding the methods for estimating the value of service contracts.

Amendment 21, which concerns the calculation of the value of insurance service contracts, is designed to take into account other forms of remuneration comparable with insurance premiums.

This amendment is justified by the type of services concerned and their mode of remuneration.

Amendment 22 specifically regulates the calculation of the value of contracts of indefinite duration with a tacit renewal clause.

The amendment is aimed at avoiding improper fragmentation designed to evade the obligations imposed by the Directive — it thus pursues a laudable aim. However, recourse to competition-reducing renewal clauses should be avoided.

To facilitate agreement between the co-legislators, the Commission takes the view that the four articles concerning calculation methods should be merged — Article 16 containing general rules, Article 17 for works contracts, Article 18 for supply contracts and Article 19 for service contracts. The Commission therefore incorporates Amendments 21 and 22 as follows:

'*Article 16*

Methods of calculating the estimated value of contracts and framework agreements

1. The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting entity. This calculation shall take account of the estimated total amount, including any form of option and any tacit contract renewal clauses.

([1]) OJ L 15, 21.1.1998, p. 14. Directive last amended by Directive .../.../EC of ... of the European Parliament and of the Council of ... amending Directive 97/67/EC insofar as concerns the further opening to competition of Community postal services (OJ L ...).

Where the contracting entity provides for prizes or payments to candidates or tenderers, it shall take them into account when calculating the estimated value of the contract.

2. Contracting entities may not circumvent this Directive by splitting works projects or proposed purchases of a certain quantity of supplies and/or services or by using special methods for calculating the value of contracts.

3. The basis for calculating the value of a framework agreement shall be the estimated maximum value, net of VAT, of all the contracts envisaged for the period in question.

4. For the purposes of Article 15, contracting entities shall include in the estimated value of a works contract both the cost of the works and the value of any supplies or services necessary for the execution of the works which they make available to the contractor.

5. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract, when doing so would result in removing the procurement of those supplies or services from the scope of this Directive.

6. Where a supply, service or work is the subject of several lots, the total estimated value of all those lots shall be taken into account. Where the aggregate value of the lots equals or exceeds the threshold laid down in Article 15, the provisions of that Article shall apply to all the lots.

However, in the case of works contracts, contracting entities may derogate from Article 15 in respect of lots whose estimated value net of VAT is less than one million euro, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

7. In the case of procurement of supplies or services over a given period by means of a series of contracts to be awarded to one or more suppliers or service providers, or of contracts which are to be renewed, the contract value shall be calculated on the basis of:

(a) the total value of contracts with similar characteristics which were awarded over the previous financial year or 12 months, adjusted where possible to reflect anticipated changes in quantity or value over the subsequent 12 months; or

(b) the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.

8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective shares. The calculation shall include the value of the siting and installation operations.

9. In the case of supply contracts for lease, rental or hire-purchase, the value to be used as the basis for calculating the contract value shall be:

(a) in the case of fixed-term contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;

(b) in the case of contracts for an indefinite period, or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

10. For the purposes of calculating the estimated contract amount of financial services, the following amounts shall be taken into account:

(a) in the case of insurance services, the premium payable and other forms of remuneration;

(b) in the case of banking and other financial services, the fees, commissions and interest and other forms of remuneration;

(c) in the case of contracts involving design tasks, the fees, or commissions and other forms of remuneration.

11. In the case of service contracts which do not indicate a total cost, the value to be used as the basis for calculating the estimated contract value shall be:

(a) in the case of fixed-term contracts, where their term is 48 months or less, the total contract value for their duration;

(b) in the case of contracts of indefinite duration, or with a term of more than 48 months, the anticipated total of the instalments to be paid in the first four years.'

Amendments 26 and 27 modify, respectively, the title and first paragraph of Article 26 concerning the possibility of awarding service contracts to an affiliated undertaking or to a contracting entity forming part of a joint venture.

Overall, these amendments are aimed firstly at extending the provision to include supply or works contracts.

They then provide for the following exclusions for contracts awarded to:

1. an undertaking affiliated to the contracting authority, or

2. a joint venture formed by several contracting authorities for the purpose of engaging in one of the activities covered by this Directive.

In these two cases, the amendment reduces the turnover requirement to 50 %. It is also envisaged that this condition can be met where the undertaking to which the contract is awarded has been in existence for less than three years, if the turnover required is likely to be attained at the end of the first three years of its existence.

The amendment also provides for exceptions for contracts awarded by a joint venture.

3. to one of the contracting entities which set it up, or

4. to an undertaking which is affiliated to one of those contracting entities.

In these last two cases, no other condition is laid down.

This extension to include works and supply contracts is unacceptable, in that it would question the *acquis communautaire*, without valid justification, by excluding from the scope of the Directive contracts which are currently covered by it. What is more, the possible acceptance of this extension could distort competition by reserving for certain undertakings the opportunity to gain income or experience which these same undertakings could invoke in calls — by other contracting entities — for competition in connection with comparable contracts, to the disadvantage of competing undertakings which had not had the opportunity to gain the same income and experience.

For the same reasons, the reduction of the turnover required for the exclusion to be applicable from 80 % to 50 % is also unacceptable, as is the removal of all conditions in the case of a contract awarded by a joint venture to an undertaking affiliated to one of the contracting entities which set up the joint venture (case No 4).

By contrast, the principle of providing for the possibility of awarding contracts to affiliated undertakings during the first three years of their existence is acceptable, if reformulated. The possibility of a contracting entity awarding contracts to a joint venture is consistent with the broad thrust of the provision and is therefore acceptable. Cases 1 and 3 are already provided for under existing legislation and thus do not pose any problems in terms of substance.

The Commission therefore incorporates Amendments 26 and 27 as follows:

Recital: '(28) It is appropriate to exclude certain service contracts awarded to an affiliated undertaking having as its principal activity, with respect to services, the provision of such services to the group of which it is part, rather than the offering of its services on the market. It is also appropriate to exclude certain service contracts awarded by a contracting entity to a joint venture set up by several contracting entities for the purpose of engaging in activities covered by this Directive and of which it itself forms part.'

'*Article 26*

Service contracts awarded to an affiliated undertaking, a joint venture or a contracting entity forming part of a joint venture

1. For the purposes of this Article, "affiliated undertaking" means any undertaking whose annual accounts are consolidated with those of the contracting entity in accordance with the requirements of the Seventh Council Directive 83/349/EEC [1], or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of point (b) of Article 2(1), or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it.

2. This Directive shall not apply to service contracts:

(a) which a contracting entity awards to an affiliated undertaking;

(b) awarded by a joint venture formed by a number of contracting entities for the purpose of carrying on activities within the meaning of Articles 3 to 6 to an undertaking which is affiliated with one of these contracting entities;

provided that at least 80 % of the average turnover of that undertaking with respect to services for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

Where, because of the date on which the affiliated undertaking was set up or commenced its activities, the turnover for the preceding three years is not available, it shall suffice for that undertaking to demonstrate that the turnover referred to in the first subparagraph will probably be achieved, particularly on the basis of activity forecasts.

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[1] OJ L 193, 18.7.1983, p. 1. Directive last amended by Directive 90/605/EEC (OJ L 317, 16.11.1990, p. 60).

Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

3. This Directive shall not apply to service contracts:

(a) awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out activities within the meaning of Articles 3 to 6 to one of those contracting entities;

(b) awarded by a contracting entity to such a joint venture of which it forms part.

4. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of the provisions of paragraphs 2 and 3:

(a) the names of the undertakings or joint ventures concerned;

(b) the nature and value of the service contracts involved;

(c) such proof as may be deemed necessary by the Commission that the relationship between the contracting entity and the undertaking or joint venture to which the contracts are awarded complies with the requirements of this Article.'

Amendment 29, modifying Article 27(1) reintroduces an exclusion, existing in the current Directive, for purchases of energy or fuels for the production of energy made by contracting entities operating in the energy sector in the broad sense of the term (production, transport and distribution of electricity, gas or heat, as well as the exploration for and extraction of oil, gas, coal or other solid fuels). However, a reformulation of a purely technical nature is required, replacing the references to annexes, which imply a reference to the contracting entities, with a reference to the articles defining the relevant activities.

Amendment 30 is designed to ensure that any modification to the exclusion provided for in paragraph 1 is carried out in agreement with the European Parliament. Given than any and every proposal to amend this provision will have to follow the co-decision procedure provided for by the Treaty, and that the Commission will always have the possibility of securing a re-examination of the provision by the two co-legislators by submitting appropriate and reasoned proposals, the amendment, while not being taken over explicitly, can be accepted in substance by deleting paragraph 2 of Article 27.

The Commission incorporates Amendments 29 and 30 in Article 27 as follows:

'Article 27

Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or fuels for the production of energy

This Directive shall not apply to:

(a) contracts for the purchase of water, insofar as they are awarded by contracting entities engaged in the activity referred to in Article 4,

(b) contracts for the supply of energy or fuel intended for production of energy by contracting entities engaged in an activity referred to in Article 3(1), Article 3(3) or Article 6, point (a).'.

Amendment 117 introduces the possibility for contracting entities themselves of requesting the opening of an exemption procedure under Article 29. Such a possibility is acceptable to the Commission. By incorporating Amendment 117, it is also possible to take into account the fear underlying Amendment 31 that the decision-making procedure under Article 31 is too complicated and long. Amendment 117 can therefore be incorporated as follows:

Recital (14): deleted.

'Article 29

General mechanism for the exclusion of activities directly exposed to competition

1. Contracts intended to permit the performance of a service mentioned in Articles 3 to 6 shall not be subject to this Directive if, in the Member State in which the activity is to be performed, it is directly exposed to competition on markets to which access is not restricted.

2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria such as the characteristics of the goods or services concerned, the existence of alternative goods or services, prices and the actual or potential presence of more than one supplier of the goods or services in question.

3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation referred to in Annex X.

If free access to a given market cannot be presumed on the basis of the first subparagraph, a Member State or the contracting entity seeking exemption must demonstrate that access to the market in question is free de facto and de jure.

4. In order to benefit from an exemption under paragraph 1, a Member State or a contracting entity shall ask the Commission to grant an exemption. If the request comes from a contracting entity, the Commission shall immediately inform the Member State concerned.

That Member State shall, taking account of paragraphs 2 and 3, inform the Commission of all the relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1.

The Commission may also initiate the procedure for adoption of an exemption decision at its own initiative.

For the adoption of a decision under this Article, in accordance with the procedure provided for in Article 65(2), the Commission shall be allowed a period of three months, commencing on the first working day following the date on which it receives the exemption request. This period may be extended once by one, two or three months in duly justified cases where the information contained in the request or in the documents attached is incomplete or inaccurate, or where the facts reported in the request subsequently change substantially.

If, at the end of this period, the Commission has not adopted a decision as to exemption, paragraph 1 shall be deemed to be applicable.

The Commission shall adopt the arrangements for application of this paragraph in accordance with the procedure provided for under Article 65(2).'

Amendment 51 specifies that the obligation on the part of the purchaser to preserve the confidentiality and integrity of the data submitted to it covers the entire operational cycle of the procedure: storage, processing and holding.

The clarifications proposed will be taken over in the relevant provisions of the text, but reformulated to take into account the requirements of the various types of electronic submission.

The Commission incorporates Amendment 51 by modifying Article 47 as follows:

'*Article 47*

Rules applicable to communication

1. All communication and information exchange referred to in this Title may be performed by letter, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting entity.

2. The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting entities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, reasonable available to the public and interoperable with the information and communication technology products in general use.

5. The following rules are applicable to devices for the electronic receipt of offers and requests to participate:

(a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, must be available to interested parties. In addition, the equipment for the electronic receipt of tenders and requests to participate shall comply with the requirements of Annex XXII;

(b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;

(c) tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for submission of tenders or requests to participate, the documents, certificates, attestations and declarations referred to in Article 51(2) and Articles 52 and 53 if they do not exist in electronic format.

6. Rules applicable to the transmission of requests to participate:

(a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone;

(b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time limit set for their receipt;

(c) contracting entities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit by which it must be met, must be stated by the contracting entity in the notice used as a means of calling for competition or in the invitation referred to in Article 46(3).'

Amendment 53 modifies Article 48(4), introducing a maximum period of two months within which economic operators whose application for qualification under a qualification system has been refused must be informed of the reasons for the refusal. The current provision does not set a time limit. The principle of including a time limit may be useful. However, a maximum period of two months could be too long in view of national time limits for appeals. Moreover, given that the same problems arise as those associated with the absence of a time limit for informing economic operators in respect of which a negative decision has been taken, the Commission can incorporate this amendment as follows:

'*Article 48*

Information to applicants for qualification, candidates and tenderers

1. Contracting entities shall, as soon as possible and at all events within a maximum period of fifteen days, inform the economic operators involved of decisions reached concerning the conclusion of a framework agreement or the award of a contract, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition, or to recommence the procedure, and shall do so in writing if requested.

2. The contracting entity shall, upon request, inform any unsuccessful candidate or tenderer as soon as possible of the reasons for the rejection of his application or his tender, and shall inform any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement. Under no circumstances may the time taken to provide such information exceed fifteen days, counting from receipt of the written request.

However, contracting entities may decide that certain information on the contract award or the conclusion of the framework agreement, referred to in the first subparagraph, is to be withheld where the release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular public or private economic operator, including those of the economic operator to whom the contract has been awarded, or might prejudice fair competition between economic operators.

3. Contracting entities who establish and operate a system of qualification shall inform applicants of their decision as to qualification within a reasonable period.

If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying an extension of the time limit and of the date by which his application will be accepted or refused.

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal as soon as possible, and at all events within a maximum period of fifteen days. The reasons must be based on the criteria for qualification referred to in Article 52(2).

5. Contracting entities who establish and operate a system of qualification may terminate the qualification of an economic operator only for reasons based on the criteria referred to in Article 52(2). The intention to terminate qualification must be notified in writing to the economic operator, together with the reason or reasons justifying the proposed action. This notification must be given as soon as possible, and at all events within a maximum period of fifteen days, commencing on the date envisaged for terminating qualification.'

Amendment 56 modifies Article 50, describing the procedure, so as to introduce an obligation to check tenderers' or candidates' compliance with obligations under environmental, social and tax legislation, defined by reference to Article 38. It is clear from the link-up with amendments rejected during the voting that this amendment is essentially targeted at non-compliance with social legislation. Therefore, the amendment would, *per se*, have required the adoption of the (rejected) amendments to Article 38.

It is nevertheless true that non-compliance with labour law may constitute grounds for exclusion of a tenderer under the provisions proposed by the Commission, without it being necessary to refer explicitly to this case in the substantive provisions; it may also constitute grounds for exclusion on account of 'grave professional misconduct' within the meaning of Article 46(2) of the classic Directive, to which contracting entities may explicitly refer (see comments on Amendments 57, 109 and 60 above). In its Communication of 15 October 2001 concerning the integration of social considerations into public procurement [1], the Commission explained the extent to which these cases were already covered by existing legislation. This also applies to this proposal; it is therefore acceptable to clarify this. The Commission can therefore incorporate Amendment 56 as follows:

[1] 'Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement', COM(2001) 566 final (OJ C 333, 29.11.2001, p. 13).

Recital: '(32a) National and Community laws, regulations and collective agreements in force on social protection and social security apply throughout the performance of a public contract, provided that the rules concerned, and also their implementation, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1] lays down the minimum conditions which must be observed by the host country in respect of such posted workers. Non-observance of these obligations may be considered by contracting entities, depending on the national law applicable, to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned.'

Amendment 66 is aimed firstly at deleting the obligation for contracting entities to state the weighting given to each of the award criteria which they will apply to determine the most economically advantageous tender. The amendment replaces this with a requirement merely to state the order of importance of the criteria.

The introduction of a provision imposing weighting is a major element of the proposal designed to prevent manipulations, encountered in practice, favouring certain operators, and allows any tenderer to be reasonably informed in accordance with the principles laid down by the Court in the 'SIAC' judgment [2]. It is essential that the weighting of the criteria be indicated in advance.

Amendment 66 also aims to simplify the arrangements for informing economic operators about each of the criteria.

The Commission can incorporate part of Amendment 66 as follows in Recitals 40 and 41, combined, as well as in Article 54(2).

Recital: '(40) The contract must also be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equality of treatment, and which guarantee that tenders are assessed in conditions of effective competition. As a result, it is appropriate to allow the application of two award criteria only: "the lowest price" and "the most economically advantageous tender".

Moreover, in order to ensure compliance with the principle of equality of treatment in the awarding of contracts, the obligation to ensure the necessary transparency should be codified to allow any tenderer to be reasonably informed as to the criteria chosen to determine the most economically advantageous tender. Therefore, contracting entities should be obliged to indicate the relative weighting given to each of these criteria in time for economic operators to be aware of it when they draw up their tenders. The contracting entity should be allowed to confine itself to setting out a simple descending order of importance attaching to the criteria. However, it is sufficient to indicate such an order of importance if, in exceptional circumstances, a weighting is not possible, in particular owing to the subject-matter of the contract.'

'Article 54

Contract award criteria

1. ...

2. In the case referred to in point (b) of paragraph 1, the contracting authority shall specify the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

This weighting can be expressed by providing for a range with an appropriate maximum spread.

If a weighting is not possible in exceptional cases, in particular owing to the subject-matter of the contract, the contracting entity shall indicate the order of importance of the application of the criteria.

This relative weighting or order of importance shall be specified in the notice used as a means of calling for competition, the invitation to confirm the interest referred to in Article 46(3), the invitation to submit a tender or to negotiate or in the specifications.'

Amendment 75 specifies that the obligation on the part of the purchaser to preserve the confidentiality and integrity of the data submitted to it covers the entire operational cycle of the procedure: storage, processing and holding.

The clarifications proposed will be taken over in the relevant provisions of the text, but reformulated to take into account the requirements of the various types of electronic submission. The Commission incorporates the Amendment as follows:

'Article 62

Means of communication

1. Article 47(1), (2) and (4) shall apply to all communications relating to the design contest.

[1] OJ L 18, 21.1.1997, p. 1.

[2] Judgment of 18 October 2001 in case C-19/2000, ECR 2001, p. I-7725.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved, and that the jury ascertains the contents of plans and projects only after the expiry of the time limit for their submission.

3. The following rules shall apply to the devices for the electronic receipt of plans and projects:

(a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the equipment for the electronic receipt of plans and projects shall comply with the requirements of Annex XXII;

(b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices.'

Amendment 76, which addresses a specifically German situation, would introduce a legal presumption of freedom of access to activities comprising exploration for and extraction of coal or other solid fuels in the event of a Member State voluntarily making a Directive (94/22/EC) relating to hydrocarbons licences ([1]) applicable to the coal sector. This amendment links up with the general exclusion mechanism provided for in Article 29.

The introduction of a legal presumption linked to the voluntary application of a Community Directive beyond its actual scope poses major problems in terms of legal certainty and does not take into account the differences between the hydrocarbons sector and that of coal and other solid fuels. Such a voluntary application cannot be ignored, however. The Commission therefore incorporates Amendment 76 into recital 13, modified as follows:

Recital: '(13) Direct exposure to competition must be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. The implementation and application of appropriate Community legislation liberalising a given sector, or a part of it, will be considered to provide sufficient grounds for assuming that there is free access to the market in question. Such appropriate legislation should be identified in an annex which can be updated by the Commission. Where access to a given market is not liberalised by Community legislation, the Member States must demonstrate that, de jure and de facto, such access is free. The voluntary application in national law of a Directive liberalising a given sector to another sector constitutes a fact which has to be taken into account for the purposes of Article 29.'

([1]) Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, p. 3).

Amendments 78, 79 and 80, respectively, impose in the case of open, restricted and negotiated procedures for which the prior call for competition is issued by way of a contract notice an obligation on the part of contracting entities to state in the contract notice the name and address of the body responsible for appeals in relation to the award of public contracts.

Increased transparency in this domain is desirable.

The Commission therefore incorporates Amendments 78, 79 and 80 as follows:

'*ANNEX XII*

INFORMATION TO BE INCLUDED IN CONTRACT NOTICES

A. **OPEN PROCEDURES**

. . .

19a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .

B. **RESTRICTED PROCEDURES**

. . .

17a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .

C. **NEGOTIATED PROCEDURES**

. . .

18a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'.

Amendments 81 and 82 relate to contracts for which the call for competition is made by means of a notice on the existence of a qualification system, or a periodic indicative notice, and impose an obligation on the part of contracting entities to state in these notices the name and address of the body responsible for appeals in relation to the award of public contracts. As regards periodic indicative notices, however, this new obligation of transparency should be limited to cases where the periodic indicative notice is used as the means of calling for competition, or where it enables the time limits for the receipt of applications or tenders to be reduced. Where the notice does not fulfil these functions, the added value of an obligation to provide information regarding appeals has not been demonstrated.

Amendment 83 introduces the same obligation in the case of contract award notices.

Increased transparency in this domain is desirable.

The Commission therefore incorporates Amendments 81, 82 and 83 as follows:

'*ANNEX XIII*

INFORMATION TO BE INCLUDED IN THE NOTICE ON THE EXISTENCE OF A SYSTEM OF QUALIFICATION

. . .

6a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'

'*ANNEX XIV*

INFORMATION TO BE INCLUDED IN THE PERIODIC NOTICE

I. HEADINGS TO BE COMPLETED IN ALL CASES

. . .

II. INFORMATION WHICH MUST BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS A REDUCTION OF THE TIME LIMITS FOR THE RECEIPT OF APPLICATIONS OR TENDERS

. . .

14a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'

'*ANNEX XV*

INFORMATION TO BE INCLUDED IN THE CONTRACT AWARD NOTICE

I. Information for publication in the *Official Journal of the European Communities* [1]

. . .

11a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

12. Optional information:

. . .'

Amendments 85 and 86, respectively, impose, in the case of notices of design contests and notices concerning the results of contests, an obligation on the part of contracting entities to state in those notices the name and address of the body responsible for appeals in relation to the award of public contracts.

Increased transparency in this domain is desirable.

The Commission therefore incorporates Amendments 85 and 86 as follows:

'*ANNEX XVII*

INFORMATION TO BE INCLUDED IN THE CONTEST NOTICE

. . .

13a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'

[1] Information under headings 6, 9 and 11 is regarded as information that is not to be published if a contracting entity takes the view that its publication would prejudice a sensitive commercial interest.

'*ANNEX XVIII*

INFORMATION TO BE INCLUDED IN THE RESULTS OF CONTEST NOTICES

. . .

8a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'

3.3. *Amendments not accepted by the Commission (Amendments 1, 5, 6, 123, 124, 10, 11, 106, 14, 19, 23, 25, 28, 31, 32, 91-98, 100, 120, 45, 48, 49, 50, 103, 52, 54, 55, 58, 61, 62, 125, 71, 73, 74, 77, 84 and 88)*

Amendment 1 is aimed at including among the objectives pursued by the Directive a guarantee of 'a high standard of reliable services of general interest at affordable prices'. This amendment is unacceptable because the Directive is aimed merely at coordinating procedures for the award of contracts, and does not address the standard of services of a general interest offered in the various Member States.

Amendment 5 modifies recital 8 by adding: 'The reason for regulating the water, energy and transport sectors by means of this Directive is that the entities which provide services in those areas are in certain cases public ones and, in other cases, private ones.'

It is indisputable that the activities addressed by the Directive are carried out by both public and private entities. However, to reduce the *raison d'être* of legislation coordinating procedures for the award of contracts to its application to all entities, whatever their legal status, is nevertheless unacceptable. The reasons for regulating contract award procedures in these sectors are in fact linked to the completion of the internal market in these sectors, which are characterised by an activity carried out by both public and private entities operating across a network, often in monopolistic or oligopolistic situations, where barriers to the smooth operation of the single market may persist. The fact that the entities operating in these sectors are in some cases public ones and in other cases private ones does not, *per se*, justify the introduction of regulatory measures, but has the effect that the scope of the Directive has to be defined otherwise than by a simple reference to the legal status of entities.

Amendment 6 aims to justify the extension, to supply and works contracts, of the exemption provided for in Article 26 (affiliated undertakings), as amended. Such an extension is not acceptable, for the reasons set out above with regard to Amendments 26 and 27.

Amendments 123 and 124 seek to change the concept of 'framework agreement', which is part of established law, into that of 'framework contract' [1], in the definitions in Article 1, and in Article 13 governing its use. These amendments are unacceptable: for one thing, they would create without any justification whatsoever a major difference between the two public procurement Directives (a definition of framework agreements closely based on that in the current sectors Directive will be introduced in the classic Directive); for another, they would deprive contracting entities of a flexible and useful instrument.

Amendment 10 is specifically designed to regulate framework contracts [2] in the field of translation and interpretation.

This amendment is also unacceptable: for one thing, contracting entities which have to procure translation and interpreting services may need the same flexibility as other contracting entities; for another, there is no justification whatsoever for making the award of framework contracts or agreements concerning this category of services covered by Annex XVIB subject to detailed rules of procedure different from those applicable to other services covered by the same Annex.

Amendment 11 sets out to make the awarding of prizes to participants in design contests compulsory and accordingly modifies the definition of 'design contests' by limiting them exclusively to contests in which prizes are awarded

The principle of making the awarding of prizes to participants compulsory may be justified where a design contest relates to projects incurring real costs, such as design contests organised with a view to the execution of a structure or an urban or landscaping project. However, it should be pointed out that design contests may be organised in other fields where the compulsory awarding of prizes would not be justified. What is more, the definition proposed by the amendment, according to which only design contests with prizes could be held, would not appear to be an appropriate way of achieving this objective. Indeed, such a definition would not prevent design contests without prizes being organised, but it would remove such contests from the scope of the Directive.

Amendment 106 includes 'purchasing groups' among public authorities in order to enhance legal certainty vis-à-vis such joint procurement bodies. To this end, the amendment inserts, on the one hand, an explicit reference to such purchasing groups, while on the other hand modifying the second subparagraph, first indent, i.e. the first cumulative criterion defining the concept of a body governed by public law, by deleting the words 'not having an industrial or commercial character'.

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[1] According to the original (DE) version and eight other language versions. The IT version, by contrast, has remained unchanged. The Finnish language apparently does not admit of a distinction between the two concepts.

[2] It should be noted, however, that the original version (IT) refers to framework agreements, nine other language versions to framework contracts. The Finnish language apparently does not admit of a distinction between the two concepts.

The amendment is inappropriate for several reasons:

— the modification of the definition of a 'body governed by public law' would create an unjustified difference between the two Directives, as the split vote on Amendments 126 and 172 to the classic Directive resulted in this change to the concept of a body governed by public law being rejected. This part of the amendment would also create a great deal of legal uncertainty in the demarcation of 'public authorities', including in particular bodies governed by public law and 'public undertakings'. This legal uncertainty would be all the greater as some rules would apply to 'public authorities' and not to 'public undertakings', and vice versa;

— the inclusion of purchasing groups among contracting entities would not entail any legal effect, as there are no proposals to set up a suitable framework to govern relations between contracting entities and purchasing groups;

— the purchasing groups of which the Commission is currently aware do not carry out any of the activities referred to by this Directive and are thus not subject to its rules;

— apart from this amendment, the justification for which shows that it is geared more to situations governed by the classic Directive, neither the debates in the European Parliament nor those in the Council have demonstrated a real need for specific rules on the subject in the framework of this Directive.

Amendment 14 rejects the modifications to the definition of exclusive and special rights proposed by the Commission, and thus has the effect of reverting to existing law.

The modification of the definition of exclusive rights is desirable, firstly in order to bring it more closely into line with other definitions of the same concept in other areas of Community legislation (especially in some telecommunications Directives and in the 'transparency' Directive [1]), and secondly because practical experience has shown that the current definition is too broad. Reverting to existing law on this point is therefore inappropriate as far as the Commission is concerned.

Amendment 19 would introduce into the substantive provisions a new recital stating that nothing in this Directive shall prevent any contracting entity from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health.

This amendment, the content of which is essentially identical to that of Amendment 111, is superfluous, as the Commission has accepted the latter.

Amendment 23 would enable the Commission to request Member States to provide information on which to base a decision on the applicability of the exclusion provided for by Article 22 in the case of contracts declared to be secret. The amendment is superfluous and would, moreover, lend itself to contradictory conclusions concerning all provisions in which such a possibility was not referred to, and could thus militate against the Commission addressing questions to Member States under Article 10 or Article 226 of the Treaty.

Amendment 25 extends to supply and works contracts an exclusion which relates to service contracts only. This extension to the exception provided for in Article 25 is unacceptable, as it would call into question the *acquis communautaire* without valid justification by excluding from the scope of the Directive contracts which are currently covered by it.

Amendment 28, modifying Article 26(3)(b), is a direct consequence of the extension, proposed in Amendments 26 and 27, of the exception provided for in Article 26(1), in respect of services only, to supply and works contracts. Given that this part of Amendments 26 and 27 is unacceptable to the Commission, the same applies to Amendment 28.

Amendment 31 modifies the general exclusion mechanism provided for in Article 29 by reducing the substantive conditions for exclusion to the sole condition that access to the activity concerned is not restricted, and adds that access to an activity shall legally be deemed not to be restricted if Community legislation liberalising that activity has been transposed. What is more, the amendment would eliminate the procedure for the Commission to decide whether an activity had been liberalised to such an extent as to render application of the public procurement rules superfluous.

The amendment is unacceptable to the Commission; firstly, because of the complete absence of legal certainty, both for the contracting entities concerned — they could find themselves facing a plethora of disputes following a decision not, or above all no longer, to apply the public procurement rules — and for economic operators, who would no longer know the legal framework governing their relations with contracting entities. Moreover, competitive distortions could arise where divergent assessments were made — for example depending on whether this is done by long-established operators or by recent entrants to the sector — of the state of liberalisation in a given sector, especially in the case of an activity which was not the subject of Community liberalisation legislation.

[1] Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ L 193, 29.7.2000, p. 75).

Secondly, this amendment is unacceptable also because it eliminates the condition under which unrestricted access must have had the effect of fully exposing the activity in question to competition. It is not unusual, especially where services are provided across networks, for there to be a time-lag between the adoption of liberalisation legislation and the point at which this begins actually to have an impact. It is also possible to imagine cases where established operators had enjoyed advantages over a long period, such that the entry into the market of other operators could remain purely theoretical for a long time.

Amendment 32 turns into an obligation the option, provided for in Article 33 of the Commission's initial proposal and taken over from existing law, for contracting entities to require information on the subject of any subcontracting envisaged.

It also makes it obligatory to stipulate conditions concerning provisions on health and safety at work and working conditions. The amendment also adds conditions relating to environmental protection.

As regards the first aspect, see the comments concerning the second aspect of Amendment 120 above.

The second part of the amendment is superfluous, as the possibility of stipulating conditions relating to environmental protection has been explicitly provided for elsewhere in the proposal (see comments on Amendments 3 and 33), while the new recital 32a — cited in the comments to amendment 56 — provides a reminder of the obligation to comply with social legislation. Under these conditions, an obligation to impose conditions going beyond the obligations deriving from legislation or from the applicable collective agreements is not appropriate.

Amendments 91-98 include, in particular, eco-labels and environmental management systems among the instruments which may be used as technical references for drawing up technical specifications. Moreover, they introduce a preference for European eco-labels.

The preference given to European eco-labels is inappropriate, given that these labels do not replace national or plurinational labels. The reference to environmental management systems is inappropriate, as this does not concern a technical specification characterising a product or a service. By contrast, where a contracting entity prescribes a particular environmental performance level, it may use the criteria of European or national eco-labels or any other eco-label, provided it has been drawn up by all the parties concerned and is accessible.

Amendment 100 relates to the means by which economic operators may prove to the satisfaction of the contracting entity the equivalence of the technical solutions proposed. It deletes any explicit reference to any means of proof other than test reports from impartial outside bodies — which can be very expensive.

Although the amendment is ambiguous in that it states that such a report 'may constitute' an appropriate means, it leaves open to serious doubt the question as to whether other means, such as a manufacturer's technical dossier, would be acceptable. The amendment, if actually intended to exclude other means of proof, runs counter to the objective of clarification underlying the Commission's proposal.

Amendment 120 is intended to:

1. ensure that contracting entities do not impose any 'quantitative restrictions on the exercise, by the undertakings, of freedom of organisation of their own inputs';

2. oblige contracting entities to ask the tenderer to indicate in his tender the share of the contract he may intend to subcontract, and the names of the subcontractors;

3. oblige contracting entities to prohibit any subcontracting to undertakings which are in the situation referred to in Article 46 of the classic Directive 'and/or undertakings which do not meet the requirements laid down in Articles 47, 48 and 49';

4. prohibit the contracting out of 'intellectual services, with the exception of translation and interpretation services and management and related services'.

The Commission cannot accept this amendment, the reasons being as follows:

1. If an economic operator can demonstrate that he can effectively draw on the capacity of other entities, for example through subcontracting, he is entitled, according to case law, to avail himself thereof for the purposes of selection. By contrast, there is nothing under current law to prevent a contracting entity from prohibiting (subsequent) subcontracting at the contract performance stage.

2. By dint of this obligation, tenderers would be required to single out in the tender both the portion of the contract to be subcontracted and the choice of subcontractors. Imposing such an obligation at Community level would appear to be excessive, given the fact that it is always the successful tenderer who is responsible for the execution of the contract. In view of the principle of subsidiarity, it would be up to Member States to provide, where necessary, for an obligation to identify subcontractors.

3. As regards contracts awarded by contracting entities which are public authorities, the possibility of excluding subcontractors would appear to be legitimate in respect of companies/persons convicted of certain offences (organised crime/corruption/fraud against the financial interest of the Community, cf. Article 46(1)) of the classic Directive or in other cases (non-compliance with labour law, cf. Article 46(2)); it nevertheless poses difficulties in terms of application. It presupposes knowledge of (see point 2) and *a priori* control over subcontractors, which would excessively lengthen award procedures.

However, it could be taken into account in accordance with the principle of subsidiarity (obligation imposed, where appropriate, by Member States).

As regards contracts awarded by contracting entities other than public authorities, imposing such an obligation on subcontractors would be impracticable, quite apart from the problems cited in the comments on Amendments 57 and 109 above concerning the obligatory application of the compulsory exclusion criteria listed in 46(1) of the classic Directive.

