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II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation amending Regulation (EC) No 2555/2001 fixing for 2002 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required

(2002/C 331 E/01)

COM(2002) 442 final

(Submitted by the Commission on 1 August 2002)

EXPLANATORY MEMORANDUM

Council Regulation (EC) No 2555/2001 fixes the fishing opportunities and associated conditions for certain fish stocks and groups of stocks applicable in Community waters and for Community vessels, in waters where limitations in catch are required for 2002. Amendments of the Regulation are required following decisions recently reached in international fora, new scientific advice and a ruling by the Court of Justice:

1. Various conservation and enforcement measures to be applied in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (NAFO) are laid down in the Regulation. The Community is a Contracting Party to NAFO and has to implement measures adopted by the Organisation. At a Special Meeting in February 2002 NAFO adopted the following measures:

   (a) To introduce increased mesh size of nets in the skate fishery. The mesh size shall be 280 mm in the codend (from 1 July 2002).

   (b) To introduce a reporting system for catches of shrimp in NAFO Division 3L.

   (c) To extend the closed period for fishing for shrimp in certain defined areas of NAFO Division 3M from 1 June to 30 September 2002 to 1 June to 31 December 2002.

   (d) To increase the maximum number of fishing days for shrimp in certain defined areas of NAFO Division 3M.

   (e) To increase the TAC of Greenland halibut in NAFO Division 3LMNO.

2. Consultations between the Community, on behalf of Sweden, and the Russian Federation concerning cooperation in fisheries for 2002 were concluded on 14 February 2002. The conclusions of such consultations, which concern exchange of fishing opportunities in the form of quotas and licences, need now to be implemented in Community legislation so fishermen can make use of the new fishing possibilities.

3. During the Fisheries Consultations between the EU and Norway on the regulation of fisheries in Skagerrak and Kattegat for 2002 the Parties agreed that: 'In view of the special circumstances surrounding the plaice advice for 2002, the Parties agreed that ICES should be requested to re-evaluate its advice for the stock for 2002 when official statistics of plaice catches for 2001 become available'. ICES concludes in its advice for plaice in Skagerrak and Kattegat that 'the 2001 information suggests a 32 % higher status quo prediction for 2002 than presented in 2001, implying that the 2002 TAC could be increased by up to 32 % without significant additional risk to the stock'. The TAC has been amended accordingly. As regards Skagerrak Norway has agreed to the increased TAC.

4. An agreement has been reached between the European Community and Norway whereby 15 000 tonnes of sandeel in Community waters of ICES Subdivision IIa and the North Sea has been transferred to Norway and 1 500 tonnes of plaice in the same area has been transferred from Norway to the Community.

5. The Council and the Commission at the Council meeting in December 2001 agreed to seek further scientific advice from ICES and STECF on the state of the stock of sole in ICES Subdivisions VIIIa, b and appropriate catches for 2002. Neither ICES nor STECF found any basis to revise the previous ICES advice.

The Commission last year, when developing TAC and quota proposals for recovery stocks, selected the TACs equal to the landings that, according to ICES catch forecasts, would give for cod and sole a 30 % increase in SSB and for hake a 15 % increase. If this implied a reduction in the TAC of more than 50 % the proposed TAC was set equal to 50 % of the 2001 TAC. The proposed TAC was, however, never set at a level that would result in a fishing mortality higher than the Fpa.

Following the ICES advice and applying the same principles as used when developing the that TAC last year the TAC will be 2 710 tonnes for sole in ICES Subdivisions VIIIa,b for the whole year 2002 (Fpa rule).

6. ICES has in a new scientific advice on management of herring in ICES Subdivisions VII g,h,j,k recommended that the fishing mortality in 2002 should be at or below 0,35 corresponding to catches of no more than 11 000 tonnes for the whole year. The TAC has been amended accordingly.

7. The Court of Justice has in case C-61/96 ruled that allowing Portugal under the TAC for anchovy in ICES Divisions IX, X, CECAF 34.1.1 to fish part of its quota allocated in the aforementioned zone in ICES Division VIII will distort the relative stability in Division VIII. The transfer must therefore be discontinued.

8. During the Annual Meeting of ICCAT from 12 to 19 November 2001, tables were adopted for the first time showing the under-utilisation and over-utilisation by the ICCAT Contracting Parties of their fishing possibilities agreed in ICCAT. In this context, ICCAT adopted a decision showing that during 2000, the European Community under-exploited its quota by 1 696 tonnes for South Atlantic blue-fin tuna and by 2 tonnes for South Atlantic swordfish as well as over-exploited its quota of North Atlantic swordfish by 147,5 tonnes. In order to respect the adjustments to the Community quotas established by ICCAT, and taking into account the under-utilisation and the over-utilisation attributed to the European Community resulting from the under-exploitation of South Atlantic blue-fin tuna and swordfish and the over-exploitation by certain Member States of the 2000 fishing possibilities of North Atlantic swordfish established by ICCAT, it is necessary that the distribution of under-utilisation and over-utilisation is carried out on the basis of the respective contribution of each Member State towards the under-utilisation and over-utilisation without modifying the distribution key established under Article 3 (1) of Regulation (EC) No 2555/2001 concerning the annual allocation of TACs.

9. At the extraordinary meeting of the International Commission for the Conservation of Atlantic Tuna (ICCAT) in November 2000 it was recommend ed that quotas should be introduced for white marlin and blue marlin in the Atlantic Ocean. The recommendations entered into force 26 June 2001. The Community as a Contracting Party has to implement them.

10. In accordance with Article 10 (1) of Regulation (EC) No 973/2001 the number of Community fishing vessels that are fishing for Northern Albacore as a target species has to be fixed, based on the average number of fishing vessels fishing for Northern Albacore during the period 1993 and 1995. The total number is 1 253 distributed among Member States as follows: Ireland 25, Spain 751, France 155, United Kingdom 12 and Portugal 310. The total number may not be exceeded.

In accordance with Article 10 (4) of Regulation (EC) No 973/2001 the total number of vessels fixed in accordance with Article 10 (1) shall be distributed among Member States. The vessels intended to participate in the Northern Albacore fishery during 2002, notified by the Member States to the Commission, is higher than 1 253. In accordance with a declaration made by Spain, France and Ireland, made at the adoption of the Regulation, Spain and France will renounce up to 25 vessels in favour of Ireland if it is deemed necessary for the application of Article 10 (4). The reduction will be made in proportion to their number of vessels determined in accordance with Article 10 (1). This means that Spain has to reduce the number of vessels with 21 to 730 and France with 4 to 151 and Ireland will increase the number of vessels from 25 to 50.

11. Various conservation and enforcement measures to be applied in the Baltic Sea fishery are laid down in the Regulation. These measures are recommended by the International Baltic Sea Fishery Commission (IBSFC). The Community as a Contracting Party has to implement them. The IBSFC, at an Extraordinary Session in March 2001, made a recommendation on increased gear selectivity in the cod trawl fishery. The specification relating to twine thickness for the 130 mm trawl should be inserted in Annex V to the Regulation.

The Council is requested to adopt this proposal as soon as possible in order to allow fishermen to plan their activities for this fishing season.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture [1], and in particular Article 8 (4) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In February 2002 the Northwest Atlantic Fisheries Organisation (NAFO) adopted various amendments to its conservation and enforcement measures regarding mesh size for fishing for skate, catch reporting requirements for the shrimp fishery in Division 3L, the extension of the closed period for the fishing for shrimp in certain defined areas in Division 3M, a change of the maximum number of fishing days for shrimp in Division 3M and the total allowable catches (TAC) for Greenland halibut.

(2) In accordance with the procedure provided for in Article 3 of the Agreement on fisheries of 11 December 1992 concluded between the Government of the Kingdom of Sweden and the Government of the Russian Federation, the Community, on behalf of the Kingdom of Sweden, held consultations with the Russian Federation concerning their respective fishing rights for 2002.

(3) In accordance with the most recent scientific evidence and in agreement with Norway, the TAC for plaice in ICES [2] Subdivision IIIa (Kattegat and Skagerrak) for 2002 can be increased.

(4) An agreement has been reached between the European Community and Norway whereby 15 000 tonnes of sandeel in Community waters of ICES Subdivision IIa and the North Sea has been transferred to Norway and 1 500 tonnes of plaice in the same area has been transferred from Norway to the Community.

(5) According to the most recent scientific evidence, the TAC for sole in ICES Subdivisions VIIIa,b should be reduced. The TAC for herring in ICES Subdivisions VIIg,h,j,k should be set for the whole year 2002 taking into account new scientific advice from ICES.

(6) Following the judgement of the Court of Justice of 18 April 2002 in case C-61/96 footnote 2 on the entry concerning anchovy in Zone IX, X, CECAF 34.1.1 should be deleted.

(7) During the Annual Meeting of ICCAT from 12 to 19 November 2001, tables were adopted for the first time showing the under-utilisation and over-utilisation by the ICCAT Contracting Parties of their fishing possibilities agreed in ICCAT. In this context, ICCAT adopted a decision showing that during 2000, the European Community under-exploited its quota by 1,696 tonnes for South Atlantic blue-fin tuna and by 2 tonnes for South Atlantic swordfish as well as over-exploited its quota of North Atlantic swordfish by 147,5 tonnes.

(8) In order to respect the adjustments to the Community quotas established by ICCAT, and taking into account the under-utilisation and the over-utilisation attributed to the European Community resulting from the under-exploitation of South Atlantic blue-fin tuna and swordfish and the over-exploitation by certain Member States of the 2000 fishing possibilities of North Atlantic swordfish established by ICCAT, it is necessary that the distribution of under-utilisation and over-utilisation is carried out on the basis of the respective contribution of each Member State towards the under-utilisation and over-utilisation without modifying the distribution key established under Article 3 (1) of Regulation (EC) No 2555/2001 concerning the annual allocation of TACs.

[1] OJ L 389, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 1181/98 (OJ L 164, 9.6.1998, p. 1).

[2] International Council for the Exploration of the Sea.

(9) In accordance with Article 10 (1) of Council Regulation (EC) No 973/2001 of 14 May 2001 laying down certain technical measures for the conservation of certain stocks of highly migratory species [1] the number of Community fishing vessels that are fishing for Northern Albacore as a target species should be determined, based on the average number of fishing vessels fishing for this species during the period 1993 and 1995. That number of vessels should be distributed among the Member States.

(10) At its extraordinary meeting in November 2000, the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended that quotas should be introduced for white marlin and blue marlin in the Atlantic Ocean.

(11) The International Baltic Sea Fishery Commission (IBSFC), recommended technical conservation measures in March 2001 for the cod trawl fishery. Therefore point 3 of Annex V of Regulation (EC) No 2555/2001 of 18 December 2001 fixing for 2002 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where limitations in catch are required [2] has to be changed.

(12) Regulation (EC) No 2555/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2555/2001 is amended as follows:

1. The first paragraph of Article 17 (1) is replaced by the following:

'The use of trawl net having in any section thereof net meshes of dimensions less than 130 mm shall be prohibited for direct fishing of the species referred to in Annex IX. This mesh size may be reduced to minimum 60 mm for direct fishing of short-finned squid (*Illex illecebrosus*). For direct fishing of skates (*Rajidae*) this mesh size shall be increased to minimum 280 mm in the cod-end from 1 July 2002.'

2. In Article 18, the following paragraph 5 is added:

'5. Member States shall report to the Commission daily the quantities of Northern prawns (*Pandalus borealis*) caught in Division 3L of the NAFO Regulatory Area by vessels flying the flag of a Member State and registered in the Community.'

3. Annex IA is amended in accordance with Annex I to this Regulation.

4. Annex IB is amended in accordance with Annex II to this Regulation.

5. Annex ID is amended in accordance with Annex III to this Regulation.

6. Annex IE is amended in accordance with Annex IV to this Regulation.

7. Annex IF is amended in accordance with Annex V to this Regulation.

8. In Annex V, point 3 is replaced by the following:

'3. By way of derogation from the provisions of Annex IV of Council Regulation (EC) No 88/98, the minimum mesh size for fishing for cod with trawls, Danish seines and similar nets shall be 130 mm. The maximum twine thickness shall be 6 mm if single twine is used and 4 mm if double twine is used. The said mesh size and twine thickness shall apply to any cod-end or extension piece found on board a fishing vessel and attached to or suitable for attachment to any towed net.'

Article 2

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.

[1] OJ L 137, 19.5.2001, p. 1.

[2] OJ L 347, 31.12.2001, p. 1.

ANNEX I

Annex IA to Regulation (EC) No 2555/2001 is amended as follows:

1. The entry concerning the species Sprat in zone 'IIIbcd (EC waters)' is replaced by the following:

'**Species:**	Sprat *Sprattus sprattus*	**Zone:** IIIbcd (EC waters)
Denmark	33 705	([1]) To be counted against the Estonian share of the IBSFC TAC.
Germany	21 353	([2]) To be counted against the Latvian share of the IBSFC TAC.
Finland	17 644	([3]) A maximum of 5 % in weight of herring is allowed as by-catch.
Sweden	76 158	([4]) To be counted against the Lithuanian share of the IBSFC TAC.
EC	148 860	([5]) To be fished in the Swedish zone of EC waters and by-catches of other species shall be counted against this quota.
Estonia	0 ([1])	
Latvia	8 000 ([2]) ([3])	
Lithuania	4 000 ([4])	
Russian Federation	1 000 ([5])	
TAC	380 000	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Estonian waters	Latvian waters	Lithuanian waters
EC	0	8 000	4 000'

2. The following entry is added:

'**Species:**	Sprat *Sprattus sprattus*	**Zone:** IIId (Russian Federation waters)
Sweden	1 000	
EC	1 000	
TAC	380 000'	

ANNEX II

In Annex IB to Regulation (EC) No 2555/2001, the entries concerning the species Sandeel in zone 'IIa, North Sea', the species Plaice in zones 'Skagerrak', 'Kattegat' and zone 'IIa (EC waters), North Sea' are replaced by the following:

'**Species:** Sandeel *Ammodytidae*		**Zone:** IIa ([1]), North Sea ([1])
Denmark	799 388	([1]) Community waters excluding waters within 6 miles of UK baselines at Shetland, Fair Isle and Foula.
United Kingdom	17 473	([2]) Except Denmark, Finland, Spain, Portugal and the United Kingdom.
All Member States	31 139 ([2])	([3]) This quota consists of any mixture of sandeel, Norway pout and blue whiting. No more than 500 tonnes of Norway pout may be taken in VIa north of 56°30' N.
EC	848 000	([4]) This quota consists of sandeel, Norway pout, a maximum of 2 000 tonnes of sprat and unavoidable by-catches of blue whiting. Sprat and a maximum of 6 000 tonnes of Norway pout may be taken in VIa north of 56°30' N. Such Norway pout catches shall be subject to the provision, on request by the Commission, of details on the quantity and composition of any by-catch taken.
Norway	50 000 ([3])	
Faroe Islands	20 000 ([4])	
TAC	918 000	

Species: Plaice *Pleuronectes platessa*		**Zone:** Skagerrak
Belgium	50	([1]) TAC agreed in the framework of Fisheries Consultations between the European Community and Norway on Fisheries in the Skagerrak and Kattegat for 2002. The parties' shares of the TAC are: EC: 8 279 tonnes; Norway: 169 tonnes.
Denmark	6 578	
Germany	34	
The Netherlands	1 265	
Sweden	352	
EC	8 279	
TAC	8 448 ([1])	

Species: Plaice *Pleuronectes platessa*		**Zone:** Kattegat
Denmark	1 880	
Germany	21	
Sweden	211	
EC	2 112	
TAC	2 112	

Species: Plaice *Pleuronectes platessa*		**Zone:** IIa (EC waters), North Sea
Belgium	4 591	(1) May only be taken in IV(EC waters). Catches taken within this quota are to be deducted from Norway's share of the TAC.
Denmark	14 922	(2) TAC agreed in the framework of Fisheries Consultations between the European Community and Norway for 2002. The parties' shares of the TAC, after swaps, are: EC: 74 610 tonnes, Norway: 2 390 tonnes.
Germany	4 305	
France	861	
The Netherlands	28 696	
United Kingdom	21 235	
EC	74 610	
Norway	2 390 (1)	
TAC	77 000 (2)	

Special conditions:

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Norwegian waters
EC	31 500’

ANNEX III

Annex ID to Regulation (EC) No 2555/2001 the entries concerning the species Herring in zone 'VII g,h,j,k', the species Anchovy in zone 'IX, X, CECAF 34.1.1 (Community waters)' and the species Common sole in zone 'VIII a,b' are replaced by the following:

'**Species:** Herring *Clupea harengus*		**Zone:** VII g,h,j,k ([1])
Germany	122	([1]) ICES Division VII g,h,j,k is increased by the area added to the Celtic Sea bounded: — to the north by latitude 52°30'N, — to the south by latitude 52°00'N, — to the west by the coast of Ireland, — to the east by the coast of the United Kingdom.
France	679	
Ireland	9 506	
The Netherlands	679	
United Kingdom	14	
EC	11 000	
TAC	11 000	

Species: Anchovy *Engraulis encrasicolus*		**Zone:** IX, X, CECAF 34.1.1 (Community waters)
Spain	3 826 ([1])	([1]) May be fished only in the waters under the sovereignty or within the jurisdiction of the Member State concerned, or in international waters of the zone concerned.
Portugal	4 174 ([1])	
EC	8 000	
TAC	8 000	

Species: Common sole *Solea solea*		**Zone:** VIII a,b
Belgium	34 ([1])	([1]) May be fished only in the waters under the sovereignty or within the jurisdiction of France, or in the international waters of the zone concerned. ([2]) May be fished only in the waters under the sovereignty or within the jurisdiction of Spain, or in the international waters of the zone concerned.'
Spain	6 ([2])	
France	2 484 ([1])	
The Netherlands	186 ([1])	
EC	2 710	
TAC	2 710	

ANNEX IV

In Annex IE to Regulation (EC) No 2555/2001, the entries concerning the species Northern prawn in zone 'NAFO 3M' and the species Greenland halibut in zone 'NAFO 3LMNO' are replaced by the following:

'**Species:** Northern prawn *Pandalus borealis*	**Zone:** NAFO 3M ([1])
TAC ([2])	([1]) Vessels may also fish this stock in Division 3L in the box bounded by the following coordinates: Point No — Latitude — Longitude 1 — 47°20'0 — 46°40'0 2 — 47°20'0 — 46°30'0 3 — 46°00'0 — 46°30'0 4 — 46°00'0 — 46°40'0 When conducting a fishery for shrimp in this box, vessels shall, whether or not crossing the line separating NAFO Divisions 3L and 3M, report in accordance with point 1.3 of the annex to Regulation (EC) No 189/92 (OJ L 21, 30.1.1992, p. 4). Moreover, fishing for shrimp shall be prohibited from 1 June to 31 December 2002 in the area bounded by the following coordinates: Point No — Latitude N — Longitude W 1 — 47°55'0 — 45°00'0 2 — 47°30'0 — 44°15'0 3 — 46°55'0 — 44°15'0 4 — 46°35'0 — 44°30'0 5 — 46°35'0 — 45°40'0 6 — 47°30'0 — 45°40'0 7 — 47°55'0 — 45°00'0 ([2]) Not relevant. Fishery managed by limitations in fishing effort. The Member States concerned shall issue special fishing permits for their fishing vessels engaging in this fishery, and shall notify those permits to the Commission prior to the commencement of the vessel's activity, in accordance with Regulation (EC) No 1627/94. By way of derogation from Article 8 of that regulation, permits will only become valid if the Commission has not objected within five working days following the notification. The maximum number of vessels and fishing time allowed shall be: Member State — Maximum number of vessels — Maximum number of fishing days Denmark — 2 — 131 Spain — 10 — 257 Portugal — 1 — 69 Each Member State shall, within 25 days following the calendar month in which the catches are made, report monthly to the Commission the fishing days spent in Division 3M and in the area defined in footnote ([1]) above.

'Species:	Greenland halibut *Reinhardtius hippoglossoides*	Zone: NAFO 3LMNO
Germany	896	
Spain	12 060	
Portugal	5 090	
EC	18 046	
TAC	32 604'	

ANNEX V

Annex IF to Regulation (EC) No 2555/2001 is amended as follows:

1. The entries concerning the species Bluefin tuna in zone 'Atlantic Ocean', East of longitude 45 °W, and 'Mediterranean', the species swordfish in zones 'Atlantic Ocean, north of latitude 5 N' and 'Atlantic Ocean, south of latitude 5 N' and the species Northern Albacore in zone 'Atlantic Ocean, north of latitude 5 °N' are replaced by the following:

'Species:	Bluefin tuna *Thunnus thynnus*	Zone: Atlantic Ocean, east of longitude 45° W, and Mediterranean
Greece	395,5	(1) Except Greece, Spain, France, Italy and Portugal, and only as by-catch.
Spain	6 497	
France	6 461	
Italy	6 105	
Portugal	803,5	
All Member States	60 (1)	
EC	20 286	
TAC	29 500	

Species:	Swordfish *Xiphias gladius*	Zone: Atlantic Ocean, north of latitude 5° N
Spain	4 087,5	(1) Except Spain and Portugal, and only as by-catch.
Portugal	763	
All Member States	75 (1)	
EC	4 925,5	
TAC	10 200	

Species:	Swordfish *Xiphias gladius*	Zone: Atlantic Ocean, south of latitude 5° N
Spain	5 850	
Portugal	385	
EC	6 235	
TAC	14 620	

Species:	Northern Albacore *Germo alalunga*	**Zone:** Atlantic Ocean, north of latitude 5° N
Ireland	3 158 (1) (3)	(1) It is prohibited to use any gill net, bottom set gill net, trammel net and entangling net.
Spain	17 801 (1) (3)	(2) The number of Community fishing vessels fishing for Northern Albacore as a target species is fixed to 1 253 vessels in accordance with Article 10 (1) of Regulation (EC) No 973/2001.
France	5 599 (1) (3)	(3) The distribution between the Member States of the maximum number fishing vessels flying the flag of a Member State authorised to fish for Northern Albacore as a target species in accordance with Article 10 (4) of Regulation (EC) No 973/2001:
United Kingdom	201 (1) (3)	
Portugal	1 953 (3)	
EC	28 712 (1) (2)	
TAC	34 500	

Member States	Maximum number of vessels
Ireland	50
Spain	730
France	151
United Kingdom	12
Portugal	310
EC	1 253’

2. The following entries concerning the species Blue marlin and White marlin in zone ‘Atlantic Ocean’ are inserted:

‘**Species:**	Blue marlin *Makaira nigricans*	**Zone:** Atlantic Ocean
EC	106,5	
TAC	Not relevant	
Species:	White marlin *Tetrapturus alba*	**Zone:** Atlantic Ocean
EG	46,53	
TAC	Not relevant’	

Proposal for a Regulation of the European Parliament and of the Council concerning Community cooperation with Asian and Latin American countries and amending Council Regulation (EC) No 2258/96

(2002/C 331 E/02)

COM(2002) 340 final — 2002/0139(COD)

(Submitted by the Commission on 2 July 2002)

EXPLANATORY MEMORANDUM

1. **Introduction**

The proposed Regulation is aimed at providing a new legal framework for Community cooperation with the countries of Latin America and Asia. The new Regulation will replace Regulation (EEC) No 443/92 adopted on 25 February 1992.

The proposed Regulation is not intended to provide political or strategic orientations with respect to the beneficiary regions. It lays down instead clear and simple rules and procedures for effective programming and decision-making for the purposes of Community cooperation with the partner countries.

The rules being the same for both regions, the Commission has decided to submit a proposal for a single Regulation.

2. **The objectives of Community cooperation**

The objectives of cooperation are defined in a broad way, to make it possible to intervene in all areas of cooperation covered by the agreements between the Community and the partner countries and under the policy and cooperation guidelines adopted in the relevant forums.

It is during the programming exercise that sectors and cooperation activities will be precisely defined, according to the characteristics and needs of each partner country or region. The proposed Regulation does not prejudge these choices. It should be flexible enough to answer the priorities of the moment.

In general terms, cooperation and assistance under the proposed Regulation will have to take account of the objectives of development policy as defined in Article 177 of the Treaty, and further developed in the Conclusions of the Development Council and in the joint statement of the Council and the Commission of 10 November 2000, which in turn reflect the Millennium Development Goals adopted at the 55th Session of the UN General Assembly. Community cooperation and assistance will also support the priorities set out in the agreements between the European Community and the beneficiary countries, and in the Commission Communication on Asia of 4 September 2001 and in the conclusions of the EU-LAC Summit held in Madrid on 17 May 2002, which constitute the overall strategic framework for relations with Asia and Latin America respectively.