A possible obligation to exclude subcontractors in other cases (non-compliance with labour law, cf. paragraph 2 of the same Article) could be envisaged in accordance with the principle of subsidiarity (with the obligation being imposed by Member States where appropriate) but would pose the same problems as in cases where the contracting entity is a public authority.

As regards the aspects of point 3 relating to economic and financial standing and technical and professional capabilities, as referred to in Articles 48 and 49 of the classic Directive, this would mean that subcontractors would have to have the same capacity as the principal contractor, which would unjustifiably exclude SMEs. These aspects cannot, therefore, be taken into consideration, especially as contracting entities are in no way obliged to include such criteria among the rules and criteria applied for the selection of principal contractors or in the management of a qualification system.

As far as Article 47 of the classic Directive is concerned, the amendment proposes to apply in respect of subcontractors a stricter regime than that envisaged for candidates and tenderers (in the latter case, contracting entities would not be obliged to include such requirements among the rules and criteria applicable to the selection of candidates and tenderers or in the management of qualification systems, nor to request information, whereas in the case of subcontractors they would have to do so systematically). However, where provided for in the rules and criteria relating to the selection of participants or to the management of a qualification system, it is already possible to apply Article 47 of the classic Directive to subcontractors for selection purposes where a tenderer relies on means made available to him by subcontractors ('Holst Italia' judgment [1]).

4. It would not appear justified to lay down such a general prohibition: contracting entities, which are the parties concerned, are already able, if they so wish, to prohibit subcontracting by imposing conditions for the execution of the contract; this goes for all types of contracts and not just for certain services. By the same token, they must be free to allow subcontracting.

Amendment 45 aims to broaden the scope for awarding contracts for the purpose of research, experiment, study or development without a call for competition, by eliminating the conditions provided for under existing law, according to which such contracts cannot be awarded 'for the purpose of securing a profit or of recovering research and development costs and in so far as the award of such contracts does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends.'

By eliminating these conditions, the amendment would have the effect of excluding from the scope of the Directive contracts which are currently covered by it, thus calling the *acquis communautaire* into question. What is more, the amendment could create captive markets over very long periods, as the application of this exception could easily be followed by the use of another exception invoking technical reasons as grounds for continuing to award contracts to the successful tenderer for the initial research contract. The amendment is therefore unacceptable.

Amendment 48 adds a clarification that any 'other specific conditions for taking part', which must be included in the invitation to submit a tender or to negotiate in the restricted and negotiated procedures respectively, may not 'unduly discriminate between tenderers'.

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[1] Judgment of the Court of 2 December 1999, Holst Italia SpA v Commune di Cagliari, intervener: Ruhrwasser AG International Water Management, Case C-176/98, [1999] ECR I-8607.

The goal pursued by this amendment is in line with the proposal for a directive. This addition is superfluous, however, as the matter is already covered by Article 9 concerning the fundamental principles to be observed in general.

Amendment 49 is designed to prevent the contracting entity from being able to choose the means by which communication and the exchange of information must be performed in the context of an award procedure or of the management of a qualification system.

The effect of this amendment would be to oblige contracting entities to receive tenders by whatever means, regardless of whether they have the technical facilities to receive them by those means. The amendment therefore has to be rejected.

Amendment 50 states that tenders submitted by electronic means are to be rejected unless an advanced electronic signature within the meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used.

This amendment reflects the current situation regarding electronic signatures. However, technical developments in this area are proceeding apace. The amendment would make it necessary to amend the Directive in line with each new development. Guarantees concerning electronic signatures can be obtained by way of referral to national provisions on the subject (avoiding subsequent amendments to the text if and when Community legislation changes). Also, encryption is not necessary, as other means can be used to ensure the inviolability of tenders. What is more, compulsory encryption would incur additional costs for both the purchaser and the tenderers. Therefore, this amendment cannot be accepted.

Amendment 103 imposes an obligation to involve an accredited third party in order to guarantee the confidentiality of data transmitted by tenderers.

It should be stressed that Community policy has been geared towards ensuring that an accreditation system is never compulsory, given the risks of distortion and increased disparities between Member States.

Amendment 52 specifies that contracting entities must inform economic operators of their decisions regarding applications for qualification within a maximum period of two months.

Insofar as the goal of the amendment is to oblige contracting entities to complete the evaluation of applications for qualification within a maximum period of two months, this is unacceptable, given that qualification systems were added to this Directive *inter alia* to take account of the fact that the contracting entities need highly complex industrial equipment (e.g. rolling stock for railways), the technical evaluation of which may require testing, analysis, etc. over a long period of time. Moreover, if the intention of the amendment is to ensure that economic operators are provided with information by the two-month deadline, it is superfluous, as the second subparagraph already states that 'if the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.'

Amendment 54 is intended to extend the period for which the contracting entities must store information on the course of an award procedure from 4 to 6 years.

The provision in question was added 'so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests'. In view of the rules which govern the treatment of complaints and the code of good behaviour, requiring such an extension seems disproportionate, particularly given that the contracting entities would incur considerable expense applying it (particularly in terms of room for archives). It should be noted that Member States would be free to lay down a longer period if this were to prove necessary to safeguard the rights of economic operators (or to harmonise the length of time with that laid down in the national provisions, for example).

Amendment 55 aims to introduce a system for appeals against the decisions made by the contracting entities and to provide for it to be open to workers and their representatives.

There is already a separate and specific directive concerning appeals concerning public contracts (for utilities, this is Directive 92/13/EEC and not 89/665/EEC). Moreover, appeals by workers and their representatives with regard to social legislation in respect of public contracts are provided for. Specific methods of appeal for posted workers are set out in the Directive on the posting of workers (96/71/EC). These two systems of appeal cannot be combined. An identical amendment (Article 41a) was rejected by the Committee on Legal Affairs and was not put forward for the classic Directive. Adopting the amendment for this Directive would thus result in unjustified differences between the two Directives.

Amendment 58 introduces a rule according to which the provisions which apply to a given sector overrule the rules for public contracts if there is a conflict.

According to its justification, the amendment is aimed particularly at the rail sector (Proposal for a Regulation concerning passenger transport by rail, road and inland waterway ([1])).

The amendment should be rejected as it contradicts the approach taken by the Commission, particularly in the proposal for a Regulation, i.e. that sectoral rules be without prejudice to the general rules which apply to all public contracts, in the sense that they cannot introduce procedural rules for contracts for which competition is obligatory under the detailed rules of the public procurement Directives. Moreover, the amendment would create unjustified differences between the two Directives, as no similar amendment was put forward for the classic Directive, where the same problem may arise.

Under Amendment 61, the system of official lists of approved economic operators provided for in the classic Directive would apply to the contracting entities.

First of all, it should be pointed out that nothing prevents a contracting entity from accepting certificates of registration in the list as proof of capacity. Secondly, it is important to remember that, even under the classic Directive, other types of proof must be accepted. The amendment also contradicts the general approach taken by this Directive, which sets out more flexible rules than the classic Directive, except where the fundamental principles of Community law require the same rules, in order to take into account the fact that the scope includes public and private undertakings.

Amendment 62 is intended to establish that the criteria and rules used to select participants do not prejudice any conditions of performance.

As their name indicates, performance conditions are conditions which apply to the way the contract is performed. They are thus neither selection criteria nor award criteria. This has been confirmed in case law. Moreover, accepting this amendment would create an unacceptable difference between the two Directives, as no similar amendment was put forward for the classic Directive.

Amendment 125 is intended, as far as the award criterion of the 'most economically advantageous tender' is concerned, to:

1. remove the clarification that this means the most economically advantageous tender 'for the contracting entities';

2. specify that environmental characteristics may include 'production methods';

3. add the criterion of 'equal treatment policy'.

Re point 1: removal of the words 'for the contracting entities' would enable various, often non-measurable, elements to be taken into account in relation to a possible benefit to 'society' in the broad sense of the word. Such award criteria would no longer fulfil their function, which is to permit an evaluation of the intrinsic qualities of tenders in order to determine which one offers the purchaser the best value for money. This would completely disrupt the objective of the public procurement Directives and would amount to the institutionalisation of this legislation to the benefit of sectoral policies, while also introducing serious risks of inequality of treatment.

Re point 2: the contract award stage is not the appropriate time at which to choose a less polluting method. Less polluting production methods can be prescribed once the subject of the contract has been defined in the technical specifications when the purchaser chooses to purchase the solution causing the least pollution. If he wishes to compare different solutions and evaluate the advantages/cost of lower- or higher-pollution solutions, he may allow or insist on the presentation of variants.

Re point 3: the concept of equality of treatment takes on a particular meaning in the context of public contracts (= treating all applicants/tenderers in the same way), whereas the amendment seems to be concerned with non-discrimination within the meaning of Article 13 of the Treaty. To the extent that this concerns a criterion relating to the policy of the undertaking and not to the qualities of a tender, it cannot be an award criterion. The introduction of criteria linked to the undertaking would lead to a situation where certain undertakings were given preference on the basis of non-measurable elements during the award phase, even if their tenders did not give the purchaser the best value for money.

Amendment 71 modifies Article 57. This provision, which currently applies only to service contracts, is aimed at possible difficulties of access to service contracts in third countries which may be encountered by economic operators. It requires the Commission to strive to resolve problems concerning access to contracts in third countries. The amendment would extend the current provisions to three kinds of contracts, in addition to introducing a requirement to take action in the event of the third countries not complying with certain ILO conventions.

There is no justification for extending the existing requirements to take action to supply and works contracts. In fact, there are other instruments for these types of contracts, both in this Directive (e.g. Article 56), and as part of bi-, pluri- or multilateral agreements or negotiations. This aspect of the amendment is therefore unacceptable.

([1]) OJ C 365, 19.12.2000, p. 169.

As for the new cases requiring action, a public procurement Directive is not an appropriate instrument for introducing an obligation on the Commission to monitor the compliance of third countries with international labour law.

Amendment 73 removes, in Article 62(1), the part of the sentence which clearly states that the means of communication to be used in a contest is to be that chosen by the contracting entity.

Without this part of the sentence, the text would give participants the possibility of choosing the means of communication themselves, and the consequences would be those described with regard to Amendment 49.

Amendment 74 introduces, in Article 62, a new paragraph 1a making it compulsory, when transmitting drafts or plans by electronic means in the context of design contests for services, to use an advanced electronic signature and a reliable means of encryption.

See the reasons given for rejecting Amendment 50 and the text of Article 62 as amended (Amendment 75).

Amendment 77 introduces a legal presumption of freedom of access to the rail sector in the event of the transposition and correct application of Directive 91/440/EEC on the development of the Community's railways [1]. The amendment links up with the general exclusion mechanism described in Article 29.

It is not acceptable, as Directive 91/440/EEC is not, strictly speaking, a liberalisation directive.

Amendment 84 is intended to completely exclude banking services from the scope of the Directive.

This amendment is unacceptable, insofar as it would call into question the *acquis communautaire* by excluding contracts which are currently covered by the Directive. In addition, the reasons often given to justify such an exclusion (i.e. that it would be impossible to apply the procedures due to the volatility of rates) are not valid. The Directive provides means which can meet the needs expressed with regard to awarding these contracts (use of qualification systems, framework agreements, electronic means, etc.).

Amendment 88 introduces a new annex which lists the international conventions on working conditions for the purposes of Amendment 71.

Given that this annex is only relevant to Amendment 71 to Article 57, and that Amendment 71 is unacceptable for the reasons given above, Amendment 88 is itself unacceptable for the same reasons.

3.4. *Amended proposal*

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal in the foregoing terms.

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[1] OJ L 237, 24.8.1991, p. 25.

Amended proposal for a European Parliament and Council Directive concerning the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts [1]

(2002/C 203 E/31)

(Text with EEA relevance)

COM(2002) 236 final — 2000/0115(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 6 May 2002)

1. **Background**

Proposals submitted to the Council and the European Parliament (COM(2000) 275 final — 2000/0115(COD)) pursuant to Article 175(1) of the Treaty: 12 July 2000

Economic and Social Committee Opinion: 26 April 2001

Committee of the Regions Opinion: 13 December 2000

Opinion of the European Parliament at first reading: 17 January 2002

2. **Objective of the Commission proposal**

The proposal is aimed at recasting Community legislation on public procurement, the objective being to create a genuine internal European market in this area. This legislation is intended not to replace national law but to ensure compliance with the principles of equality of treatment, non-discrimination and transparency in the award of public contracts in all Member States.

This proposal, which follows on from the debate launched by the Green Paper on Public Procurement, pursues a threefold objective of modernising, simplifying and rendering more flexible the existing legal framework in this field: modernisation is required in order to take account of new technologies and changes in the economic environment; the purpose of simplification is to make the current texts more easily comprehensible for users, so that contracts are awarded in complete conformity with the standards and principles governing this area and the companies involved are in a better position to know their rights; and procedures need to be rendered more flexible in order to meet the needs of public purchasers and economic operators.

Moreover, the recasting of the three Directives in force will make available to economic operators, contracting authorities and European citizens a single, clear and transparent text.

3. **Commission opinion on Parliament's amendments**

The Commission has accepted, either in their entirety, in part, in spirit or with reformulation, 63 of the 103 amendments adopted by the European Parliament.

3.1. *Amendments accepted by the Commission in their entirety or reformulated for purely formal reasons (Amendments 1, 141, 4, 13, 125, 17, 50, 85, 88, 97 and 112)*

Amendment 1 proposes a new recital which recognises that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract is liable to distort competition; it therefore provides that Member States may lay down rules relating to the methods to be used for calculating the price/real cost of a tender.

Amendment 141 introduces a new recital stating that nothing in this Directive shall prevent any contracting authority from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health. The Commission accepts this amendment, while stressing that it needs to be framed in such a way as to reflect the provisions of the Treaty (Article 30):

Recital: '(6) Nothing in this Directive shall prevent any contracting authority from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health, in particular with a view to sustainable development, provided that these measures are not discriminatory and do not conflict either with the objective of opening up markets in the sector of public contracts or with the Treaty.'

Amendment 4 introduces a new recital linked to Amendment 40. It aims to clarify, in line with the case law of the European Court of Justice ('Teckal' judgment [2]) the conditions under which a contracting authority may award a public contract directly to an entity which is formally a separate legal entity but over which it exercises a control analogous to that which it exercises over its own departments.

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[1] OJ C 29 E, 30.1.2001, p. 11.

[2] Judgment of 18 November 1999 in case C-107/98, [1999] ECR I-8121.

Amendment 13 introduces a new recital which stresses the obligation on the part of Member States to adopt the necessary measures for the enforcement and operation of the Directive and to examine whether it is necessary to create an independent public procurement agency.

Amendment 125 modifies recital 31. It adds engineers' services to the examples of services whose remuneration is governed by national laws which must not be affected.

Amendment 17 introduces a new recital asking the Commission to examine the possibility of adopting a proposal for a Directive to regulate the concessions sector and project financing.

This amendment is accepted with slight changes for institutional reasons:

'(46) The Commission is asked to examine the possibility of reinforcing legal certainty in the concessions sector and in public/private partnerships, and to adopt a legislative proposal if it feels this is necessary.'

Amendment 50 modifies Article 27 — title and paragraph 1 — so as to ensure that tenderers have the necessary information on environmental, tax and social legislation in force at the place of performance and to oblige contracting authorities to state in the contract documents the body or bodies from which the appropriate information on this legislation can be obtained.

Amendment 85 modifies Article 46(2)(c) — regarding the possibility of excluding a candidate or a tenderer for having committed an offence concerning professional conduct — to the effect that exclusion will only occur after a final judgment pursuant to the law of the Member State in question.

Amendment 88 deletes from point (h) of Article 46(2) the 'possibility' of excluding a candidate or a tenderer who has been convicted by a judgment of fraud or any other illegal activity within the meaning of Article 280 of the Treaty, other than those referred to in the first paragraph (mandatory exclusion).

Amendment 97 introduces a new Article 50a which provides that, should a contracting authority require the production of a certificate relating to an environmental management system, it must accept EMAS certificates, certificates attesting to compliance with international standards, as well as any other equivalent means of proof. This amendment must be read in conjunction with Amendment 93 relating to technical capacity; in some appropriate cases — e.g. where the ability to comply with an eco-management scheme during the realisation of a public work is concerned — an environmental management system may attest to technical capacity. For such cases, it is appropriate to make provision for the possible means of proof and for the recognition of equivalence so as to ensure that contracts are not reserved for holders of certain certificates only. This amendment broadly takes over the provisions of Article 50 concerning quality assurance certificates.

Amendment 112 introduces the additional requirement in Annex VII A, Contract notices, point 1, indent (a) — concerning the name and address of the service from which contract documents and additional documents can be requested — to include the telephone number, fax number and e-mail address.

3.2. *Amendments accepted by the Commission with reformulation, in part or in substance (Amendments 2, 5, 168, 126-172, 21, 175, 7, 142, 171-145, 9, 137, 138, 45, 46, 47-123, 109, 10, 127, 11, 51, 15, 100, 170, 23, 54, 65, 24, 30, 93, 95, 31, 147, 34, 35, 36, 121, 38, 40, 5, 150, 70, 74, 77-132, 80, 86, 87, 89, 153, 104, 110, 113, 114)*

Amendment 2 introduces a new recital designed to emphasise the integration of environmental policy into public procurement policy. Article 6 stipulates that environmental protection requirements must be integrated into other policies: this means that the respective policies on the environment and public contracts must be reconciled. The Commission therefore considers that public purchasers must be enabled to procure 'green' products/services at the best value for money. It therefore takes up the amendment and reformulates it as follows:

Recital: '(5) In accordance with Article 6 of the Treaty establishing the European Community, environmental requirements are integrated into the definition and implementation of the policies and activities of the Community referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development.

This Directive therefore clarifies how the contracting authorities may contribute towards the protection of the environment and the promotion of sustainable development, whilst ensuring that the contracting authorities are in a position to obtain the best value for money when awarding their contracts.'

Amendment 5 is linked to Amendments 168, 126-172 and 21: in essence, these amendments introduce provisions enabling contracting authorities to make their purchases via purchasing groups.

Amendment 5 provides for a new recital explaining the need to establish a Community definition of purchasing groups and to define the procedures applicable to them and the manner in which contracting authorities may have recourse to purchasing groups, provided that the latter are themselves contracting authorities.

Amendment 168 introduces a new recital aimed at justifying purchases of supplies and services from or through purchasing groups provided that these groups have complied with the procedural rules of the Directive. The Commission takes the view that recourse to such purchasing groups must also be possible for works.

The Commission accepts the amendments, modified and combined in a single recital, as follows:

'(13) Certain techniques for centralising purchases have been developed in Member States. Several contracting authorities are charged with the task of making purchases or awarding public contacts on behalf of other contracting authorities. Given the scale of the volumes purchased, these techniques make for broader competition and improved efficiency of public procurement. It is necessary, therefore, to establish a Community definition for purchasing groups dedicated to contracting authorities. It is also necessary to define the conditions, subject to observance of the principles of equal treatment, non-discrimination and transparency, under which contracting authorities which acquire works, supplies and/or services from or through a purchasing group can be deemed to have complied with the provisions of this Directive.'

Amendments 126-172, 21 and 175 introduce specific provisions governing purchasing groups.

Amendments 126-172 includes among contracting authorities within the meaning of the Directive purchasing groups set up by contracting authorities.

Amendment 21 introduces a definition of a purchasing group and stipulates that purchasing groups meeting that definition must be notified to the Commission.

The objective pursued by Amendments 126-172 and 21 is legitimate, as purchasing groups contribute towards economies of scale, reinforce competition at European level given the size of the contracts involved and assist local authorities. It is nevertheless necessary to provide for the broadest possible arrangements for the configurations already in place in Member States.

Amendment 175 obliges purchasing groups to comply fully with the Directive and enables contracting authorities to acquire supplies or services directly from a purchasing group or through the intermediary of a third party without subsequent application of the Directive on their part.

The amendment can be accepted as regards the principle concerning recourse to a purchasing group, with this possibility being extended to include works in order to facilitate agreement between the co-legislators.

The Commission therefore takes up the spirit of these amendments by defining a purchasing group and including an article which, in accordance with the principle of subsidiarity, gives Member States the right to use purchasing groups and, where appropriate, to limit such use to certain contracts.

'*Article 1*

Definitions

1. For the purpose of this Directive, the definitions set out in paragraphs 2 to 12 shall apply.

. . .

7a A purchasing group is a contracting authority which:

— procures supplies and/or services intended for contracting authorities and/or

— awards public contracts or concludes framework agreements relating to works, supplies or services intended for contracting authorities.'

'*Article 7a*

Public contracts awarded and framework agreements concluded by purchasing groups

1. Member States may provide for the possibility of contracting authorities procuring works, supplies and/or services by having recourse to purchasing groups.

2. Contracting authorities which procure works, supplies and/or services by having recourse to a purchasing group in the cases referred to in Article 1(7a), shall be deemed to have complied with the provisions of this Directive provided that the purchasing group has complied with them.'

Amendments 7, 142 and 171-145 concern mixed 'services/works contracts'.

Amendment 7 is linked to Amendments 171-145. It introduces a new recital stipulating that the choice between awarding a joint contract covering both the design and execution of works or separate contracts is for contracting authorities to make and is not to be prescribed by the Directive. It specifies that the choice made by a contracting authority must be determined by qualitative and economic criteria, and that the award of a joint contract must be duly justified by the contracting authority.

The Commission acknowledges that it is appropriate to state that the free choice made between awarding joint or separate contracts must be based on qualitative and economic criteria. However, it does not share the view that there should be an obligation to justify the choice of a design and execution contract. As such an obligation would in effect apply only in the case of a 'joint' contract being opted for, it would actually encourage the award of separate contracts, which would be presumed to be an award method that automatically satisfies the qualitative and economic criteria. This presumption is not accepted; moreover, it contradicts the freedom of choice which is an expression of the subsidiarity principle. Finally, it would not appear appropriate to penalise the award of joint contracts, as joint award makes it easy to reach the trigger level for application of the procedural rules of the Directive by grouping together design services and execution works.

Amendment 142 is linked to Amendments 171-145; it introduces a new recital clarifying the distinction between public works contracts and public service contracts (contracts in the real estate management sector including consecutive or complementary works and works contracts providing for the provision of services which are necessary in order to carry out works). This amendment is in line with the case law of the European Court of Justice ('Gestión Hotelera' judgment) [1].

Amendments 171-145 modify Article 1 in order to specifically mention mixed works/services and services/works contracts. It explains, in particular, the conditions under which a real estate management service contract that includes works has to be deemed to be a public works contract. It also contains a provision concerning the separate or joint award of contracts for works or services (criteria for choice of award method and obligation to justify joint award) referred to in Amendment 7. The situations in which a contract includes both services and works are settled by applying the criterion of the principal object of the contract as indicated in the Commission's proposal. The amendment also clarifies this rule in the specific case of real estate management services involving works. Its substance would thus be better located in a recital. Moreover, it should be noted that the limitation to 'execution' works only is not justified.

As a result, the Commission reformulates Amendments 7, 142 and 171-145 in a single recital:

'(10) In view of the diversity shown by public works contracts, contracting authorities must be able to award separate or joint contracts for works and design services. It is not the intention of the Directive to prescribe separate or joint award. The decision as to whether to award separate contracts or a joint contract should be based on qualitative and economic criteria which may be laid down by national laws.

A contract may be deemed to be a public works contract only if its object specifically relates to the performance of the activities referred to in Annex I, although the contract may include other services necessary for the performance of those activities. Public service contracts, particularly in the area of real estate management, may include works in certain cases; however, these works, where they are of an ancillary nature and are thus merely consecutive or complementary to the main object of the contract, cannot justify the categorisation of the contract as a public works contract.'

Amendments 9 and 137 concern competitive dialogue, while Amendment 138 relates to a new possibility of exclusive dialogue.

Amendment 9 modifies Recital 18 so as to specify that, in a competitive dialogue, negotiations end once the consultation stage has been completed, without the definitive contract documents (necessarily) having been drawn up.

Amendment 137 is chiefly intended to:

1. make the submission of an outline solution compulsory. Having consulted the groups concerned, the Commission takes the view that an obligation to submit an outline solution would be a source of legislative complications and risks of 'cherry picking' (intellectual 'theft' against which there could be no protection). As a result, the Commission does not accept this obligation.

2. reinforce the confidentiality of data provided by economic operators. In order to facilitate agreement between the co-legislators, contracting authorities should continue to have the possibility of communicating to the other participants the data provided by one participant, with this possibility being reserved solely for cases where the participant concerned has given its consent to communication.

3. limit negotiations during the dialogue phase to aspects other than economic ones. To the extent that the amendment effectively aims to limit the subjects that could be dealt with during the dialogue phase to non-economic aspects only, that part of the amendment is not acceptable. The approach taken by the Commission is that the procedure, if it is to serve a useful purpose, must enable all aspects of the project to be discussed during the dialogue phase.

[1] Judgment of 19 April 1994 in case C-331/92, [1994] ECR I-1329.

4. expand the possibilities already provided for or introduce new possibilities for contracting authorities to amend contract specifications, award criteria and their weighting; (concerning this last aspect, the amendment is inconsistent, explicitly referring both to weighting and a straightforward order of importance of these criteria). The Commission's initial proposal provided for the possibility of amending the award criteria in the event of their no longer being appropriate for the solution adopted in the definitive contract documents. However, it is recognised that, in order to take widespread fears of 'cherry picking' into account and to facilitate adoption by the co-legislators, it is necessary to abandon the idea that the contract documents could be definitively established at the end of the dialogue phase, possibly on the basis of a mix of several solutions. Therefore, the possibility of amending the award criteria during the course of the procedure would create serious risks of manipulation.

5. introduce an obligatory monetary payment to participants (not exceeding in the aggregate 15 % of the estimated value of the contract). The principle of an obligatory monetary payment to participants may be accepted, especially as the costs linked to the conduct of a dialogue may lead contracting authorities to reserve this new procedure for particularly complex contracts. By contrast, it is not appropriate, for reasons of subsidiarity, to lay down the amounts to be paid.

Amendment 138 introduces a new Article 30a providing, in the case of contracts 'whose objective is the creation of a public-private partnership', that the contracting authority may conduct an 'exclusive dialogue' with the tenderer that has submitted the most economically advantageous tender, provided that this dialogue does not substantially alter fundamental aspects of the tender or distort competition. Although ambiguous on this point, the amendment would appear to introduce this possibility irrespective of the award procedure chosen.

If part of the amendment relates to all procedures and not just to the final phase of a competitive dialogue, it is not acceptable. The new competitive-dialogue procedure was introduced precisely to take into account, amongst other things, flexibility requirements, which may arise in connection with projects involving the creation of public-private partnerships.

By contrast, the idea underlying this amendment, namely that it may prove necessary to clarify certain aspects of the tender identified as being the most economically advantageous one or to confirm commitments featuring in it, can be accepted, provided there are appropriate safeguards, ensuring in particular that this will not have the effect of altering fundamental aspects of the tender or of the contract as put up for tender, falsifying competition or result in discrimination. It is also appropriate to ensure that clarifications do not involve any tenderer other than the one who submitted the most economically advantageous tender. To this extent, the idea of the amendment can be accepted, using formulations in line with recital (18) and Article 30 itself.

The Commission takes into account Amendments 9, 137 and 138 by reformulating them as follows:

Recital: '(27) Contracting authorities carrying out particularly complex projects may find it objectively impossible to define the tools likely to meet their needs or assess what the contract can offer in terms of technical or financial/legal solutions, without their being open to criticism in this regard. This situation may arise in particular in the setting-up of major integrated transport infrastructures, of major computer networks or of projects involving complex and structured financing, whose legal and financial package cannot be stipulated in advance. Inasmuch as recourse to open or restricted procedures would not enable such contracts to be awarded, a flexible procedure needs to be provided for which safeguards both competition between economic operators and the need on the part of contracting authorities to discuss all the aspects of the contract with each candidate. However, this procedure must not be used in such a way as to restrict or falsify competition, in particular by altering fundamental elements of the tender or imposing on the selected tenderer substantial new elements, or by involving any tenderer other than the one who has submitted the most economically advantageous bid.'

'*Article 1*

Definitions

1. For the purpose of this Directive, the definitions set out in paragraphs 2 to 12 shall apply.

8. . . .

The "competitive dialogue" is a procedure in which any economic operator may ask to participate and in which the contracting authority conducts a dialogue with the candidates invited to this procedure, with a view to developing one or more solutions likely to meet its requirements and on the basis of which the selected candidates are invited to submit a tender.

. . .'

'*Article 30*

Competitive dialogue

1. Member States may provide that a contracting authority which believes that recourse to the open or restricted procedure would not enable a contract to be awarded may have recourse to a competitive dialogue in accordance with the provisions of this article.

(a) where it is objectively unable to define, in accordance with Article 24(3)(b), (c) or (d), the technical means likely to meet its needs and/or

(b) where it is objectively unable to establish the legal and/or financial package for a project.

The public contract is to be awarded solely on the basis of the award criterion of the most economically advantageous tender.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define either in the same notice and/or in a descriptive document.

3. Contracting authorities shall open a dialogue with the candidates selected in accordance with the relevant provisions of Articles 43a to 52, the objective being to identify and define the means likely best to meet their needs. In the course of this dialogue, they may discuss all aspects of the contract with the selected candidates.

During the course of the dialogue, contracting authorities must ensure equality of treatment for all tenderers. In particular, they shall not provide, in a discriminatory manner, information that is likely to place certain candidates at an advantage over others.

Contracting authorities may not disclose to the other participants the solutions proposed or any other confidential information given by a candidate participating in the dialogue without the latter's consent.

4. Contracting authorities may arrange for the procedure to take place in successive phases so as to reduce the number of solutions to be discussed during the dialogue phase, applying the award criteria set out in the contract notice or the descriptive document. This option shall be pointed out in the contract notice or in the descriptive document.

5. The contracting authority shall continue the dialogue until such time as it can identify the solution or solutions, after having compared them if necessary, which is/are likely to meet its needs.

6. After announcing the end of the dialogue and informing the participants thereof, contracting authorities shall invite them to submit their final tender on the basis of the solution or solutions presented and specified in the course of the dialogue. These tenders must comprise all the elements required and necessary for the implementation of the project.

At the request of the contracting authority, these tenders may be clarified and explained. However, these explanations, clarifications or items of supplementary information shall not have the effect of altering the fundamental elements of the tender or of the invitation to tender, the variation of which is liable to falsify competition or have a discriminatory effect.

7. Contracting authorities shall assess tenders on the basis of the criteria established in the contract notice and shall select the most economically advantageous tender in accordance with Article 53.

At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may have to clarify aspects of its tender or confirm commitments featuring therein, provided that this will not have the effect of altering fundamental elements of the tender or of the invitation to tender, of falsifying competition or of leading to discrimination.

8. The contracting authorities shall specify prices and payments to the participants in the dialogue.'

Amendments 45, 46, 47-123 and 109 relate to Article 24 concerning the technical specifications to be used for defining works, supplies and/or services sought by the contracting authority.

Amendment 45 introduces a reference to European eco-labels as being an obligatory reference. This cannot be accepted, as Community policy on eco-labels does not introduce a hierarchy between European, plurinational and national eco-labels.

Moreover, it provides that technical specifications may be formulated in terms of requirements with regard to the environmental impact of the product throughout its lifetime. The Commission shares this approach.

On the other hand, it introduces a new definition, namely the 'equivalent standard', at a place where, on the contrary, a tender ensuring an equivalent solution is what is meant.

Amendment 46 modifies Article 24 in order to clarify that a contracting authority may not reject a tender where the tenderer has proved that it satisfies the requirements of the contract in an equivalent manner, to ensure the widest range of means of proof, and to guarantee that the tenderer is given the necessary information on the non-conformity of its tender. This last point is taken into account in general terms in Article 41(2).

Amendments 47-123 are aimed at avoiding discrimination through specifications referring to specific producers, suppliers or operators.

Amendment 109 introduces into the definition of technical specifications referred to in Annex VI environmental performance/compatibility and production methods or processes.

This part of the amendment clarifies the text in line with the Commission Communication [1] on public contracts and the environment and is thus acceptable with reformulation.

Environmental performance, by contrast, is not a specification as such; however, it may give rise to the definition of technical specifications in terms of environmental performance. The same applies for environmental compatibility.

It also brings in design for all requirements, including accessibility for disabled people.

The Commission takes up Amendments 45, 46, 47-123 and 109 in recital 25 (ex 17), Article 24, Article 41 (restructured) and Annex VI, reformulated as follows:

Recital: '(25) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit bids which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on other equivalent arrangements must be taken into account by the contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. The contracting authority must be able to justify any decision drawing the conclusion of non-equivalence.

Contracting authorities wishing to define environmental requirements in the technical specifications of a particular contract may prescribe specific environmental characteristics and/or effects of groups of products or services. They can, but are not obliged to, use the detailed specifications, or parts thereof which are suitable, to specify the supplies or services sought, as defined by eco-labels such as the European eco-label, the (pluri)national eco-label or any other eco-label if the requirements for the label are drawn up on the basis of scientific information and adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, retail and environmental organisations can participate, and providing that the label is accessible to all interested parties.'

'*Article 24*

Technical specifications

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents.

2. Technical specifications shall afford equal access for tenderers and not have the effect of creating unjustified obstacles to the opening of public procurement to competition.

3. Without prejudice to legally binding technical rules, insofar as they are compatible with Community law, the technical specifications must be formulated:

(a) by referring to specifications defined in Annex VI and, by order of preference, to national standards implementing European standards, European technical approvals, common technical specifications, international standards, other technical reference material produced by European standardisation bodies or, where these do not exist, national standards, national technical approvals or national technical specifications relating to design and method of calculation and execution of works and use of material. Each reference shall be accompanied by the words "or equivalent".

(b) or in terms either of performance or of functional requirements; these may include environmental characteristics. They shall, however, be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract.

(c) or in terms of performance or functional requirements as referred to in point (b), referring as a means of presumption of conformity with these requirements or performance capabilities to the specifications cited in point (a);

[1] 'Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement' (OJ C 333, 28.11.2001, p. 13).

(d) or by referring to the specifications in point (a) for certain characteristics, and to the performance capabilities or functional requirements in point (b) for other characteristics.