In this context, the proposed Regulation, when setting out the broad objectives of assistance, refers in particular, to sustainable development, to poverty reduction, to the integration of the partner countries in the world economy, to trade and investment, to regional integration and to strengthening the links between the partner regions and the European Union. Similarly, the modernisation and improvement of institutional capacities is included as an essential principle of cooperation. This will contribute, in particular, to the promotion of democratic principles, of the rule of law and of human rights as well as to the improvement of the fight against terrorism, drug trafficking and organised crime.

3. **Programming**

Within the framework of the reform of the management of external aid, the Commission considers a key objective to strengthen multiannual programming in order to reflect the political objectives and the priorities of the EU.

The proposed Regulation establishes clear principles for programming: a strategy paper will serve as a basis for establishing multiannual indicative programmes, which will in turn make it possible to draw up annual action plans. These principles are of general application, except in particular cases.

The establishment of a rigorous and coherent programming system will improve the effectiveness of aid, link Community cooperation better to reform programmes pursuing short and medium term objectives and ensure its complementarity with the assistance provided by other donors.

4. **Comitology**

In accordance with the criteria established in Council Decision 1999/468/EC, the Committee provided for in the proposed Regulation will act according to the management procedure provided for in Article 4 of the aforementioned decision.

The strengthening of the programming and definition of a strategic framework will enable Member States, within the management committee, to provide their opinion on priorities and strategic cooperation guidelines.

The guidelines on the reform of external aid recommend that the contribution of the committees should concentrate on the programming phase, rather than on specific projects. Indeed, it is during the programming phase that the crucial questions of policy and strategy have to be addressed.

Thus strategy papers, multiannual programmes and annual action plans will be referred to the Committee for its opinion.

This proposal is consistent with the provisions adopted in this matter by the Council under the MEDA and CARDS Regulations.

The new simplified framework for the adoption of strategy papers, multiannual indicative programmes and annual action plans is expected to result in a significant reduction in the overall number of financing decisions approved by the Committee and adopted by the Commission, thereby releasing resources for redeployment on priority tasks, including ensuring effective and timely delivery of external assistance.

5. **Access to public procurement**

With regard to the participation in public tenders, the proposed Regulation provides for the untying of aid at the regional level, in accordance with the Commission Decision of 11 April 2001 and the statement of the Commission at the OECD/DAC meeting of 25/26 April 2001. It also provides for the participation of the candidate countries.

Specific provisions allow other countries to participate, on a case-by-case basis, in particular, for the purposes of cofinancing and of regional cooperation in Asia.

In accordance with the aforementioned statement of the Commission of 25 April 2001, the participation of other countries in the procurement of services and products for the fight against communicable diseases such as AIDS, tuberculosis and malaria is also authorised on a case by case basis.

With regard to the untying of assistance for the less developed countries, the proposed Regulation provides for aid to be untied for the categories and within the limits envisaged in the recommendation of the DAC.

This is consistent both with the commitment made by the Commission to explore ways of implementing the DAC's recommendations and with the objective of increasing the effectiveness of aid by allowing broader competition. Moreover, the possibility of allowing operators from certain Central Asian countries currently receiving Community assistance under the TACIS programme to take part in public tendering for assistance to the less developed countries will contribute to strengthening regional cooperation. Untying aid is of course based on the principle of reciprocity.

6. **Reconstruction and rehabilitation, aid to uprooted people**

With a view to simplifying and reducing the number of legal bases, the proposed Regulation encompasses aid activities for uprooted people. It also introduces the possibility of financing rehabilitation activities. This will make it possible to handle issues relating to the transition between relief, rehabilitation and development in a more coherent way.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 179(1) thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) The Community has since 1992 been pursuing a policy of financial, technical and economic cooperation with the countries of Asia and Latin America in the framework of Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America [1]. This policy should be continued and intensified.

(2) Agreements between the Community and the countries and regions of Asia and Latin America define domains of cooperation for each country and subregion.

(3) The Heads of State and Government of the European Union, of Latin America and of the Caribbean, meeting in Rio de Janeiro in June 1999, adopted an action plan defining a broad range of cooperation activities with a view to developing a strategic partnership. They updated and consolidated this action plan at their second summit, which was held in Madrid on 17 May 2002.

(4) The Commission communication of 4 September 2001 'Europe and Asia: a strategic framework for enhanced partnerships' [2] sets out an overall framework for relations with Asia. The core objective is to strengthen the European Union's political and economic presence across the region and raise it to a level commensurate with the growing global weight of an enlarged European Union. The Council fully endorsed that communication in conclusions adopted on 27 December 2001.

(5) The Heads of State and Government of the European Union and the Commission reached a consensus at the 55th Session of the United Nations General Assembly and adopted the United Nations Millennium Declaration setting out the Millennium Development Goals. In striving to reach these goals, the Community will be guided by the principles and objectives of the development policy defined by the Council and the Commission in their joint statement of 10 November 2000.

(6) The members of the World Trade Organisation (WTO) committed themselves at the 4th Ministerial Conference in Doha to mainstreaming trade in development strategies and to providing trade-related technical and capacity-building assistance to help developing countries take part in new trade negotiations and implement their results.

(7) The Commission plans to support the preparation and implementation of a new generation of economic reforms in the countries of Asia and Latin America, in line with the Council Resolution of 18 May 2000 on economic reforms and structural adjustment in developing countries. In so doing, it will ensure proper coordination with other donors, in particular Member States and the Bretton Woods Institutions.

(8) Without prejudice to the decisions which will be taken during the programming phase, it is necessary to define the broad objectives of Community cooperation in order to allow the implementation of activities in all the sectors covered by the agreements concluded with the beneficiary countries and the pursuit of the priorities defined in the European Union's strategic guidelines with respect to Latin America and Asia.

[1] OJ L 52, 27.2.1992, p. 1.

[2] COM(2001) 469 final.

(9) In order to simplify and rationalise the rules governing cooperation, this Regulation should incorporate both operations related to rehabilitation and reconstruction and those concerning aid to uprooted people. Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asian and Latin American developing countries [1] should therefore be repealed and Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries [2] should be amended accordingly.

(10) Community cooperation should be governed by a strategic framework and by annual and multiannual programming as defined in the Commission communication of 16 May 2000 'Reform of the Management of External Assistance' and referred to in the Council's conclusions of 10 November 2000. This will place Community cooperation in a medium-term context and make it possible to ensure that it complements and remains consistent with that of the Member States.

(11) To promote economic relations within the two regions and in conformity with the OECD Development Assistance Committee's (DAC) recommendation of 26 April 2001 on untying official development aid to the least developed countries and the Commission declaration annexed to it, provision should be made for opening up participation in invitations to tender and contracts, on a regional basis, to Asian and Latin American partner countries, taking into account the content of the above-mentioned declaration in the field of services and products essential in the fight against HIV/AIDS, tuberculosis and malaria. In addition, participation in invitations to tender and contracts for Community cooperation with the least developed countries eligible under this Regulation is fully opened up for the categories specified in that recommendation.

(12) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(13) This Regulation establishes a financial framework for the period 2003 to 2006 which is to be the principal point of reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [4].

(14) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of this Regulation. In particular, agreements and contracts concluded pursuant to this Regulation should authorise the Commission to carry out the measures provided for in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities [5].

(15) In view of the establishment under this Regulation of a new framework for cooperation, it is necessary to repeal Regulation (EEC) No 443/92. At the same time, to avoid any disruption in the action of the Community, it is important to provide for transitional measures,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, PURPOSE, AND UNDERLYING PRINCIPLES

Article 1

This Regulation establishes a framework for the implementation of a Community policy of cooperation through the financing of projects and programmes, hereinafter referred to as 'Community cooperation', with the Asian and Latin American (ALA) countries, hereinafter referred to as the 'Asian partners' and 'Latin American partners', listed in Annex I.

Article 2

1. Community cooperation under this Regulation shall be pursued with the overall objectives of strengthening the relationship between the Community and its Asian and Latin American partners, reducing poverty, promoting sustainable development and contributing to prosperity, security and stability.

2. Without prejudice to the eligibility of the sectors included in agreements with the partner countries, Community cooperation shall in particular:

(a) foster the sustainable economic and social development of partner countries, and their smooth and gradual integration into the world economy;

[1] OJ L 287, 31.10.2001, p. 3.

[2] OJ L 306, 28.11.1996, p. 1.

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

[4] OJ L 172, 18.6.1999, p. 1.

[5] OJ L 292, 15.11.1996, p. 2.

(b) strengthen the institutional and legislative framework, in particular to underpin democratic principles, the rule of law and respect and protection for human rights and fundamental freedoms;

(c) promote economic and trade cooperation, strengthen investment relations, and foster the integration of Asian and Latin American countries into the multilateral trading system and the implementation of WTO agreements;

(d) support the fight against organised crime, money-laundering, terrorism, drugs, illegal migration and trafficking in human beings, and measures aiming at confidence-building and conflict prevention;

(e) favour regional integration and cooperation in Asia and Latin America, and support the development of closer relations between Asian and Latin American partners and the European Union, so as to enable mutually beneficial exchanges, notably between economic, social, cultural, educational, technological and scientific entities;

(f) support rehabilitation, reconstruction and aid to uprooted people, with particular attention to the transition between emergency and development.

3. Community cooperation shall follow a sector-wide approach wherever possible. In this context, it shall support sectoral policies and economic reform programmes, through the most appropriate instruments, including budgetary support, subject to strict monitoring and conditionality. In exceptional circumstances, where such policies and programmes are not yet in place, budgetary support may also be provided for specific and clearly identified measures, subject to strict monitoring and conditionality.

Article 3

Respect for the principles of democracy and the rule of law and for human and minority rights and fundamental freedoms is an essential element for the application of this Regulation. Failure to respect these principles may give grounds for the adoption of appropriate measures.

CHAPTER II

PROCEDURES FOR THE IMPLEMENTATION OF COOPERATION ACTIVITIES

Article 4

1. As a general rule, the framework for the programming and identification of Community cooperation activities under this Regulation shall consist of:

(a) strategy papers;

(b) multiannual indicative programmes;

(c) annual action plans.

2. Strategy papers for Asian and Latin American partner countries, regions or subregions shall be established for a period of five to seven years.

They shall define the long-term objectives for cooperation and identify the strategic priorities and the specific fields of action. They shall be revised if circumstances so require.

A separate three-year strategy paper covering the whole of Asia and Latin America shall be drawn up for crises involving uprooted people.

3. Three-year multiannual indicative programmes based on the strategy papers shall be drawn up for each country, region or subregion eligible for Community cooperation.

They shall contain a description of sectoral and cross-cutting priorities, specific objectives and expected results.

They shall give indicative amounts (overall and for each priority sector) and set out criteria for funding the programme concerned.

They shall reflect the priorities identified and agreed with the Asian and Latin American partners concerned. They shall be updated as necessary.

4. Annual action plans based on the multiannual programmes shall be drawn up for each country, region or subregion eligible for Community cooperation.

They shall set out, as precisely as possible, for a given operational year, the aims being pursued, the fields of action and the budget provided.

They shall contain a list of cooperation activities to be financed by the Community. They shall specify the maximum amount of the Community financial contribution for each project and programme.

5. In particular situations, specific cooperation measures not covered by annual action plans may be approved.

Article 5

1. Community financing shall be in the form of grants.

2. Community financing may be used to cover in particular expenditure for preparing, implementing, monitoring, checking and evaluating projects and programmes and for information on cooperation activities.

3. Community financing may be used for cofinancing, which should be sought whenever feasible, particularly when it can lever other funding to contribute to the objectives set in Article 2.

4. Community financing may not be used to pay taxes, duties or charges.

5. Community financing may cover investment expenditure, including the purchase of real estate, when the latter is necessary for the direct implementation of the operation and provided that ownership is transferred to the recipient's local partners or the ultimate beneficiaries of the operation once the latter has come to an end.

Article 6

1. The Commission shall implement Community cooperation in accordance with the budgetary and other procedures in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. In taking financing decisions under this Regulation, the Commission shall have regard to the principles of sound financial management laid down in the Financial Regulation.

Article 7

The financial reference amount for the implementation of Community cooperation under this Regulation for the period 2003 to 2006 shall be EUR 2 523 million for cooperation with Asia and EUR 1 270 million for cooperation with Latin America.