4. Where contracting authorities avail themselves of the possibility of referring to the specifications referred to in paragraph 3(a), they may not reject a bid on the grounds that the products and services offered are not in conformity with the specifications to which they have made reference, provided that the tenderer proves in its tender to the satisfaction of the contracting authority, by any appropriate means, that the solutions it proposes meet the requirements defined by the technical specifications in an equivalent fashion.

An appropriate means may be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5. Where a contracting authority uses the option provided in the second subparagraph of paragraph 3 to prescribe in terms of performance, it may not reject a tender for products, services or works which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference produced by a European standardisation body if these specifications address the same functional and performance requirements which it required.

In its tender, the tenderer must prove to the satisfaction of the contracting authority, by any appropriate means, that the products, services and works in compliance with the standard meets the functional or performance requirements of the contracting authority.

An appropriate means may be constituted by a technical dossier of the manufacturer or a test report from a recognised body.

5a Where a contracting authority prescribes environmental characteristics in terms of performance or functional requirements, such as those referred to in paragraph 3(b), it may use detailed specifications or, if necessary, parts thereof, as defined by eco-labels such as the European eco-label, the (pluri)national eco-label or any other eco-label, provided they are suitable for defining the characteristics of the supplies or services forming the object of the contract and that the requirements for the label are drawn up on the basis of scientific information, that the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, retail and environmental organisations can take part, and that they are accessible to all interested parties.

Contracting authorities may indicate that products or services carrying the eco-label are presumed to satisfy the technical specifications defined in the contract documents. They must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

6. "Recognised bodies" within the meaning of the present article shall be understood to mean test and calibration laboratories, and inspection and certification bodies which are in compliance with the applicable European standards.

Contracting authorities shall accept certificates issued by bodies recognised in other Member States.

7. Unless justified by the object of the contract, the technical specifications shall not refer to a specific make or source, or to a particular process, or to a trade mark, patent, type or specific origin or production which would have the effect of favouring or eliminating certain enterprises or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words "or equivalent".'

'*Article 41*

Informing candidates and tenderers

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement or the award of the contract, including the grounds for any decision not to conclude a framework agreement or not to award a contract for which there has been a call for competition or to recommence the procedure, and shall do so in writing if requested.

2. The contracting authority shall, upon request, inform any unsuccessful candidate or tenderer as soon as possible of the reasons for the rejection of his application or his tender, and shall inform any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected, as well as the name of the successful tenderer or the parties to the framework agreement. Under no circumstances may the time taken to provide such information exceed fifteen days, counting from receipt of the written request.

However, contracting authorities may decide to withhold certain information on the contract award or conclusion of a framework agreement, referred to in the preceding subparagraph, where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.'

'*ANNEX VI*

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive:

1. (a) "technical specification", in the case of public service or supply contracts, means a specification in a document defining the required characteristics of a product, such as quality levels, environmental performance, design for all requirements (including accessibility for disabled people), safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production methods and procedures, as well as conformity assessments procedures.

(b) "technical specifications", in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits them to be described in a manner such that they fulfil the use for which they are intended by the contracting authority. These characteristics include environmental performance levels, design for all requirements (including accessibility for disabled people) and conformity assessment levels, use of the product, safety or dimensions, including procedures relating to quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production procedures and methods. They also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

2. "standard" means a technical specification approved by a recognised standardisation body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

— international standard: a standard adopted by an international standards organisation and made available to the general public,

— European standard: a standard adopted by a European standards organisation and made available to the general public,

— national standard: a standard adopted by a national standards organisation and made available to the general public;

3. "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. A European technical approval is issued by an approval body designated for this purpose by the Member State;

4. "common technical specification" means a technical specification drawn up according to a procedure recognised by the Member States and published in the *Official Journal of the European Communities*;

5. "technical reference" means any product produced by European standardisation bodies, other than official standards, according to procedures adapted in line with market developments.'

Amendments 10 and 127 relate to contract performance conditions.

Amendment 10 comprises changes to recital 22 designed to clarify further that contract performance conditions must not constitute discrimination and that they may be intended to achieve, amongst other things, specific environmental goals.

The first part of the amendment modifies the wording proposed by the Commission ('provided that they are not directly or indirectly discriminatory'). The Commission's wording is based on the case-law of the European Court of Justice ('Beentjes' judgment [1]) and therefore should not be amended, especially as it does not have any restrictive effect on taking into account the environmental considerations referred to in the second part of the amendment, the principle of which is fully accepted.

Amendment 127 aims to further reinforce compliance with the principles of equal treatment, non-discrimination and transparency, where contracting authorities impose particular conditions concerning performance of public contracts. This amendment actually clarifies in a specific provision what is already contained in the generally valid provision set out in Article 2.

The Commission therefore incorporates Amendments 10 and 127 in the following texts, which also take into account the appropriateness of facilitating agreement between the co-legislators.

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[1] Judgment of 20 September 1988 in case C-31/87, [1988] ECR p. 4635.

Recital: '(29) Contract performance conditions are compatible with the Directive provided that they are not directly or indirectly discriminatory and provided that they are indicated in the contract notice and in the contract documents. They may be aimed at promoting on-the-job training and the employment of people who are facing particular difficulties in finding work, at combating unemployment or at protecting the environment, and may give rise to obligations — applicable to contract performance — to, in particular, recruit the long-term unemployed or implement training schemes for the unemployed and young persons, or to comply with the substance of the provisions of the ILO core conventions, in the event that these have not been implemented in national law, to recruit a number of handicapped persons above that required under national legislation.'

'*Article 26a*

Contract performance conditions

Contracting authorities may impose particular conditions concerning performance of the contract, provided that those conditions are compatible with Community law and provided that they are stated in the contract notice or in the contract documents. Contract performance conditions may relate in particular to social and environmental considerations.'

Amendments 11 and 51 relate to compliance with social protection provisions.

Amendment 11 introduces a new recital serving as a reminder of the applicability of the Directive on the posting of workers (96/71/EC), which sets out the minimum labour protection conditions which must be observed in which services are provided by such posted workers. This amendment is akin to what the Commission itself reiterated in its communication of 15 October 2001 on the social aspect of public contracts [1]. It contributes to the information available to the tenders and thus creates added value.

Amendment 51 obliges tenderers to comply with social legislation, including collective as well as individual rights, judicial decisions and collective decisions which are deemed to be generally binding. These obligations must not prejudice the application of more favourable employment protections rules and working conditions.

It is indisputable that companies tendering for public contracts must comply with the social legislation applicable in the country of establishment and, where appropriate, at the place where a service is rendered (cf. Commission communication of 15 October 2001 on the social aspects of public contracts). This reminder of applicable legislation could be the subject of a recital; it should not feature in the substantive provisions, however, as the objective of the public contracts Directives is to coordinate procedures for the award of public contracts and not to impose on companies specific obligations concerning social or other legislation.

The Commission takes the view that the concerns underlying this amendment are sufficiently taken into account by recital 29 mentioned above and by recital 30 below.

As a result, the Commission incorporates Amendments 11 and 51 by adding the following recital:

'(30) The laws, regulations and collective agreements in force at both national and Community level in the social and employment protection fields shall apply during the performance of a public contract provided that such rules, as well as their application, are in conformity with Community law. In cross-border situations, where workers from one Member State provide services in another Member State in respect of a public procurement contract, European Parliament and Council Directive 96/71/EC of 6 December 1996 concerning the posting of workers in the framework of a transnational provision of services [2] sets out conditions which should be observed in the host country in respect of such posted workers. Non-observance of these obligations may be considered, depending on the national law applicable, to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned.'

Amendments 15 and 100 relate to abnormally low tenders.

Amendment 15, linked to Amendment 100, introduces a new recital 31a specifying that contracting authorities may reject tenders which are abnormally low owing to non-compliance with social legislation. As this possibility already exists under current law, if suffices to clarify it in an appropriate way.

Amendment 100 removes in its first part the words specifying that, to be rejected, tenders must be abnormally low in relation to the goods, works or services. The removal of the words 'in relation to the goods, works or services', which are contained in the Directives in force, would eliminate a key element of the provision. Consequently, this part of the amendment cannot be accepted.

[1] 'Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement' (OJ C 333, 28.11.2001, p. 27).

[2] OJ L 18, 21.1.1997, p. 1.

The second part of Amendment 100 adds to the list of explanations (of the apparently too low price) which have to be taken into account by the contracting authority in order to determine whether a tender is abnormally low the fulfilment of obligations relating to health and safety at work and working conditions by the tenderer and subcontractors in performance of the contract, including, in the case of supply of products and services originating from third countries, compliance during production with the international standards referred to in an Annex IXb proposed by Amendment 116.

Contracting authorities may be interested in verifying that the price is not too low on account of the non-application of labour law; to this end, the Commission takes up this amendment by clarifying in the text that the list of explanations is not exhaustive.

As regards the internationally agreed core labour standards, it should be noted that compliance with these standards is not the object of the 'public contracts' directive. Where these standards have been transposed into national law, compliance with them can be verified when selecting candidates or tenderers.

The Commission incorporates Amendments 15 and 100 as follows:

'Article 54

Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

(a) the economics of the manufacturing process, of the services provided and of the construction method;

(b) the technical solutions chosen and/or the exceptionally favourable conditions available to the tenderer for the supply of the goods or services or for the execution of the work;

(c) the originality of the supplies, services or work proposed by the tenderer;

(ca) compliance with the provisions on health and safety at work and working conditions in force at the place of performance.

(d) the possibility of the tenderer obtaining State aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where a contracting authority establishes that a tender is abnormally low on the grounds that the tenderer has obtained a State aid, the tender can be rejected on such grounds alone only after consultation with the tenderer where the latter is unable to prove, within an adequate timeframe fixed by the contracting authority, that the aid in question was lawfully granted. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.'

Amendment 170 introduces a new recital 33(a) which provides for the mandatory exclusion of tenderers found guilty of the offences of participation in a criminal organisation, fraud and corruption, as well as of violations of environmental law and of non-compliance with social legislation. It also states that any conviction relating to unlawful agreements should be taken into account, and that a conviction in respect of grave professional misconduct would also justify exclusion.

This amendment makes it possible to justify by way of a recital the cases referred to in Article 46(1) (mandatory exclusions) as proposed by the Commission; however, it adds other elements which are better accommodated among the cases referred to in Article 46(2), in that they are already implicitly covered by that paragraph.

The Commission incorporates the amendment as follows:

'(39) The award of public contracts to economic operators who have participated in a criminal organisation or who have been found guilty of corruption or of fraud to the detriment of the financial interests of the European Communities, or of money laundering, must be avoided. The exclusion of such economic operators should take place as soon as the contracting authority has knowledge of a final judgment concerning such offences rendered in accordance with national law.

To this end, contracting authorities may require candidates/tenderers to provide appropriate documentation; where they have any doubts as to the personal situations of these candidates/tenderers, they may seek the cooperation of the competent authorities in the Member State concerned.

If national law contains provisions to this effect, non-compliance with environmental legislation sanctioned by a judgment having the force of res judicata or a conviction or sanction for unlawful agreement in connection with public contracts may be regarded as, respectively, an offence concerning the professional conduct of the economic operator concerned or as grave misconduct.'

Amendments 23, 54 and 65 relate to electronic auctions.

Amendment 23 provides a definition of a reverse auction for electronic tendering. This definition limits the use of such auctions solely to award procedures which result in the contract being awarded on the basis of the lowest price tendered.

It is appropriate to accept the introduction of such auctions with a view to electronic public purchasing. A definition must therefore be inserted and reformulated in order to bring it more closely into line with the Council's approach, where the scope of the auctions has been widened to include variables other than price.

Amendment 54 proposes the possibility of awarding a contract by electronic auction. However, the introduction of electronic auctions requires a reformulation so as to provide for the possibility of also holding an auction when a contract is awarded to the tenderer submitting the most economically advantageous tender and to introduce procedural guarantees and the necessary techniques.

Amendment 65 proposes the possibility of awarding a contract by electronic auction. However, it organises this possibility as a separate procedure, which runs counter to the aim of simplification and flexibility pursued in the Commission's proposal.

Consequently, the Commission incorporates Amendments 23, 54 and 65, modifying them in the following texts.

'Article 1

Definitions

1. For the purpose of this Directive, the definitions set out in paragraphs 2 to 12 shall apply.

. . .

5b An "electronic auction" is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and of new values relating to certain elements of tenders which occurs after the first complete evaluation of the tenders and which enables them to be evaluated automatically.

. . .'

'Article 53a

Use of electronic auctions

1. Member States may provide for the possibility of contracting authorities using electronic auctions.

2. In open, restricted or negotiated procedures in the case referred to in Article 29(1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the contract concerns works, supplies or services the specifications of which can be established with sufficient precision. An electronic auction may take place in several successive stages.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework agreement, as provided for in the second indent of the second subparagraph of Article 32(3).

3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice. The contract documents shall comprise, inter alia, the following information:

(a) the elements whose values will be the subject of the electronic auction, provided that these elements are quantifiable in such a way that they can be expressed in figures or percentages;

(b) the limits for the values which may be presented, as deriving from the entirety of the specifications of the subject of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction, and when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will be required;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before holding an electronic auction, contracting authorities shall evaluate tenders in accordance with the chosen award criterion or criteria.

An electronic auction shall concern

(a) prices only, where the contact is awarded on the basis of the lowest price;

(b) or prices and/or the new values of the elements of the tenders set out in the contract documents where the contract is awarded to the tenderer submitting the most economically advantageous tender.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the most economically advantageous offer, the invitation shall be accompanied by the outcome of the full evaluation of the recipient's offer, carried out in accordance with the weighting provided for in the first subparagraph of Article 53(2).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine the automatic rankings on the basis of the new prices and/or new values submitted. That formula shall express the relative weighting of each of the criteria chosen to determine the most economically advantageous offer, as indicated in the contract notice or in the specifications; any brackets shall, however, be reduced to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction, the contracting authorities shall continually and instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment; they may also communicate other information concerning other prices submitted, provided that that is stated in the specifications; they may also at any time announce the number of participants in that phase of the auction; in no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. The contracting authorities shall close an electronic auction in one of the following manners:

(a) in the invitation to take part in the auction they shall indicate the date and time fixed in advance;

(b) when they receive no more new prices which meet the requirements concerning minimum differences or no more new values. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last bid before they close the electronic auction;

(c) when the number of phases in the auction, fixed in the invitation to take part, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with subparagraph (c), possibly in combination with the arrangements laid down in subparagraph (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. When they have closed an electronic auction the contracting authorities shall award the contract in accordance with Article 53 on the basis of the results of the electronic auction.

9. Contracting authorities may not use electronic auctions improperly or in such a way as to restrict or distort competition or as to alter the subject of the contract as put up for tender by publication of the contract notice and defined in the contract documents.'

Amendment 24 aims to align the definition of a framework contract with that contained in the 'Utilities Directive' 93/38. The definitions contained in the amendment can be accepted, but have to be reformulated so as to enable several contracting authorities to conclude the same framework agreement at the same time.

The amendment is therefore incorporated as follows:

'*Article 1*

Definitions

1. For the purpose of this Directive, the definitions set out in paragraphs 2 to 12 shall apply.

. . .

5. A "framework agreement" is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

. . .'

Amendments 30, 93 and 95 concern economic and financial capacity, as well as technical and/or professional capability.

Amendment 30 is designed to enable economic operators tendering as a group to bring their collective capacities to bear for selection purposes, as regards suitability to pursue the professional activity concerned, economic and financial capacity and technical and/or professional capability. However, the length of any professional experience required may not be accumulated. Moreover, the amendment provides that there may be a requirement for minimum criteria to be met by the head of the group.

The amendment is line with case-law. However, it must be possible to apply the requirement 'suitability to pursue the professional activity' to each participant in a group, depending on the activity which the participant concerned will be called upon to carry out in the performance of the contract. As regards the minimum criteria which the contracting authority may require the head of the group to meet, it has to be ensured that the word 'minimum' is interpreted in such a way as to guarantee to the contracting authority that at least one participant in the group has the skills required for the performance of the contract.

The Commission feels that the spirit of the amendment should be incorporated into Articles 48 and 49, which relate more particularly to economic and financial capacity and technical and/or professional capability.

Amendment 93 adds to the means of proof of technical/professional capability for the provision of services an indication of the technicians or technical bodies responsible for environmental management or the health and safety of workers.

Amendment 95 proposes for works the same addition as Amendment 93 proposes for services.

Amendments 93 and 95 are designed to provide a way of judging the technical capability of an economic operator to deliver services or carry out works which are both environmentally friendly and geared to the health and safety of workers. These aspects are covered either by the description of the service specifications or by the requirement, in other phases in the award procedure, of compliance with social or environmental legislation. However, 'environmental management measures' may testify, in appropriate cases, to an 'environmental' technical capability.

The Commission therefore incorporates Amendments 30, 93 and 95 into Articles 48 and 49, modified as follows:

'Article 48

Economic and financial standing

1. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

(a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) the presentation of balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the economic operator is established;

(c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, insofar as the references of this turnover are available.

2. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing the undertaking of those entities to that effect.

2a Under the same conditions, a group of economic operators, such as referred to in Article 3, may bring to bear the capacities of the group participants or of other entities.

3. Contracting authorities shall specify, in the contract notice or in the invitation to tender, which reference or references mentioned in paragraph 1 they have chosen and which other references must be provided.

4. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.'

Recital: '(40) In appropriate cases, where the nature of the works and/or the services justifies the application of environmental management systems during the execution of a public contract, the application of such measures or systems may be required. Irrespective of their registration in accordance with Community instruments (EMAS Regulation), environmental management systems may demonstrate the technical capability of the economic operator to execute the contract. Moreover, a description of the measures applied by the economic operator in order to ensure the same level of environmental protection must be accepted as an alternative means of proof to registered environmental management systems.'

'Article 49

Technical and/or professional capability

1. The technical and/or professional capabilities of the economic operators shall be assessed and examined in accordance with paragraphs 2 and 3.

2. Evidence of the economic operators' technical capability may be furnished by one or more of the following means according to the nature, quantity or scale, and purpose of the supplies, services or works:

1. (a) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where necessary, the competent authority shall submit these certificates to the contracting authority direct;

(b) a list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients, public or private, involved. Evidence of delivery and services provided shall be given:

— where the recipient was a contracting authority, in the form of certificates issued or countersigned by the competent authority;

— where the recipient was a private purchaser, by the purchaser's certification or, failing this, simply by a declaration by the economic operator;

2. indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator, especially those responsible for quality control and, in the case of public works contracts, which the contractor can call upon for carrying out the work;

3. a description of the technical facilities and measures used by the supplier or service provider for ensuring quality, and of his undertaking's study and research facilities;

4. where the products or services to be provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on his study and research facilities and quality control measures;

5. the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;

5a for public works and service contracts, and in appropriate cases only, the environmental management measures which the economic operator will be able to take during performance of the contract;

6. a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years;

7. a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the services;

8. an indication of the proportion of the contract which the services provider intends possibly to subcontract;

9. with regard to the products to be supplied:

(a) samples, descriptions and/or photographs, the authenticity of which must be certified if the contracting authority so requests;

(b) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing the undertaking of those entities to place the necessary resources at the disposal of the economic operator.

3a Under the same conditions, a group of economic operators, such as referred to in Article 3, may bring to bear the capacities of the group participants or of other entities.

4. In the procedures for awarding public contracts having as their object the provision of services and/or the execution of works, the ability of economic operators to perform this service or to execute this work may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

5. The contracting authority shall specify, in the notice or in the invitation to tender, which references under paragraph 2 it wishes to receive.'

Amendment 31 adds to contracting authorities' obligations concerning compliance with confidentiality requirements in relation to data submitted by economic operators, particularly by giving the list of information or documents concerned and by specifying that these obligations must be met both during and after the award procedures.

The listing of the information and documents concerned, as envisaged by the amendment, would appear to be excessive, but can be taken over in the form of examples. As regards the technical solutions proposed in the competitive dialogue, Article 30 already governs this aspect (paragraph 3, third subparagraph). By contrast, the absolute character of the provision 'both throughout and after the award procedure' could have the effect of impeding competition: an enterprise which had designed a project within the framework of a service contract would subsequently be the only one able to carry out that project, as the plans could not be divulged to any other candidate or tenderer. What is more, a contradiction could arise between transparency obligations, e.g. vis-à-vis control bodies, and confidentiality obligations.

Taking due account of Amendment 31, which has recognised the right of economic operators to demand that the information which they provide be treated confidentially, in accordance with the applicable national legislation, the Commission amends Article 5 as follows:

'*Article 5*

Confidentiality

This Directive shall not limit the right of economic operators to require a contracting authority, in accordance with national law, to respect the confidential nature of information which they make available; such information shall include in particular technical or commercial secrets and the tenders.'

Amendment 147 introduces a new provision recalling that the principles of the Treaty are applicable to all public contracts, including those falling below the Directive's application threshold. As regards the principle of non-discrimination, this provision stipulates that this implies an obligation of transparency and that this transparency consists of ensuring an adequate level of publicity in order to open up public service contracts to competition and ensure impartiality in the award procedures. In order to guarantee compliance with this obligation, Member States would have to refer to the relevant provisions of the Directive.

A reminder of the obligation to comply with the rules of the Treaty when awarding public contracts below the thresholds for application of the Directive is in line with Community law and with the case-law of the European Court of Justice. However, it would in no way be justified to limit the transparency principle's implications solely to public service contracts as proposed in the amendment.

Nor would it be appropriate to provide that, in order to implement the obligation of transparency, Member States should refer to the 'relevant provisions of this Directive', which would both create legal uncertainty and go beyond compliance with the rules of the Treaty. Those principles do not imply publicity and procedural obligations as specific as those provided for by the Directive, and it would appear neither justified nor appropriate to subject contracts of whatever value to those rules.

The Commission incorporates the amendment by reformulating recital 2 of its proposal as follows:

'(2) The principles of freedom of movement of goods, freedom of establishment and freedom of services, and the principles deriving therefrom, such as the principles of equality of treatment, of which the principle of non-discrimination is no more than a specific expression, mutual recognition, proportionality and transparency, apply to contracts concluded by entities subject to the Treaty or in the name or on behalf of those entities. These principles shall apply whatever the value of the contracts. However, in order to facilitate their application in the case of high-value contracts, it is appropriate to coordinate national award procedures under this Directive. These coordination provisions must be interpreted in accordance both with the aforementioned rules and principles and in conformity with the other Treaty rules.'

Amendments 34 and 35 relate to the methods for estimating the value of service contracts.

Amendment 34, which concerns the calculation of the value of insurance service contracts, is designed to take into account other forms of remuneration comparable with insurance premiums.

This amendment is justified by the type of services concerned and the mode of remuneration.

Amendment 35 specifically regulates the calculation of the value of contracts of indefinite duration with a tacit renewal clause.

The amendment is aimed at avoiding improper fragmentation designed to evade the obligations imposed by the Directive — it thus pursues a laudable aim. However, recourse to competition-reducing renewal clauses should be avoided.

The Commission incorporates Amendments 34 and 35 by means of a reformulation also aimed at simplifying the text by merging the four articles concerning calculation methods — Article 10 for framework agreements, Article 11 for supplies, Article 12 for services and Article 13 for works, as follows:

'Article 10

Methods for calculating the estimated value of public contracts and of framework agreements

1. The calculation of the estimated value of a public contract shall be based on the total amount net of VAT payable as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any tacit contract renewal clauses.

Where the contracting authority provides for prizes or payments to candidates or tenderers, it shall take them into account when calculating the estimated value of the contract.

2. This estimate must be valid at the moment at which the contract notice is sent, as provided for in Article 34(2), or, in cases where such notice is not required, at the moment at which the contracting authority commences the contract awarding procedure.

3. No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive.

4. With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) in the case of fixed-term public contracts, if that term is less than or equal to twelve months, the total estimated value for the term of the contract or, if the term of the contract is greater than twelve months, the total value including the estimated residual value;

(b) in the case of public contracts without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

5. With regard to public service contracts, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

(a) for the following types of services:

(i) insurance services: the premium payable and other forms of remuneration;

(ii) banking and other financial services: the fees, commissions, interest and other forms of remuneration;

(iii) design contracts: fees, commission payable and other forms of remuneration;

(b) for service contracts which do not indicate a total price:

(i) in the case of fixed-term contracts, if that term is less than or equal to forty-eight months: the total value for their full term;

(ii) in the case of contracts without a fixed term or with a term greater than forty-eight months: the monthly value multiplied by 48.

6. With regard to public works contracts, calculation of the estimated value must take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authorities.

7. (a) Where a proposed work or purchase of services may result in contracts being awarded at the same time in the form of separate lots, account must be taken of the total estimated value of all such lots.

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 8, the Directive shall apply to the awarding of each lot.

However, the contracting authorities may waive such application in respect of lots the estimated value of which net of VAT is less than EUR 80 000 for services or EUR 1 million for works, provided that the aggregate cost of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

(b) Where a proposal for the acquisition of similar supplies may result in contracts being awarded at the same time in the form of separate lots, account must be taken of the total estimated value of all such lots when applying Article 8(a) and (b).

Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 8, the Directive shall apply to the awarding of each lot.

8. In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

(a) either the actual aggregate value of similar successive contracts awarded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the 12 months following the initial contract;

(b) or the estimated aggregate value of successive contracts awarded during the 12 months following the first delivery or during the term of the contract, where this is greater than 12 months.

The choice of method used to calculate the estimated value of a public contract may not be made with the intention of excluding it from the scope of this Directive.

9. The calculation of the value of a framework agreement shall be based on the maximum estimated value net of VAT of all the contracts envisaged for the total term of the agreement.'

Amendment 36 provides for the possibility of Member States reserving contracts for sheltered employment schemes or sheltered workshops.

This amendment can be accepted if modified in order further to clarify that reservation does not imply exemption from the application of all other provisions of the Directive applicable to public contracts.

The Commission incorporates this amendment as follows:

'*Article 19b*

Reserved contracts

The Member States may reserve the right to participate in public contract award procedures to sheltered workshops or provide for their execution in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

The contract notice shall make reference to this provision.'

Amendment 121 modifies Article 18(b); its origin lies in the different language versions of the 'services' Directive 92/50/EEC and highlights the need for better harmonisation of language versions. This would be useful but would require the reformulation of the text of the amendment for it to be interpreted in conformity with the principle of the freedom of movement of goods.

The Commission incorporates this amendment, modified as follows:

'*Article 18*

Specific exclusions

This Directive shall not apply to public service contracts for:

. . .

(b) the acquisition, development, production or co-production of programmes by broadcasters and contracts for broadcasting time. This exclusion shall not apply to supplies of technical equipment needed for the production, co-production and transmission of these programmes;

. . .'

Amendment 38 extends to supply and works contracts an exclusion which relates to service contracts only. This extension is unacceptable, as it would call into question the *acquis communautaire* without valid justification by excluding from the scope of the Directive contracts which are currently covered by it.

On the other hand, the amendment clarifies the notion of an 'entity which is itself a contracting authority': this part is acceptable, as it does not call the *acquis communautaire* into question; on the contrary, it clarifies the provision.

The Commission therefore incorporates Amendment 38 as follows:

'*Article 19*

Service contracts awarded on the basis of an exclusive right

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.'

Amendment 40 introduces a new article designed to exclude from the scope of the Directive contracts concluded by a contracting authority with an entity completely dependent on it, or with a joint venture formed by that contracting authority with other contracting authorities.

This amendment incorporates the spirit of current case law ('Teckel' judgment). Reformulation is necessary so as take up the elements covered by the judgment, adapt them to the situation of a group of contracting authorities and accommodate them in the appropriate place in the Directive.

'Article 19a

Contracts awarded to entities owned by a contracting authority

1. This Directive shall not apply to public contracts awarded by a contracting authority to a legally distinct entity owned exclusively by that contracting authority, if:

— the entity concerned does not have autonomous decision-making powers in relation to the contracting authority on account of the latter exercising over that entity a control which is similar to that which it exercises over its own departments;

— the entity carries out all its activities with the contracting authority which owns it.

2. Where such an entity is itself a contracting authority, it shall, when meeting its own needs, comply with the contract award rules provided for in this Directive.

3. Where such an entity is not a contracting authority, Member States shall take the measures necessary to ensure that, when meeting its own needs, it applies the contract award rules provided for in this Directive.'

Amendment 57 is intended to:

1. introduce a new possibility of using a negotiated procedure with prior publicity for supply contracts

2. and clarify the applicability of the current provision as regards 'intellectual' services.

Part 1 of the amendment is unacceptable, as it would call into question the *acquis communautaire* by extending without valid justification the scope for the negotiation of tenders to include supply contracts. It should be emphasised that, by virtue of the possibilities opened up by the definition of the technical specifications in terms of performance and by the variants, contracting authorities can find it impossible to adequately define the supplies they are looking for only in the cases covered by the competitive dialogue procedure.

Part 2 of the amendment, by contrast, is accepted, reformulated as follows:

'Article 29

Cases justifying use of the negotiated procedure with publication of a contract notice

Contracting authorities may award their public contracts by negotiated procedure, after publication of a contract notice, in the following cases:

. . .

(c) in the case of services, inter alia services within category 6 of Annex IIA, and intellectual services such as services involving the design of works, insofar as the nature of the services to be procured is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

. . .'

It should be noted that the Commission feels it would be useful to change the 'supplies, services and works' into 'works, supplies and services', so as to bring it into line with the order used at the time of the adoption of the initial Directives. Annex IA has consequently become Annex IIA.

Amendment 150 is designed to ensure that contracting authorities are able to use the negotiated procedure without publication of a contract notice in order to award directly to the contractor additional works not included in the initial project which have, through unforeseen circumstances, become necessary for the performance of the work, when such additional works cannot be technically or economically separated from the main work without major inconvenience or when such works, though separable from the performance of the main work, are strictly necessary for its completion.

This amendment can be accepted in this form:

'Article 73a

Cases justifying the direct award of additional contracts to the concessionnaire

Contracting authorities may award directly to the concessionnaire public contracts relating to additional works not included either in the project initially considered for the concession or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the work described therein, on condition that the award is made to the economic operator performing the service or work:

— when such additional services or works cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities,

or

— when such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional works may not exceed 50 % of the amount of the value of the initial work forming the subject of the concession.'

Amendment 70 is intended to:

1. simplify the provisions concerning the time-limits applicable to the various stages of contract award procedures;

2. remove the provision shortening the time-limits in the case of the publication of a periodic indicative notice;

3. remove any possibility of shortening these time-limits where electronic means are used.

Re point 1: in order to avoid a legal vacuum regarding the time-limits for the receipt of tenders in restricted procedures, it is necessary to reformulate the amendment, acceptance of which means some time-limits being extended by three days.

Re point 2: the amendment is not justified, as it poses a twofold problem: firstly, it constitutes reverse discrimination against European contracting authorities compared with their counterparts in non-EU countries which have acceded to the WTO Agreement on Public Procurement; secondly, it threatens to deprive companies of information concerning the intentions of contracting authorities.

Re point 3: removal of time-limit reduction possibilities which in no way penalise companies; this would run counter to the objective of encouraging purchasers to use electronic means as called for by the Lisbon Council.

The Commission incorporates Amendment 70 as follows:

'*Article 37*

Time-limits for requests to participate and receipt of tenders

1. When fixing the time-limits for the receipt of tenders and requests to participate, contracting authorities shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.

2. In the case of open procedures, the minimum time-limit for the receipt of tenders is 52 days from the date on which the contract notice was sent.

3. In the case of restricted procedures, negotiated procedures with publication of a contract notice referred to in Article 29 and the competitive dialogue

(a) the minimum time-limit for receipt of requests to participate shall be 40 days from the date on which the contract notice was sent;

(b) In the case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 40 days from the date on which the invitation was sent.

4. When contracting authorities have published a prior information notice, the minimum time-limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

The period shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to submit a tender was sent in restricted procedures.

The shortened time-limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required in the model contract notice in Annex VIIA, insofar as that information is available at the time the notice is published and was sent for publication between no less than 52 days and no more than twelve months before the date on which the contract notice was sent.

5. Where notices are drawn up and transmitted by electronic means in accordance with the format and procedure for transmission indicated in Annex VIII, paragraph 3, the time-limits for the receipt of tenders referred to in paragraphs 2 and 4 in open procedures, and the time-limit for the receipt of the requests to participate referred to in point (a) of paragraph 3, in restricted and negotiated procedures and the competitive dialogue, may be shortened by seven days.

6. The time-limits for receipt of tenders set out in paragraphs 2 and 3(b) above may be reduced by five days where the contracting authority offers free and full direct access by electronic means to the contract documents and any supporting documents from the date of publication of the notice in accordance with Annex VIII, specifying in the text of the notice the Internet address at which this documentation is accessible.

This reduction may be aggregated with the reduction referred to in paragraph 5.

7. If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, have not been supplied within the time-limits set in Article 38, or where tenders can be drawn up only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time-limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce a tender.

8. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 29, where urgency renders impracticable the time-limits laid down in the present Article, contracting authorities may fix:

(a) a time-limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices indicated in Annex VIII, paragraph 3;

(b) and, in the case of restricted procedures, a time-limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.'

Amendment 74 specifies that the obligation on the part of the purchaser to preserve the confidentiality and integrity of the data submitted to it covers the entire operational cycle of the procedure: storage, processing and holding.

The clarifications proposed will be taken over in the relevant provisions of the text, but reformulated to take into account the requirements of the various types of electronic submission.

The Commission incorporates Amendment 74 by modifying Article 42 of its proposal as follows:

'*Article 42*

Rules applicable to communication

1. All communication and information exchange referred to in this Title may be performed by letter, by fax, by electronic means in accordance with paragraphs 4 and 5, by telephone in the cases and circumstances referred to in paragraph 6, or by a combination of those means, according to the choice of the contracting authority.

2. The means of communication chosen must be generally available and thus not restrict economic operators' access to the tendering procedure.

3. Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time-limit set for submitting these has expired.

4. The tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, reasonably available to the public and interoperable with the information and communication technology products in general use.