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

Article 8

In addition to national and federal governments, partners eligible for financial support under this Regulation may include regional and international organisations (including United Nations agencies), non-governmental organisations, national, provincial and local administrations and agencies, community-based organisations, and public or private institutes and operators.

Article 9

1. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons from the Member States, candidate countries for accession to the European Union and, for the purposes of cooperation activities in their respective regions, from the Asian and Latin American partners.

2. The Commission may, on a case-by-case basis, extend participation to natural and legal persons of other developing countries and, in the case of programmes fostering regional cooperation and integration in Asia, of the Asian countries and territories listed in Annex II.

3. In the event of cofinancing, the Commission may authorise participation in invitations to tender and contracts by natural and legal persons of the other financing countries on a case-by-case basis, provided that reciprocity is granted.

4. The Commission may also open up, on a case-by-case basis, its procurement of services and sanitary products essential to the fight against communicable diseases such as HIV/AIDS, tuberculosis and malaria to natural and legal persons of other countries.

5. In addition, natural and legal persons of any third country shall be eligible to participate in invitations to tender and contracts for projects and programmes in favour of the countries listed in Annex I, which are classified as least developed in the OECD/DAC list of aid recipients, in the following areas: sectoral and multisectoral programme assistance, investment project aid, import and commodity support, commercial services contracts, and assistance to non-governmental organisations. In these cases, the participation of undertakings from third countries shall only be admissible if reciprocity is granted.

This provision applies only to activities with a value of more than SDR 700 000 or, in the case of investment-related technical cooperation, SDR 130 000. Free-standing technical cooperation and food aid are not covered by this provision.

Article 10

Any agreement or contract concluded pursuant to this Regulation shall expressly provide for monitoring and financial control by the Commission, including the European Anti-Fraud Office (OLAF), and audits by the Court of Auditors, if necessary on the spot. They shall authorise the Commission to carry out on-the-spot checks and inspections in accordance with Regulation (Euratom, EC) No 2185/96.

CHAPTER III

DECISION MAKING PROCEDURE

Article 11

1. The strategy papers, multiannual indicative programmes and annual action plans referred to in Article 4 shall be adopted in accordance with the procedure referred to in Article 12(2). Decisions on annual action plans are to be considered financing decisions for the projects and programmes specified in those annual action plans.

Amendments to decisions referred to in the first subparagraph shall be adopted in accordance with the same procedure, except where amendments do not exceed 20 % of the global amount allocated to the annual action plan or do not substantially change the nature of the projects or programmes contained in the annual action plan. In that case, the amendments will be adopted by the Commission, which shall inform the committee set up in Article 12(1).

2. Financing decisions on projects and programmes not covered by annual action plans and amounting to or exceeding EUR 5 million shall be individually adopted in accordance with the procedure referred to in Article 12(2).

Amendments to those decisions shall be adopted in accordance with the same procedure, except where amendments do not exceed 20 % of the amount allocated to the projects and programmes or do not substantially change the projects or programmes in question. In the latter case, amendments will be adopted by the Commission, which shall inform the committee set up in Article 12(1).

Financing decisions below EUR 5 million and amendments thereto shall be adopted by the Commission, which shall inform the committee set up in Article 12(1).

Article 12

1. The Commission shall be assisted by a committee, referred to as 'the ALA Committee', composed of representatives of the Member States and chaired by a representative of the Commission.

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

The period laid down in Article 4(3) of Decision 1999/468/EC shall be 30 days.

3. The Committee shall adopt its rules of procedure.

4. The Committee may examine any other question concerning this Regulation which is submitted to it by the Chairman, whether or not at the request of the representative of a Member State, and in particular any question relating to the programming or general implementation of measures or to cofinancing.

CHAPTER IV

COORDINATION, REPORTING AND FINAL PROVISIONS

Article 13

1. In the interests of the consistency, efficiency and complementarity of Community cooperation, the Member States and the Commission shall organise, including on the spot, a frequent and regular exchange of information on the operations they intend to implement. They shall keep each other informed about their programme strategy, priority sectors, evaluations and their ongoing and future cooperation.

2. The Commission may, in liaison with the Member States, take any initiative necessary to ensure proper coordination and cooperation with international financial institutions, United Nations agencies and other donors.

3. The necessary measures shall be taken to emphasise the Community character of cooperation activities carried out under this Regulation.

Article 14

Every year the Commission shall submit, in its annual report on Community external assistance to the European Parliament and the Council, information on the operations financed under this Regulation.

Article 15

The Commission shall take the measures necessary to ensure effective and continuous monitoring of the implementation of Community cooperation activities under this Regulation.

Every five years the Commission shall submit to the European Parliament and the Council an evaluation report, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

Article 16

1. Regulations (EEC) No 443/92 and (EC) No 2130/2001 are hereby repealed.

2. In Article 1(2) of Regulation (EC) No 2258/96, the words 'the countries of Latin America and Asia' are deleted.

3. Without prejudice to paragraphs 1 and 2, Regulations (EEC) No 443/92, (EC) No 2130/2001 and (EC) No 2258/96 shall remain applicable to projects and programmes for which the procedures leading to the Commission financing decision have been started but have not yet been completed at the time of entry into force of this Regulation.

4. Strategy papers, multiannual indicative programmes, annual action plans and projects adopted by the Commission under Regulation (EEC) No 443/92 with the favourable opinion of the Committee set up in Article 15 thereof shall be deemed to have been adopted in accordance with this Regulation.

Article 17

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.

ANNEX I

Afghanistan
Bahrain
Bangladesh
Bhutan
Burma/Myanmar
Cambodia
China
East Timor
India
Indonesia
Iran
Iraq
Korea, Democratic People's Republic
Laos
Malaysia
Maldives
Mongolia
Nepal
Oman
Pakistan
Philippines
Saudi Arabia
Sri Lanka
Thailand
Vietnam
Yemen

Argentina
Bolivia
Brazil
Chile
Colombia
Costa Rica
Cuba
Ecuador
El Salvador
Guatemala
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru
Uruguay
Venezuela

ANNEX II

Brunei Darussalam
Chinese Taipei
Hong Kong
Korea, Republic of
Kuwait
Japan
Macao
Qatar
Singapore
United Arab Emirates

Proposal for a Council Regulation amending Council Regulation (EC) No 963/2002 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 331 E/03)

COM(2002) 395 final — 2002/0146(ACC)

(Submitted by the Commission on 11 July 2002)

EXPLANATORY MEMORANDUM

The Treaty on the European Coal and Steel Community (ECSC Treaty) shall expire on 23 July 2002. After this date, products formerly covered by the ECSC Treaty will be covered by the EC Treaty.

The Commission has adopted two basic Decisions, respectively Commission Decisions No 2277/96/ECSC and No 1889/98/ECSC, governing anti-dumping and anti-subsidy investigations and measures for ECSC products.

A number of measures adopted pursuant to these two Decisions will still be in force as of 23 July, and a number of complaints, applications or investigations may be pending.

Council Regulation (EC) 963/2002 of 3 June 2002 [1] aims at clarifying the legal situation of these measures, complaints or investigations, by stating explicitly that, after 23 July 2002, they will become subject to the provisions of the basic anti-dumping and anti-subsidy Council Regulations (Council Regulations (EC) No 384/96 and (EC) No 2026/97), adopted pursuant to Article 133 of the EC Treaty.

The Tables attached in annex to the above-mentioned Regulation list all the anti-dumping and anti-subsidy measures in force on 16 April 2002, at the date of the adoption of the proposal by the Commission.

The attached proposal aims at updating these Tables, to duly take into account developments occurred since 16 April 2002 and hence present an updated and corrected situation.

[1] OJ L 149, 7.6.2002.

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 [1],

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) Council Regulation (EC) No 963/2002 [2] lays down transitional provisions concerning anti-dumping and anti-subsidy measures adopted pursuant to Commission Decisions No 2277/96/ECSC and No 1889/98/ECSC. The annexes to that Regulation list all the anti-dumping and anti-subsidy measures in force on 16 April 2002, namely the date of the adoption of the proposal by the Commission.

[1] COM(2002) 395 final.

[2] OJ L 149, 7.6.2002.

(4) In the meantime, amendments have however been adopted in relation to certain of these measures. Consequently, the above-mentioned annexes should be updated. It is therefore appropriate to provide for an amending Regulation which brings the annexes of Council Regulation (EC) No 963/2002 up to date.

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC) No 963/2002 is amended as follows:

1. In the table of annex I, the section 'Flat rolled products of iron or non-alloy steel (hot rolled coils) originating in India' is replaced by the following:

Product	Decision No	CN-Code (TARIC code)	Origin	Manufacturers (additional Taric code)	Level of duty
Flat rolled products of iron or non-alloy steel (hot rolled coils)	Commission Dec. No 283/2000/ECSC of 4.2.2000 (OJ L 31, 5.2.2000) (corrected by Dec. No 2009/2000/ECSC 22.9.2000) (OJ L 240, 23.9.2000) as last amended by Commission Dec. No 841/2002/ECSC 21.5.2002 (OJ L 134, 22.5.2002) and Commission Dec. No 1043/2002/ECSC 14.6.2002 (OJ L 157, 15.6.2002)	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	Tata Iron & Steel Company Ltd. (A078)	0
				Essar Steel Ltd. (A083/A076)	Undertaking/1,5 %
				Steel Authority of India Ltd. (A084/A077)	Undertaking/11,5 %
				Jindal Vijayanagar Steel Ltd. (A270)	Undertaking/18,1 %
				Ispat Industries Ltd. (A204)	Undertaking/14 %
				All other companies (A999)	10,7 %

2. In the table of annex I, the section 'Hot-rolled flat products of non-alloy steel (quarto plates) originating in Romania' is replaced by the following:

Product	Decision No	CN-Code (TARIC code)	Origin	Manufacturers (additional Taric code)	Level of duty
Hot-rolled flat products of non-alloy steel (quarto plates)	No 1758/2000/ECSC 9.8.2000 (OJ L 202, 10.8.2000) as last amended by Commission Dec. No 979/2002/ECSC 3.6.2002 (OJ L 150, 8.6.2002)	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)	Romania	Sidex SA (069)	5,7 %
				All other companies (A999)	11,5 %

3. In the table of annex II, the section 'Flat rolled products of iron or non-alloy steel (hot rolled coils) originating in India' is replaced by the following:

Product	Decision No	CN-Code (TARIC code)	Origin	Manufacturers (additional Taric code)	Level of duty
Flat rolled products of iron or non-alloy steel (hot rolled coils)	Commission Dec. No 284/2000/ECSC 4.2.2000 (OJ L 31, 5.2.2000) corrected by Commission Dec. No 2071/2000/ECSC 29.9.2000 (L 246, 30.9.2000) as last amended by Commission Dec. No 842/2002/ECSC 21.5.2002 (OJ L 134, 22.5.2002) and Commission Dec. No 1043/2002/ECSC 14.6.2002 (OJ L 157, 15.6.2002)	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. (A083/A076)	Undertaking/4,9 %
				The Steel Authority of India Ltd. (A084/A077)	Undertaking/12,3 %
				Tata Iron & Steel Company Ltd. (A075/A078)	Undertaking/6,2 %
				Ispat Industries Ltd. (A204)	Undertaking/9,8 %
				Jindal Vijayanagar Steel Ltd. (A270)	Undertaking/5,7 %
				All other companies (A999)	13,1 %

Article 2

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.

Amended proposal for a European Parliament and Council Regulation amending, for the benefit of European parliamentary assistants, Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71

(2002/C 331 E/04)

COM(2002) 405 final — 2001/0137(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 16 July 2002)

1. **Background**

In order to make for more legal certainty in the field of social security for European parliamentary assistants, and to determine more easily and beyond doubt the legislation applicable to this particular type of worker employed by MEPs to assist them in the performance of their elective office, the Commission considered it appropriate to amend Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72. These regulations coordinate Member States' social security schemes so as to avoid certain disadvantages — due to differences between Member States' schemes — which might occur when a person moves within the Community. This coordination determines, in particular, the Member State whose social security legislation is applicable.

The Commission presented its proposal on 25 June 2001 [1]. The proposed amendments will allow European parliamentary assistants to exercise, as is the case for the Community institutions' auxiliary staff, a right of option on the social security system to be applicable to them.

The European Parliament adopted a report containing five amendments to the Commission proposal during its plenary sitting on 11 June 2002.

2. **Examination of the amendments**

The Commission accepts to incorporate amendment 3 in its amended proposal, without change. With this amendment the European Parliament proposes to add to recital no. 4 of the Commission proposal a reference to the possibility of employment by several members of the European Parliament. The Commission accepts this amendment because it provides a useful clarification in respect of the group of persons covered by this proposal, with no need to amend the proposed provision.

However the Commission does not accept the other amendments, namely amendments 1, 2, 4 and 5.

Amendment 1 proposes to replace the term 'European parliamentary assistants' in the title and the text with the term 'assistants to members of the European Parliament'. The Commission refuses this amendment because it is superfluous in light of the definition contained in the Commission proposal (see Article 1(1), which already refers to 'an employed person employed by one or more Members of the European Parliament'.

Amendment 2 proposes to add a recital 3a containing an additional justification for the right of option granted to the parliamentary assistants covered by the Commission proposal, namely the financial source (Community budget) of the salary and social security payments. The Commission rejects this amendment because the right of option is justified by the specific nature of the direct and subordinate link between the parliamentary assistant and the member(s) and not because the assistants' salaries and social security contributions are taken from the Community budget, which is also the case for other groups of parliamentary assistants not covered by the Commission proposal, namely workers employed through an intermediary and self-employed workers.

[1] COM(2001) 344 (OJ C 270 E of 29.9.2001).

Amendment 4 is intended to clarify, in Article (1) w), that the parliamentary assistant may be contracted for a period shorter than the term of office of the Member of Parliament employing him. The Commission refuses this amendment as this concept already appears in the Commission's text, which uses the term 'during their term of office' and not 'for the duration of their term of office'. This amendment is therefore superfluous.

Amendment 5 proposes to add to Article 14(4) of Regulation 574/72 the possibility for parliamentary assistants who have opted for German legislation to be applied to remain affiliated to the system covering the *Land* where they were last resident. The Commission rejects this as it considers that this amendment is not required to ensure the correct operation of the right of option for the German system. In fact the provisions for auxiliary agents on which the Commission proposal is modelled already appear to guarantee complete social protection by referring to the place of the seat of the German government.

3. **Conclusion**

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal for a Regulation as outlined above.

Proposal for a European Parliament and Council Decision establishing a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus World) (2004-2008)

(2002/C 331 E/05)

COM(2002) 401 final — 2002/0165(COD)

(Submitted by the Commission on 17 July 2002)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The present proposal is based on article 149 of the Treaty, which stipulates that the 'The Community and the Member States shall foster cooperation with third countries . . .' with a view to contributing to the development of quality education in Europe.

This provision must be interpreted against the background of a number of developments. The first is the conclusions of the Lisbon European Council of 24 March 2000, which underlined the fact that the European Union has been confronted by and must respond to a quantum shift resulting from globalisation and the challenges of the new knowledge-driven economy.

In such an era of globalisation and interdependence, the response of the Member States and of the European Community to emerging needs in higher education cannot be confined only to the geographical limits of the European Union or the wider Europe.

Second, the Ministers of Education of the Member States, and the Ministers of Education from fourteen other European countries, identified in the Bologna Declaration (19 June 1999) that it is necessary to ensure that Europe's higher education sector acquires a degree of attractiveness in the wider world equal to Europe's major cultural and scientific achievements.

The European Ministers in charge of higher education meeting in Prague (19 May 2001), *inter alia*, further emphasised the importance of enhancing the attractiveness of European higher education to students from Europe and other parts of the world.

Moreover, the potential of higher education institutions to contribute to the development of a Europe of knowledge should be further exploited in view of the synergies between the European Higher Education Area and the European Research Area.

Third, the present proposal takes into account political developments at international level. In particular, it takes into account the Conclusions of the G8 Education Ministers Summit in Tokyo in March 2000, which encouraged nations to collaborate further in their quest for responses to emerging education challenges and pays due regard to the Conclusions of the G8 Heads of State Summit held in Kananaskis in June 2002, which adopted the New Partnership for African Development. The proposal also takes into account policies being adopted by major players elsewhere in response to the globalisation of higher education, such as the United States of America, Canada and Australia.

The proposal follows on from the Communication from the Commission to the European Parliament and the Council on strengthening cooperation with third countries in the field of higher education, adopted on 18.7.2001 (COM(2001) 385).

Like the Communication, the proposal reflects, *inter alia*, the results of a study carried out by the Academic Cooperation Association under the title 'The Globalisation of Education and Training: Recommendations for a coherent response from the European Union' [1] between February and May 2000.

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[1] Dr. Sybille Reicherts, Bernd Wächter, http://europa.eu.int/comm/education/ec-usa/usa.html

The proposal builds on the debates held and the conclusions adopted by the European Parliament and the Council. The deliberations revealed broad agreements with the analysis set out in the Communications on the general objectives that the European Community should pursue in undertaking cooperation with third countries in the field of higher education and on the need for a new Community instrument to achieve them.

The proposal should also be seen against the backdrop of the Commission's recent Communication 'A project for the European Union' ([1]), the Commission's initial overall contribution to the debate on the Future of Europe, which identifies education as being among those policies which encourage the competitiveness of our economies and businesses and which need to be developed in order to strengthen a knowledge-based Europe.

Parallel to the institutional discussions, the Commission organised a series of bilateral discussion meetings with a sample of major organisations actively involved in international education outreach activities in the Member States (the British Council, DAAD, EduFrance and ACA). The purpose of these meetings was to discuss and test the validity of specific lines of action suggested in the Communication (such as the possible form of a European higher education offer and ways to promote European higher education world-wide). These discussions helped in determining the choice of measures contained in the proposal.

In the light of the above, the Commission produced an operational paper which, on the basis of the objectives already identified, described in detail the delivery mechanisms and outputs through which those objectives could be achieved. The paper was put to a panel of external higher education experts, which confirmed the validity of the approach and provided valuable advice on certain specific aspects of the proposed delivery mechanism.

Finally, the preparation of the present initiative took place against the backcloth of the renewed impetus given by the European Commission to the dialogue between peoples and cultures placing it among high political priorities, and the recognition of the potential of cooperation in higher education in promoting understanding and tolerance.

2. **CHALLENGES AND NEEDS EMERGING FROM THE INTERNATIONALISATION OF HIGHER EDUCATION**

Higher education is subject to a phenomenon of growing internationalisation ([2]) as a response to the process of globalisation ([3]). Article 149 of the Treaty stipulates, in its third paragraph, that 'The Community and the Member States shall foster cooperation with third countries . . .' with a view to contributing to the development of quality education in Europe. In developing its higher education systems the Community must therefore seek to prepare its citizens and its workforce for a global environment by including the international dimension in an appropriate and effective way.

Community programmes in education, particularly Erasmus, have had a substantial impact in boosting the capacity for international cooperation among European universities. However, the competitive advantages gained by European universities through their involvement in Erasmus, such as the experience in questions of recognition of study abroad periods, mutual transparency of widely differing systems of education, teaching staff mobility and joint curriculum development are not yet fully exploited.

([1]) COM(2002) 247 final, 22.5.2002.

([2]) 'The process of systematic integration of an international dimension into the teaching, research and public service function of a higher education institution', Wächter, 1999.

([3]) The forceful changes in the economic, social, political and cultural environment brought about by global competition, the integration of markets, increasingly dense communication networks, information flows and mobility, Van Damme, 1999.

While the European Community focuses particularly on the needs of European citizens and European higher education systems, it is clear that there is similar awareness around the world concerning the challenges of globalisation. The number of free moving students seeking an international education today is greater than ever ([1]). Europe's comparative advantages can be exploited to respond to the needs of students from third countries seeking specialised or advanced courses lacking in the country concerned.

Today, the majority of international exchange students go mainly to the US (547 867 international students in 2000/2001 ([2])). In Europe, there is a clear imbalance in the flow of international students: over ¾ of the approximately 400 000 students from non-European countries studying in the EC go to the UK, France and Germany ([3]). European higher education institutions have so far failed to combine individual strengths, educational diversity and wide experience in networking to offer courses unique to Europe and of world class and which would enable the benefits of international mobility simultaneously to be maximised and shared more widely within the EC and partner countries.

Higher education plays a critical role in boosting innovation, economic growth, employment growth and productivity. Its potential positive impact can be can be further reinforced if it provides labour market access to highly skilled, mobile human capital.

If European higher education is to remain at the leading edge of developments, institutions should seek to establish cooperation with third-country institutions that have achieved a level of development comparable to that of EC institutions. Many third countries see potential benefits in systematic cooperation with European higher education institutions, especially within multilateral networks involving institutions from more than one Member State. Such cooperation enhances the value of bilateral education arrangements with individual Member States. This is the reason why in almost all agreements between the EC and third countries, education is mentioned as a field for potential cooperation. Every country needs its best-educated people to have some international expertise.

Europe's status as a centre of excellence in learning is not always appreciated or understood by third country universities, nor by students looking for an international education. One of the reasons behind this situation is the lack of a European higher education identity. Another factor is the lack of transparency of quality assurance procedures. Increasing the attractiveness of our universities requires an assurance of quality that is widely understood in the world.

From another angle, Europe's political and commercial success in the world is dependent on future decision-makers in third countries having a better understanding of, and closer ties with, Europe.

In the aftermath of World War II, US Senator J. William Fulbright realised the importance of academic exchanges as a means of improving mutual understanding between peoples. More than fifty years later the Fulbright Programme has proved its worth as the USA's flagship programme of international education and intercultural dialogue. The Fulbright Programme has also contributed enormously to reinforcing the attractiveness of higher education in the USA for students and scholars from all over the world. In addition, it has helped enhance the quality of higher education in the USA, and has stimulated individual American universities into developing ever better and stronger international services and outreach and into becoming more attractive overall to foreign students.

([1]) The number of foreign students in OECD countries was 1,41 million in 1999, up from 1,3 million in 1998 (source: OECD Trade in Educational Services: Trends and Emerging Issues, Kurt Larsen, John P. Martin, and Rosemary Morris, May 2002 Revised Version). In 2000/2001 there were 547 867 foreign students in the US; this figure represents an increase of 6,4 % in relation to the previous academic year. This annual increase is the largest since 1980.

([2]) Source: Opendoors (http://www.opendoorsweb.org/).

([3]) Source: UNESCO Statistical Yearbook 1998, chapter 3.14: 'Education at the third level: foreign students by country of origin, in the 50 major host countries'.

Many of the issues arising from internationalisation of higher education may best be addressed at national level (stimulating pro-active internationalisation amongst individual universities, including development of student services, promotional action, internationally oriented curricula, etc.) or at intergovernmental level (convergence of degree structures, more transparent quality assurance mechanisms). Some issues can be addressed in the context of existing Community programmes and actions (such as Socrates/Erasmus) or through new instruments other than the present proposal (such as issues regarding the conditions of admission of third country nationals for purposes of study).

The purpose of the present proposal is to complement efforts at national and intergovernmental level and to be effective only in those areas where specific needs so require. From the analysis above, it follows that the European Community intervention may be effective in confronting and resolving:

— the difficulty in exploiting the comparative advantages of European universities in developing a genuine and attractive higher education offer, particularly at postgraduate level for both education and research, by providing support to European universities' collaborative efforts in this respect;

— the lack of a clearly discernible European identity for higher education, by supporting the development of a European higher education profile;

— the absence of 'flagship products', such as double degrees at postgraduate level in spite of a long tradition of multilateral networking and cooperation, by creating a Community label for joint, high quality postgraduate courses;

— the growing imbalance in the incoming flow of third country students, who go mainly to a small number of Member States, by encouraging collaboration among higher education institutions from these and other Member States and by establishing a European Community scholarship scheme;

— the tendency amongst the brightest post-graduate students and scholars in search of an international education and experience og to the US; the risk for Europe's political and commercial success in the world caused by a lack of understanding of, and ties with, Europe among future decision-makers in third countries and the danger of losing comparative advantages in higher education due to Europe's diminishing attractiveness for first class scholars, by establishing a European Community scholarship scheme aimed at attracting the best and the brightest among third country postgraduate students seeking an international education;

— the risk of widening the gap in intercultural understanding between European and other cultures, by promoting exchanges of students and scholars between Europe and the rest of the world;

— the insufficient development of structural schemes to encourage bridges between European networks and third country higher education excellence and European student and scholar outward mobility as part of a European *cursus*, by supporting structured cooperation between higher education institutions in Europe and third countries;

— the absence of coordinated action at Community level to promote European attractiveness, as well as, *inter alia*, of mechanisms to ensure international cooperation with regard to quality assurance and student services and, therefore, risks for students as consumers of international mobility products, by encouraging cooperation between organisations competent and/or active in these fields.