5. The following rules are applicable to devices for the electronic receipt of offers and requests to participate:

(a) information regarding the specifications necessary for the electronic submission of offers and requests to participate, including encryption, must be available to interested parties. Moreover, the devices for the electronic receipt of offers and requests to participate must conform to the requirements of Annex X;

(b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;

(c) tenderers or candidates shall undertake to submit, before expiry of the time-limit laid down for submission of tenders or requests to participate, the documents, certificates, attestations and declarations referred to in Articles 46 to 50 and Article 52 if they do not exist in electronic format.

6. Rules applicable to the transmission of requests to participate:

(a) requests to participate in procedures for the award of public contracts may be made in writing or by telephone;

(b) where requests to participate are made by telephone, a written confirmation must be sent before expiry of the time-limit set for their receipt;

(c) contracting authorities may require that requests for participation made by fax must be confirmed by post or by electronic means, where this is necessary for the purposes of legal proof. Any such requirement, together with the deadline for sending confirmation by post or electronic means, must be stated by the contracting authority in the contract notice.'

Amendments 77-132 are designed to:

1. clarify that requirements relating to the selection of participants must be proportional to the subject matter of the contract.

2. increase the obligations of the contracting authority as regards the confidential treatment of information supplied by economic operators.

As far as the first aspect is concerned, the amendments are consistent with the proposal and can be accepted in spirit. By contrast, the second aspect is superfluous, as it is already covered by Amendment 31 concerning Article 5.

The Commission takes over amendments 77-132 as follows, reformulating them and merging Articles 44 and 45 in such a way as to simplify the text and facilitate agreement between the co-legislators:

'Article 43a

Verification of aptitude and choice of participants, award of contracts

1. Contracts shall be awarded on the basis of the criteria laid down in Articles 53 and 54, taking into account Article 25, after the suitability of the economic operators not excluded under Articles 46 and 47 has been checked by contracting authorities in accordance with the criteria of economic and financial standing and of professional and technical knowledge or ability referred to in Articles 48 to 52 and, where appropriate, with the non-discriminatory rules and criteria referred to in paragraph 3.

2. The contracting authorities shall specify in the contract notice the minimum levels of ability in accordance with Articles 48, 49 and 50 which candidates and tenderers must meet.

The extent of the information referred to in Articles 48 and 49 and the minimum capacity levels required for a specific contract shall be linked to and proportionate to the subject matter of the contract.

3. In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue, contracting authorities may restrict the number of suitable candidates they will invite to tender, to negotiate or to participate, provided a sufficient number of suitable candidates is available. The contracting authorities shall indicate in the contract notice the objective and non-discriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite and, where appropriate, the maximum number.

4. In the restricted procedure the minimum shall be five. In the negotiated procedure with publication of a contract notice and the competitive dialogue the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number, the contracting authority may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the contracting authority may not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

5. Where the contracting authorities exercise the option of reducing the number of solutions to be discussed or of tenders to be negotiated, as provided for in Articles 30(4) and 29(4), they shall do so by applying the award criteria stated in the contract notice, in the specifications or in the descriptive document. In the final stage, the number arrived at shall make for genuine competition insofar as there are enough solutions or suitable candidates.'

Amendment 80 supplements the compulsory exclusions referred to in Article 46(1) by adding the offence of money laundering within the meaning of Article 1 of Council Directive 91/308/EEC of 10 June 1991.

In order to facilitate agreement between the co-legislators, the Commission takes over the amendment as follows:

'Article 46

Personal situation of the candidate or tenderer

1. Any candidate or tenderer shall be excluded from participation in a public contract who, to the knowledge of the contracting authority, has been convicted by definitive judgment for one or more of the reasons set out below:

(a) participation in a criminal organisation, as defined in Article 2(1) of the Joint Action of 21 December 1998;

(b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of the Joint Action of 22 December 1998 respectively;

(c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities established by the Council Act of 26 July 1995.

(d) money laundering as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991on prevention of the use of the financial system for the purpose of money laundering [1], as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 [2].

. . .'

Amendments 86, 87 and 89 modify Article 46(2).

Amendment 86 modifies Article 46(2)(d) by providing for the possibility of excluding on the grounds of grave professional conduct any economic operator who has been guilty of violating international core labour standards or infringement of 'fundamental' European legislation relating to employment protection and working conditions.

[1] OJ L 166, 28.6.1991, p. 77.

[2] OJ L 344, 28.12.2001, p. 76.

Non-compliance with labour law may constitute grounds for exclusion under the provisions proposed by the Commission without it being necessary to refer explicitly to this case in the substantive provisions; it may also constitute grounds for exclusion on account of 'grave professional misconduct' within the meaning of Article 46(2) as proposed. In its Communication of 15 October 2001 concerning the integration of social considerations into public procurement, the Commission explained the extent to which these cases were already covered by existing legislation. This also applies to this proposal; the Commission has therefore explained this in recital 30 cited in Amendment 51 above.

Amendment 87 introduces the possibility of excluding any operator who has not fulfilled his employment-protection obligations towards workers or labour-law obligations towards their representatives in accordance with the applicable legal provisions or the collective agreements in force: non-compliance must have been established by a court judgment.

This amendment clarifies the possibility, already offered by Article 46(2)(c) of the proposal, of excluding any tenderer who has been convicted by a judgment of any offence concerning his professional conduct; this explanation is provided by recital 30 referred to above.

Amendment 89 introduces the possibility of exclusion for failure to comply with social legislation, as established by judgment or any other means.

As in the case of Amendments 86 and 87, the Commission has taken this amendment into account in recital 30 referred to above.

Amendment 153 is designed to enable Member States to entrust private-law certification bodies with the task of checking the requirements referred to in Articles 46, 47, 48, 49, 50 and 50a.

In order to facilitate verification of the exclusion and selection criteria, Member States are allowed to assign this task to private- or public-law certification bodies. However, this must not have the effect of making certification solely by national bodies a condition for participation in invitations to tender in a Member State.

The Commission incorporates this amendment, reformulated as follows:

'Article 52

Official lists of approved economic operators and certification by public- or private-law bodies

1. Member States may draw up either official lists of approved contractors, suppliers or service providers or introduce a system of certification by public or private certification bodies.

They shall adapt the conditions for inclusion in these lists and for the issue of certificates by certification bodies to the provisions of Article 46(1) and (2)(a) to (d) and (g), Articles 47, 48(1), (3) and (4), Article 49(1), (2), (4) and (5), and Articles 52 and 50a.

They shall also adapt them to Articles 48(2) and 49(3) as regards applications for registration submitted by economic operators belonging to a group and claiming resources made available to them by the other companies in the group. In such case, these operators must prove to the authority establishing the official list that they will have these resources at their disposal throughout the period of validity of the certificate attesting to their being registered in the official list.

2. Economic operators registered in the official lists or in possession of a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body. These certificates shall state the reference which enabled them to be registered in the list/certified and the classification given in that list.

3. Certified registration in official lists by the competent bodies or the certificate issued by the certification body shall not, for the purposes of the contracting authorities of other Member States, constitute a presumption of suitability except as regards Articles 46(1) and (2)(a) to (d) and (g), 47, 48(1)(b) and (c) and 49(2)(1)(a), (2), (5), (6) and (7) in the case of contractors, (2)(1)(b), (2), (3), (4) and (9) in the case of suppliers and 2(1)(b), and (3) to (8) in the case of service providers.

4. Information which can be deduced from registration in official lists or from certification may not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator whenever a contract is offered.

The contracting authorities of other Member States shall apply paragraph 3 and the first subparagraph of this paragraph only in favour of economic operators established in the country holding the official list.

5. For any registration of economic operators of other Member States in an official list or for their certification by the bodies referred to paragraph 1, no further proof or statements can be required other than those requested of national economic operators and, in any event, only those provided for under Articles 46 to 50a.

However, such registration or certification cannot be stipulated as a requirement which economic operators from other Member States must fulfil in order to tender for a public contract. Contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

6. The certification bodies referred to in paragraph 1 shall be bodies which comply with European certification standards.

7. Member States which have official lists or certification bodies as referred to in paragraph 1 shall be obliged to inform the other Member States of the address of the body to which applications should be sent.'

Amendment 104 specifies that the obligation on the part of the purchaser to preserve the confidentiality and integrity of the information submitted to it covers part of the operational cycle of the procedure: storage, processing and holding.

In order to take into account the requirements of the various types of electronic submission, the clarifications proposed are reformulated and taken over as follows:

'*Article 61*

Means of communication

1. Article 42(1), (2) and (4) shall apply to all communications relating to contests.

2. Communications, exchanges and the storage of information shall be such as to ensure that the integrity and the confidentiality of all information communicated by the participants in a contest are preserved and that the jury ascertains the contents of plans and projects only after the expiry of the time-limit for their submission.

3. The following rules shall apply to the devices for the electronic receipt of plans and projects:

(a) the information relating to the specifications which is necessary for the presentation of plans and projects by electronic means, including encryption, shall be available to the parties concerned. In addition, the devices for the electronic receipt of plans and projects shall comply with the requirements of Annex X;

(b) the Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices.'

Amendments 110 and 113 modify Annex VIIA as regards contract notices.

Amendment 110 obliges contracting authorities to state in the pre-information notice the body from which information on tax, social and environmental legislation can be obtained.

Economic operators must have knowledge of the elements necessary for the preparation of their tenders. Where a works or service contract is to be performed in the contracting authority's country, some elements will relate to national legislation there. It is therefore legitimate that contracting authorities should be obliged to state where they can obtain such information. However, it would be more appropriate for this information to be featured in the contract notice.

Amendment 113 imposes on contracting authorities an obligation to state in contract notices the names and addresses of bodies responsible for appeals relating to the award of public contracts.

Increased transparency in this domain is desirable.

The Commission therefore incorporates Amendments 110 and 113 as follows:

'**CONTRACT NOTICES**

OPEN AND RESTRICTED PROCEDURES, COMPETITIVE DIALOGUES, NEGOTIATED PROCEDURES:

1. Name, address, telephone and telefax numbers, electronic address of the contracting authority.

1a Where public works and supply contracts involve siting and installation operations: name, address, telephone and telefax numbers, electronic address of the departments from which information can be obtained concerning the rules and regulations on taxes, environmental protection, health and safety at work and working conditions applicable in the place where the contract is to be performed.

. . .

23a Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.

. . .'

Amendment 114 imposes on contracting authorities an obligation to provide in notices on contracts awarded the names and addresses of bodies responsible for appeals relating to the award of public contracts.

Increased transparency in this domain is desirable. The Commission therefore incorporates this amendment as follows

'**NOTICES ON CONTRACTS AWARDED**

. . .

12a Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.'

3.3. *Amendments not accepted by the Commission (162, 8, 173, 25, 29, 32, 37, 159, 49, 151, 68, 78, 63, 139, 66, 69, 161, 71, 72, 131, 73, 75, 76, 81, 82, 83, 84, 90, 92, 94, 176, 99, 102, 103, 107, 108, 111, 115, 117 and 116)*

Amendment 162 introduces a new recital 1a designed to have account taken in award procedures of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

This amendment is superfluous, as it lies outside the scope of this Directive. It reaffirms the applicability of a Directive which imposes obligations on the private and public sectors prior to the launch of any project and, hence, of any award procedure.

Amendment 8 supplements the recital concerning technical specifications by underlining that, where there are no European specifications, contracting authorities must be able to lay down precise national criteria in advance in order to keep maintenance and repair costs as low as possible. This amendment has to be considered in conjunction with Amendment 45, which enables a contracting authority to reject an equivalent solution — a national one, as the case may be — on the grounds that it would entail higher costs. This part of Amendment 45 is unacceptable, as it is in contradiction to Article 28 of the Treaty. Therefore, Amendment 8 is also unacceptable. What is more, it is not for contracting authorities to lay down national criteria which are generally applicable. As regards the reference to a national standard, the recital in the Commission initial proposal is already explicit.

Amendment 173 modifies Article 1 in order to define particularly complex contracts which may be the subject of a competitive dialogue. The amendment relates to Article 1 rather than Article 30, which sets out the details of the procedure, giving a non-exhaustive list of examples. This is in fact more than a definition. Rather, it is a listing of cases in which a competitive dialogue may be held, namely when a contracting authority is unable either to define the technical or other means of meeting its requirements or to determine the solutions that the market can offer. As regards inability to define the means, this must not be attributable to the absence of a prior design competition or to the fact that a functional contract notice could have sufficed. The Commission takes the view that the concept of a complex contract is not necessary and that it is preferable to define — in Article 30 — the objective conditions permitting recourse to a competitive dialogue.

As regards the condition according to which the organisation of a prior design contest had not enabled the contracting authority to define the means suitable to meet its needs, the amendment is unacceptable, as it poses the same problems in terms of subsidiarity as Amendments 142, 7 and 171-145 aimed at introducing an obligatory separation between the design and execution of works.

Amendment 25 is specifically designed to regulate framework agreements in the field of translation and interpretation.

It should be emphasised that the services to which this amendment refers are covered by Annex IB and are therefore not subject to all the procedural rules of the Directive (call for competition and detailed rules). Consequently, by providing for specific rules to govern framework agreements, the amendment would, without justification, make the legislation applicable to such agreements more inflexible than that applicable to public contracts awarded in the same sector.

Amendment 29 sets out to make the awarding of prizes to participants in design contests compulsory and accordingly modifies the definition of 'design contests' by limiting them exclusively to contests in which prizes are awarded.

The principle of making the awarding of prizes to participants compulsory may be justified where a design contest relates to projects incurring real costs, such as design contests organised with a view to the execution of a structure or an urban or landscaping project. However, it should be pointed out that design contests may be organised in other fields where the compulsory awarding of prizes would not be justified. What is more, the definition proposed by the amendment, according to which only design contests with prizes could be held, would not appear to be an appropriate way of achieving this objective. Indeed, such a definition would not prevent design contests without prizes being organised, but it would remove such contests from the scope of the Directive.

Amendment 32 proposes to increase the thresholds indicated in the Commission's proposals by around 50 %.

The thresholds in the Directives in force are such that Community regulations cover only the biggest contracts in value terms. Raising the thresholds of the Directive would lead to an unjustified reduction in the guarantees concerning the opening-up of public contracts currently offered to economic operators in the European Union. It should be noted that the supposed complexity of the procedures under the Directives and the associated administrative costs could not justify raising the thresholds: these factors are in fact comparable with the complexity and costs of other national contract award procedures in force for contracts below the thresholds.

What is more, a unilateral raising of the thresholds by the European Union would be incompatible with its obligations within the WTO. In addition, a European request to raise the thresholds within the framework of the current revision of the Government Procurement Agreement would entail a loss of credibility for Europe in the context of the negotiations involved in that revision, as the negotiating mandate clearly refers to the objective of broadening the Agreement's coverage. Also, such a request would provoke either a demand by our partners for compensation or the reciprocal closing of international markets.

It should further be noted that the mechanism for the biennial revision of thresholds, designed to adapt them in line with changes in parities between European currencies and SDRs, may already result in a significant raising of thresholds, as is currently the case for the thresholds applicable for the period 2002-2004.

Amendment 37 adds an exclusion concerning transactions enabling the contracting authority to contract borrowings intended for investments and cash flow requirements.

This exclusion would have the effect of making it possible for the financing of any public (and particularly local) authority project to be raised without a call for competition at European level. This runs counter to the objectives of the liberation of financial services and is not justified by the argument put forward concerning the volatility of interest rates. Procedures already exist — e.g. framework agreements combined with electronic means and, in particular, reverse auctions — which are sufficiently flexible to enable this volatility to be taken into account.

Amendment 159 is intended to:

1. ensure that contracting authorities do not impose any 'quantitative restrictions on the exercise, by the undertakings, of freedom of organisation of their own inputs';

2. oblige contracting authorities to ask the tenderer to indicate in his tender the share of the contract he may intend to subcontract to third parties and any designated subcontractors;

3. oblige contracting authorities to prohibit any subcontracting to undertakings which are in the situation referred to in Article 46 'and/or undertakings which do not meet the requirements laid down in Articles 47, 48 and 49';

4. prohibit the contracting out of 'intellectual services, with the exception of translation and interpretation services and management and related services'.

The Commission cannot accept this amendment, the reasons being as follows:

1. If an economic operator can demonstrate that he can effectively draw on the capacity of other entities, for example through subcontracting, he is entitled, according to case-law, to avail himself thereof for the purposes of selection. By contrast, there is nothing under current legislation to prevent a contracting authority prohibiting the execution of the contract, in whole or in part, from being subcontracted.

2. By dint of this obligation, tenders would be required to single out in the tender both the portion of the contract to be subcontracted and the choice of subcontractors. Imposing such an obligation at Community level would appear to be excessive, given the fact that it is always the successful tenderer who is responsible for the execution of the contract. In view of the principle of subsidiarity, it would be up to Member States to provide, where necessary, for an obligation to request the names of subcontractors.

3. The possibility of excluding subcontractors would appear to be legitimate as regards companies/persons convicted of certain offences (organised crime/corruption/fraud against the financial interest of the Community, cf. Article 46(1)) or in other cases (non-compliance with labour law, cf. Article 46(2)); it nevertheless poses difficulties in terms of application. It presupposes knowledge of (see point 2) and a priori control over subcontractors, which would excessively lengthen award procedures. However, it could be taken into account in accordance with the principle of subsidiarity (obligation imposed, where appropriate, by Member States).

   As regards the aspects of point 3 relating to economic and financial standing and technical and professional capabilities, as referred to in Articles 48 and 49, this would mean that subcontractors would have to have the same capacity as the principal contractor, which would unjustifiably exclude SMEs. These aspects cannot, therefore, be taken into consideration.

   As far as Article 47 is concerned, the amendment proposes to apply in respect of subcontractors a stricter regime than that envisaged for candidates and tenderers (in the latter case, contracting authorities would not be obliged to request information, whereas in the case of subcontractors they would have to do so systematically). However, it is already possible to apply Article 47 to subcontractors for selection purposes where a tenderer relies on means made available to him by subcontractors ('Holst Italia' [1] judgment).

[1] Judgment of 2 December 1999 in case C-176/98, [1999] ECR I-8607.

4. It would not appear justified to lay down such a general prohibition: contracting authorities, which are the parties concerned, are already able, if they so wish, to prohibit subcontracting by imposing conditions for the execution of the contract; this goes for all types of contracts and not just for certain services. By the same token, they must be free to allow subcontracting.

Amendment 49 inserts into Article 26 a new subparagraph imposing on subcontractors the same requirements regarding economic, financial and social performance as apply to candidates or tenderers.

For the same reasons as set out in the comments on Amendment 159 (point 3, 2nd and 3rd paragraphs), Amendment 49 cannot be accepted.

Amendments 151, 68 and 78 are aimed essentially at introducing qualification systems such as those provided for in the 'Utilities Directive' 93/38/EEC.

Amendment 151 adds a new paragraph 2a to Article 32 in order to introduce the possibility for contracting authorities of setting up a qualification system, to be the subject of an annual notice where the duration of the system exceeds three years and of a single notice in other cases.

Amendment 68 introduces the possibility of calling for competition by means of a notice on the existence of a qualification system.

Amendment 78 introduces the rules applicable to qualification systems. These provisions are closely aligned on analogous provisions of the 'Utilities Directive' which are in force. However, the amendment does not incorporate the provisions concerning the obligations to state reasons for decisions taken regarding qualification, nor those imposing mutual recognition and equality of treatment within the framework of qualification systems. Regarding the selection of economic operators, the amendment merely indicates that the system is to be operated on the basis of 'objective criteria and rules to be established by the contracting authority', with no reference being made to the general rules applying to qualitative selection.

Amendments 151, 68 and 78 (Article 45a) should be analysed together. Their effect is to introduce the regime of the 'Utilities Directive', namely the possibility of using a qualification system — specific to each contracting authority — as a means of calling for competition for several individual contracts to be awarded during the period of validity of the system. In other words, instead of having as many notices as there are award procedures, there would be either one notice per year calling for competition for all the contracts covered by the system during that year or, if the system had a period of validity of more than one year, a single notice calling for competition for all contracts to be awarded during that period. The qualification system would in theory be open at all times. In practice, accessibility to the system would be very uncertain, as it would presuppose that economic operators became aware of the very existence of the system — through a notice published months of even years in advance. This would militate against putting contracts out to competition and would place newly-created enterprises at a disadvantage. The amendment would thus entail an unacceptable loss of transparency and risk contracts being reserved for companies which had taken note of the initial notice. Matters could be otherwise if such systems and the contracts awarded on the basis thereof were accompanied by an appropriate call for competition and were put in place by electronic means making it possible to ensure transparency and equality of treatment. It should also be noted that the introduction of qualification systems would be in breach of the GPA to the extent that it was applied to central contracting authorities.

Amendment 63 is aimed at prohibiting the application of framework agreements to intellectual services and introducing specific rules for translation and interpretation services.

The first part of the amendment is void, as the amendment designed to separate intellectual services from other services was not adopted. The origin of the second part of the amendment lies in the problems raised by the translation services of the European Institutions, in particular that of the European Parliament, which have meanwhile been resolved to the full satisfaction of those services.

Moreover, it should be emphasised that the services to which the amendment refers, and which are covered by Annex IB, are not subject to all the procedural rules of the Directive (call for competition and detailed rules). Consequently, by providing for specific rules to govern framework agreements, the amendment would, without justification, make the legislation applicable to such agreements more inflexible than that applicable to public contracts awarded in the same sector.

Amendment 139 prohibits the use of framework agreements for works contracts.

Framework agreements can be used for works contracts, in particular for 'standard' works such as road surfacing or repairs. The exclusion envisaged by the amendment is therefore unacceptable.

Amendment 66 modifies Article 33 in order to extend the scope of the particular procedure, concerning public housing schemes, to all 'public works which, for reasons of size, complexity and duration and/or financing, require collaborative project planning . . .'

This amendment is wholly unacceptable, as it broadens the scope for contract negotiation, in a very vague manner to boot. Moreover, it should be noted that Article 30 already makes it possible to cover a large number of the cases referred to by this amendment.

Amendment 69 adds to Article 35(1), first subparagraph, an explicit reference to the *Official Journal of the European Communities* for the publication of notices.

This amendment would institutionalise the publication arrangements and make it impossible to take into account technological changes which could, in future, make it more appropriate to publish notices by other means.

Amendment 161 deletes the provision stipulating that the time limits for receipt of requests to participate and for submission of tenders must be sufficiently long to ensure that economic operators are allowed the time actually needed.

As the aim of this provision is to contribute towards ensuring that public contracts are the subject of a better and genuine call for competition, the amendment is unacceptable.

Amendment 71 modifies Article 40 by specifying that any specific conditions for taking part in the tendering process must not unduly discriminate between tenderers. It adds this provision to the conditions stated in the invitation to tender.

The goal pursued by this amendment is in line with the proposal for a Directive. This addition is superfluous, however, as the matter is already covered by Article 2 concerning the fundamental principles to be observed throughout the award procedure.

Amendment 72 limits to two specific situations the scope for closing an award procedure before a contract has been awarded: where no tender has been received which meets the award criteria and where there are other serious grounds which lie outside the powers of the contracting authority.

This amendment is laudable as regards its objectives (to avoid possible manipulations and contribute towards greater security of planning for companies), but is unacceptable as regards its form, as it restricts in a drastic, disproportionate and inappropriate manner the scope for not awarding a contract.

Reasons for non-award must not be listed in an exhaustive manner, as contracting authorities act as purchasers and consequently must have at their disposal options that are geared to coping with highly variable situations which the Directive could not demarcate. It is appropriate to point out that one of the possibilities which the amendment would exclude is the early closure of a procedure on grounds of non-compliance with applicable Community law, which is in contradiction with the 'review procedures' Directive [1].

Moreover, it should be pointed out that contracting authorities are already obliged to inform participants of the reason why no contract has been awarded. This provision is aimed precisely at avoiding arbitrary manipulations and enables participants to check the soundness of a decision made by a contracting authority.

Amendment 131 is designed to prevent contracting authorities from being able to choose the means by which communication and the exchange of information must be performed in the context of an award procedure.

The effect of this amendment would be to oblige contracting authorities to receive tenders by whatever means, regardless of whether they have the technical facilities to receive them by a particular means. The amendment therefore has to be rejected.

Amendment 73 provides that tenders submitted by electronic means are to be rejected unless an advanced electronic signature within the meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used.

This amendment reflects the current situation regarding electronic signatures. However, technical developments in this area are proceeding apace. The amendment would make it necessary to amend the Directive in line with each new development. Guarantees concerning electronic signatures can be obtained by way of referral to national provisions on the subject (avoiding subsequent amendments to the text if and when Community legislation changes). Also, encryption is not necessary, as other means can be used to ensure the inviolability of tenders. What is more, compulsory encryption would incur additional costs for both the purchaser and the tenderers. Therefore, this amendment cannot be accepted.

Amendment 75 imposes an obligation to involve an accredited third party in order to guarantee the confidentiality of data transmitted by tenderers.

It should be stressed that Community policy has always been geared precisely towards ensuring that an accreditation system is never compulsory, given the risks of distortion and increased disparities between Member States.

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[1] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33) as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

Amendment 76 proposes that, in the context of determining the specific level of capacity and experience required for a particular contract, a lack of experience may be offset by evidence of 'special capacity'.

On its own, special capacity could not, in practical terms, replace experience and provide contracting authorities with sufficient guarantees for the purposes of the sound execution of the contract (certificates of studies cannot replace experience on the ground). Moreover, the thresholds applicable mean that contracts subject to the Directives involve large amounts and consequently require appropriate guarantees. What is more, neither the 'special capacity' to which the amendment refers nor the means of proving the same is defined. This is liable to create a major source of dispute for contracting authorities.

Amendment 81 supplements Article 46(1) by adding 'of fraudulent or any other form of anti-competitive behaviour in connection with the award of public contracts in the common market'.

Under current Community legislation, there is no harmonisation of the penalties for these phenomena under the third pillar; nor do all Member States have systems of penal sanctions in place. Under these circumstances, the mechanism set up by the first paragraph of Article 46 cannot be implemented.

Amendment 82 supplements Article 46(1) by including among the grounds for compulsory exclusion non-compliance with collective agreements and other provisions and laws relating to employment and social security in the country of establishment or in another relevant country.

For the same reasons as in the case of the previous instruments (penalties/violations of employment law not being the subject of approximation under a third pillar instrument), the amendment is not accepted,

By contrast, Article 46(2) already provides scope for such exclusions; the principle can be explicitly set out in a recital (see Amendment 86).

Amendment 83 supplements Article 46(1) by adding drugs-related offences within the meaning of the United Nations Convention (Vienna, 19 December 1988).

Under current Community legislation, there is no harmonisation of the penalties for these phenomena under the third pillar; nor do all Member States have systems of penal sanctions in place. Under these circumstances, the mechanism set up by the first paragraph cannot be implemented.

Amendment 84 removes the possibility, currently available to contracting authorities, of excluding from the award procedure a tenderer or candidate who is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation. Under Amendment 90, this possibility becomes an obligation.

Amendment 90 provides for the compulsory exclusion of any economic operators who are bankrupt, whose affairs are being wound up by the court, who have entered into an arrangement with creditors or have suspended business activities.

Amendments 84 and 90 would have the effect of prohibiting any contracting authority in the EU from concluding a contract, as the case may be, with a company which has entered into an arrangement with creditors, without giving that company any chance whatsoever and thus automatically condemning it to closure. That is why it would appear more appropriate to make the exclusion of operators in this situation simply an option for all purchasers.

Amendment 92 expands the list of proofs of technical capacity for supplies by including therein a description of the measures employed for ensuring environmental protection and protection of the health and safety of workers, as well as an indication of the technicians or technical bodies responsible for environmental management and protection of the health and safety of workers.

The amendment is designed to provide a way of judging the technical capability of an enterprise to supply a product which is both environmentally friendly and does not endanger the health and safety of workers. These aspects are covered either by the description of the product specifications (prescribing a less polluting production process) or by the requirement, in other phases in the award procedure, of compliance with social or environmental legislation (exclusion of any non-complying tenderers).

Amendment 94 introduces reliability as an element to be demonstrated alongside the technical/professional capability of an undertaking.

As reliability is a particularly subjective element, it cannot be added in parallel with these capabilities. For this reason, the amendment is not acceptable.

Amendment 176 is intended, as far as the award criterion of the 'most economically advantageous tender' is concerned, to:

1. remove the clarification that this means the most economically advantageous tender 'for the contracting authorities',

2. specify that environmental characteristics may include 'production methods',

3. and add the criterion of 'equal treatment policy'.

Re point 1.: removal of the words 'for the contracting authorities' would enable various, often non-measurable, elements to be taken into account in relation to a possible benefit to 'society' in the broad sense of the word. Such award criteria would no longer fulfil their function, which is to permit an evaluation of the intrinsic qualities of tenders in order to determine which one offers the purchaser the best value for money. This would completely disrupt the objective of the public contracts Directives and would amount to the institutionalisation of this legislation to the benefit of sectoral policies, while also introducing serious risks of inequality of treatment.

Re point 2.: the contract award stage is not the appropriate time at which to choose a less polluting method. Less polluting production methods can be prescribed once the subject of the contract has been defined in the technical specifications when the purchaser chooses to purchase the solution causing the least pollution. If he wishes to compare different solutions and evaluate the advantages/cost of lower- or higher-pollution solutions, he may allow or insist on the presentation of variants.

Re point 3.: the concept of equality of treatment takes on a particular meaning in the context of public contracts (= treating all candidates/tenders in the same way), whereas the amendment seems to be concerned with the non-discrimination within the meaning of Article 13 of the Treaty. To the extent that this concerns a criterion relating to the policy of the enterprise and not to the qualities of a tender, it cannot be an award criterion. The introduction of criteria linked to the undertaking would lead to a situation where certain undertakings were given preference on the basis of non-measurable elements during the award phase, even if their tenders did not give the purchaser the best value for money.

Amendment 99 removes the obligation to apply a weighting to award criteria, replacing it with a requirement to specify the selection criteria in order of importance.

The introduction of a provision making weighting obligatory is an important element of the proposal and is designed to prevent manipulations, encountered in practice, favouring certain operators, and to enable any tenderers to be reasonably informed in accordance with the principles laid down by the Court in the 'SIAC' ([1]) judgment. It is essential that the weighting of the criteria be indicated in advance.

Amendment 102 removes, in Article 61(1), the part of the sentence which clearly states that the means of communication to be used in a design contest is to be that chosen by the contracting authority.

Without this part of the sentence, the text would give participants the possibility of choosing the means of communication themselves, and the consequences would be those set out in the case of Amendment 131.

Amendment 103 introduces, in Article 61, a new paragraph 1a making it compulsory, when transmitting drafts or plans by electronic means in the context of design contests for services, to use an advanced electronic signature and a reliable means of encryption.

See the reasons given for rejecting Amendment 73 and the text of Article 61 with which Amendment 104 is concerned.

Amendment 107 removes some delegated powers which enable the Commission, after obtaining the opinion of the Advisory Committee for Public Contracts, to amend aspects of the Directive which are essential if it is to operate properly. These delegated powers relate to threshold adjustments which are necessary in order to take account of fluctuations in SRD/euro parities, to possible amendments to conditions for the drawing-up, transmission and publication of opinions and statistical reports, and to amendments to Annex VIII enabling technical developments to be taken into account, as well as to amendments to the nomenclatures contained in Annexes I and II.

Firstly, it should be noted that the amendment removes a number of powers already delegated to the Commission by the legislation in force. As regards the new powers, these are limited to domains where the pace of technological change (use of electronic means) is such that, if the Directive were not adapted, it would quickly become obsolete, as would the codecision procedure, given the time it takes.

Amendment 108 introduces a new article obliging Member States to establish effective and transparent mechanisms to ensure implementation of the Directive. It goes on to specify that Member States may, to this effect, set up an independent Public Procurement Agency vested with broad powers, including the power to set aside contract awards and reopen contract award procedures.

Directive 89/665/EEC already requires Member States to provide efficient national review procedures regarding the award of contracts, including interlocutory procedures, the power to annul illegal decisions and award damages. Member States may fulfil this obligation either by ensuring that national courts have these powers or by setting up bodies endowed with the appropriate powers. The obligation introduced by the amendment is thus already the subject of Community legislation in force and must not be reiterated. As regards the possibility of setting up independent bodies, this is also possible under the legislation in force, and an explicit reminder is given in the new recital 30a referred to in Amendment 13, which is accepted by the Commission. This repetition is therefore superfluous.

([1]) Judgement of 18 October 2001 in case C-19/00, 2001 ECR I-7725.

Amendment 111 introduced an obligation to state in preinformation notices the contact details — including electronic addresses — of the bodies responsible for appeals relating to the award of public contracts.

Although greater transparency regarding appeals is desirable, preinformation notices are not the appropriate instrument.

Amendment 115, in the majority of language versions, stipulates that public-sector Internet sites containing information on award procedures must comply with the European Union guidelines on Internet access. (It should be noted that the FR version is radically different.)

There is no reason to provide for specific legal arrangements governing this type of Internet site. An issue such as this must be addressed by horizontal legislation and not harmonised via the 'public contracts' Directive.

Amendment 117 introduces a new annex designed to guarantee that, where electronic means of communication are used to submit tenders or requests to participate, this is done under conditions which ensure that confidentiality is maintained.

While the concerns underlying these amendments are legitimate, the new annex cannot be inserted in the absence of any reference in the substantive provisions, as amended, to a new annex. The legal arrangements governing the annex would thus remain unspecified.

Amendment 116 introduces a new annex linked to a new point (c)a of Article 54, second sub-paragraph, proposed by Amendment 100. As Amendment 100 has not been accepted, this amendment is likewise not accepted: see comments on Amendment 100 above.

3.4. *Amended proposal*

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal in the foregoing terms.

Proposal for a Council Regulation establishing concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Latvia

(2002/C 203 E/32)

COM(2002) 227 final — 2002/0103(ACC)

(Submitted by the Commission on 7 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part [1], provides for certain concessions for certain agricultural products originating in Latvia.

(2) The first improvements to the preferential arrangements of the Europe Agreement with Latvia were provided for in the Protocol adjusting trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia of the other part, to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential arrangements [2].

(3) Improvements to the preferential arrangements of the Europe Agreement with Latvia were also provided for, as a result of a first round of negotiations to liberalise agricultural trade. The improvements entered into force as from 1 July 2000 in the form of Council Regulation (EC) No 2341/2000 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Latvia [3]. The second adjustment of the relevant provisions in the Europe Agreement — which will take the form of another Additional Protocol to the Europe Agreement — has not yet entered into force.

(4) A new Additional Protocol to the Europe Agreement on trade liberalisation for agricultural products has been negotiated.

(5) A swift implementation of the adjustments forms an essential part of the results of the negotiations for the conclusion of a new Additional Protocol to the Europe Agreement with Latvia. It is therefore appropriate to provide for the adjustment, as an autonomous and transitional measure, of the agricultural concessions provided for in the Europe Agreement with Latvia.

(6) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4], they should be adopted by use of the management procedure provided for in Article 4 of that Decision.

(7) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [5] codified the management rules for tariff quotas designed to be used following the chronological order of dates of customs declarations. Tariff quotas under this Regulation should therefore be administered in accordance with those rules.

(8) Regulation (EC) No 2341/2000 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. The conditions for import into the Community applicable to certain agricultural products originating in Latvia as set out in Annex C(a) and Annex C(b) to this Regulation shall replace those set out in Annex Va to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, hereinafter the 'Europe Agreement'.

[1] OJ L 26, 2.2.1998, p. 3.

[2] OJ L 317, 10.12.1999, p. 1.

[3] OJ L 271, 24.10.2000, p. 7.

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

[5] OJ L 253, 11.10.1993, p. 1. Regulation last amended by Regulation (EC) No 444/2002 (OJ L 68, 12.3.2002 p. 11).

2. On the entry into force of the Additional Protocol adjusting the Europe Agreement to take into account the outcome of the negotiations between the parties on new mutual agricultural concessions, the concessions provided for in that Protocol shall replace those referred to in Annex C(a) and Annex C(b) to this Regulation.

3. The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 3(2).

Article 2

1. Tariff quotas with an order number above 09.5100 shall be administered by the Commission in accordance with Articles 308(a), 308(b) and 308(c) of Regulation (EEC) No 2454/93.

2. Quantities of goods subject to tariff quotas and released for free circulation as from 1 July 2002 under the concessions provided for in Annex A(b) of Regulation (EC) No 2341/2000 shall be fully counted against the quantities provided for in Annex C(b) of this Regulation, except for quantities for which import licences have been issued before 1 July 2002.

Article 3

1. The Commission shall be assisted by the Management Committee for Cereals instituted by Article 23 of Council Regulation (EEC) No 1766/92 [1] or, where appropriate, by the committee instituted by the relevant provisions of the other Regulations on the common organisation of agricultural markets.

2. Where reference is made to this paragraph, Decision 1999/468/EC shall apply.

3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

Article 4

Regulation (EC) No 2341/2000 is hereby repealed.

Article 5

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

It shall apply from 1 July 2002.

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

[1] OJ L 181, 1.7.1992, p. 21.

ANNEX C(a)

The following products originating in Latvia shall benefit from a preferential zero-duty within unlimited quantities (applicable duty 0 % of MFN) when imported into the Community.

CN code [1]	CN code	CN code	CN code	CN code
0101 10 90	0208 10 19	0210 99 80	0709 30 00	0710 80 85
0101 90 19	0208 20 00	0407 00 90	0709 40 00	0711 40 00
0101 90 30	0208 30 00	0410 00 00	0709 52 00	0711 59 00
0101 90 90	0208 40 10	0601 10	0709 59 00	0711 90 10
0104 20 10	0208 40 90	0601 20	0709 60	0711 90 50
0106 19 10	0208 90 10	0602	0709 70 00	0711 90 80
0106 39 10	0208 90 55	0603	0709 90 10	0711 90 90
0205	0208 90 60	0604	0709 90 20	0712 20 00
0206 80 91	0208 90 95	0701 10 00	0709 90 50	0712 32 00
0206 90 91	0210 91 00	0701 90 10	0709 90 70	0712 33 00
0207 13 91	0210 92 00	0703 10	0709 90 90	0712 39 00
0207 14 91	0210 93 00	0703 90 00	0710 29 00	0713 50 00
0207 26 91	0210 99 10	0707 00 90	0710 30 00	0713 90 10
0207 27 91	0210 99 31	0708 10 00	0710 80 51	0713 90 90
0207 35 91	0210 99 39	0708 90 00	0710 80 59	0802 11 90
0207 36 89	0210 99 59	0709 10 00	0710 80 69	0802 12 90
0208 10 11	0210 99 79	0709 20 00	0710 80 80	0802 21 00

CN code [1]	CN code	CN code	CN code	CN code
0802 22 00	0901 90 90	1602 31	2008 40 59	2008 99 99
0802 31 00	0902 10 00	1602 90 10	2008 40 71	2009 31 11
0802 32 00	0904 12 00	1602 90 31	2008 40 79	2009 39 31
0802 40 00	0904 20 10	1602 90 41	2008 40 91	2009 41 10
0802 90 50	0904 20 90	1602 90 72	2008 40 99	2009 49 30
0802 90 85	0907 00 00	1602 90 74	2008 50 11	2009 50 10
0806 20 11	0910 40 13	1602 90 76	2008 60 11	2009 50 90
0806 20 12	0910 40 19	1602 90 78	2008 60 31	2009 80 19
0806 20 91	0910 40 90	1602 90 98	2008 60 39	2009 80 38
0806 20 92	0910 91 90	1603 00 10	2008 60 51	2009 80 50
0806 20 98	0910 99 99	1704 90 10	2008 60 59	2009 80 63
0808 20 90	1106 10 00	2001 90 20	2008 60 61	2009 80 69
0809 40 90	1106 30	2001 90 70	2008 60 69	2009 80 71
0810 40 30	1208 10 00	2001 90 75	2008 60 71	2009 80 79
0810 40 50	1209	2001 90 85	2008 60 79	2009 80 89
0810 40 90	1210	2003 20 00	2008 60 91	2009 80 95
0811 90 39	1211 90 30	2003 90 00	2008 60 99	2009 80 96
0811 90 50	1212 10 10	2004 90 50	2008 80 11	2009 80 99
0811 90 75	1212 10 99	2004 90 91	2008 80 31	2009 90 19
0811 90 80	1214 90 10	2004 90 98	2008 80 39	2009 90 29
0811 90 85	1502 00 90	2005 10 00	2008 92 12	2009 90 39
0811 90 95	1503 00 19	2005 60 00	2008 92 14	2009 90 51
0812 10 00	1503 00 90	2005 90 10	2008 92 34	2009 90 59
0812 90 40	1504	2005 90 50	2008 92 38	2009 90 96
0812 90 50	1507	2006 00 99	2008 92 51	2009 90 97
0812 90 60	1508	2007 10 91	2008 92 59	2009 90 98
0812 90 99	1511	2007 10 99	2008 92 74	2204 30 10
0813 10 00	1512	2008 11 92	2008 92 78	2302 50 00
0813 20 00	1513	2008 11 94	2008 92 93	2306 90 19
0813 30 00	1514	2008 11 96	2008 92 96	2308 00 90
0813 40 10	1515	2008 11 98	2008 92 98	2309 10 51
0813 40 30	1516 10 10	2008 19 19	2008 99 28	2309 10 90
0813 40 95	1516 10 90	2008 19 93	2008 99 37	2309 90 10
0813 50 15	1516 20 91	2008 19 95	2008 99 40	2309 90 31
0813 50 19	1516 20 95	2008 19 99	2008 99 45	2309 90 41
0813 50 91	1516 20 96	2008 40 11	2008 99 49	2309 90 51
0813 50 99	1516 20 98	2008 40 21	2008 99 55	
0901 12 00	1518 00 31	2008 40 29	2008 99 68	
0901 21 00	1518 00 39	2008 40 39	2008 99 72	
0901 22 00	1522 00 91	2008 40 51	2008 99 78	

[1] As defined in Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 279, 23.10.2001, p. 1).

ANNEX(b)

Imports into the Community of the following products originating in Latvia shall be subject to the concessions set out below (MFN = Most Favoured Nation duty).

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4598	0102 90 05	Live bovine animals of domestic species of a live weight not exceeding 80 kg	20	178 000 heads	0	(3)
09.4537	0102 90 21 0102 90 29 0102 90 41 0102 90 49	Live bovine animals of domestic species of a live weight exceeding 80 kg but not exceeding 300 kg	20	153 000 heads	0	(3)
09.4563	ex 0102 90	Heifers and cows, not for slaughter, of the following mountain breeds: Grey, brown, yellow, spotted Simmental and Pinzgau	6 % *ad valorem*	7 000 heads	0	(4)
09.4871	0201 0202 0206 10 95 0206 29 91 0210 20 0210 99 51 0210 99 90 1602 50	Meat of bovine animals, fresh or chilled Meat of bovine animals, frozen Edible offal of bovine animals, fresh or chilled, thick skirt and thin skirt Edible offal of bovine animals, frozen, other, thick skirt and thin skirt Meat of bovine animals, salted, in brine, dried or smoked thick skirt and thin skirt of bovine animals Edible flours and meals of meat or meat offal Other prepared or preserved meat or meat offal of bovine animals	free	675	75	(8)
09.4540	ex 0203	Meat of domestic swine, fresh, chilled or frozen, excluding CN codes 0203 11 90, 0203 12 90, 0203 19 90, 0203 21 90, 0203 22 90, 0203 29 90	free	1 500	125	(5) (8)
	0104 10 30 0104 10 80 0104 20 90 0204 0210 99 21 0210 99 29 0210 99 60	Live sheep, lambs up to a year old Live sheep, other Live goats, other Meat of sheep or goats, fresh, chilled or frozen Edible meat of sheep and goats, with bone in Edible meat of sheep and goats, boneless Edible meat offal of sheep and goats	free	unlimited		(8)
09.6676	ex 0207	Meat and edible offal, of the poultry of heading No 0105, fresh, chilled or frozen excluding CN codes 0207 13 91, 0207 14 91, 0207 26 91, 0207 27 91, 0207 34 10, 0207 34 90, 0207 35 91, 0207 36 81, 0207 36 85, 0207 36 89	free	755	65	(8)
09.4872	0401	Milk and cream, not concentrated, nor containing added sugar or other sweetening matter	free	200	20	(8)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.4873	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter	free	3 800	0	(8)
09.4874	0403 10 11 to 0403 10 39	Yoghurt, not flavoured nor containing added fruit, nuts or cocoa	free	100	10	(8)
	0403 90 11 to 0403 90 69	Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, not flavoured nor containing added fruit nuts or cocoa				
09.4551	0405 10 11	Natural butter of a fat content, by weight, not exceeding 85 %, in immediate packings of a net content not exceeding 1 kg	free	2 255	190	(8)
	0405 10 19	Natural butter of a fat content by weight not exceeding 85 %, other				
	0405 10 30	Recombined butter, of a fat content, by weight, not exceeding 85 %				
	0405 10 50	Whey butter				
	0405 10 90	Butter, other				
	0405 20 90	Dairy spreads of a fat content, by weight, of more than 75 % but less than 80 %				
	0405 90	Other fats and oils derived from milk				
09.4552	0406	Cheese and curd	free	5 000	500	(8)
09.6677	0409 00 00	Natural honey	free	100	10	(8)
09.6621	ex 0702 00 00	Tomatoes, fresh or chilled, 15 May to 31 October	free	250	50	(7) (8)
09.6623	0703 20 00	Garlic, fresh or chilled	free	60	5	
09.6456	0704 90	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled, other	free	550	50	
09.6457	ex 0706 10 00	Carrots, fresh or chilled	20	250	0	
09.6678	0706 90	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled, other	free	200	20	
09.6679	0707 00 05	Cucumbers, fresh or chilled	free	500	50	(7)
09.6680	0709 40 00	Celery other than celeriac, fresh or chilled	free	50	5	
09.6458	0710 10 00	Potatoes, frozen	20	250	0	
09.6681	0712 90 50	Carrots, dried, whole, cut, sliced, broken or in powder, but not further prepared	free	200	20	
	0712 90 90	Other vegetables and mixtures of vegetables, dried, whole, cut, sliced, broken or in powder, but not further prepared				

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.6682	ex 0714 90 90	Frozen or dried Jerusalem artichokes	free	100	10	
	0806 10 10	Fresh table grapes	free	unlimited		(7)
09.6625	0808 10	Apples, fresh	free	250	50	(7) (8)
	0808 20 50	Fresh pears (excl. perry pears, in bulk, 1 August to 31 December)	free	unlimited		(7)
	0809 20	Cherries, fresh	free	unlimited		(7)
	0809 40 05	Plums, fresh	free	unlimited		(7)
	ex 0810 10 00	Strawberries, fresh, 1 August to 14 June	free	unlimited		(6)
	0810 20	Raspberries, blackberries, mulberries and loganberries, fresh	free	unlimited		(6)
	0810 30	Black-, white- or redcurrants and gooseberries, fresh	free	unlimited		(6)
09.6683	0811 10 11	Strawberries, frozen, containing added sugar or other sweetening matter with a sugar content exceeding 13 % by weight	20	250	0	(6)
	0811 10 19	Strawberries, frozen, containing added sugar or other sweetening matter with a sugar content not exceeding 13 % by weight	free	unlimited		(6)
	0811 10 90	Strawberries, frozen, other	free	unlimited		(6)
	0811 20 19	Raspberries, blackberries, mulberries, loganberries, black-, white- or redcurrants and gooseberries, frozen, with a sugar content not exceeding 13 % by weight	free	unlimited		(6)
	0811 20 31	Other frozen raspberries	free	unlimited		(6)
	0811 20 39	Other frozen blackcurrants	free	unlimited		(6)
	0811 20 51	Other frozen redcurrants	free	unlimited		(6)
	0811 20 59	Other frozen blackberries and mulberries	free	unlimited		(6)
	0811 20 90	Other, frozen	free	unlimited		(6)
09.6684	1001 10 00 1001 90 10 1001 90 91 1001 90 99	Durum wheat Spelt for sowing Common wheat and meslin seed Other	free	26 000	2 600	(8)
09.6685	1101 00 11 1101 00 15 1101 00 90 1103 11 10 1103 11 90 1103 20 60	Durum wheat flour Flour of common wheat and spelt Meslin flour Durum wheat groats and meal Common wheat and spelt groats and meal Wheat pellets	free	9 000	900	(8)

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.6686	1002 00 00	Rye	free	3 750	375	(8)
09.6687	1102 10 00 1103 19 10 1103 20 10	Rye flour Rye groats and meal Rye pellets	free	1 250	125	(8)
09.6688	1003 00	Barley	free	7 500	750	(8)
09.6689	1102 90 10 1103 19 30 1103 20 20	Barley flour Barley groats and meal Barley pellets	free	2 500	250	(8)
09.6690	1004 00 00	Oats	free	2 250	225	(8)
09.6691	1102 90 30 1103 19 40 1103 20 30	Oat flour Groats and meal of oats Pellets of oats	free	750	75	(8)
09.6692	ex 1104	Cereals grains, otherwise worked, excluding CN 1104 19 50 and CN 1104 23	free	900	90	
09.6473	1108 13 00	Potato starch	free	500	0	
09.4564	1601 00 1602 41 1602 42 1602 49	Sausages and similar products, of meat, meat offal or blood: food preparations based on these products Other prepared or preserved meat, meat offal or blood: of swine: Hams and cuts thereof Other prepared or preserved meat, meat offal or blood: of swine: Shoulders and cuts thereof Other prepared or preserved meat, meat offal or blood: of swine: Other, including mixtures	free	180	15	(8)
09.6693	1602 32 to 1602 39	Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: of fowls of the species *Gallus domesticus* Other prepared or preserved meat, meat offal or blood: of poultry of heading 0105: Other than of fowls of the species *Gallus domesticus* and other than of turkeys	free	120	10	(8)
	1703	Molasses resulting from the extraction or refining of sugar	free	unlimited		(8)
09.6694	ex 2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, excluding CN 2001 90 30, 2001 90 40, 2001 90 60, 2001 90 65 and 2001 90 91	free	600	60	
09.6695	ex 2005	Other vegetables, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, excluding CN 2005 20 10, 2005 70 and 2005 80 00	free	300	30	

Order No	CN code	Description (1)	Applicable duty (% of MFN) (2)	Annual quantity from 1.7.2002 to 30.6.2003 (tonnes)	Yearly increase as from 1.7.2003 (tonnes)	Specific provisions
09.6696	2009 71	Apple juice of a brix value not exceeding 20	free	1 000	100	
09.6697	ex 2009 79	Apple juice of a brix value exceeding 20, excluding CN 2009 79 11 and 2009 79 91	free	1 000	100	

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than indicative value, the preferential scheme being determined, within the context of this annex, by the coverage of the CN code. Where ex CN codes are indicated, the preferential scheme is to be determined by application to the CN code and corresponding description taken together.

(2) In cases where an MFN minimum duty exists, the applicable minimum duty is equal to the MFN minimum duty multiplied by the percentage indicated in this column.

(3) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania. In case imports into the Community of live bovine domestic animals may exceed 500 000 heads for any given year, the Community may take the management measures needed to protect its market, notwithstanding any other rights given under the Agreement.

(4) The quota for this product is opened for the Czech Republic, the Slovak Republic, Bulgaria, Romania, Hungary, Poland, Estonia, Latvia and Lithuania.

(5) Excluding tenderloin presented alone.

(6) Subject to minimum import price arrangements contained in the Annex to this Annex.

(7) The reduction applies only to the *ad valorem* part of the duty.

(8) This concession is only applicable to products not benefiting from export refunds.

Annex to Annex C(b)

Minimum import price arrangement for certain soft fruit for processing

1. Minimum import prices are fixed as follows for the following products for processing originating in Latvia:

CN Code	Description	Minimum import price (EUR/t net)
ex 0810 10	Strawberries, fresh, intended for processing	514
ex 0810 30 10	Blackcurrants, fresh, intended for processing	385
ex 0810 30 30	Redcurrants, fresh, intended for processing	233
ex 0811 10 11	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content exceeding 13 % by weight: whole fruit	750
ex 0811 10 11	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content exceeding 13 % by weight: other	576
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: whole fruit	750
ex 0811 10 19	Frozen strawberries, containing added sugar or other sweetening matter, with a sugar content not exceeding 13 % by weight: other	576
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: whole fruit	750
ex 0811 10 90	Frozen strawberries, containing no added sugar or other sweetening matter: other	576
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter not exceeding 13 % by weight: whole fruit	995
ex 0811 20 19	Frozen raspberries, containing added sugar or other sweetening matter not exceeding 13 % by weight: other	796
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: whole fruit	995
ex 0811 20 31	Frozen raspberries, containing no added sugar or other sweetening matter: other	796
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: without stalk	628
ex 0811 20 39	Frozen blackcurrants, containing no added sugar or other sweetening matter: other	448
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: without stalk	390
ex 0811 20 51	Frozen redcurrants, containing no added sugar or other sweetening matter: other	295

2. The minimum import prices, as set out in point 1, will be respected on a consignment by consignment basis. In the case of a customs declaration value being lower than the minimum import price, a countervailing duty will be charged equal to the difference between the minimum import price and the customs declaration value.

3. If the import prices of a given product covered by this Annex show a trend suggesting that the prices could go below the level of the minimum import prices in the immediate future, the European Commission will inform the Latvian authorities in order to enable them to correct the situation.

4. At the request of either the Community or Latvia, the Association Council shall examine the functioning of the system or the revision of the level of the minimum import prices. If appropriate, the Association Council shall take the necessary decisions.

5. To encourage and promote the development of trade and for the mutual benefit of all parties concerned, a consultation meeting may be organised three months before the beginning of each marketing year in the European Community. This consultation meeting will take place between the European Commission and the interested European producers' organisations for the products concerned, on the one part and the authorities', producers' and exporters' organisations of all the associated exporting countries, on the other part.

   During this consultation meeting, the market situation for soft fruit including, in particular, forecasts for production, stock situation, price evolution and possible market development, as well as possibilities to adapt supply to demand, will be discussed.

Proposal for a Council Decision on a Community position within the EC-Mexico Joint Council on the rules of procedure of the Special Committees

(2002/C 203 E/33)

COM(2002) 228 final

(Submitted by the Commission on 7 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the proposal from the Commission,

Whereas:

(1) Article 49 of the Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part provides that the Joint Council may decide to set up special committees to assist it in the performance of its duties.

(2) Whereas Article 17 of the Decision No 2/2000 adopted on 23 March 2000 by the EU-Mexico Joint Council hereinafter referred to as the 'Decision No 2/2000', established a Special Committee on Customs Co-operation and Rules of Origin.

(3) Whereas Article 19 of the Decision No 2/2000 sets up a Special Committee on Standards and Technical Regulations.

(4) Whereas Article 20 of the Decision No 2/2000 sets up a Special Committee on Sanitary and Phytosanitary Measures.

(5) Whereas Article 24 of the Decision No 2/2000 sets up a Special Committee on Steel Products.

(6) Whereas Article 32 of the Decision No 2/2000 sets up a Special Committee on Government Procurement.

(7) Whereas Article 40 of the Decision No 2/2000 sets up a Special Committee on Intellectual Property Matters.

(8) Whereas Article 23 of the Decision No 2/2001 adopted on 27 February 2001 by the EU-Mexico Joint Council, hereinafter referred to as the 'Decision No 2/2001' sets up a Special Committee on Financial Services.

(9) Whereas Article 49 of the Agreement provides that the Joint Council shall determine in its rules of procedure how the Special Committees shall function.

HAS DECIDED AS FOLLOWS:

Sole Article

To adopt, as a Community position within the EC-Mexico Joint Council, the annexed draft decision.

ANNEX

DECISION No .../2002 OF THE EUROPEAN COMMUNITY-MEXICO JOINT COUNCIL

of ... 2002

established by the Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, of 8 December 1997

RULES OF PROCEDURE OF THE SPECIAL COMMITTEES

THE JOINT COUNCIL,

Having regard to the Economic Partnership, Political Co-ordination and Co-operation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, signed in Brussels on 8 December 1997, hereinafter referred to as the 'Agreement' and in particular article 49.

Whereas Article 49 of the Agreement provides that the Joint Council may decide to set up special committees to assist it in the performance of its duties.

Whereas Article 17 of the Decision No 2/2000 adopted on 23 March 2000 by the EU-Mexico Joint Council hereinafter referred to as the 'Decision No 2/2000', established a Special Committee on Customs Co-operation and Rules of Origin.

Whereas Article 19 of the Decision No 2/2000 sets up a Special Committee on Standards and Technical Regulations.

Whereas Article 20 of the Decision No 2/2000 sets up a Special Committee on Sanitary and Phytosanitary Measures.

Whereas Article 24 of the Decision No 2/2000 sets up a Special Committee on Steel Products.

Whereas Article 32 of the Decision No 2/2000 sets up a Special Committee on Government Procurement.

Whereas Article 40 of the Decision No 2/2000 sets up a Special Committee on Intellectual Property Matters.

Whereas Article 23 of the Decision No 2/2001 adopted on 27 February 2001 by the EU-Mexico Joint Council, hereinafter referred to as the 'Decision No 2/2001' sets up a Special Committee on Financial Services.

Whereas Article 49 of the Agreement provides that the Joint Council shall determine in its rules of procedure how the Special Committees shall function,

HAS DECIDED AS FOLLOWS:

Article 1

The Rules of Procedure of the Special Committees are established as set out in the annex of this Decision, which shall become an appendix to the Rules of Procedure of the Joint Council annexed to Decision No 1/2001 of the EU/Mexico Joint Council.

Article 2

This Decision shall enter into force on ...

ANNEX

RULES OF PROCEDURE FOR THE EC-MEXICO SPECIAL COMMITTEES

Article 1

Presidency

Every meeting of the Special Committees shall be presided alternatively by a representative of the European Commission, and by a representative of the Mexican Government, normally at senior civil servant level.

Article 2

Meetings

The Special Committees shall meet as stated in the respective articles of the Decision No 2/2000 and the Decision No 2/2001 which establishes each of them.

Article 3

Delegations

Before each meeting, the Chairman of the Special Committees shall be informed of the intended composition and the Head of the delegation of each Party.

Article 4

Secretariat

1. An official of the European Commission, of the one part, and an official of the Government of Mexico, of the other part, shall act jointly as Secretaries of the Special Committees.

2. All correspondence to and from the Chairman of the Special Committees provided for in these rules of procedure shall be forwarded to the Secretaries of the Special Committees and to the Secretaries and the Chairman of the Joint Committee and where appropriate, to the members of the Joint Committee.

Article 5

Documents

When the deliberations of the Special Committees are based on written supporting documents, such documents shall be numbered and circulated as documents of the Special Committee by the two Secretaries.

Article 6

Publicity

Unless otherwise decided, the meetings of the Special Committees shall not be public.

Article 7

Agenda for the meetings

1. A provisional agenda for each meeting shall be drawn up by the Secretaries of the Special Committees no later than thirty days before the meeting, together with the supporting documentation. The agenda shall be forwarded to the Chairman, Secretaries and members of the Joint Committee not later than fifteen days before the beginning of the meeting. The agenda shall be adopted by the Special Committees at the beginning of each meeting. Items not on the provisional agenda may be added with the agreement of both parties.

2. With the agreement of the Parties the time limits specified in paragraph 1 may be shortened in order to take account of the requirements of a particular case.

Article 8

Minutes

Minutes shall be taken for each meeting and shall be based on a summing up by the Chairman of the conclusions arrived at by the Special Committees:

1. The parties will draft and agree on a first version of the minutes directly after the Special Committees meeting.

2. The parties will then have 20 working days to circulate the minutes internally and compare the versions cleared internally.

3. Upon adoption by the Special Committees, the minutes shall be signed by the Chairman and by the Secretaries within 10 working days after the end of the internal clearance procedure referred to in paragraph 2.

4. A copy of the minutes shall be forwarded to the Chairman and Secretaries of the Joint Committee.

Article 9

Recommendations

1. In those cases where the Special Committee is empowered to make recommendations in accordance with Decision No 2/2000 or Decision No 2/2001, those acts shall be entitled 'recommendation', followed by a serial number, by the date of their adoption and by description of their subject.

2. Where the Special Committee makes a recommendation, the provisions of article 10, 11 and 12 of Decision No 1/2001 of the Joint Council that establish the rules of procedure of the Joint Council shall apply mutatis mutandis.

3. The recommendations of the Special Committee shall be forwarded to the Secretaries of the Joint Committee.

Article 10

Expenses

1. The United Mexican States and the European Community shall each defray the expenses they incur by reason of their participation in the meetings of the Special Committees, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

2. Expenditure in connection with the material organisation and the interpretation at meetings, translation and reproduction of documents shall be borne by the Party which hosts the meetings.

Article 11

Annual report

The Special Committees shall report annually to the Joint Committee.

Article 12

Other special committee

These rules of procedure shall apply to any other special committee or body set up, in accordance with article 49 of the Agreement, to assist the Joint Council in the performance of its duties.

Proposal for a Council Decision on the Community position in relation to the establishment of a Joint Consultative Committee to be decided on by the Association Council established by the Europe Agreement between the European Communities and the Republic of Bulgaria

(2002/C 203 E/34)

COM(2002) 231 final — 2002/0107(ACC)

(Submitted by the Commission on 13 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a European Community, the Treaty establishing a European Coal and Steel Community and the Treaty establishing a European Atomic Energy Community (Euratom),

Having regard to Article 300(2), second and third subparagraphs, of the Treaty establishing the European Community,

Having regard to Article 2(1) of the Council and Commission Decision of 19.12.1995 [1] on conclusion of the Europe Agreement establishing an Association between the European Communities and their Member States, on the one hand, and the Republic of Bulgaria, on the other hand,

Having regard to the Commission proposal,

Whereas:

(1) Article 110 of the said Europe Agreement provides that the Association Council may decide to set up any special committee or body that can assist it in carrying out its duties,

(2) Dialogues and cooperation between regional and local authorities in the European Union and the Republic of Bulgaria can make a major contribution to the full implementation of the Europe Agreement,

(3) It seems appropriate that such cooperation should be between the members of the Committee of the Regions of the European Communities and of the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions of the European Communities,

HAS DECIDED AS FOLLOWS:

The position to be adopted by the Community within the Association Council established by Article 110 of the Europe Agreement establishing an Association between the European Communities and their Member States, on the one hand, and the Republic of Bulgaria, on the other hand, in relation to the establishment of a Joint Consultative Committee shall be based on the draft decision of the said Association Council which is annexed to the present decision.

[1] OJ L 358, 31.12.1994, p. 1.

DRAFT DECISION No .../2002 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part

amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/95 [1] adopting the rules of procedure of the Association Council

THE ASSOCIATION COUNCIL

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part [2] and in particular Article 110 thereof;

Whereas dialogue and cooperation between the regional and local authorities in the European Community and those in the Republic of Bulgaria can make a major contribution to the development of their relations and to the integration of Europe;

Whereas it seems appropriate that such cooperation should be organised at the level of the Committee of the Regions of the one part, and of the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions, of the other part, by setting up of a Joint Consultative Committee;

Whereas this means that the rules of procedure of the Association Council, adopted by Decision No 1/95, need to be amended accordingly;

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be added to the rules of procedure of the Association Council:

'*Article 15*

A Joint Consultative Committee (hereinafter referred to as "Committee") is hereby established with the task of assisting the Association Council with a view to promoting dialogue and cooperation between the regional and local authorities in the European Community and those in the Republic of Bulgaria. Such dialogue and cooperation shall be aimed in particular at:

1. preparing Bulgarian regions and local authorities for activity in the framework of future membership of the European Union;

2. preparing Bulgarian regions and local authorities for their participation in the work of the Committee of the Regions after accession of the Republic of Bulgaria;

3. exchanging information on current issues of mutual interest, in particular on up-to-date state of play concerning EU regional policy and accession process as well as preparation of Bulgarian regions and local authorities for these policies;

4. encouraging multilateral structured dialogue between (a) Bulgarian regions and local authorities and (b) regions from EU Member States, including through networking in specific areas where direct contacts and cooperation between regions and local authorities from the Republic of Bulgaria and EU Member States might prove the most effective way of solving particular problems;

5. providing regular exchange of information on inter-regional cooperation between regional and local authorities from the Republic of Bulgaria and Member States;

6. encouraging exchange of experience and knowledge in the field of regional policy and structural interventions, between (a) Bulgarian regions and local authorities and (b) regions and local authorities from EU Member States, in particular know-how and techniques concerning preparation of regional and local development plans or strategies and most efficient use of Structural Funds;

7. assisting Bulgarian regional and local authorities by means of information exchange in practical implementation of the principle of subsidiarity in all aspects of life on regional and local level;

[1] OJ L 255, 25.10.1995, p. 19.

[2] OJ L 358, 31.12.1994, p. 3.

8. discussing any other relevant matters proposed by any side, as they can arise in the context of implementation of the Europe Agreement and in the framework of the Pre-accession Strategy.

Article 16

The Committee shall comprise eight representatives of the Committee of the Regions, on the one hand, and eight representatives of the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions, on the other hand. An equal number of alternate members shall be appointed.

The Committee shall carry out its activities on the basis of consultation by the Association Council or, as concerns the promotion of the dialogue between the regional and local authorities, on its own initiative.

The Committee may make recommendations to the Association Council.

Members shall be chosen to ensure that the Committee is as faithful a reflection as possible of the various levels of regional and local authorities in both the European Community and the Republic of Bulgaria.

The Committee shall adopt its own Rules of Procedure.

The Committee shall meet at intervals, which it shall itself determine in its Rules of Procedure.

The Committee shall be co-chaired by a member of the Committee of the Regions of the European Community and a member of the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions.

Article 17

The Committee of the Regions, on the one hand, and the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions, on the other hand, shall each defray the expenses they incur by reason of their participation in the meetings of the Committee with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Committee of the Regions, with the exception of expenditure in connection with interpreting or translation into or from Bulgarian, which shall be borne by the Bulgarian Liaison Committee for Cooperation with the Committee of the Regions.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.'

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Proposal for a Council Directive amending Directive 69/208/EEC on the marketing of seed of oil and fibre plants

(2002/C 203 E/35)

COM(2002) 232 final — 2002/0105(CNS)

(Submitted by the Commission on 14 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) Varietal associations of oil and fibre plants species should be included in the scope of Council Directive 69/208/EEC [1]. The conditions to be satisfied by the varietal associations, including the colour of the official label required for packages of certified seed of varietal associations, should also be defined.

(2) Owing to their increased importance in the Community, hybrid varieties of oil and fibre plant species additional to sunflower should also be included in the scope of the Directive 69/208/EEC.

(3) It is necessary for this Directive to enter into force as a matter of urgency. Due to the increased importance in the Community of such seed the Commission adopted in 1995 Commission Decision 95/232/EC [2] with the aim of establishing the conditions to be satisfied by the seed of hybrids and varietal associations of swede rape and turnip rape. This Decision will expire on 30 June 2002.

(4) Directive 69/208/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 69/208/EEC is hereby amended as follows:

1. In Article 2, the following paragraph is inserted after paragraph 1b:

'1c. Amendments to be made to paragraph 1(B) and (Ba) for the purpose of including hybrids of plants other than sunflower in the scope of this Directive shall be adopted in accordance with the procedure laid down in Article 20.'

2. In Article 10(1)(a), the following sentence is inserted after the second sentence:

'In the case of certified seed of a varietal association, the label shall be blue with a diagonal green line.'

3. In Article 14(1), the terms 'Directive 70/457/EEC' are replaced by the following text:

'Directive 70/457/EEC (*)

(*) OJ L 225, 12.10.1970, p. 1; as last amended by Directive 98/95/EC (OJ L 25, 1.2.1999, p. 1)'.

4. The following Article 14b is inserted:

'*Article 14b*

1. Member States shall permit seed of species of oil and fibre plants to be marketed in the form of a varietal association.

2. For the purpose of paragraph 1:

— a "varietal association" shall mean an association of certified seed of a specified pollinator-dependant hybrid officially admitted under Directive 70/457/EEC with certified seed of one or more specified pollinator(s), similarly admitted, and mechanically combined in proportions jointly determined by the persons responsible for the maintenance of these components, such combination having been notified to the Certification Authority,

— "pollinator-dependant hybrid" shall mean the male-sterile component within the "varietal association" (female component),

— "pollinator(s)" shall mean the component shedding pollen within the "varietal association" (male component),

[1] OJ L 169, 10.7.1969, p. 3. Directive as last amended by Directive 98/96/EC (OJ L 25, 1.2.1999, p. 27).