The absence of Community intervention would result in the persistence, in the longer term, and the probable aggravation of these needs.

3. OBJECTIVES OF THE COMMISSION PROPOSAL

3.1. General objectives

The programme's overall aim is to contribute to quality education in the European Union, in particular by fostering cooperation with third countries. The long-term impact sought by the present proposal is, firstly, to better prepare citizens in Europe, but also in partner third countries, to live and work in a global, knowledge-based society. The proposal seeks, secondly, to ensure Europe's position as a pole of excellence in higher education and, therefore, to ensure that higher education in Europe becomes an increasingly more attractive destination world-wide. Thirdly, through people-to-people exchanges and structural cooperation concentrating on young people with a potential for future leadership roles within the economy and society, the proposal seeks to improve mutual understanding between peoples and cultures, thus contributing to world peace and stability, and to Europe's legitimate aspirations as a major player on the international scene. In pursuing these objectives the Community will also seek to improve links between higher education institutions and industry.

3.2. Specific objectives

In order to achieve these general objectives, the direct and short-term effects sought by the programme can be grouped as follows:

— the emergence of a distinctly European offer in higher education which would be attractive both within the European Union and beyond its borders;

— a higher profile for, visibility of and improved accessibility to European education;

— a greater world-wide interest in and more concrete possibilities for acquiring European qualifications and/or experience among highly-qualified graduates and scholars from all over the world;

— more structured cooperation between European Community and third country institutions and greater outgoing European Union mobility as part of European study programmes.

3.3. Operational objectives

The Community, through calls for proposals launched in the framework of the programme, will provide financial support with a view to generating:

— European Union Masters Courses (selected for a five-year period, subject to a light-weight annual renewal procedure based on progress reporting), involving at least three higher education institutions from three different Member States and leading to double/multiple degrees.

  Concentrating on the post-graduate level is a deliberate operational choice that can be justified for the following main reasons:

  (a) factors such as, *inter alia*, the structure of degrees, complexity of curricula and the use of language; undergraduate studies would allow much less flexibility than post-graduate level courses for developing European 'flagship' products, i.e., European joint programmes leading to double degrees;

  (b) the Community could not support significant numbers of third country students for a three to six year period of undergraduate study, whereas the duration of study at Masters level does allow the development of a strong international projection including Community-sponsored student mobility;

(c) the value-added of Community intervention could be maximal at post-graduate level (Masters) since it would contribute to the development of the degree structure favoured by the Bologna/Prague process, a key element of which is the establishment of a first degree, Masters degree, and doctorate cycle;

(d) international mobility is proportionately higher at postgraduate (Masters) level than at undergraduate level;

(e) in practical terms, working with students at post-graduate level provides an insurance against failure as the student has proved during undergraduate study his or her abilities.

— Scholarships for third country graduate students selected to enrol for a full study period (on average fifteen months) in European Union Masters Courses.

— Scholarships for third country visiting scholars for teaching and scholarly assignments (average three months) connected with European Union Masters Courses.

— Partnerships (up to three years) between European Union Masters Courses and third country higher education universities, including European Union student and staff outgoing mobility.

— Studies, conferences, seminars, publications, joint development of marketing actions, joint development of web-based and other tools to support international education and student mobility.

4. **DESCRIPTION OF THE PROGRAMME**

The programme's overall and specific objectives would be achieved through the following actions:

(A) European Union Masters Courses

(B) Scholarships

(C) Partnerships with third country higher education institutions

(D) Enhancing attractiveness

(E) Support measures

The programme must be seen as an internal policy instrument and therefore the actions above will be funded from Chapter Three of the Community Budget.

4.1. **European Union Masters Courses**

The specific purpose of this action would be to identify and distinguish (through a European label) a pool of host European postgraduate (Masters) courses with a view to reinforcing the attractiveness and visibility of European education, encouraging European universities to jointly exploit their comparative advantages. Although the medium- to longer-term aim of the programme is clearly to encourage the creation of new postgraduate courses, in its initial stages this action would be open to existing as well as new networks set up for the purpose of the programme.

For the purpose of this programme, European Union Masters Courses shall:

(a) involve as a rule a minimum of three higher education institutions from three different Member States;

(b) implement a study programme which involves a period of study in at least two of the three institutions under (a);

(c) have built-in mechanisms for the recognition of periods of study undertaken in partner institutions in accordance with the European Credit Transfer System;

(d) result in the awarding of double or multiple recognised or accredited degrees from the participating institutions;

(e) reserve a minimum of places for, and host, third country students who have been granted financial support under this programme;

(f) establish transparent conditions for admissions, which pay due regard, inter alia, to gender issues and equity issues;

(g) agree to respect the rules applicable to the selection procedure of grantees (students and scholars);

(h) put in place adequate arrangements to facilitate access for, and hosting of, third country students (information facilities, accommodation, etc.);

(i) provide, as appropriate, for students' language preparation and assistance.

European postgraduate courses will be granted the protected label of 'European Union Masters Courses' through a rigorous selection process ([1]).

It should be noted that in European education systems today, the word 'Masters' is used to refer to higher education courses and programmes whose configuration and relation to the official degree structure varies considerably from country to country. In selecting European Union Masters Courses, the programme should acknowledge and reflect this variety. However the programme should endeavour to encourage greater convergence and transparency in postgraduate qualifications structures along the lines of the Bologna/Prague processes ([2]).

European Union Masters Courses will be delivered within the territory of the European Union Member States and of the countries participating in the programme (EEA EFTA States and countries candidate for accession to the European Union in accordance with the relevant provisions of the instruments governing the relations between the European Community and these countries). There will be no conditions regarding the language(s) in which the courses will be delivered.

The selection of European Union Masters Courses will be carried out by a High Level Selection Board chaired by the Commission. The Selection Board should ensure that only courses responding to the highest academic standards and adhering strictly to the principles and criteria set up for the purpose of this programme would be selected. In this context, the selection process could involve consultation with accreditation bodies and/or competent national authorities. While the primary criterion for selection will be quality, the Commission shall seek to ensure a balanced geographical representation of Member States in labelled European Union Master Courses. The selection of European Union Master Courses will pay due regard to the existence of poles of university excellence in less advantaged European Union regions, with a view to reinforcing universities' economic, social and cultural influence in these regions.

In order to ensure continuity and stability in the system, European Union Masters Courses will be selected for a five-year period (subject to a light-weight annual renewal procedure based on progress reporting), which period could include a year's preparatory activities before the actual course begins to run. Funding would be subject to the annual renewal procedure; but a desire for and commitment to continuity would be made clear after first year selection. At cruising speed, an estimated number of 20 new European Union Masters Courses would be labelled each year.

([1]) The Jean Monnet Action provides a good example of such a label and rigorous selection process.

([2]) As far as possible, the framework programme would seek to build on the European Masters initiative piloted during the academic year 2002-2003 under Socrates-Erasmus (Bologna process) as this evolves.

4.2. **Scholarships**

The Community will establish a single, global scholarship scheme linked to European Union Masters Courses and targeted at the best qualified third country graduate students and scholars.

The development of a single scheme will ensure maximum visibility. Scholarships will be open to nationals from third countries other than those participating in this programme under Article 12 ([1]) of the decision, who have already obtained a first higher education degree, who are not residents of any of the Member States or the participating countries, who may not have carried out his or her main activity (studies, work, etc.) for more than a total of 12 months over the last five years in any of the Member States or the participating countries, without any precondition for participation other than the existence of relations between the European Union and the country of origin of the students and scholars in question. Participation of women and less-advantaged students from these countries will be encouraged.

Participating institutions in the European Union Masters Courses and other hosting universities will be strongly encouraged to make provision in their application and selection processes to avoid or discourage brain drain from less developed countries.

4.2.1. *Global Student Scheme*

At present, there is no open, global European Community scheme targeting graduate student mobility beyond the possibilities offered by the fifth framework programme for research. A certain degree of mobility exists within regional or bilateral cooperation programmes (such as Tempus, Alfa, AlBan and Asia-Link). But, by virtue of their specificity, grants for mobility are only granted within institutional frameworks that enhance partnership, ownership and know-how sharing with a view to promoting structured and sustainable cooperation between regions.

The proposed global scheme for graduate students will support longer-term stays (as proposed in the Communication) for up to two academic years (20 months).

Scholarships will be linked to a specific European postgraduate offer, as established above, and, therefore, it will have a guaranteed European added value and hence contribute to enhancing the quality of education in Europe.

The list of labelled European Union Masters Courses would be disseminated world-wide (Internet). Students who fulfil the criteria set out in the second paragraph under 4.2 would be eligible. They would be invited to apply directly to these Courses.

Each European Union Masters Course would determine the precise academic conditions for admission. Students applying for a scholarship would have to be able to show acceptance in principle by a European Union Masters Course in order to be eligible for the scholarship. European Union Masters Courses would set up joint selection panels to ensure even distribution of students between the institutions involved. They would communicate the pre-selection list to the Commission.

Selection will be carried out by a Selection Board, chaired by the Commission. The Selection Board will ensure appropriate balance across European Union Masters Courses, fields of study, students' regions of provenance and will encourage participation of women and less-advantaged students from third countries. To this end and to a limited extent, the Board may redirect student flows if necessary.

Financial support will be provided for up to two academic years. The average duration of a European Union Masters Course is estimated at 15 months. The scheme would aim at a cruising speed of over 2 000 scholarships.

([1]) Participation of EEA EFTA States, and candidate countries for accession to the European Community.

4.2.2. *Visiting Scholar Scheme*

The Community will provide support to third country scholars (third country nationals with outstanding academic and/or professional experience) visiting the European Union Masters Courses, with a view to carrying out teaching and research assignments and scholarly work in the institutions participating in European Union Masters Courses.

As a complement to the student scheme, and in order to reinforce the international dimension of the programme, European Union Masters Courses would be encouraged to involve world class scholars in their activities. To this end grants would be provided to scholars visiting the European Union Masters Courses, with a view to carrying out teaching and research assignments as well as scholarly work.

These activities will be primarily connected to or related with the content of the European Union Masters Course, however institutions participating in a European Union Masters Course should be encouraged to profit from the presence of the visiting scholars during the academic year.

Each European Union Masters Course may host three visiting scholars per academic year. The grant period would be on average three months.

The selection process would be identical to that proposed for the Graduate Student Scheme.

The scheme could support up to 480 scholars per year by 2008.

4.3. **Partnerships with third country higher education institutions**

Partnerships with third country higher education institutions are designed to open up European higher education and reinforce its presence in the world. It will do this through the creation of structured relations between institutions. By encouraging mutual dialogue and agreement on issues like mutual recognition and accreditation, such structured relations will create enduring bridges for cultural and educational exchanges and serve as blueprints for the implementation of education clauses in association agreements, political declarations or action plans.

Contrary to the approach adopted for external cooperation programmes, partnerships are an added opportunity and not a requirement for European Union Masters Courses. Partnerships with top third country higher education institutions would enhance the attractiveness of European Union Masters Courses and should contribute to the Courses' learning objectives.

In this context, partnerships would provide the framework for outgoing mobility of European Union students and scholars involved in the European Union Masters Courses.

The Commission will give priority to countries with highly developed higher education sectors and/or institutions sufficiently well-developed to be able to cooperate on an equal footing.

Partnerships will have the following basic characteristics:

— the European Community would provide support for European Union Masters Courses to establish cooperation with third country institutions;

— this cooperation would take the form of partnership projects, based on cooperation between European Union Masters Courses and third country institutions;

— partnership projects would be established for periods of up to three years;

— a European Union Masters Course could have partner institutions in more than one third country;

— a partnership project would provide a framework for outgoing mobility; such outgoing mobility would primarily consist of students enrolled in the European Union Masters Courses and the Courses' teachers;

— to be eligible for such outward mobility, students and scholars would have to have been European Union citizens, or third country nationals who had been legal residents in the European Union for at least three years (and for purposes other than study) before the start of the outgoing mobility;

— study periods at the host (i.e., non-European) institution would be regarded as an integral part of the degree requirements at the sending institution, which would entail prior agreement on credit recognition; as a rule, study periods would have a minimum duration of one month and a maximum of six months.

Partnership project activities could also include:

— teaching assignments at a partner institution supporting the project's curriculum development;

— exchanges of teachers, trainers, administrators, and other relevant specialists;

— development and dissemination of new methodologies in higher education, including the use of information and communication technologies, e-learning, and open and distance learning;

— development of cooperation schemes with third country universities with a view to offering a course in the country in question.

European Union Masters Courses applying for a third country partnership would receive a block allocation per third country partner institution up to a certain maximum. European Union Masters Courses could enjoy partnerships in different third countries. Limitations might be imposed on the number of institutions from one specific third country.

They would also receive support for European Union student mobility. It could be envisaged that up to five students per institution participating in a European Union Masters Course per year would get support for studying at a third country partner university. Students should spend a minimum of one month and a maximum of six months at a third country institution.

Teachers and staff involved in European Union Masters Courses would be granted support for up to three months for teaching or research assignments linked to Course activities. The number of grantees per year would be calculated on the assumption that each institution participating in a European Union Masters Course activity would send one European Union scholar per year.

Selection of partnerships would be carried out through procedures similar to those applicable to European Union Masters Courses and scholarships. European Union grantees would be selected by institutions. The list of participants would receive Commission approval.

4.4. **Enhancing attractiveness**

Through this action, the Community will support activities aimed at enhancing the profile and visibility of, and accessibility to, European education. The Community will also support complementary activities that contribute to the objectives of this programme.

Eligible institutions would be public or private organisations dealing with issues pertaining to the provision of higher education at international level. Activities shall be conducted within networks involving a minimum of three organisations from three different Member States and may involve organisations from third countries. Activities (which may include seminars, conferences, workshops, development of ICT tools, production of material for publication, etc.) may take place in the Member States or in third countries.

The programme may support the involvement of third country organisations but on a pilot project basis. The involvement on a long-term, structural basis of organisations from third countries in complementary activities would be possible only within the context of bilateral arrangements.

4.4.1. *Support for joint promotional actions*

The Community will provide support to higher education institutions and public non-profit making organisations working towards the promotion of European higher education abroad.

Eligible activities may include:

— development of general written or visual common information and dissemination tools contributing towards a better understanding of the value of study in Europe;

— joint representation of European higher education and European Union Masters Courses at international fairs and other events;

— seminars, workshops and other means with a view to co-ordinating information and dissemination efforts;

— activities targeting geographical areas having a significant potential in terms of international student mobility.

Promotional activities shall seek to establish links between higher education and research, and exploit whenever possible potential synergies, in particular with the Marie Curie Fellowship Schemes, Jean Monnet Action and with the European Union Centres in third countries.

Activities under 4.4.1 would not cover the promotion of the framework programme itself, as these would be covered by technical support measures.

4.4.2. *Support for services facilitating access of third country students to European education*

The European Community will support collaborative activities aimed at facilitating access to, and encouraging study in, Europe.

Eligible activities may include:

— joint development of pedagogic tools for language training and cultural preparation;

— development of joint distance education modules targeting third county students;

— services facilitating mobility between university partnerships within and outside European Union Masters Courses as defined above;

— services facilitating international mobility of students with children and other dependent people;

— further development of an internet gateway to facilitate access to European Union Masters Courses as well as to other European courses suitable for third country students.

Harmonisation of the conditions of admission and residence for third country nationals for study purposes is one of the key aspects to encouraging study in the European Union. The European Commission is currently working on a possible directive on this subject.

4.4.3. *Complementary activities*

The Community will support complementary activities dealing with issues crucial to the internationalisation of higher education such as:

— quality assurance, including accreditation or other types of quality labels or specifications;

— credit recognition;

— recognition of European qualifications abroad and mutual recognition of qualifications with third countries;

— evolving curriculum development needs in a world-wide perspective;

— changes in society and in education systems in a world-wide perspective;

— safety and health for exchange students;

— consumer protection issues linked to international education;

— surveys and studies (for example on the decision-making process of foreign students seeking study abroad, on obstacles to study in Europe).

Eligible institutions would be higher education institutions and organisations dealing with issues pertaining to the provision of higher education and in particular those indicated above. Activities supported under this programme would be complementary to those undertaken in relation with intra-European Community cooperation (e.g., through the Socrates-Erasmus programme or the Bologna/Prague process).

Activities would include: seminars, conferences, workshops, production of material for publication, and could both take place in, and involve organisations from, third countries.

The programme would support the involvement of third country organisations only on a pilot project basis. The involvement of a long-term, structural basis of organisations from third countries in complementary activities would be possible only within the context of a bilateral agreement.

This action may support projects initiatives undertaken by thematic networks, including the setting up of associations in countries/regions where they do not yet exist and the pursuance of specific objectives through joint projects (on issues such as curriculum development, needs of society and quality assurance). Where a bilateral agreement already existed, thematic networks could facilitate the development of Masters and PhDs by groupings of institutions and contribute, through horizontal action, towards the structural strengthening of cooperation with third countries. In supporting these types of activities, the Community will endeavour to develop synergies with networks in the field of research, such as the Marie Curie Early Stage Actions.

The Community may support pilot projects with third countries with a view to developing further cooperation in the field of higher education with the countries in question. Under this action, the Community may provide, on a pilot basis, scholarships to third country students seeking a postgraduate degree from a European university or consortium of universities where no other Community action provides for such financial support at higher education level and where complementarity with bilateral schemes at Member State level can be ensured.

The Community may support an Alumni Association of all students (third country and Europeans) graduating from European Union Masters Courses.

In cooperation with Member States and with due regard to the role of the Committee established for the purpose of this programme, the Commission will establish a high level scientific group open to recognised intellectuals from all over the world whose role will be to advise on the academic development and other relevant aspects of the programme.

4.5. **Technical support measures**

In carrying out the programme, the Commission will pay due regard to the guiding principles of simplification, subsidiarity and economies of scale. It will seek wherever possible to foster cooperation and synergies with existing structures concerned with higher education links with third countries in Member States. Therefore, whilst the Commission will necessarily have recourse to a central executive agency in order to ensure adequate support across the European Union and the European dimension of the programme, it will seek to ensure that the agency cooperates with, and makes maximum use of, those structures and agencies already existing in the Member States.

5. **JUSTIFICATION OF THE NEED FOR A NEW COMMUNITY ACTION PROGRAMME**

5.1. **The recourse to a Community action programme versus non-intervention and/or regulatory approach**

Article 149 of the EC Treaty limits Community intervention in the field of education to supporting and complementing Member States' action, and proscribes legislative harmonisation. It could be argued that the Commission could achieve the objectives identified in the programme exclusively by encouraging intergovernmental cooperation and promoting dialogue between education authorities instead of resorting to a financial assistance programme. Non binding legal instruments, such as Recommendations, may serve to buttress this dialogue. However, as has been argued above, certain needs and shortcomings persist despite on-going intergovernmental cooperation and despite the ever present possibility of having recourse to non-binding legal instruments.

The lack of Community intervention would prolong the persistence of such needs and shortcomings and possibly might aggravate them over time. The alternative is a Community programme that, through the classic competitive mechanism of calls for proposals and targeted financial support, would provide incentives for change and speed up processes.

This approach does not exclude but rather encourages, concurrent, complementary activities to be taken outside the programme. A good example of this is the work currently under way within the Commission to harmonise the conditions of entry of third country nationals for reasons of study. This regulatory process may enhance Europe's attractiveness and facilitate inflows of third country students. Similarly, the intergovernmental Bologna/Prague process will have very positive effects in rendering European higher education more attractive.

The present proposal should be seen as an instrument to reinforce, through concrete outputs, these processes. In so doing the European Community is fulfilling the mandate given to it by article 149 of the Treaty.

5.2. **The need for a new action programme versus the use of existing ones**

In the Communication of 18 July 2001, the Commission indicated that the objectives of the Community's strategy for reinforcing cooperation with third countries should be achieved, wherever possible, through existing programmes and legal bases.

At present, there are a number of Community programmes which may address the needs identified. The Socrates programme contains a clause that allows limited cooperation with third countries and international organisations in order to pursue the programme's objectives and activities are being developed under this clause in line with the strategy outlined in the Communication. The proposal to extend the Tempus programme to the Meda partners responds to the spirit of the Communication in that it significantly enlarges the geographical scope of European Community cooperation in higher education. The adoption of a scholarship scheme for graduate students from Latin America, and the establishment of new European Union Centres in Australia or Japan will certainly contribute, within their own specificity, towards achieving the general objectives of the Community strategy in this field. In the context of the African, Caribbean and Pacific (ACP) countries the Community has supported regional centers of excellence, providing research as well as training at Masters level in economic sciences and management, statistics, agricultural sciences, medicine and veterinary sciences. The Community will continue to support higher education in ACP countries principally at regional level.

However, none of these instruments, most of which have been in place for a number of years, provide an adequate framework to address appropriately the set of specific needs identified above. For example, Socrates (and particularly its Erasmus action) has been conceived of as a programme to be operated within the European Union and a number of third countries set out in the Council decision. However, it does not support the creation of European Masters courses, and its structure and financing would need to be completely changed for this to be possible. Equally, there are no mechanisms in Socrates that would allow for the development of a specifically European 'offer' of a large-scale mobility scheme for third country students or scholars; nor for the establishment of partnerships with third country universities and outward mobility between the European Union and these universities; and increasing the attractiveness of European higher education also falls outside its scope. It would therefore not be possible to achieve the proposal's objectives by extending the Socrates programme.

While there is an important degree of reciprocal benefit in programmes like Tempus, Alfa or Asia-Link, their primary aim is to promote regional and multilateral networking as a means to foster know-how transfer and sustainable cooperation. The present proposal's main concern is with higher education in Europe and, while third country nationals and institutions will certainly benefit from their involvement in the programme, the programme has to be seen as a tool primarily serving Community interests. To the extent that this programme complements and does not duplicate other external cooperation programmes, it remains open to nationals from countries eligible under these programmes.

In conclusion, neither Socrates nor other major education programmes address the specific needs identified above. In order for them to address these concerns, the programmes would have to be fundamentally redesigned. Redesigning them in this way would amount to the establishment of a new instrument which is in effect what the present proposal suggests.

6. **THE PROGRAMME'S ADDED VALUE**

As paragraph 1 of the 18 July 2001 Communication on cooperation with third countries in the field of higher education made clear, 'action at Community level is justified where it can provide "value-added": where, by acting together, the Member States can achieve more than if they were to act alone'.

The draftsmen of Article 149 of the Treaty, the legal basis for the draft proposal, clearly saw cooperation with third countries as a means to enhance quality education within the European Community.

Community programmes in education, and particularly Erasmus, have had a substantial impact in boosting the capacity for international cooperation among European universities. However, the European Union's institutions have failed fully to exploit their comparative advantage in terms of higher education networking, student and staff mobility, and the recognition of periods of study in order to develop a genuine and attractive higher education offer with international projection, particularly at postgraduate level. As the Communication points out, a further effort is required at European Community level to encourage institutions systematically to integrate new cooperation with third countries into a wider partnership framework. The proposal responds to this need for Community intervention by supporting universities' cooperative efforts to develop a European education offer and to establish structural cooperation with first class partner institutions abroad.

There is a common recognition (Parliament, Council, Commission's Communication, stakeholders consulted during ex ante evaluation process) that the European Union's institutions fail to attract a proportionate share of internationally mobile students. Scholarship schemes have mostly remained confined to bilateral arrangements at Member State level. However, there is a case today for establishing a European Community global scholarship scheme that does not replace but rather complements existing bilateral scholarship schemes already established by the individual Member States.

The Community added value is to be found in a new European cooperative approach that would complement bilateral action at Member State level. The draft proposal uses scholarships to contribute to the development of human resources and promote intercultural dialogue and understanding.

Scholarships also serve as an incentive to develop structured and sustainable cooperation between universities within the European Union. In particular, the proposal builds on the experience of the Socrates programme, and supports the Bologna/Prague convergence process and the European Union's Objectives Process.

It could be argued that the Community should start by providing scholarships to students from within Europe, and only look outward to third country students at a later stage. Clearly, there will always be European students on European Masters courses — they will be attracted by the quality of the offer, the European experience involved, the diversity of the student/faculty population. However, their costs would be significantly lower that those of third country students (and therefore there is less need for scholarships); and, in addition, they already have information and support mechanisms available to them within Member States that, with regard to European Union Masters Courses, third country students do not have. It must also be remembered that European students alone will not bring to Europe the world-wide recognition of European quality that the programme seeks, nor will they enable Europe to develop, over time, links with the academic, economic and social worlds in third countries that the proposed scholarship scheme will allow.