[2] OJ L 154, 5.7.1995, p. 22. Decision as last amended by Commission Decision 99/84/EC (OJ L 27, 2.2.1999, p. 31).

3. The seed of the female and male components shall be dressed using different coloured seed dressings.'

Article 2

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 30 June 2002 at the latest. They shall forthwith inform the Commission thereof.

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

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

Article 3

This Directive shall enter into force on the 7th day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2223/96 with respect to the delays of transmission of the main aggregates of national accounts, to the derogations concerning the transmission of the main aggregates national accounts and to the transmission of employment data in hours worked

(2002/C 203 E/36)

COM(2002) 234 final — 2002/0109(COD)

(Submitted by the Commission on 15 May 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community [1] (ESA 95), as last amended by Commission Regulation (EC) No 995/2001 [2], contains the reference framework of common standards, definitions, classifications and accounting rules for drawing up the accounts of the Member States for the statistical requirements of the Community, in order to obtain comparable results between Member States.

(2) The report of the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) on statistical requirements in EMU, endorsed by the Ecofin Council of 18 January 1999, underlined that for the proper functioning of Economic and Monetary Union (EMU) and the Single Market, effective surveillance and co-ordination of economic policies are of major importance and that this requires a comprehensive statistical information system providing policy makers with the necessary data on which to base their decisions. This report outlined the high priority in having such information available for the Community and especially for Member States participating in the euro area.

(3) The report underlined that the cross-country comparison of the labour market will demand more attention in the Economic and Monetary Union.

(4) In order to compile quarterly statistics for the euro area, the delay of transmission of the main aggregates of national accounts should be reduced to 70 days.

(5) Quarterly and annually derogations accorded to Member States that prevent the compilation of the main aggregates of national accounts for the euro area and the Community should be abrogated.

(6) The Action Plan on Economic and Monetary Union Statistical Requirements [3], endorsed by the Ecofin Council of 29 September 2000, identifies as a priority the transmission of national accounts employment data according to the unit 'hours worked'.

(7) The Statistical Programme Committee (SPC) and the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) have been consulted in accordance with Article 3 of respectively Decision 89/382/EEC, Euratom [4] and Council Decision 91/115/EEC [5],

HAVE ADOPTED THIS REGULATION:

Article 1

Annex B of Regulation (EC) No 2223/96 is hereby amended as follows:

1. The text following the title: 'Transmission Programme of National Accounts Data' is amended as follows:

   (a) The text of the 'Overview of the tables' is replaced by the text in Annex I.

   (b) The text of Table 1 'Main aggregates — quarterly and annual exercise' is replaced by the text in Annex II.

2. The text following the title: 'Derogations concerning the tables to be supplied in the framework of the questionnaire "ESA 95" by country' is replaced by the text in Annex III.

Article 2

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

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

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[1] OJ L 310, 30.11.1996, p. 1.

[2] OJ L 139, 23.5.2001, p. 3.

[3] Public Register of Council documents, 11655/2000, Action Plan on EMU Statistical Requirements, 27.9.2001.

[4] OJ L 181, 28.6.1989, p. 47.

[5] OJ L 59, 6.3.1991, p. 19.

ANNEX I

Amendments to the table 'Overview of the tables' of Annex B — Transmission Programme of National Accounts Data — of the Regulation (EC) No 2223/96, ESA 95

TRANSMISSION PROGRAMME OF NATIONAL ACCOUNTS DATA

Overview of the tables

First transmission	Delay t + month (days where specified)	Transmission for years	Subject of the tables	Tables No
2002	70 days	95-01	Main aggregates, annual	1
2002	70 days	95-01	Main aggregates, quarterly	1
1999	8	95-98	Main aggregates general government	2
2001	3	97-00	Main aggregates general government	2
2000	9	95-99	Tables by industry	3
2000	9	95-99	Exports and imports by EU/third countries	4
2000	9	95-99	Household final consumption expenditure by purpose	5
2000	9	95-99	Financial accounts by sector (transactions)	6
2000	9	95-99	Balance sheets for financial assets and liabilities	7
2000	12	95-99	Non-financial accounts by sector	8
2000	12	95-99	Detailed tax receipts by sector	9
2000	24	95-98	Tables by industry and by region, NUTS II, A17	10
2001	12	95-00	General government expenditure by function	11
2001	24	95-99	Tables by industry and by region, NUTS III, A3	12
2001	24	95-99	Household accounts by region, NUTS II	13
2001	24	95-99	Fixed assets for total economy and by product, Pi3	14
2002	36	95-99	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	15
2002	36	95-99	Use table at purchasers' prices, A60 × P60	16
2002	36	95 (*)	Symmetric input-output table at basic prices, P60 × P60, five yearly	17
2002	36	95 (*)	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	18
2002	36	95 (*)	Symmetric input-output table for imports at basic prices P60 × P60, five yearly	19
2003	36	00	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	20
2003	36	00	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	21
2003	36	00	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five yearly	22
see table	see table	see table	Backward calculations	23

T = Reference period (year or quarter).

(*) The five yearly table for the year 2000 has to be delivered in 2003.

ANNEX II

Amendments to Table 1 — Main aggregates, quarterly and annual exercise — of Annex B — Transmission Programme of National Accounts Data — of the Regulation (EC) No 2223/96, ESA 95

Table 1 — **Main aggregates — quarterly and annual exercise**

Code	List of variables	Breakdown +	Current prices	Constant prices
Value added and Gross Domestic Product				
B.1g	1. Gross value added at basic prices	A6	x	x
D.21–D.31	2. Taxes less subsidies on products		x	x
P.119	3. FISIM		x	x
B.1*g	4. Gross domestic product at market prices		x	x
Expenditure of the Gross Domestic Product				
P.3	5. Total final consumption expenditure		x	x
P.3	6. (a) Household final consumption expenditure (domestic concept)		x	x
P.3	(b) Household final consumption expenditure (national concept)		x	x
P.3	7. Final consumption expenditure of NPISHs		x	x
P.3	8. Government final consumption expenditure		x	x
P.31	(a) Individual consumption expenditure		x	x
P.32	(b) Collective consumption expenditure		x	x
P.4	9. Actual final consumption of households		x	x
P.41	(a) Actual individual consumption		x	x
P.5	10. Gross capital formation		x	x
P.51	(a) Gross fixed capital formation	Pi6	x	x
P.52	(b) Changes in inventories		x	x
P.53	(c) Acquisitions less disposals of valuables		x	x
P.6	11. Exports of goods (fob) and services		x	x
P.7	12. Imports of goods (fob) and services		x	x
Income, Saving and Net Lending				
B.5	13. Balance of primary income with the rest of the world		x	x
B.5*g	14. Gross national income at market prices		x	(x)
K.1	15. Consumption of fixed capital		x	x
B.5*n	16. Net national income at market prices		x	x
D.5, D.6, D.7	17. Net current transfers with the rest of the world		x	

Code	List of variables	Breakdown +	Current prices	Constant prices
B.6n	18. Disposable income, net		x	(x)
B.8n	19. National saving, net		x	
D.9	20. Net capital transfers with the rest of the world		x	
B.9	21. Net lending or net borrowing of the nation		x	
Population, Employment, Compensation of employees				
	22. Population and employment data			
	(a) Total population (1 000)			
	(b) Unemployed persons (1 000)			
	(c) Employment in resident production units (thousands of persons employed and thousands of hours worked) and employment of residents (thousands of persons)			
	— self employed	A6 (*)		
	— employees	A6 (*)		
D.1	23. Compensation of employees working in resident production units and compensation of resident employees	A6	x	
D.11	(a) Gross wages and salaries	A6	x	

+ If no breakdown is indicated that means total economy.

(*) A6 only for self employed and employees in resident production units.

(x) at real terms.

ANNEX III

Amendments to the tables by country of Annex B — Derogations concerning the tables to be supplied in the framework of the questionnaire 'ESA 95' by country — of the Regulation (EC) No 2223/96, ESA 95

DEROGATIONS CONCERNING THE TABLES TO BE SUPPLIED IN THE FRAMEWORK OF THE QUESTIONNAIRE 'ESA 95' BY COUNTRY

1. AUSTRIA

1.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	delay: t+9 months	1999
2	Main aggregates general government	backward calculations: recalculation only years 88-94	2005
3	Tables by industry	delay: t+12 months	1999
3	Tables by industry	backward calculations: recalculation only years 88-94	2005
5	Household final consumption expenditure by purpose	backward calculations: recalculation only years 88-94	2005
11	General government expenditure by function	backward calculations: years 90-94 not to be recalculated	2005
12	Tables by industry and by region, NUTS III, A3	first transmission 2002	2002
13	Household accounts by region, NUTS	first transmission 2005	2005
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	first transmission 2003 and only 2-yearly	2003
16	Use table at purchasers' prices, A60 × P60	first transmission 2003 and only 2-yearly	2003
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	first transmission 2003	2003
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	first transmission 2003	2003
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly	first transmission 2003	2003

1.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3 8	Tables by industry Non-financial accounts by sector	Consumption of fixed capital by industry or sector	first transmission 2002	2002
8	Non-financial accounts by sector	Breakdown of corporations by owner	first transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of private households by groups	first transmission 2005	2005
16 18	Use table at purchasers' prices, A60 × P60 Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	Consumption of fixed capital by industry	first transmission 2003	2003

2. DENMARK

2.1. **Derogations for tables**

Table No	Table	Derogation	Until
6	Financial accounts by sectors (transactions)	delay: t+13 months	2005
7	Balance sheets for financial assets and liabilities	delay: t+13 months	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	first transmission 2005	2005

2.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Wages and salaries by industry	not to be reported	2005
3	Tables by industry	Consumption of fixed capital by industry	delay: t+36 months	2005
3	Tables by industry	Gross fixed capital formation by industry	delay: t+36 months	2005
3	Tables by industry	Changes in inventories by industry	delay: t+36 month	2005
3	Tables by industry	Acquisitions less disposals of valuables by industry	delay: t+36 months	2005
3	Tables by industry	Self employed by industry	delay: t+36 months	2005
3	Tables by industry	Employees by industry	delay: t+36 months	2005
3	Tables by industry	Hours worked by industry	delay: t+36 months	2005
3	Tables by industry	Compensation of employees by industry	delay: t+36 months	2005
9	Detailed tax receipts by sector	General sales or turnover taxes (taxes on imports) General sales or turnover taxes (taxes on products)	both variables together	2005
9	Detailed tax receipts by sector	Excise duties (taxes on imports) Excise duties (taxes on products)	both variables together	2005
9	Detailed tax receipts by sector	Taxes on specific services (taxes on imports) Taxes on specific services (taxes on products)	both variables together	2005
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	Consumption of fixed capital, operating surplus, net	both variables together at P60	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly			

Table No	Table	Variable/Sector	Derogation	Until
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	Fixed capital formation	only P31	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly			
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	Fixed capital stock	not to be reported	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	Sector private households Sector NPISHs	both sectors together	2005

3. GERMANY

3.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 91-94	2005
3	Tables by industry	backward calculations: recalculation only years 91-94	2005
3	Tables by industry	t+9 months only A17, A31 only at t+21 months delay	2005
5	Household final consumption expenditure by purpose	backward calculations: recalculation only years 91-94	2005
5	Household final consumption expenditure by purpose	partly only 1-digit positions	2005
8	Non-financial accounts by sector	backward calculations: recalculation only years 91-94	2005
9	Detailed tax receipts by sector	no letter positions at the end of the code	2005
10	Tables by industry and by region, NUTS II, A17	only NUTS I and A6	2005
11	General government expenditure by function	backward calculations: recalculation only years 91-94	2005
12	Tables by industry and by region, NUTS III, A3	delay: t+30 months, only 2-yearly	2005
13	Household accounts by region, NUTS II	delay: t+30 months, only NUTS I	2005
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	only 2-yearly	2005
16	Use table at purchasers' prices, A60 × P60	only 2-yearly	2005
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	no constant prices	2005

3.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables by industry, changes in inventories by industry	both variables together, not by industry	2005
6	Financial accounts by sector (transactions)	Sector general government	S1311/S1312 and S1313 only together	2005
7	Balance sheets for financial assets and liabilities			
10	Tables by industry and by region, NUTS II, A17	Gross fixed capital formation	delay: t+30 months	2005

4. GREECE

4.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	delay: t+9 months	2005
3	Tables by industry	backward calculations: recalculation only years 88-94	2005
5	Household final consumption expenditure by purpose	backward calculations: recalculation only years 88-94	2005
6	Financial accounts by sector (transactions)	first transmission: answer at the moment not clear	2005
6	Financial accounts by sector (transactions)	delay: answer at the moment not clear	2005
7	Balance sheets for financial assets and liabilities	first transmission 2005	2005
8	Non-financial accounts by sector	backward calculations: recalculation only years 88-94	2005
8	Non-financial accounts by sector	backward calculations: years 80–89 not to be recalculated	2005
11	General government expenditure by function	backward calculations: recalculation only years 88-94	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	first transmission 2005	2005

4.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	first transmission 2005	2005
3	Tables by industry	Hours worked by industry	first transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of corporations by owner	first transmission 2005	2005
8	Non-financial accounts by sector	Breakdown of private households by groups	first transmission 2005	2005

5. SPAIN

5.1. **Derogations for tables**

Table No	Table	Derogation	Until
11	General government expenditure by function	delay: t+21 months	2005

5.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Consumption of fixed capital by industry	first transmission 2005	2005
3	Tables by industry	Acquisitions less disposals of valuables by industry	first transmission 2005	2005
3	Tables by industry	Hours worked by industry	first transmission 2005	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables	first transmission 2005	2005
9	Detailed tax receipts by sector	Breakdown of current taxes on income, wealth etc., Taxes and duties on imports excluding VAT and other taxes on production for the subsectors state government (S1312) and local government (S1313)	delay: t+21 months	2005
16	Use table at purchasers' prices, A60 × P60	Consumption of fixed capital by industry (A60)	first transmission 2005	2005
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	Consumption of fixed capital (P60)	first transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly			
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	Stocks of fixed assets (P60)	first transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly			
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly			

6. FRANCE

6.1. **Derogations for tables**

Table No	Table	Derogation	Until
10	Tables by industry and by region, NUTS II, A17	delay: t+36 months	2005
12	Tables by industry and by region, NUTS III, A3	delay: t+36 months	2005
13	Household accounts by region, NUTS II	delay: t+42 months	2005

6.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	all variables	breakdown by branches to be calculated for homogenous branches	2005
10	Tables by industry and by region, NUTS II, A17			
12	Tables by industry and by region, NUTS III, A3			
15	Supply table at basic prices incl. transformation into purchasers' prices A60 × P60			
16	Use table at purchasers' prices, A60 × P60			
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly			
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly			
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five yearly			

7. IRELAND

7.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 85-94	2005
2	Main aggregates of general government	transmission at t+3	2002
3	Tables by industry	first transmission 2005	2005
3	Tables by industry	backward calculations: years 70-94 not to be recalculated	2005
5	Household final consumption expenditure by purpose	backward calculations: recalculation only years 85-94	2005
6	Financial accounts by sector (transactions)	first transmission 2005	2005
7	Balance sheets for financial assets and liabilities	first transmission 2005	2005
8	Non-financial accounts by sector	first transmission 2005	2005
8	Non-financial accounts by sector	backward calculations: years 90-94 not to be recalculated	2005
8	Non-financial accounts by sector	backward calculations: years 80-89 not to be recalculated	2005
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	first transmission 2005	2005
16	Use table at purchasers' prices, A60 × P60	first transmission 2005	2005
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	first transmission 2005	2005
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	first transmission 2005	2005

Table No	Table	Derogation	Until
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly	first transmission 2005	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	first transmission 2005	2005
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14 + S15), five yearly	first transmission 2005	2005
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five yearly	first transmission 2005	2005

7.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
2	Main aggregates general government	P52 + P53 + K2	not to be supplied	2003

8. ITALY

8.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: years 70-94 not to be supplied	2005
2	Main aggregates general government	backward calculations: years 80-94 to be supplied in December 2001	2001
2	Main aggregates general government	delay: t+9 months	2005
20	Cross classification of fixed assets by industry and by product, A31 × Pi3, five yearly	not to be calculated	2005
22	Cross classification of gross fixed capital formation by industry and by product, A31 × P60, five yearly	first transmission 2005	2005

8.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Consumption of fixed capital by industry	breakdown A17, first transmission 2002	2002
3	Tables by industry	Consumption of fixed capital by industry	breakdown A31, first transmission 2005	2005
3	Tables by industry	Acquisitions less disposals of valuables by industry	together with changes in inventories	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables by industry	together with changes in inventories	2005

9. LUXEMBOURG

9.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 90-94	2005
3	Tables by industry	backward calculations: recalculation only years 80-94	2005
6	Financial accounts by sector (transactions)	first transmission 2005	2005
7	Balance sheets for financial assets and liabilities	first transmission 2005	2005
8	Non-financial accounts by sector	backward calculations: years 90-94 not to be recalculated	2005
8	Non-financial accounts by sector	backward calculations: years 80-89 not to be recalculated	2005
10	Tables by industry and by region, NUTS II, A17	not to be calculated	2005
11	General government expenditure by function	backward calculations: years 90-94 not to be recalculated	2005
12	Tables by industry and by region, NUTS III, A3	not to be calculated	2005
13	Household accounts by region, NUTS II	not to be calculated	2005

9.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Gross fixed capital formation by industry	delay: t+36 months	2005
3	Tables by industry	Acquisitions less disposals of valuables	first transmission 2005	2005
8	Non-financial accounts by sector	S11, S12, S14+45, S211, S212	first transmission 2005	2005
20	Cross classification of fixed assets by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	Table at historic cost values	first transmission 2005	2005

10. NETHERLANDS

10.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: years 86-94 to be supplied in July 2001	2001
2	Main aggregates general government	backward calculations: years 70-85 to be supplied in December 2001	2001
2	Main aggregates of general government	transmission at t+3	2003
3	Tables by industry	backward calculations: years 86-94 to be supplied in July 2001	2001
3	Tables by industry	backward calculations: years 70-85 to be supplied in December 2001	2001
5	Household final consumption expenditure by purpose	backward calculations: years 86-94 to be supplied in July 2001	2001
5	Household final consumption expenditure by purpose	backward calculations: years 80-85 to be supplied in December 2001	2001

Table No	Table	Derogation	Until
7	Balance sheets for financial assets and liabilities	delay: t+19 months	2003
8	Non-financial accounts by sector	backward calculations: years 86-94 to be supplied in July 2001; years 80-85 to be supplied in December 2001	2001
10	Tables industry and by region, NUTS II, A17	delay: t+30 months	2005
13	Household accounts by region, NUTS II	delay: t+36 months	2005

10.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
10	Tables industry and by region, NUTS II, A17	Gross fixed capital formation by region	not to be calculated	2005
10 12	Tables industry and by region, NUTS II, A17 Tables by industry and by region, NUTS III, A3	Total employment by region	not to be calculated	2005

11. PORTUGAL

11.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 77-94, to be supplied in December 2000	2005/ 2000
3	Tables by industry	backward calculations: recalculation only years 77-94	2005
5	Household final consumption expenditure by purpose	delay: t+12 months	2005
5	Household final consumption expenditure by purpose	backward calculations: not to be recalculated	2005
6	Financial accounts by sector (transactions)	delay: t+12 months	2005
7	Balance sheets for financial assets and liabilities	delay: t+12 months	2005
8	Non-financial accounts by sector	backward calculations: years 90-94 to be supplied in December 1999	1999
11	General government expenditure by function	backward calculations: not to be recalculated	2005

12. FINLAND

12.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 75-94	2005
3	Tables by industry	backward calculations: recalculation only years 75-94	2005

12.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	not to be calculated	2005
15	Supply table at basic prices incl. transformation into purchasers' prices, A60 × P60	All	breakdown A31 and P31 only at current prices	2005
16	Use table at purchasers' prices, A60 × P60	All		
17	Symmetric input-output table at basic prices, P60 × P60, five yearly	All		
18	Symmetric input-output table for domestic output at basic prices, P60 × P60, five yearly	All		
19	Symmetric input-output table for imports at basic prices, P60 × P60, five yearly	All		
21	Cross classification of production account by industry and by sector, A60 × (S11, S12, S13, S14, S15), five yearly	All	breakdown A31	2005

13. SWEDEN

13.1. **Derogations for tables**

Table No	Table	Derogation	Until
2	Main aggregates general government	backward calculations: recalculation only years 80-94	2005
3	Tables by industry	delay: t+12 months	2005
3	Tables by industry	backward calculations: recalculation only years 80-94	2005
6	Financial accounts by sector (transactions)	delay: t+12 months	2005
7	Balance sheets for financial assets and liabilities	delay: t+12 months	2005
11	General government expenditure by function	delay: t+16 months	2005

13.2. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
2	Main aggregates general government	Acquisitions less disposals of valuables	first transmission 2005	2005
2	Main aggregates general government	Breakdown of government final consumption expenditure into individual and collective	delay t+16 months	2005
2	Main aggregates general government	Actual final consumption of households	delay t+16 months	2005
2	Main aggregates general government	Actual individual consumption	delay t+16 months	2005
3	Tables by industry	Acquisitions less disposals of valuables	first transmission 2005	2005
3	Tables by industry	breakdown A31	delay t+12 months	2005
8	Non-financial accounts by sector	Acquisitions less disposals of valuables	first transmission 2005	2005

Table No	Table	Variable/Sector	Derogation	Until
8	Non-financial accounts by sector	Breakdown of government final consumption expenditure into individual and collective	delay t+16 months	2005
8	Non-financial accounts by sector	Actual final consumption of households	delay t+16 months	2005
8	Non-financial accounts by sector	Actual individual consumption	delay t+16 months	2005

14. UNITED KINGDOM

14.1. **Derogations for single variables/sectors in the tables**

Table No	Table	Variable/Sector	Derogation	Until
3	Tables by industry	Acquisitions less disposals of valuables	exclude transactions by MFIs in gold as a store of wealth	2005
4	Exports and imports by EU/third countries	exports and imports by EU/third countries	exclude transactions by MFIs in gold as a store of wealth	2005
6	Financial accounts by sector (transactions)	monetary gold and SDRs	include transactions by MFIs in gold as a store of wealth	2005
6	Financial accounts by sector (transactions)	Financial auxiliaries	to be included in non-financial corporations	2002
7	Balance sheets for financial assets and liabilities	monetary gold and SDRs	include transactions by MFIs in gold as a store of wealth	2005
7	Balance sheets for financial assets and liabilities	Financial auxiliaries	to be included in non-financial corporations	2002
8	Non-financial accounts by sector	Acquisitions less disposals of valuables and exports and imports of goods and services	exclude transactions by MFIs in gold as a store of wealth	2005
10	Tables by industry and by region, NUTS II, A17	GDP	for NUTS II only A17	2001

Amended proposal for a Directive of the European Parliament and of the Council amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work [1]

(2002/C 203 E/37)

COM(2002) 254 final — 2001/0165(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 16 May 2002)

[1] OJ C 304 E, 30.10.2001, p. 179.

INITIAL PROPOSAL	AMENDED PROPOSAL
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	Unchanged
Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,	
Having regard to the proposal from the Commission, drawn up following consultation with social partners and with the Advisory Committee on Safety, Hygiene and Health Protection at Work,	
Having regard to the Opinion of the Economic and Social Committee,	
Having regard to the Opinion of the Committee of the Regions,	
Acting in accordance with the procedure laid down in Article 251 of the Treaty [1],	
Whereas:	
(1) The Council in its Conclusions of 7 April 1998 on the protection of workers against the risks from exposure to asbestos [2] invites the Commission to bring forward proposals for amending Directive 83/477/EEC [3], considering in particular the merits of refocusing protective measures on those who are now most at risk.	
(2) The Economic and Social Committee, in its Opinion on 'Asbestos' [4], calls on the Commission to take new measures to reduce the risks to workers.	

[1] OJ C 340, 10.11.1997, p. 1.

[2] OJ C 142, 7.5.1998, p. 1.

[3] OJ L 263, 24.9.1983, p. 25. Directive as last amended by Directive 98/24/EC (OJ L 131, 5.5.1998, p. 11).

[4] OJ C 138, 18.5.1999, p. 24.

INITIAL PROPOSAL	AMENDED PROPOSAL
	(3) In view of the Council's Conclusions, the Commission should submit proposals to amend Directive 83/477/EEC in the light of the more detailed research on limits for exposure to chrysotile and the methods for measuring airborne asbestos (having regard to the method adopted by the World Health Organisation (WHO)). Similar steps should be taken regarding substitute fibres.
(3) The ban on the marketing and use of chrysotile asbestos introduced by Council Directive 76/769/EEC [1] as amended in 1999 by Commission Directive 1999/77/EC [2], with effect from 1 January 2005, will contribute to a substantial reduction in asbestos-exposure of workers.	(4) The ban on the marketing and use of chrysotile asbestos introduced by Council Directive 76/769/EEC [1] as amended in 1999 by Commission Directive 1999/77/EC [2], with effect from 1 January 2005, will contribute to a substantial reduction in asbestos-exposure of workers.
(4) All workers must be protected against the risks associated with exposure to asbestos and the derogations applicable to the sea and air transport sectors should therefore be removed.	(5) All workers must be protected against the risks associated with exposure to asbestos and the derogations applicable to the sea and air transport sectors should therefore be removed.
(5) In order to ensure clarity in the definition of the fibres, they should be redefined either in mineralogical terms or with regard to their Chemical Abstract Service (CAS) number.	(6) In order to ensure clarity in the definition of the fibres, they should be redefined either in mineralogical terms or with regard to their Chemical Abstract Service (CAS) number.
(6) Without prejudice to the application of other Community provisions concerning marketing and use of asbestos, limiting the activities involving exposure to asbestos will play a very important role in preventing the diseases associated with such exposure.	(7) Without prejudice to the application of other Community provisions concerning marketing and use of asbestos, limiting the activities involving exposure to asbestos will play a very important role in preventing the diseases associated with such exposure.
(7) The notification system of activities involving exposure to asbestos should be adapted to the new work situations.	(8) The notification system of activities involving exposure to asbestos should be adapted to the new work situations.
(8) Taking account of the latest technical expertise, it is necessary to specify more precisely the sampling methodology used to measure the asbestos level in air and the method of counting fibres.	(9) Taking account of the latest technical expertise, it is necessary to specify more precisely the sampling methodology used to measure the asbestos level in air and the method of counting fibres.
[1] OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 1999/77/EC (OJ L 207, 6.8.1999, p. 18).	[1] OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 1999/77/EC (OJ L 207, 6.8.1999, p. 18).
[2] OJ L 207, 6.8.1999, p. 18.	[2] OJ L 207, 6.8.1999, p. 18.

INITIAL PROPOSAL	AMENDED PROPOSAL
(9) Even if it has not yet been possible to identify the exposure threshold below which asbestos does not involve a cancer risk, the limit value for occupational exposure to asbestos should be reduced.	(10) Even if it has not yet been possible to identify the exposure threshold below which asbestos does not involve a cancer risk, the limit value for occupational exposure to asbestos should be reduced.
(10) The persons responsible for buildings should be required to identify before the start of the asbestos removal project, the presence or presumed presence of asbestos in buildings or installations and communicate this information to others who may be exposed by the use, maintenance or other activities in, or on the building.	(11) The persons responsible for buildings should be required to identify before the start of the asbestos removal project, the presence or presumed presence of asbestos in buildings or installations and communicate this information to others who may be exposed by the use, maintenance or other activities in, or in the immediate vicinity of the building.
(11) It should be ensured that demolition or asbestos removal work is carried out by undertakings which are familiar with all the precautions to be taken in order to protect workers.	(12) It should be ensured that demolition or asbestos removal work is carried out by undertakings which are familiar with all the precautions to be taken in order to protect workers.
(12) Special training for workers exposed or likely to be exposed to asbestos should be ensured in order significantly to contribute to reducing the risks related to such exposure.	(13) Special training for workers exposed or likely to be exposed to asbestos should be ensured in order to significantly to contribute to reducing the risks related to such exposure.
(13) The content of the exposure and medical records provided for in Directive 83/477/EEC should be brought into line with the records referred to in Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1].	(14) The content of the exposure and medical records provided for in Directive 83/477/EEC should be brought into line with the records referred to in Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1].
(14) It is appropriate to update the practical recommendations on the clinical surveillance of exposed workers in the light of the latest medical expertise, with a view to the early detection of pathologies linked to asbestos.	(15) It is appropriate to update the practical recommendations on the clinical surveillance of exposed workers in the light of the latest medical expertise, with a view to the early detection of pathologies linked to asbestos.
[1] OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).	[1] OJ L 196, 26.7.1990, p. 1. Directive as last amended by Directive 1999/38/EC (OJ L 138, 1.6.1999, p. 66).

INITIAL PROPOSAL	AMENDED PROPOSAL
(15) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the desired objectives of Directive 83/477/EEC to amend it as proposed. These amendments do not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.	(16) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the desired objectives of Directive 83/477/EEC to amend it as proposed. These amendments do not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
(16) The amendments contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market.	(17) The amendments contained in this Directive constitute a concrete contribution towards creating the social dimension of the internal market.
(17) These amendments are limited to the minimum in order not to impose unnecessary burden to the creation and development of small and medium-sized enterprises.	(18) These amendments are limited to the minimum in order not to impose unnecessary burden to the creation and development of small and medium-sized enterprises.
(18) In accordance with Decision 74/325/EEC [1], the Advisory Committee on Safety, Hygiene and Health Protection at Work must be consulted by the Commission concerning the preparation of proposals in this field.	(19) In accordance with Decision 74/325/EEC [1], the Advisory Committee on Safety, Hygiene and Health Protection at Work must be consulted by the Commission concerning the preparation of proposals in this field.
(19) Directive 83/477/EEC should therefore be amended accordingly,	(20) Directive 83/477/EEC should therefore be amended accordingly,
HAVE ADOPTED THIS DIRECTIVE:	Unchanged
Article 1	
Directive 83/477/EEC is amended as follows:	
1. In Article 1, paragraph 2 is deleted.	
2. Article 2 is replaced by the following:	
'*Article* 2	
For the purposes of this Directive, "asbestos" means the following fibrous silicates:	
— Asbestos actinolite, CAS No 77536-66-4 (*)	
— Asbestos gruenerite (amosite) CAS No 12172-73-5 (*),	
— Asbestos anthophyllite, CAS No 77536-67-5 (*),	
— Chrysotile, CAS No 12001-29-5 (*),	

[1] OJ L 185, 9.7.1974, p. 15. Decision as last amended by the Act of Accession of Austria, Finland and Sweden.

[1] OJ L 185, 9.7.1974, p. 15. Decision as last amended by the Act of Accession of Austria, Finland and Sweden.

INITIAL PROPOSAL	AMENDED PROPOSAL
— Crocidolite, CAS No 12001-28-4 (*),	
— Asbestos tremolite, CAS No 77536-68-6 (*)	
(*) Number in the register of the Chemical Abstract Service (CAS).'	
3. In Article 3 paragraph 3 is replaced by the following:	
'3. Provided that the total exposure time of workers does not exceed two hours in any seven day period, and it is clear from the risk assessment required by paragraph 2 that the exposure limit for asbestos will not be exceeded, Articles 4, 15 and 16 shall not apply where work involves:	
(a) asbestos coating, asbestos insulation or asbestos panelling, or	
(b) air monitoring, clearance inspection or collection of bulk samples to identify whether a material is asbestos'.	
4. Article 4 is amended as follows:	
(a) Paragraph 2 is replaced by the following:	
'2. The notification shall be submitted by the employer to the responsible authority of the Member States, in accordance with national laws, regulations and administrative provisions. The notification must include at least a brief description of	
(a) the location of the work site,	
(b) the type and quantities of asbestos used or handled,	
(c) the activities and processes involved.	(c) the activities and processes involved including the measures taken to prevent asbestos pollution outside the location of the work site.
(d) the products manufactured.	Unchanged
	(e) the undertaking and the worker(s) or the entity contracted to carry out activities involving asbestos.
When asbestos is being removed, the notification shall also include information about the period when the asbestos removal project will actually take place, and information about the measures which will be taken to limit the exposure of asbestos to the workers involved. The notification shall be submitted prior to the start of the asbestos removal project.'	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
(b) Paragraph 4 is replaced by the following:	
'4. Each time a change occurs in working conditions which can result in a change in exposure to dust from asbestos or materials containing asbestos, a new notification must be submitted.'	
5. Article 6 is replaced by the following:	
'Article 6	
For all activities referred to in Article 3(1), the exposure of workers to dust arising from asbestos or materials containing asbestos at the place of work must be reduced to a minimum and in any case below the limit value laid down in Article 8, in particular through the following measures:	
1. The number of workers exposed or likely to be exposed to dust arising from asbestos or materials containing asbestos must be limited to the lowest possible figure.	
2. Work processes must, in principle, be so designed as to avoid the release of asbestos dust into the air.	2. Work processes must, be so designed as to prevent the release of asbestos dust in the air inside the workplace and into the general environment of the workplace.
3. All premises and equipment involved in the treatment of asbestos must be capable of being regularly and effectively cleaned and maintained.	Unchanged
4. Asbestos or dust-generating asbestos-containing material must be stored and transported in suitable sealed packing.	
5. Waste must be collected and removed from the place of work as soon as possible in suitable sealed packing with labels indicating that it contains asbestos. This measure shall not apply to mining activities.	
The waste referred to in the first paragraph shall then be dealt with in accordance with Council Directive 91/689/EEC (*).	
(*) OJ L 377, 31.12.1991, p. 20.'	
6. Article 7 is replaced by the following:	
'Article 7	
1. Depending on the results of the initial risk assessment, and in order to ensure compliance with the limit value laid down in Article 8, measurement of asbestos fibres in the air at the workplace shall be carried out regularly.	

INITIAL PROPOSAL	AMENDED PROPOSAL
2. Sampling must be representative of the personal exposure of the worker to dust arising from asbestos or materials containing asbestos.	
3. Sampling shall be carried out after consulting the workers and/or their representatives in undertakings.	
4. Sampling shall be carried out by suitably qualified personnel. The samples taken shall be subsequently analysed in laboratories equipped to analyse them and qualified to apply the necessary identification techniques.	
5. The duration of sampling must be such that representative exposure can be established for an eight-hour reference period (one shift) by means of measurements or time-weighted calculations.	
6. Fibre counting shall be carried out wherever possible by PCM (phase contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method [1].	6. Fibre counting shall be carried out wherever possible by PCM (phase contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method [1] or any other method giving equivalent results.
For the purposes of measuring asbestos in the air, as referred to in the first subparagraph, only fibres with a length of more than five micrometres and a length/breadth ratio greater than 3:1 shall be taken into consideration.'	Unchanged
7. Article 8 is replaced by the following:	
'*Article 8*	
Employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0,1 fibres per cm^3 as an 8-hour time-weighted average (TWA).'	
8. In Article 9 paragraph 1 is deleted.	

[1] Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Geneva 1997 (1SBN 92 4 154496 1).

[1] Determination of airborne fibre number concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO, Geneva 1997 (1SBN 92 4 154496 1).

INITIAL PROPOSAL	AMENDED PROPOSAL
9. Article 10 is amended as follows:	
(a) In paragraph 1 the first subparagraph is replaced by the following:	
'Where the limit value laid down in Article 8 is exceeded, the reasons for the limit being exceeded must be identified and appropriate measures to remedy the situation must be taken as soon as possible.'	
(b) Paragraph 3 is replaced by the following:	(b) Paragraph 3 is replaced by the following:
'3. Where exposure cannot be reduced by other means and where the limit values of individual respiratory protective equipment proves necessary, this may not be permanent and shall be kept to the strict minimum necessary for each worker.'	'3. Where exposure cannot be reduced by other means and where the limit values of individual respiratory protective equipment proves necessary, this may not be permanent and shall be kept to the strict minimum necessary for each worker. During periods of work which require the use of individual respiratory protective equipment, provision shall be made for breaks appropriate to the physical and climatological conditions, in consultation with the workers and/or their representatives.'
10. The following Article 10a is inserted:	Unchanged
'*Article 10a*	
Before beginning demolition or maintenance work, employers in control of workplace premises shall take, if appropriate by obtaining information from owners, all necessary steps to identify presumed asbestos-containing materials.	Before beginning demolition or maintenance work, employers in control of workplace premises shall take, if appropriate by obtaining information from owners, local authorities, civil protection services, and other authorities, bodies or individuals and from anyone who can provide, add to or upgrade such information, all necessary steps to identify presumed asbestos-containing materials.
If there is any doubt about the presence of asbestos in a material or construction, the regulations and procedures of asbestos removal work shall be followed.'	Unchanged
11. In Article 11 paragraph 1 is replaced by the following:	
'1. In the case of certain activities such as demolition, or removal, in respect of which it is foreseeable that the limit value set out in Article 8 will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer shall determine the measures intended to ensure protection of the workers while they are engaged in such activities, in particular the following:	'1. In the case of certain activities such as demolition, removal, repairing, and maintenance in respect of which it is foreseeable that the limit value set out in Article 8 will be exceeded despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer shall determine the measures intended to ensure protection of the workers while they are engaged in such activities, in particular the following:
(a) workers shall be issued with suitable respiratory and other personal protective equipment, which must be worn; and	Unchanged
(b) warning signs shall be put up indicating that it is foreseeable that the limit value laid down in Article 8 will be exceeded; and	

INITIAL PROPOSAL	AMENDED PROPOSAL
(c) the spread of dust arising from asbestos or materials containing asbestos outside the premises/site of action shall be prevented.'	
12. In Article 12(2) the first two subparagraphs are replaced by the following:	
'2. The plan referred to in paragraph 1 must prescribe the measures necessary to ensure the safety and health of workers at the place of work.	
The plan must in particular specify that:	
— asbestos and/or asbestos containing products are removed before demolition techniques are applied,	
— the personal protective equipment referred to in Article 11(1)(a) is provided, where necessary.'	
13. The following Article 12a is inserted:	
'Article 12a	
1. Employers shall provide appropriate training for all workers who are, or are liable to be, exposed to asbestos-containing dust. Such training must be provided at regular intervals and at no cost to the workers.	
2. Training must be easily understandable for workers and must inform them among others of:	
a) the properties of asbestos and its effects on health including the synergistic effect of smoking.	a) the specific risks associated with each type of asbestos and the consequences for the health of individual workers and outsiders, including the possible side-effects of smoking or of other noxious and similarly harmful substances present within the workplace,
b) the types of products or materials likely to contain asbestos,	Unchanged
c) the operations that could result in asbestos exposure and the importance of preventive controls to minimise exposure,	
d) safe work practices, controls and protective equipment,	
e) the appropriate role, choice, selection, limitations and proper use of respiratory equipment,	
f) emergency procedures,	

INITIAL PROPOSAL	AMENDED PROPOSAL
g) decontamination procedures,	
h) waste disposal,	
i) medical examination requirements,	i) medical examination requirements, including the frequency of such examinations,
3. Practical guidelines for the training of asbestos removal workers shall be developed at Community level.'	Unchanged
14. The following Article 12b is inserted:	
'*Article 12b*	
In order to carry out asbestos demolition or removal work, firms must provide evidence of their ability in this field.'	
15. In Article 14(2), point (b) is replaced by the following:	
'(b) if the results exceed the limit value laid down in Article 8 the workers concerned and their representatives in the undertaking or establishment are informed as quickly as possible of the fact and the reason for it and the workers and/or their representatives in the undertaking or establishment are consulted on the measures to be taken or, in an emergency, are informed of the measures which have been taken.'	
	16. Article 15(3) is replaced by the following:
	'3. Information and advice must be given to workers regarding any assessment of their health which they may undergo following the end of exposure.
	The approved medical practitioner or approved occupational health services may indicate the need for medical surveillance to continue after cessation of work for as long as they consider it necessary to safeguard the health of the person concerned.
	Such continuing supervision shall be carried out in accordance with the laws and practices of the individual Member States.'
16. In Article 16, paragraph 2 is replaced by the following:	17. In Article 16, paragraph 2 is replaced by the following:
'2. The register referred to in point 1 and the medical records referred to in point 1 of Article 15 shall be kept for at least 40 years following the end of exposure, in accordance with national laws and/or practice.'	Unchanged
17. In Article 16 the following paragraph 3 is added:	18. In Article 16 the following paragraph 3 is added:
'3. The documents referred to in point 2 shall be made available to the responsible authority in cases where the undertaking ceases activity, in accordance with national laws and/or practice'.	Unchanged

INITIAL PROPOSAL	AMENDED PROPOSAL
18. Annex I is deleted.	19. Annex I is deleted.
19. Point 3 of Annex II is replaced by the following:	20. Point 3 of Annex II is replaced by the following:
'3. Health examination of workers should be carried out in accordance with the principles and practices of occupational medicine. It should include the following measures: — keeping records of a worker's medical and occupational history, — a personal interview, — a clinical examination of the chest, — lung function tests (respiratory flow volumes and rates). The doctor and/or authority responsible for the health surveillance should decide on further examinations, such as sputum cytology tests or a chest X-ray or a tomodensitometry in each individual case, in the light of the latest occupational health knowledge available'.	
Article 2	Unchanged
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2004, at the latest. They shall forthwith inform the Commission thereof.	
When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	
2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.	
Article 3	
This Directive is addressed to the Member States.	

Proposal for a Council Regulation on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy

(2002/C 203 E/38)

(Text with EEA relevance)

COM(2002) 185 final — 2002/0114(CNS)

(Submitted by the Commission on 29 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Regulation (EEC) No 3760/92 of 20 December 1992 established a Community system for fisheries and aquaculture [1]. According to that Regulation, the Council has to decide on any necessary adjustments by 31 December 2002.

(2) Given that many fish stocks continue to decline, the common fisheries policy must be improved to ensure the long-term viability of the fisheries sector through sustainable exploitation of living aquatic resources based on sound scientific advice and on the precautionary principle.

(3) The objective of the common fisheries policy should therefore be to provide for sustainable exploitation of living aquatic resources and of aquaculture in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner.

(4) It is important that the management of the common fisheries policy is guided by the principle of good governance and that the measures taken are mutually compatible and consistent with other Community policies.

(5) The objective of sustainable exploitation will be more effectively achieved through a multi-annual approach to fisheries management, involving multi-annual management plans for stocks; for stocks considered to be outside safe biological limits, the adoption of a multi-annual management plan is an absolute priority. In line with scientific advice, substantial reductions in fishing efforts may be required for these stocks.

(6) These multi-annual management plans should establish targets for sustainable exploitation of the stocks concerned, contain harvesting rules laying down the manner in which annual catch and fishing effort limits are to be calculated and provide for other specific management measures, taking account also of the effect on other species.

(7) Sustainable exploitation of stocks for which no multi-annual management plan has been established should be ensured by setting catch and/or effort limits.

(8) Provision should be made for the adoption of emergency measures by the Member States or by the Commission in the event of a serious threat to the conservation of resources, or to the ecosystem resulting from fishing activities, and requiring immediate action.

(9) In their 12 nautical mile zone, Member States should be allowed to adopt conservation and management measures applicable to all fishing vessels, provided that, where such measures apply to fishing vessels from other Member States, the measures adopted are non-discriminatory and prior consultation has taken place, and that the Community has not adopted measures specifically addressing conservation and management within this area.

(10) The Community fleet should be reduced to bring it into line with available resources and specific measures should be set up in order to attain that objective, including the fixing of reference levels for fishing capacity which may not be exceeded, a special Community facility to promote scrapping of fishing vessels and national entry/exit schemes.

(11) Each Member State should maintain a national register of fishing vessels which should be made available to the Commission for the purposes of monitoring the size of the Member States' fleets.

(12) Rules in place since 1983 restricting access to resources within the 12 nautical mile zones of Member States have operated satisfactorily and should continue to apply on a permanent basis.

[1] OJ L 389, 31.12.1992, p. 1.

(13) Although other access restrictions contained in Community legislation should be maintained for the time being they should be reviewed in order to evaluate whether they are necessary to ensure sustainable fisheries.

(14) In view of the precarious economic state of the fishing industry and the dependence of certain coastal communities on fishing, it is necessary to ensure relative stability of fishing activities by the allocation of fishing opportunities between the Member States, based upon a predictable share of the stocks for each Member State.

(15) In order to ensure effective implementation of the common fisheries policy, the Community control and enforcement system for fisheries should be reinforced and the division of responsibilities between the Member States' authorities and the Commission should be further clarified. To this end it is appropriate to insert in this Regulation the main provisions governing control, inspection and enforcement of the rules of the common fisheries policy, part of which are already contained in Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy. That Regulation has to remain in force until all the necessary implementing rules have been adopted.

(16) Provisions on control, inspection and enforcement concern, on the one hand, obligations for the masters of fishing vessels and operators in the marketing chain and, on the other hand, spell out the different responsibilities for the Member States and the Commission.

(17) The Community should be able to seek reparation in the form of quota deductions from Member States when the rules of the common fisheries policy have been violated resulting in losses to the common resource. Where such a quota deduction is not possible, the compensation may take the form of a quota equivalent value. Where it is established that another Member State has suffered prejudice as a result of the violation of the rules, part or all of the reparation or compensation should be allocated to that Member State.

(18) Member States should be obliged to adopt immediate measures to prevent the continuation of serious infringements as defined in Council Regulation (EC) 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy [1] detected *in flagrante delicto*. Moreover there is a need to ensure that such serious infringements are sanctioned with the same effectiveness by all Member States.

(19) The Commission should be able to take immediate measures to prevent any failure to comply with the rules of the common fisheries policy from resulting in damage to living aquatic resources.

(20) The Commission should be provided with appropriate powers to carry out its obligation to control and evaluate the implementation of the common fisheries policy by the Member States.

(21) It is necessary to intensify cooperation and coordination between all relevant authorities in order to achieve compliance with the rules of the common fisheries policy, in particular through the exchange of national inspectors, by requiring Member States to give the same value to inspection reports drawn up by Community inspectors, inspectors of another Member State or Commission inspectors as to their own inspection reports for the purpose of establishing the facts.

(22) A simplified procedure should be introduced for the implementation of measures adopted in the context of international agreements which become binding on the Community if it does not object.

(23) Since the measures necessary for the implementation of this Regulation are management measures or measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2] they should be adopted by use of the management procedure provided for in Article 4 or the regulatory procedure provided for in Article 5 of that Decision.

(24) To contribute to the achievement of the objectives of the common fisheries policy, regional advisory councils should be established to enable the common fisheries policy to benefit from the knowledge and experience of stakeholders and to take into account the diverse conditions throughout Community waters.

(25) To ensure that the common fisheries policy benefits from the best scientific, technical and economic advice, the Commission should be assisted by an appropriate committee.

[1] OJ L 167, 2.7.1999, p. 5.

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

(26) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of the sustainable exploitation of living aquatic resources to lay down rules on the conservation and exploitation of those resources. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(27) By reason of the number and importance of the amendments to be made Council Regulation (EEC) No 3760/92 should be repealed. Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry [1] being voided from all substantial provisions should also be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND OBJECTIVES

Article 1

Scope

The common fisheries policy shall cover conservation and exploitation activities involving living aquatic resources, and aquaculture, and the processing and marketing of fishery and aquaculture products where such activities are practised on the territory of Member States or in Community waters or by Community fishing vessels or nationals of Member States.

Within this scope, the common fisheries policy shall provide for coherent measures concerning the conservation and management of living aquatic resources and limitation of the environmental impact of fishing, conditions of access to waters and resources, structural policy and the management of the capacity of the fleet, control and enforcement, aquaculture, common organisation of the markets, and international relations.

Article 2

Objectives

1. The common fisheries policy shall ensure exploitation of living aquatic resources that provides sustainable environmental, economic and social conditions.

For this purpose, the Community shall apply the precautionary principle in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management. It shall aim to contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry, providing a fair standard of living for those who depend on fishing activities and taking account of the interest of consumers.

2. The common fisheries policy shall be guided by the following principles of good governance:

(a) a clear definition of responsibilities at the Community, national and local levels;

(b) a decision-making process based on sound scientific advice and delivering timely results;

(c) broad involvement of stakeholders at all stages of the policy from conception to implementation;

(d) coherence with other Community policies, in particular with environmental, social, regional, development, health and consumer protection policies.

Article 3

Definitions

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

(a) 'Community waters' means the waters under the sovereignty or jurisdiction of the Member States;

(b) 'fishing vessel' means any vessel equipped for and licensed to carry out commercial exploitation of living aquatic resources including exploratory or experimental fishing;

(c) 'Community fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Community;

(d) 'sustainable exploitation' means the exploitation of a stock in such a way that it is unlikely that future benefits from the stock will be prejudiced and that it does not have negative impacts on the marine eco-systems;

(e) 'fishing mortality rate' means the catches of a stock over a given period as a proportion of the average stock available to the fishery in that period;

(f) 'stock' means a living aquatic resource that occurs in a given management area;

[1] OJ L 20, 28.1.1976, p. 19.

(g) 'fishing effort' means the product of the capacity and the activity of a fishing vessel; for a group of vessels it is the sum of fishing effort exerted by each vessel of the group;

(h) 'safe biological limits' means indicators of a state of a stock or of its exploitation above which there is a low risk of transgressing certain limit reference points;

(i) 'reference points' means estimated values derived through an agreed scientific procedure, which correspond to the state of the resource and of the fishery and which can be used as a guide for fisheries management;

(j) 'precautionary approach to fisheries management' means management action based on the principle that absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.

(k) conservation reference points set boundaries which are intended to constrain harvesting within safe biological limits.

(l) 'catch limit' means a quantitative limit on landings of a stock or group of stocks in a given period of time;

(m) 'fishing capacity' means a vessel's tonnage in GT and its power in kW, as defined in Council Regulation (EC) No 2930/86. For certain types of fishing activity, capacity may be defined in terms of the amount and/or the size of a vessel's fishing gear;

(n) 'exit from the fleet' means the removal of a vessel from the fishing fleet register of a Member State. As long as a vessel continues to fly the flag of a Member State, it shall not be considered as an exit from the fleet;

(o) 'entry into the fleet' means the registration in the fishing fleet register of a Member State of a vessel which has a licence to fish for commercial purposes;

(p) 'fishing opportunity' means a quantified legal entitlement to fish;

(q) 'Community fishing opportunity' means the fishing opportunities available to the Community in Community waters, plus the total Community fishing opportunities outside the Community waters, less the Community fishing opportunities allocated to third countries.

CHAPTER II

CONSERVATION AND SUSTAINABILITY

Article 4

Types of measures

1. To achieve the objectives mentioned in Article 2, the Council shall establish Community measures governing access to waters and resources and the sustainable pursuit of fishing activities.

2. The measures referred to in paragraph 1 shall be drawn up on the basis of the available scientific and technical advice and in particular of the reports drawn up by the Committee established under Article 34. They may, in particular, include measures for each stock to limit fishing mortality and the environmental impact of fishing activities by:

(a) adopting multi-annual management plans under Article 5;

(b) establishing targets for the sustainable exploitation of stocks;

(c) limiting catches;

(d) fixing the number and type of fishing vessels authorised to fish;

(e) limiting fishing effort;

(f) adopting technical measures, including

(i) measures regarding the structure of fishing gears, their methods of use and the composition of catches that may be retained on board when fishing with such gears;

(ii) zones and/or periods in which fishing activities are prohibited or restricted;

(iii) minimum size of individuals that may be retained on board and/or landed;

(iv) specific measures to reduce the impact of fishing activities on marine eco-systems and non-target species;

(g) establishing incentives, including those of an economic nature, to promote more selective fishing.

Article 5

Multi-annual management plans

1. The Council shall adopt multi-annual management plans for the sustainable exploitation of stocks, and as a priority, of stocks which are estimated to be outside safe biological limits. These plans shall take into account the impact of exploiting these stocks on other species.

2. Multi-annual management plans shall:

(a) for stocks outside safe biological limits, ensure their rapid return within those limits;

(b) for stocks at or within safe biological limits, maintain them within those limits;

(c) in the cases referred to in points (a) and (b) ensure that the impact of fishing activities on ecosystems is kept at levels compatible with the sustainability of such ecosystems.

3. The multi-annual plans shall be drawn up on the basis of the precautionary approach to fisheries management. They shall be based on conservation reference points recommended by relevant scientific bodies.

4. The multi-annual plans shall include targets against which the recovery of stocks to within safe biological limits or the maintenance of stocks within such limits shall be assessed. The targets shall be expressed in terms of

(a) population size and/or

(b) long-term yields, and/or

(c) fishing mortality rate and/or

(d) stability of catches.

The plans shall specify the priorities for achieving these targets and shall, where appropriate, include targets relating to other living aquatic resources and the maintenance or improvement of the conservation status of ecosystems.

5. The multi-annual management plans shall include harvesting rules which consist of a predetermined set of biological parameters to govern catch limits and may include any measure referred to in Article 4(2)(b)-(g).

6. The Commission shall report on the effectiveness of the multi-annual management plan in achieving the targets.

Article 6

Fixing of catch and fishing effort limits

1. For stocks for which a multi-annual management plan has been adopted, the Council shall decide on catch and/or fishing effort limits as well as the conditions associated to those limits for the first year of fishing under the plan. For the following years, catch and/or fishing effort limits shall be decided by the Commission in accordance with Article 31(2), in accordance with the harvesting rules set out in the multi-annual management plan.

2. For stocks not subject to a multi-annual management plan the Council, acting by qualified majority on a proposal from the Commission, shall decide on catch and/or fishing effort limits as well as the conditions associated to those limits.

Article 7

Commission emergency measures

1. In the event of a serious threat to the conservation of living aquatic resources, or to the ecosystem resulting from fishing activities, which requires immediate action, the Commission, at the substantiated request of a Member State or on its own initiative, may decide on emergency measures which shall last not more than one year.

2. The Member State shall communicate the request referred to in paragraph 1 at the same time to the Commission and to the Member States as well as to the Regional Advisory Councils concerned, which may submit their written comments to the Commission within five working days of their receipt of the request.

The Commission shall take a decision on the matter at any time within 15 working days of its receipt of the substantiated request.

3. The emergency measures shall have immediate effect. They shall be notified to the Member States concerned, and published in the Official Journal.

4. The Member States concerned may refer the Commission decision mentioned in the second subparagraph of paragraph 2 to the Council within 10 working days of their receipt of the notification referred to in paragraph 3.

5. The Council acting by a qualified majority may take a different decision within 20 working days of the date of receipt of the referral mentioned in paragraph 4.

Article 8

Member State emergency measures

1. In the event of a serious and unforeseen threat to the conservation of resources, or to the ecosystem resulting from fishing activities, in waters falling under its sovereignty or jurisdiction where any undue delay would result in damage that would be difficult to repair, a Member State may take emergency measures the duration of which shall not exceed three months.

2. Member States intending to take emergency measures shall notify the Commission, the Member States as well as the Regional Advisory Councils concerned of their intention by sending a draft of those measures, together with an explanatory memorandum, before adopting them.

3. The Member States as well as Regional Advisory Councils concerned may submit their written comments to the Commission within 5 working days of the date of notification. The Commission shall confirm the measure or require its cancellation or amendment at any time within 15 working days of the date of notification.

4. The decision shall be notified to the Member States concerned. It shall be published in the *Official Journal of the European Communities*.

5. The Member States concerned may refer the Commission decision mentioned in the second subparagraph of paragraph 3 to the Council within 10 working days of notification of the decision referred to in paragraph 4.

6. The Council acting by a qualified majority may take a different decision within 20 working days of the date of receipt of the referral mentioned in paragraph 5.

Article 9

Member State measures within the 12 nautical mile zone

1. A Member State may take non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles of its baselines provided that the Community has not adopted measures specifically addressing conservation and management within this area. The Member State measures shall be compatible with the objectives set out in Article 2 and no less stringent than Community legislation.

When Member State measures affect vessels of another Member State they may be taken only after consultation on a draft of the measures, accompanied by an explanatory memorandum, with the Commission, Member States and the Regional Advisory Councils concerned has taken place.

2. Measures applying to fishing vessels from other Member States shall be subject to the procedures laid down in Article 8(3) to (6).

CHAPTER III

ADJUSTMENT OF FISHING CAPACITY

Article 10

Fishing capacity reduction

1. Member States shall put in place measures to reduce the fishing capacity of their fleets in order to achieve a stable and enduring balance between such fishing capacity and Community fishing opportunities and taking into account the measures adopted pursuant to Article 6.

2. Member States shall ensure that the reference levels for fishing capacity referred to in Article 11 and paragraph 4 of this Article are not exceeded.

3. No exit from the fleet supported by public aid shall be permitted unless preceded by the withdrawal of the fishing licence as defined in Regulation (EC) 3690/93 and, where provided for, the fishing authorisations as defined in relevant regulations. The capacity corresponding to the license, and where necessary to the fishing authorisations for the fisheries concerned, cannot be replaced.

4. Where public aid is granted for the withdrawal of fishing capacity that goes beyond the capacity reduction necessary to comply with the reference levels under Article 11(1), the amount of the capacity withdrawn shall be automatically deducted from the reference levels. The reference levels thus obtained shall become the new reference levels.

Article 11

Reference levels for fishing fleets

1. The Commission shall establish for each Member State reference levels for the total fishing capacity of the Community fishing vessels flying the flag of that Member State in accordance with the provisions of Article 31(2).

The reference levels shall be the sum of the objectives of the Multiannual Guidance Programme 1997-2002 (hereinafter 'MAGP IV') for each segment as fixed for 31 December 2002 pursuant to Council Decision 97/413/EC.

2. Reference levels for fishing capacity expressed in terms other than kW and GT may be fixed by the Council.

Article 12

Entry/Exit scheme

In order to prevent any overall increase in fishing capacity Member States shall manage entries into the fleet and exits from the fleet in such a way that, at any time, the total fishing capacity of entries into the fleet shall not exceed the total fishing capacity of exits from the fleet.

Article 13

Implementing rules

Rules for the control of the execution of the obligations under Article 11 and 12 may be adopted in accordance with the procedure laid down in Article 31(2).

Article 14

Exchanges of information

The Commission and the Member States shall regularly exchange information on the state of the fleet and its evolution in relation to the objectives and the measures adopted under this regulation. Detailed rules for these exchanges shall be adopted in accordance with the procedure laid down in Article 31(2).

Article 15

Fishing fleet registers

1. Each Member State shall establish a register of Community fishing vessels flying its flag which shall include the minimum amount of information on vessel characteristics and activity that is necessary for the management of measures established at Community level.

2. Each Member State shall make available to the Commission the minimum information referred to in paragraph 1.

3. The Commission shall set up a Community fishing fleet register containing the information that it receives under paragraph 2 and shall make it available to Member States.

4. The minimum information referred to in paragraph 1 and the procedures for its transmission referred to in paragraphs 2 and 3 shall be determined in accordance with the procedure laid down in Article 31(2).

Article 16

Suspension of Community contributions

Without prejudice to Article 23(4), the Commission may suspend Community financial assistance under Council Regulations (EC) No 2792/1999 and (EC) No . . ./2002 establishing an emergency Community measure for scrapping fishing vessels or may reduce the allocation of fishing opportunities or fishing effort for the Member State concerned as long as a Member State fails to comply with Articles 10, 12 and 15, or fails to provide the information required under Council Regulation (EC) No 2792/99 and Commission Regulation (EC) No 366/2001.

CHAPTER IV

RULES ON ACCESS TO WATERS AND RESOURCES

Article 17

General rules

1. Community fishing vessels shall have equal access to waters and resources in all Community waters other than those referred to in paragraph 2, subject to the measures adopted under Chapter II.

2. Member States shall be authorised to restrict fishing in the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Community fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned.

Article 18

Particular rules (Shetland Box)

1. In the region defined in Annex II, fishing activity by Community fishing vessels of a length between the perpendiculars of not less than 26 metres, for demersal species other than Norway pout and blue whiting, shall be governed by a system of prior authorisation in accordance with the conditions laid down in this Regulation and, in particular, in Annex II.

2. Detailed rules of application and procedures for the implementation of paragraph 1 may be adopted in accordance with the procedure laid down in Article 31(2).

Article 19

Review of access rules

1. By 31 December 2003 the Commission shall present to the European Parliament and the Council a report on the rules concerning access to resources laid down in Community legislation other than those referred to in Article 17(2), assessing the justification for these rules in terms of conservation and sustainable exploitation objectives.

2. On the basis of the report referred to in paragraph 1 and having regard to the principle established in Article 17(1), the Council shall decide by 31 December 2004 on any adjustments to be made to these rules.

Article 20

Allocation of fishing opportunities and fishing effort

1. The Council shall decide on a method of allocation for the distribution among Member States of the Community fishing opportunities for each stock that ensures each Member State a share of those fishing opportunities and/or of the fishing effort to be distributed, having regard to the need to assure each Member State as to relative stability of fishing activities.

2. When the Community establishes new fishing opportunities the Council shall decide on the method of allocating those opportunities, taking into account the interests of each Member State.

3. Each Member State shall decide, for vessels flying its flag, on the method of allocating the fishing opportunities assigned to that Member State. It shall inform the Commission of the allocation method.

4. The Council shall establish the fishing opportunities available to third countries in Community waters and allocate those opportunities to each third country.

5. Member States may, after notifying the Commission, exchange all or part of the fishing opportunities allocated to them.

CHAPTER V

COMMUNITY CONTROL AND ENFORCEMENT SYSTEM

Article 21

Objectives

Under the Community control and enforcement system access to waters and resources and the pursuit of activities within the scope of the common fisheries policy as set out in Article 1 shall be controlled and compliance with the rules of the common fisheries policy shall be enforced.

Article 22

Conditions for access to waters and resources and for marketing of fisheries products

1. It shall be prohibited to engage in activities within the scope of the common fisheries policy, unless the following obligations are respected:

(a) a vessel shall carry on board its licence and, where provided for, its authorisations for fishing;

(b) a vessel shall have installed on board a functioning system which allows detection and identification of that vessel by remote monitoring systems;

(c) the master shall without undue delay record and report information on fishing activities, including landings and transhipments, in a manner which allows such records to be transmitted electronically. Copies of the records shall be made available to the authorities;

(d) the master shall accept inspectors on board and cooperate with them; and where an observer scheme applies, the master shall also accept observers on board and cooperate with them;

(e) the master shall respect conditions and restrictions relating to landings, transhipments, joint fishing operations, fishing gear, nets and the marking and identification of vessels.

2. The marketing of fisheries products shall be subject to the following obligations:

(a) the master shall only sell fisheries products to a registered buyer or at a registered auction;

(b) the buyer of fisheries products shall be registered with the authorities;

(c) the buyer of fisheries products shall submit invoices or sales notes to the authorities, unless the sale takes place at a registered auction which is itself obliged to submit invoices or sales notes to the authorities;

(d) all fisheries products landed in or imported into the Community for which neither invoices nor sales notes have been submitted to the authorities and which are transported to a place other than that of landing or import shall be accompanied by a document drawn up by the transporter until the first sale has taken place;

(e) the persons responsible for premises or transport vehicles shall accept inspectors and cooperate with them.

(f) where a minimum size has been fixed for a given species, operators responsible for selling, stocking or transporting must be able to prove the geographical origin of the products.

3. For the implementation of paragraphs 1 and 2, detailed rules may be adopted following the procedure laid down in Article 31(2).

These rules may cover, in particular, documentation, recording, reporting and information obligations of Member States, masters, and legal and natural persons engaged in activities falling within the scope of the common fisheries policy.

The rules may also provide exemptions from obligations for certain groups of fishing vessels, where they may be justified by the negligible impact on living aquatic resources of these vessels' activity, or by the disproportionate burden the obligations would create compared to the economic importance of the vessels' activity.

Article 23

Responsibilities of Member States

1. Unless otherwise provided for in Community law, Member States shall ensure effective control, inspection and enforcement of the rules of the common fisheries policy.

2. Member States shall control the activities carried out within the scope of the common fisheries policy on their territory or in the waters subject to their sovereignty or jurisdiction. They shall also control access to waters and resources and fishing activities outside Community waters by Community fishing vessels flying their flag and of their nationals.

3. Member States shall adopt the measures, allocate the financial and human resources and set up the administrative and technical structure necessary for ensuring effective control, inspection and enforcement, including satellite-based monitoring systems. Member States shall also set up a means of remote sensing by 2004. In each Member State, a single authority shall be responsible for collecting and verifying information on fishing activities, including placing observers on board of fishing vessels, and for taking appropriate decisions, including the prohibition of fishing activities, and for reporting to and cooperating with the Commission.

4. Any loss to the common living aquatic resources resulting from a violation of the rules of the common fisheries policy attributable to any activity or omission by the Member State shall be made good by the Member State. The reparation shall take the form of a deduction in the quota allocated to the Member State. This deduction may be made during the year in which the prejudice occurred or in the succeeding year or years. If a quota deduction is not possible, the Commission shall establish the quota equivalent value as compensation by the Member State.

Decisions shall be taken by the Commission in accordance with Article 31(2). The Commission may decide that the measures imposed on the Member State be accompanied by the reallocation of the quota, or quota equivalent value in question to the Member States which it has been established have suffered prejudice due to the loss to the common resources. These Member States shall use the quota or quota equivalent value allocated to them for the benefit of the fishing industry which has suffered prejudice due to the loss to the common resources caused by the violation of the rules of the common fisheries policy.

If no specific Member State has suffered prejudice, the quota equivalent value shall be an assigned revenue of the Community under Article 4 of the Financial Regulation [1], to be used for the strengthening of control and enforcement measures in the common fisheries policy.

5. Implementing rules for this article may be adopted in accordance with the procedure laid down in Article 31(2), including for the accreditation by the Member States of the authority referred to in paragraph 3.

Article 24

Inspection and enforcement

Member States shall take the inspection and enforcement measures necessary to ensure compliance with the rules of the common fisheries policy on their territory or in the waters subject to their sovereignty or jurisdiction. They shall also take enforcement measures relating to the fishing activities outside Community waters of Community fishing vessels flying their flag and of their nationals.

Such measures shall include,

(a) spot checks and inspections on fishing vessels, the premises of businesses and other bodies with activities relating to the common fisheries policy;

(b) sightings of fishing vessels;

(c) investigation, legal pursuit of infringements and sanctions in accordance with Article 25;

(d) preventive measures in accordance with Article 25(4).

The measures taken shall be properly documented. They shall be effective, dissuasive and proportionate.

Implementing rules for this Article may be adopted in accordance with the procedure laid down in Article 31(3).

[1] Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, as amended (OJ L 356, 31.12.1977, p. 1).

Article 25

Follow-up of infringements

1. Member States shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where the rules of the common fisheries policy have not been respected.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements and of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind.

3. The sanctions arising from the proceedings referred to in paragraph 2 shall include, in particular, depending on the gravity of the offence:

(a) fines;

(b) seizure of prohibited fishing gear and catches;

(c) sequestration of the vessel;

(d) temporary immobilisation of the vessel;

(e) suspension of the licence;

(f) withdrawal of the licence.

4. Without prejudice to the obligations referred to in paragraphs 1, 2 and 3, the Council shall decide on the level of sanctions to be applied by the Member States for behaviour which constitutes a serious infringement, as defined in Regulation (EC) No 1447/1999.

5. Member States shall adopt immediate measures to prevent vessels, natural or legal persons found *in flagrante delicto* to be committing a serious infringement, as defined in Council Regulation (EC) No 1447/1999, from continuing to do so.

Article 26

Responsibilities of the Commission

1. Without prejudice to the responsibilities of the Commission under the Treaty, the Commission shall evaluate and control the application of the rules of the common fisheries policy by the Member States, and facilitate coordination and cooperation between them.

2. If the Commission finds that there are indications that rules on conservation, control, inspection or enforcement under the common fisheries policy are not being complied with and that this may have a negative impact on living aquatic resources or the effective operation of the Community control and enforcement system necessitating urgent action, it shall set the Member State concerned a deadline of no less than 10 working days to demonstrate compliance and to give its comments.

3. If, after the deadline referred to in paragraph 2 has expired, the Commission finds that doubts as to compliance remain, it shall suspend, in whole or in part, fishing activities or landings of catches by certain categories of vessel or in certain ports, regions or areas. The decision shall be proportionate to the risk which non-compliance with the rules would bring for the conservation of living aquatic resources.

The Commission shall lift the suspension within 10 working days of the Member State's demonstrating that no doubts as to compliance remain.

4. In the event of a Member State's quota, allocation or available share being deemed to be exhausted, the Commission may take immediate action.

5. Notwithstanding Article 23(2) the Commission shall control fishing activities in Community waters by vessels flying the flag of a third country where this is provided for in Community law. To this end, the Commission and the relevant Member States shall cooperate and coordinate their actions.

6. Detailed rules for the application of this Article may be adopted in accordance with the procedure laid down in Article 31(2).

Article 27

Evaluation and inspections by the Commission

1. The Commission may, of its own accord and by its own means, initiate and carry out audits, inquiries, verifications and inspections concerning the application of the rules of the common fisheries policy. It may in particular control:

(a) the implementation and application of those rules by Member States and their competent authorities;

(b) the conformity of national administrative practices and inspection and surveillance activities with the rules;

(c) the existence of the required documents and their concordance with the applicable rules;

(d) the circumstances in which control and enforcement activities are carried out by Member States.

For these purposes, the Commission may carry out inspections on vessels as well as on the premises of businesses and other bodies with activities relating to the common fisheries policy and shall have access to all information and documents needed to exercise its control.

Member States shall afford the Commission such assistance as it needs to fulfil these tasks.

2. Detailed rules for the application of this Article may be adopted in accordance with the procedure laid down in Article 31(2).

3. Every three years the Commission shall draw up an evaluation report on the application of the common fisheries policy rules by the Member States to be submitted to the European Parliament and the Council.

Article 28

Cooperation and coordination

1. Member States shall cooperate with each other and with third countries to ensure compliance with the rules of the common fisheries policy. To this end, the Member States shall afford other Member States and third countries the assistance needed to ensure compliance with those rules.

2. In the case of control and inspection of transboundary fishing activities, Member States shall ensure that their actions under this Chapter are coordinated. To this end, Member States shall exchange inspectors.

3. Member States shall authorise each other's inspectors, inspection vessels and inspection aircraft to carry out inspections in accordance with the rules of the common fisheries policy relating to fishing activities in the waters subject to their sovereignty or jurisdiction and in international waters on Community fishing vessels flying their flag.

4. On the basis of appointments by Member States communicated to the Commission, the Commission shall establish, in accordance with the procedure laid down in Article 31(2), a list of Community inspectors, inspection vessels and inspection aircraft authorised to carry out inspections under this Chapter in Community waters and on Community fishing vessels.

5. Inspection and surveillance reports drawn up by Community inspectors or inspectors of another Member State or Commission inspectors shall constitute admissible evidence in administrative or judicial proceedings of any Member State. They shall have the same value for establishing facts as inspection and surveillance reports of the Member States.

6. Detailed rules for the application of this Article may be drawn up in accordance with the procedure laid down in Article 31(2).

CHAPTER VI

DECISION-MAKING AND CONSULTATION

Article 29

Decision-making procedure

Except where otherwise provided for in this regulation, the Council shall act in accordance with the procedure laid down in Article 37 of the Treaty.

Article 30

International relations

Measures adopted under international agreements to which the Community is a party and which become binding on the Community shall be implemented in Community law in accordance with the procedure laid down in Article 31(3).

Where such measures concern the allocation of fishing opportunities, the first paragraph shall apply after the Council has adopted the measures provided for in Article 20.

Article 31

Committee for fisheries and aquaculture

1. The Commission shall be assisted by a Committee for Fisheries and Aquaculture (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC [1] shall apply. The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at 20 working days.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply. The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at 60 working days.

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

Article 32

Regional Advisory Councils

1. Regional Advisory Councils shall be established to contribute to the achievement of the objectives of Article 2(1) and in particular to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.

2. Regional Advisory Councils shall be composed of representatives of the fisheries and aquaculture sectors, environmental protection and consumer interests, national and/or regional administrations and scientific experts from all Member States whose fishing vessels operate in the sea area or fishing zone concerned. The Commission may be present at their meetings.

3. Regional Advisory Councils may be consulted by the Commission in respect of proposals for measures to be adopted on the basis of Article 37 of the Treaty that it intends to present and that relate specifically to fish stocks in the area concerned. They may also be consulted by the Commission and by the Member States in respect of other measures.

4. Regional Advisory Councils may

(a) submit recommendations and suggestions, of their own accord or at the request of the Commission or a Member State, on matters relating to fisheries management to the Commission or the Member State concerned;

(b) inform the Commission or the Member State concerned about problems relating to the implementation of Community rules in the area they cover and submit recommendations and suggestions addressing such problems to the Commission or the Member State concerned;

(c) conduct any other activities necessary to fulfil their functions.

Article 33

Procedure for the establishment of Regional Advisory Councils

The Council shall decide on the establishment of a Regional Advisory Council. A Regional Advisory Council shall cover sea areas falling under the jurisdiction of at least two Member States.

Article 34

Scientific, Technical and Economic Committee for Fisheries

1. A Scientific, Technical and Economic Committee for Fisheries (STECF) shall be established. The STECF shall be consulted as necessary on matters pertaining to the conservation and management of living aquatic resources, including biological, economic, environmental, social and technical considerations.

2. The Commission shall take into account the advice from the STECF when presenting proposals on fisheries management under this Regulation.

CHAPTER VII

FINAL PROVISIONS

Article 35

Repeal

1. Council Regulations (EEC) No 3760/92 and (EEC) No 101/76 are hereby repealed.

2. References to the provisions of the Regulations repealed under paragraph 1 shall be construed as references to the corresponding provisions of this Regulation.

Article 36

Review

The provisions of Chapters II and III shall be reviewed before the end of the year 2008

Article 37

Entry into force

This Regulation shall enter into force 1 January 2003.

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

ANNEX I [1]

ACCESS TO COASTAL WATERS WITHIN THE MEANING OF ARTICLE 17(2)

1. **COASTAL WATERS OF THE UNITED KINGDOM**

A. ACCESS FOR FRANCE

Geographical area	Species	Importance or particular characteristics
United Kingdom coast (6 to 12 nautical miles)		
1. Berwick-upon-Tweed east Coquet Island east	Herring	Unlimited
2. Flamborough Head east Spurn Head east	Herring	Unlimited
3. Lowestoft east Lyme Regis south	All species	Unlimited
4. Lyme Regis south Eddystone south	Demersal	Unlimited
5. Eddystone south Longships south-west	Demersal Scallops Lobster Crawfish	Unlimited Unlimited Unlimited Unlimited
6. Longships south-west Hartland Point north-west	Demersal Crawfish Lobster	Unlimited Unlimited Unlimited
7. Hartland Point to a line from the north of Lundy Island	Demersal	Unlimited
8. From a line due west Lundy Island to Cardigan Harbour	All species	Unlimited
9. Point Lynas North Morecambe Light Vessel east	All species	Unlimited
10. County Down	Demersal	Unlimited
11. New Island north-east [1] Sanda Island south-west	All species	Unlimited
12. Port Stewart north Barra Head west	All species	Unlimited
13. Latitude 57 °40' N Butt of Lewis west	All species Except shellfish	Unlimited
14. St Kilda, Flannan Islands	All species	Unlimited
15. West of the line joining Butt of Lewis lighthouse to the point 59°30' N, 5 °45' W	All species	Unlimited

[1] Corrigendum, OJ No L 73, 19.3.1983, p. 42

[1] All limits are calculated from their baselines, as they existed at the time Regulation (EEC) No 170/83 was adopted and, for the States that acceded to the Community after this date, at the time of their accession.

B. ACCESS FOR IRELAND

Geographical area	Species	Importance or particular characteristics
United Kingdom coast (6 to 12 nautical miles)		
2. Point Lynas north Mull of Galloway south	Demseral Nephrops	Unlimited Unlimited
2. Mull of Oa west Barra Head west	Demseral Nephrops	Unlimited Unlimited

C. ACCESS FOR GERMANY

Geographical area	Species	Importance or particular characteristics
United Kingdom coast (6 to 12 nautical miles)		
1. East of Shetlands and Fair Isle between lines drawn due south-east from Sumbrugh Head lighthouse due north-east from Skroo lighthouse and due south-west from Skadan lighthouse	Herring	Unlimited
2. Berwick-upon-Tweed east Whitby High lighthouse east	Herring	Unlimited
3. North Foreland lighthouse east Dungeness new lighthouse south	Herring	Unlimited
4. Zone around St Kilda	Herring Mackerel	Unlimited Unlimited
5. Butt of Lewis lighthouse west to the line joining Butt of Lewis lighthouse and the point 59°30' N, 5°45' W	Herring	Unlimited
6. Zone around North Rona and Sulisker (Sulasgeir)	Herring	Unlimited

D. ACCESS FOR THE NETHERLANDS

Geographical area	Species	Importance or particular characteristics
United Kingdom coast (6 to 12 nautical miles)		
1. East of Shetlands and Fair Isle between lines drawn due south-east from Sumbrugh Head lighthouse due north-east from Skroo lighthouse and due south-west from Skadan lighthouse	Herring	Unlimited
2. Berwick-upon-Tweed east Flamborough Head east	Herring	Unlimited
3. North Foreland east Dungeness new lighthouse south	Herring	Unlimited

E. ACCESS FOR BELGIUM

Geographical area	Species	Importance or particular characteristics
United Kingdom coast (6 to 12 nautical miles)		
1. Berwick upon Tweed east Coquet Island east	Herring	Unlimited
2. Cromer north North Foreland east	Demersal	Unlimited
3. North Foreland east Dungeness new lighthouse south	Demersal Herring	Unlimited Unlimited
4. Dungeness new lighthouse south Selsey Bill south	Demersal	Unlimited
5. Straight Point south-east South Bishop north-west	Demersal	Unlimited

2. **COASTAL WATERS OF IRELAND**

A. ACCESS FOR FRANCE

Geographical area	Species	Importance or particular characteristics
Irish coast (6 to 12 nautical miles)		
1. Erris Head north-west Sybil Point west	Demersal Nephrops	Unlimited Unlimited
2. Mizen Head south Stags south	Demersal Nephrops Mackerel	Unlimited Unlimited Unlimited
3. Stags south Cork south	Demersal Nephrops Mackerel Herring	Unlimited Unlimited Unlimited Unlimited
4. Cork south Carnsore Point south	All species	Unlimited
5. Carnsore Point south Haulbowline south-east	All species, except Shellfish	Unlimited

B. ACCESS FOR THE UNITED KINGDOM

Geographical area	Species	Importance or particular characteristics
Irish coast (6 to 12 nautical miles)		
1. Mine Head south Hook Point	Demseral Herring Mackerel	Unlimited Unlimited Unlimited
2. Hook Point Carlingford Lough	Demseral Herring Mackerel Nephrops Scallops	Unlimited Unlimited Unlimited Unlimited Unlimited

C. ACCESS FOR THE NETHERLANDS

Geographical area	Species	Importance or particular characteristics
Irish coast (6 to 12 nautical miles)		
1. Stags south Carnsore Point south	Herring Mackerel	Unlimited Unlimited

D. ACCESS FOR GERMANY

Geographical area	Species	Importance or particular characteristics
Irish coast (6 to 12 nautical miles)		
1. Old Head of Kinsale south Carnsore Point south	Herring	Unlimited
2. Cork south Carnsore Point south	Mackerel	Unlimited

E. ACCESS FOR BELGIUM

Geographical area	Species	Importance or particular characteristics
Irish coast (6 to 12 nautical miles)		
1. Cork south Carnsore Point south	Demersal	Unlimited
2. Wicklow Head east Carlingford Lough south-east	Demersal	Unlimited

3. **COASTAL WATERS OF BELGIUM**

Geographical area	Member State	Species	Importance or particular characteristics
6 to 12 nautical miles	Netherlands France	All species Herring	Unlimited Unlimited

4. **COASTAL WATERS OF DENMARK**

Geographical areas	Member State	Species	Importance or particular characteristics
North Sea coast (Danish/German frontier to Hanstholm) (6 to 12 nautical miles)			
Danish/German frontier to Blåvands Huk	Germany	Flatfish Shrimps and Prawns	Unlimited Unlimited
	Netherlands	Flatfish Roundfish	Unlimited Unlimited
Blåvands Huk to Bovbjerg	Belgium	Cod Haddock	Unlimited only during June and July Unlimited only during June and July
	Germany	Flatfish	Unlimited
	Netherlands	Plaice Sole	Unlimited Unlimited
Thyborøn to Hanstholm	Belgium	Whiting Plaice	Unlimited only during June and July Unlimited only during June and July
	Germany	Flatfish Sprat Cod Saithe Haddock Mackerel Herring Whiting	Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited
	Netherlands	Cod Plaice Sole	Unlimited Unlimited Unlimited
Skagerrak (Hanstholm to Skagen) (4 to 12 nautical miles)	Belgium	Plaice	Unlimited only during June and July
	Germany	Flatfish Sprat Cod Saithe Haddock Mackerel Herring Whiting	Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited
	Netherlands	Cod Plaice Sole	Unlimited Unlimited Unlimited
Kattegat	Germany	Cod Flatfish Nephrops Herring	Unlimited Unlimited Unlimited Unlimited
Baltic Sea (including Belts, Sound, Bornholm) 3 to 12 nautical miles	Germany	Flatfish Cod Herring Sprat Eel Salmon Whiting Mackerel	Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited

5. COASTAL WATERS OF GERMANY

Geographical areas	Member State	Species	Importance or particular characteristics
North Sea coast (3 to 12 nautical miles) all coasts	Denmark	Demersal Sprat Sand-eel	Unlimited Unlimited Unlimited
	Netherlands	Demersal Shrimps and Prawns	Unlimited Unlimited
Danish/German frontier to the northern tip of Amrum at 54°43' N	Denmark	Shrimps and Prawns	Unlimited
Zone around Helgoland	United Kingdom	Cod Plaice	Unlimited Unlimited
Baltic coast	Denmark	Cod Plaice Herring Sprat Eel Whiting Mackerel	Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited Unlimited

6. COASTAL WATERS OF FRANCE AND THE OVERSEAS DEPARTMENTS

Geographical area	Member State	Species	Importance or particular characteristics
North-east Atlantic coast (6 to 12 nautical miles)			
Belgian/French frontier to east of Departement Manche (Vire-Grandcamp les Bains estuary 49°23'30'' N, 1°2' WNNE)	Belgium	Demersal Scallops	Unlimited Unlimited
	Netherlands	All species	Unlimited
Dunkerque (2°20' E) to Cap d'Antifer (0°10' E)	Germany	Herring	Unlimited only during October to December
Belgian/French frontier to Cap d'Alprech west (50°42'30'' N, 1°33'30'' E)	United Kingdom	All species	Unlimited
Atlantic Coast (6 to 12 nautical miles)			
Spanish/French frontier to 46°08' N	Spain	Anchovies	— Directed fishing, Unlimited only from 1 March to 30 June — Fishing for live bait from 1 July to 31 October only
		Sardines	— Unlimited only from 1 January to 28 February and from 1 July to 31 December — In addition, activities relating to the above-mentioned species must be pursued in accordance with and within the limits of the activities pursued during 1984
Mediterranean coast (6 to 12 nautical miles)			
Spanish frontier Cap Leucate	Spain	All species	Unlimited [1]

[1] Act of Accession of 1985.

7. **COASTAL WATERS OF SPAIN**

Geographical area	Member State	Species	Importance or particular characteristics
Atlantic coast (6 to 12 nautical miles)			
French/Spanish frontier to Cap Mayor lighthouse (3°47' W)	France	Pelagic	Unlimited in accordance with and within the limits of the activities pursued during 1984
Mediterranean coast (6 to 12 nautical miles)			
French frontier/Cap Creus	France	All species	Unlimited [1]

[1] Act of Accession of 1985.

8. **COASTAL WATERS OF THE NETHERLANDS**

Geographical area	Member State	Species	Importance or particular characteristics
(3 to 12 nautical miles) whole coast	Belgium	All species	Unlimited
	Denmark	Demersal	Unlimited
		Sprat	Unlimited
		Sand-eel	Unlimited
		Horse-mackerel	Unlimited
	Germany	Cod	Unlimited
		Shrimps and Prawns	Unlimited
(6 to 12 nautical miles) whole coast	France	All species	Unlimited
Texel south point, west to the Netherlands/German frontier	United Kingdom	Demersal	Unlimited

ANNEX II

SHETLAND BOX

A. **Geographical limits**

From the point on the west coast of Scotland in latitude 58°30' N to 59°30' N, 6°15' W
From 58°30' N, 6°15' W to 59°30' N, 5°45' W
From 59°30' N, 5°45' W to 59°30' N, 3°45' W
along the 12 nautical miles line north of the Orkneys
From 59°30' N, 3°00' W to 61°00' N, 3°00' W
From 61°00' N, 3°00' W to 61°00' N, 0°00' W
along the 12 nautical miles line north of the Shetlands
From 61°00' N, 0°00' W to 59°30' N, 0°00' W
From 59°30' N, 0°00' W to 59°30' N, 1°00' W
From 59°30' N, 1°00' W to 59°00' N, 1°00' W
From 59°00' N, 1°00' W to 59°00' N, 2°00' W
From 59°00' N, 2°00' W to 58°30' N, 2°00' W
From 58°30' N, 2°00' W to 58°30' N, 3°00' W
From 58°30' N, 3°00' W to the east coast of Scotland in latitude 58°30' N.

B. **Fishing effort authorised**

Maximum number of vessels with a length between perpendiculars of not less than 26 metres [1] authorised to fish for demersal species, other than Norway pout and blue whiting [2]:

Member State	Number of fishing vessels authorised
France	52
United Kingdom	62
Germany	12
Belgium	2

[1] Length between perpendiculars as laid down by Commission Regulation (EEC) No 2930/86 (OJ L 274, 25.9.1986, p. 1).

[2] Vessels fishing for Norway pout and blue whiting may be subject to specific monitoring measures concerning the keeping on board of fishing gear and species other than those referred to above.

Proposal for a Council Regulation amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

(2002/C 203 E/39)

(Text with EEA relevance)

COM(2002) 187 final — 2002/0116(CNS)

(Submitted by the Commission on 29 May 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector [1] includes provisions relating to the restructuring of the Community fisheries sector.

(2) The period of application of Council Decision 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with a view to achieving a balance on a sustainable basis between resources and their exploitation [2] has been extended and will expire on 31 December 2002.

(3) Appropriate provisions should be laid down for the period commencing on 1 January 2003.

(4) Consistency must be ensured between the policy for restructuring the fisheries sector and other aspects of the Common Fisheries Policy, in particular the objective of achieving a stable and enduring balance between the capacity of fishing fleets and the fishing opportunities available to them in Community waters and outside Community waters.

(5) Since this balance can only be achieved by capacity withdrawal, Community financial support to the fisheries sector through the Financial Instrument for Fisheries Guidance (FIFG) should be concentrated on the scrapping of fishing vessels and public aid for fleet renewal should no longer be permitted.

(6) For the same reason, measures for the equipment and modernisation of fishing vessels should be restricted either to measures to improve safety, navigation, hygiene, product quality, product safety and working conditions or to measures to increase the selectivity of fishing gear, including for the purpose of reducing by-catches and habitat impacts. These measures should be eligible for FIFG support on condition that they do not lead to an increase in fishing effort.

(7) FIFG support for measures to assist small-scale coastal fishing should be granted on condition that such measures do not serve to increase fishing effort in fragile coastal marine ecosystems, or that they help to reduce the impact of towed gear on the flora and fauna of the sea bed.

(8) Transfers of Community fishing vessels to third countries, including transfers made in the context of joint enterprises, do not contribute to the strengthening of sustainable fisheries outside Community waters, therefore public aid for such transfers should no longer be permitted.

(9) Socio-economic measures aim to support the retraining of fishermen to help them take up full time professional activities outside marine fisheries. These measures may also aim to support the diversification of fishermen activities outside marine fisheries and thereby enable them to continue fishing on a part-time basis, provided that this contributes to a reduction of their fishing effort.

(10) Detailed rules should be introduced for the granting of compensation and its limitation in time where a multi-annual management plan is decided on by the Council or emergency measures are decided on by the Commission or by one or more Member States.

(11) Articles 87, 88 and 89 of the Treaty should apply to aid granted by Member States to the fisheries and aquaculture sector. However, in order to speed up the reimbursement by the Commission of funds advanced by the Member States, an exception to that principle should be introduced for the obligatory financial input by Member States towards measures co-financed by the Community and provided for under the development plans defined in Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [3].

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[1] OJ L 337, 30.12.2001, p. 10. Regulation as last amended by Regulation (EC) No 179/2002 (OJ L 31, 1.2.2002, p. 25).

[2] OJ L 175, 3.7.1997, p. 27. Decision as amended by Decision 2002/70/EC (OJ L 31, 1.2.2002, p. 77).

[3] OJ L 161, 26.6.1999, p. 1. Regulation as amended by Regulation (EC) No 1447/2001 (OJ L 198, 21.7.2001, p. 1).

(12) For procedural reasons, all measures entailing public financing over and above the provisions concerning obligatory financial contributions contained in Regulation (EC) No 2792/1999 or in Regulation (EC) No [. . ./. . .] establishing an emergency Community measure for scrapping fishing vessels should be treated as a whole under Articles 87, 88 and 89 of the Treaty.

(13) Regulation (EC) No 2792/1999 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2792/1999 is amended as follows:

1. In Article 1, the following paragraph is added:

'3. Measures adopted pursuant to paragraphs 1 and 2 shall not increase fishing effort.'

2. Article 2 is replaced by the following

'*Article 2*

Means

The Financial Instrument for Fisheries Guidance, hereafter referred to as the "FIFG" may, under the conditions laid down in this Regulation, provide assistance for the measures defined in Titles II, III and IV within the fields covered by the Common Fisheries Policy as defined in Article 1 of Regulation (EC) No [. . ./. . .] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy], and subject to Articles 16 and 23(4) of that Regulation.'

3. Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Programming, defined in Article 9(a) of Regulation (EC) No 1260/1999, shall be in accordance with the objectives of the Common Fisheries Policy and in particular with the provisions of Chapter III of Regulation (EC) No [. . .] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy]. To this end, programming shall be revised as necessary and in particular in application of fishing effort limits decided under Articles 5 and 6 of Regulation (EC) No [. . ./. . .] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy].

Programming shall cover all the fields referred to in Titles II, III and IV of this Regulation.'

(b) Paragraph 3 is replaced by the following:

'3. The development plans defined in Article 9(b) of Regulation (EC) No 1260/1999 shall demonstrate that public aid is necessary with regard to the objectives pursued, in particular that, without public aid, the fishing vessels concerned could not be modernised, and that the planned measures will not jeopardise the sustainability of fisheries.

The contents of the plans shall be as set out in Annex I.'

(c) Paragraph 4 is deleted.

4. Articles 4 and 5 are deleted.

5. Title II is replaced by the following:

'TITLE II

MEASURES TO ADJUST FISHING EFFORT'

6. Article 6 is deleted.

7. Article 7 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Member States shall take appropriate measures to comply with the provisions of Chapter III of Regulation (EC) No [. . ./. . .] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy].

Where necessary, this shall be achieved either by stopping fishing vessels' fishing activities permanently, in accordance with the applicable provisions of Annex III, or by restricting them or by a combination of both.'

(b) Paragraph 3 is replaced by the following:

'3. The permanent cessation of fishing vessels' fishing activities may be achieved by the scrapping of the vessel.'

(c) Paragraph 4 is deleted.

(d) In paragraph 5, points (b), (c) and (d) are deleted.

(e) Paragraphs 6 and 7 are deleted.

8. Article 8 is deleted.

9. Article 9 is replaced by the following:

'*Article 9*

Public aid for equipment or modernisation of fishing vessels

1. Public aid for the equipment of fishing vessels, including for the use of more selective fishing techniques, or for the modernisation of fishing vessels may be granted provided that:

(a) the aid does not concern capacity in terms of tonnage or of power;

(b) the aid does not serve to increase the effectiveness of the fishing gear;

(c) the contents of the plans referred to in Article 3(3) are as set out in Annex I;

(d) the conditions laid down in Annex III are complied with.

2. The effect of granting public aid shall be accounted for in the annual implementation report referred to in Article 21.

3. Expenditure eligible for public aid for the equipment or modernisation of fishing vessels may not exceed the amounts set out in Table 1 of Annex IV.'

10. Article 10 is replaced by the following:

'*Article 10*

Common provisions on fishing fleets

Public aid for modernisation and equipment under this Regulation shall be reimbursed *pro rata temporis* when the fishing vessel concerned is deleted from the fishing vessel register of the Community within five years of the modernisation works.'

11. Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. For the purposes of this article, "small-scale coastal fishing" means fishing carried on by fishing vessels of an overall length of less than 12 metres and not using towed gear.'

(b) Paragraph 4 is replaced by the following:

'4. For the purposes of paragraph 3, the following projects, *inter alia*, may be considered integrated collective projects:

— safety equipment on board and improvement of sanitary and working conditions,

— technological innovations (more selective fishing techniques) that do not increase the fishing effort,

— organisation of the production, processing and marketing chain (promotion and added value of the products),

— professional requalification or training.'

12. Article 12 is amended as follows:

(a) In paragraph 3, point (c) is replaced by the following:

'(c) granting non-renewable individual compensatory payments to fishermen who can show that they have worked for at least five years as fishermen, to help them:

(i) to retrain outside marine fisheries under an individual or collective social plan, on the basis of an eligible cost limited to EUR 50 000 per individual beneficiary; the managing authority shall determine the individual amount according to the scale of the retraining project and the financial commitment entered into by the beneficiary;

(ii) to diversify their activities outside marine fisheries under an individual or collective diversification project, on the basis of an eligible cost limited to EUR 20 000 per individual beneficiary; the managing authority shall determine the individual amount according to the scale of the diversification project and the investment made by the beneficiary;'

(b) In paragraph 4, point (d) is replaced by the following:

'(d) that the compensation referred to in paragraph 3(c)(i) for reconversion is refunded on a *pro rata temporis* basis where the beneficiaries return to their work as fishermen within a period of less than five years after being paid the compensation and that the compensation for diversification referred to in paragraph 3(c)(ii) contributes to a reduction of the fishing effort developed by the fishing vessels on which the beneficiaries are active;'

(c) Paragraph (6) is deleted.

13. Article 16 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Point (a) is replaced by the following:

'(a) in the event of unforeseeable circumstances, particularly those caused by biological factors; the granting of compensation may last for no more than three consecutive months or six months over the entire period from 2000 to 2006. The managing authority shall furnish the Commission with scientific proof of these circumstances in advance;'

(ii) Point (c) is replaced by the following:

'(c) where a multiannual management plan is adopted by the Council or where emergency measures are decided by the Commission or by one or more Member States; the granting of compensation by a Member State may last for no more than one year.'

(b) Paragraph 3 is replaced by the following:

'3. The financial contribution from the FIFG to the measures referred to in paragraphs 1 and 2 per Member State for the entire period from 2000 to 2006 may not exceed the higher of the following two thresholds: EUR 1 million or 4 % of the Community financial assistance allocated to the sector in the Member State concerned.

However, in the case of a multiannual management plan adopted by the Council or of emergency measures decided by the Commission, these thresholds can be exceeded on condition that the measure includes a decommissioning scheme with the aim of withdrawing, within two years of the adoption of the measure, a number of fishing vessels with a fishing effort at least equal to the effort of the fishing vessels suspended from fishing activity as a consequence of the plan or emergency measure.

To obtain Commission approval for a financial contribution from the FIFG, a Member State must notify the Commission of the measure and provide it with a detailed calculation of premiums. The measure shall enter into force only after the Commission's approval has been delivered to the Member State.

The managing authority shall determine the amount of compensation as provided for in paragraphs l and 2 to be paid in individual cases taking account of relevant parameters such as the real losses suffered, the scale of the conversion effort, recovery plan or technical adjustment effort.'

(c) Paragraph 4 is replaced by the following:

'4. Recurrent seasonal suspension of fishing activity shall not be eligible for compensation under paragraphs 1, 2 and 3.'

14. Article 18 is replaced by the following:

'*Article 18*

Compliance with the conditions governing assistance

The management authority shall ensure that the special conditions governing assistance listed in Annex III are complied with.

It shall also satisfy itself as to the technical capacity of beneficiaries and the financial viability of firms as well as their respecting all rules of the Common Fisheries Policy before granting aid. If during the grant period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the grant shall be reimbursed. Detailed rules for the implementation of this article may be adopted in accordance with Article 23, paragraph 2.'

15. Article 19 is replaced by the following:

'*Article 19*

Obligatory financial contributions and State aid

1. Without prejudice to paragraph 2, Articles 87, 88 and 89 of the Treaty shall apply to aid granted by Member States to the fisheries and aquaculture sector.

2. Articles 87, 88 and 89 of the Treaty shall not apply to obligatory financial contributions by Member States to measures co-financed by the Community and provided for under the development plans referred to in Article 3(3) of this Regulation and defined in Article 9(b) of Regulation (EC) No 1260/1999 or under Article [. . .] of Regulation (EC) No [. . ./. . .] establishing a Community measure for scrapping fishing vessels.

3. Measures which provide for public financing exceeding the provisions of this Regulation or of Regulation (EC) No [. . .] establishing a Community measure for scrapping fishing vessels concerning obligatory financial contributions, as referred to in paragraph 2 of this Article, shall be treated as a whole on the basis of paragraph 1 of this article.'

16. Article 22 is replaced by the following:

'*Article 22*

Committee procedure

The measures necessary for the implementation of this Regulation relating to matters referred to in Articles 4, 5, 6, 8, 10, 15, 18 and 21 shall be adopted in accordance with the management procedure referred to in Article 23(2).'

17. Article 23 is amended as follows:

(a) In paragraph 1, point (a) is replaced by the following:

'(a) for the purpose of the implementation of Articles 8, 15, 18 and 21 by the Committee on structures for fisheries and aquaculture established by Article 51 of Regulation (EEC) No 1260/1999; and'

Article 2

Annexes I to IV are amended in accordance with the Annex to this Regulation.

Article 3

This Regulation shall enter into force on 1 January 2003.

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

ANNEX

1. Annex I is amended as follows:

   (a) point 1(c) is replaced by the following:

   '(c) requirements of the sector.'

   (b) point 2(d)(i) is replaced by the following:

   '(i) indicators concerning the development of the fleet in relation to the objectives of the multiannual management plans;'

2. Annex II is deleted.

3. Annex III is amended as follows:

   (a) The title of point 1 is replaced by the following:

   '1. **Implementation of measures to adjust fishing efforts (Title II)**'

   (b) Point 1.0 is replaced by the following:

   '1.0 *Age of vessels*

   For the purpose of this Regulation, the age of a vessel is a whole number defined as the difference between the year of the managing authority's decision to grant a premium or aid and the year of entry into service as defined in Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels [1].'

   (c) Point 1.1(b)(iv) is deleted.

   (d) Points 1.1(c) and (d) are deleted.

   (e) Points 1.2 and 1.3 are deleted.

   (f) The title of point 1.4 is replaced by the following:

   '1.4. *Fishing vessels modernisation (Article 9)*'

   (g) Point 1.4(b)(i) is deleted.

   (h) Point 1.4(b)(ii) is replaced by the following:

   '(ii) improvement of the quality and safety of products caught and preserved on board, the use of more selective fishing techniques and of better preserving techniques and the implementation of legal and regulatory provisions regarding health, and/or'.

   (i) The following point 1.5 is added:

   '1.5. *Socio-economic measures (Article 12)*

   Measures to support the training of fishermen or the diversification of their activities outside marine fisheries must contribute to a reduction of the fishing effort developed by the beneficiaries even if they continue fishing on a part-time basis.'

   (j) Point 2.5(b) is deleted.

[1] OJ L 274, 25.9.1986 p. 1. Regulation as amended by Regulation (EC) No 3259/1994 of 22 December 1994 (OJ L 339, 29.12.1994, p. 11).

4. In Annex IV, the text preceding Table 3 in point 2 is replaced by the following:

'2. **Rates of financial participation**

(a) For all the operations referred to in titles II, III and IV, the limits on Community financial participation (A), total State financial participation (national, regional and other) by the Member State concerned (B) and, where applicable, financial participation by private beneficiaries (C) shall be as follows, expressed as a percentage of eligible costs.

Group 1:

Permanent withdrawal premiums (Article 7), small-scale coastal fishing (Article 11), socio-economic measures (Article 12), protection and development of aquatic resources (Article 13(1)(a)), fishing port facilities with no financial participation by private beneficiaries (Article 13(1)(c)), measures to find and promote new market outlets with no financial participation by private beneficiaries (Article 14), operations by members of the trade with no financial participation by private beneficiaries (Article 15), temporary cessation premiums and other financial compensation (Article 16), innovative measures and technical assistance including pilot projects carried out by public bodies (Article 17).

Group 2:

Modernisation of fishing vessels (Article 9).

Group 3:

Aquaculture (Article 13(1)(b)), fishing port facilities with financial participation by private beneficiaries (Article 13(1)(c)), processing and marketing (Article 13(1)(d)), inland fishing (Article 13(1)(e)), measures to find and promote new market outlets with financial participation by private beneficiaries (Article 14), operations by members of the trade with financial participation by private beneficiaries (Article 15(2)).

Group 4:

Pilot projects other than those carried out by public bodies (Article 17).

(b) With respect to operations concerning the protection and development of aquatic resources (Article 13(1)(a)), fishing port facilities (Article 13(1)(c)), measures to find and promote new market outlets (Article 14) and operations by members of the trade (Article 15), the managing authority shall determine whether they fall under group l or group 3, in particular on the basis of the following considerations:

— collective versus individual interests,

— collective versus individual beneficiary (producers' organisations, organisations representing the trade),

— public access to the results of the operation versus private ownership and control,

— financial participation by collective bodies, research institutions.'