The proposal provides an efficient mechanism with European added value for attracting more international students but also with a more equitable distribution among the Member States. Through a scholarship scheme linked to European Union Masters Courses, the programme embodies a cooperative approach that would allow universities from Member States currently receiving a low inflow of third country student mobility to increase their share by networking with more attractive universities (or universities in more attractive Member States). This is the key to ensuring that the scholarship scheme does not result in reinforcing the attractiveness only of traditional higher education destinations in Europe.

The fourth pillar of the draft proposal places heavy emphasis on actions designed to promote European education in general and enhance attractiveness. By encouraging European flagship products, and by providing a European label, the programme will contribute to the definition of a European identity for higher education and will, therefore, have a positive impact on the perception of European higher education overall.

7. **COMPLEMENTARITY AND SYNERGIES WITH OTHER COMMUNITY ACTIONS**

The programme would be aimed primarily at enhancing the quality of European higher education. It would, therefore, be complementary to and in synergy with other programmes, such as Socrates, in particular, by developing the international dimension of education in Europe through European Masters Courses, as explained above. The programme would also complement (while avoiding overlapping and competition with) external cooperation programmes, such as Alfa, AlBan, Asia-Link or Tempus (it would focus on high level longer-term mobility through an open, global scholarship scheme) and the sixth framework programme for research (with a view to contributing towards the European Research Area) as described in this section. It would also be appropriate, once the programme is well established (say, as from 2005) to examine the feasibility (in agreement with beneficiary countries) of directing students coming to the European Union within programmes such as Alfa, AlBan or Asia-Link towards European Union Masters Courses. This would enhance complementarity and increase support for such courses, while extending the impact of Erasmus World globally.

7.1. **External cooperation programmes in the field of higher education**

As the Communication on strengthening cooperation with third countries in the field of higher education pointed out, the Community has established a number of initiatives with third countries drawing on experience gained from Erasmus and similar programmes. Examples of these are the two agreements with the USA and with Canada, just renewed for a further five years; the Tempus programme, originally launched in 1990 as part of the original Phare activity, but now (since the European Community's main education activities are open to associated countries) embracing Eastern Europe, the Caucasus, Central Asia, the Western Balkans and the Southern and Eastern Mediterranean region; Asia-Link, a programme aiming at promoting/reinforcing regional and multilateral networking between higher education institutions in European Union Member States, South Asia, South-East Asia and China; Alfa, a programme that aims at strengthening cooperation in the field of higher education between the European Union and Latin America with a view to quality enhancement and capacity building; AlBan, a programme that provides scholarships in the European Union for graduates, post-graduates and professionals from Latin America; and the support for ACP regional centres of excellence.

In its Communication on education and training in the context of poverty reduction in developing countries [1], the Commission stresses the vital importance of education in reducing poverty and in development and underlines that support for higher education is a key component of the 'Education for All' strategy. Support for higher academic, technical and vocational education is just as necessary as support for primary education. Support for higher education is also necessary for countries' institutional development. Institutional capacity-building is an essential component of programmes in all sectors of development cooperation.

The Commission is aware of the need to ensure coherence between other Community policies and the policies for development cooperation. In this context it is important to note that on 22 November 2001 the Commission established an internal instruction note (the so-called 'Common Framework for cooperation with third countries in the Higher Education sector') which sets the principles and defines the main guidelines of cooperation between the European Community and developing countries, as well as with emerging economies and countries in transition, as regards the higher education sector, and establishes a frame of reference therefor [2]. It proposes harmonising the methods of implementing Commission programmes/projects with a view to improving the effectiveness, visibility and impact of existing cooperation in the field as part of a strategy to focus efforts.

Once the present proposal has been adopted and as the implementation of the programme gets underway, the Commission will pay due regard to the principles enumerated in the above-mentioned Common Framework, draw the necessary conclusions from the 2001 evaluation on the European Community Mobility Grant-Awarding Programmes with third countries [3], and will set up the appropriate internal coordination mechanisms to ensure full complementarity and avoid competition and overlapping between this programme and external cooperation programmes in the field of higher education.

7.2. **The sixth framework programme for research**

In its 18 July 2001 Communication, the Commission indicated that the quality of European higher education institutions, measured (among other ways) through the volume and scope of institutions' scientific and technological research activities, is crucial to ensuring that Europe's status as a centre of excellence in learning and producing knowledge is appreciated around the world. Enhanced cooperation in higher education should go hand-in-hand with cooperation in science and technology, which mobilises scientific resources in universities in the European Community as well as in third countries.

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[1] COM(2002) 116 final, 6.3.2002.

[2] A summary of the common framework can be found in COM(2002) 116 final, 6.3.2002, Annex 7.

[3] http://europa.eu.int/comm/europeaid/evaluation/evinfo/sector/951632_ev.htm

The Commission's Communication on the international dimension of the European research area ([1]) argues that the European Union must have considerable top-quality scientific and technological potential and knowledge at its disposal in order to be able to play the part to which it aspires in today's global society and, to that end, the European Research Area must be opened up to the rest of the world ([2]). It further argues that this openness should enable EU countries to benefit from international cooperation in science and technology, paving the way for closer political and economic relations, and that the new strategy of international cooperation will also make it possible to further develop relations between the European Union and third countries, will help improve dialogue between regions and countries and raise the profile of science and technology in Europe.

The sixth framework programme for research ([3]) foresees international participation in the activities of the programme targeting scientific and societal issues at bilateral, bi-regional and global level.

The Commission is aware of the great potential for complementarity and synergies between the programme described in the present proposal and the activities within the sixth framework programme for research, which will allow to create a *continuum* between both fields.

The target public of the present proposal and the target public of some of the existing or envisaged research actions are to a large extent the same, even if the nature and objectives of the activities they would pursue are not identical. Avoiding overlapping will therefore be a major Commission concern.

The Commission is currently working on mechanisms to ensure complementarity and to bridge across Community research and education and training programmes. In this context, complementarity regarding cooperation with third countries features prominently. Once the present programme has been adopted, the Commission will build on and further strengthen such mechanisms.

8. **THE ISSUE OF BRAIN DRAIN**

While preparing the present proposal the Commission has carefully considered the various arguments linked to the issue commonly known as 'brain drain'. The risk of brain drain should not be underestimated. This is the reason why higher education institutions participating in the programme will be strongly encouraged to make provisions in their application and admission processes in order to avoid or discourage brain drain from less developed countries. Through the programme's implementation modalities, the Commission will seek to ensure that the support granted to third country students from developing countries is linked to a plan to return to the home country.

Consciousness of the risk of brain drain should not lead to the exclusion of developing countries from the scheme. Such an exclusion would have a negative effect on the perception of Europe among nationals from these countries; it would drive mobile students away from the European Union, encouraging them to go to other destinations, such as the USA, which continues to provide significant support to students from developing countries through the Fulbright programme; last but not least, it would have a negative impact on the European Union's longer-term interests as well as those of the countries in question.

It is important to note that in its report following the Commission's Communication on reinforcing cooperation with third countries in the field of higher education ([4]), the European Parliament specifically asked to involve developing countries in closer cooperation with third countries in the field of higher education and to make provision for students exchanges and scholarships, and grants for those who intend to return to their country of origin as a means of brain drain prevention.

([1]) COM(2001) 346 final.

([2]) Publication in the OJ pending.

([3]) OJ C 180, 26.6.2001, p. 156.

([4]) TA P5_TAPROV(2002)04-10 Provisional Edition PE 316.566, 11.4.2002.

The Commission will tackle the issue of brain drain prior to and during the implementation and management of the programme. To this end, the Commission will identify appropriate accompanying measures, eligibility criteria and indicators, and will put in place the necessary specific monitoring mechanisms.

9. **CONCLUSION**

In the light of the above, the Commission proposes to the European Parliament and the Council the adoption of the present proposal for a Decision establishing a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus World) (2004-2008).

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 149 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 European Community shall contribute to the development of quality education inter alia through cooperation with third countries.

(2) The conclusions of the Lisbon European Council (23-24 March 2000) emphasised that if Europe is to meet the challenge of globalisation Member States need to adapt their education and vocational training systems to the demands of the knowledge society.

(3) The Ministers of Education of the Member States, and the Ministers of Education from fourteen other European countries, stated in the Bologna Declaration (19 June 1999) that it is necessary to ensure that the European higher education system acquires a world-wide degree of attractiveness appropriate to Europe's major cultural and scientific achievements.

(4) The European Ministers in charge of higher education meeting in Prague (19 May 2001) further emphasised the importance of enhancing attractiveness of European higher education to students from Europe and other parts of the world.

(5) In its Communication on reinforcing cooperation with third countries in the field of higher education [1], the Commission argued that greater internationalisation of higher education is necessary to respond to the challenges of the process of globalisation, identified overall objectives for a third-country cooperation strategy in this field and suggested concrete measures for achieving these objectives.

(6) There is a need to step up Community efforts to promote dialogue and understanding between cultures world-wide, specially as mobility fosters the discovery of new cultural and social environments and facilitates understanding thereof.

(7) There is wide recognition of the great potential represented by the combined individual strengths of European higher education institutions, by their educational diversity and wide experience in networking, which enables them to offer courses of great quality unique to Europe and which allows the benefits of international mobility to be shared more widely within the Community and its partner countries.

(8) European higher education institutions must remain at the leading edge of developments; to this end they should seek to establish cooperation with third-country institutions that have achieved a level of development comparable to that of higher education institutions in the Community.

(9) It is necessary to establish a Community programme.

(10) In order to reinforce the added value of Community action it is necessary to ensure coherence and complementarity between the actions implemented in the framework of this Decision and other relevant Community policies, instruments and actions, in particular the sixth framework programme for research and external cooperation programmes in the higher education sector.

(11) The Agreement on the European Economic Area (EEA Agreement) provides for greater cooperation in the field of education, training and youth between the European Community and its Member States, on the one hand, and the countries of the European Free Trade Association participating in the European Economic Area (EEA EFTA States), on the other; the conditions and the modalities for the participation of the above countries in this programme shall be established in accordance with the relevant provisions of the EEA Agreement.

[1] COM(2001) 385 final, 18.7.2001.

(12) The conditions and the modalities for the participation of the associated central and eastern European countries (CEEC) in this programme shall be established in accordance with the provisions foreseen in the European agreements, in their additional protocols and in the decisions of the respective Association Councils; concerning Cyprus, the relevant conditions and modalities shall be funded by additional appropriations in accordance with the procedures to be agreed with that country; concerning Malta and Turkey, the relevant conditions and modalities shall be funded by additional appropriations in accordance with the provisions of the Treaty.

(13) This programme should be regularly monitored and evaluated in cooperation between the Commission and the Member States in order to allow for readjustments, particularly in the priorities for implementing the measures; the evaluation should include an external evaluation to be conducted by independent, impartial bodies.

(14) Since the objectives of the proposed action concerning the contribution of European cooperation to quality education cannot be sufficiently achieved by the Member States, *inter alia*, because of the need for multilateral partnerships and multilateral mobility and Community/third country exchanges of information and can therefore be better achieved at Community level owing to the transnational dimension of Community actions and measures, the European 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 Decision does not go beyond what is necessary in order to achieve those objectives.

(15) This Decision establishes a financial framework for the entire duration of the programme which is to be the principal point of reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission, on budgetary discipline and improvement of the budgetary procedure.

(16) The measures necessary for the implementation of 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

Establishment of the programme

1. This Decision establishes a programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries, 'Erasmus World', hereinafter referred to as 'the programme'.

2. This programme shall be implemented over a period starting on 1 January 2004 and ending on 31 December 2008.

Article 2

Definitions

For the purpose of this Decision:

1. 'higher education institution': means any institution which according to national legislation or practice offers qualifications or degrees at that level, whatever such establishments may be called.

2. 'third country graduate student': means a national of a third country other than those from EEA EFTA States and countries candidate for accession to the European Union; who has already obtained a first higher education degree; who is not a resident of any of the Member States or the participating countries as provided for in Article 12; who may not have carried out his or her main activity (studies, work, etc.) for more than a total of 12 months over the last five years in any of the Member States or the participating countries; and who has been accepted to register or is registered in a European Union Masters Course as described in the Annex.

3. 'third country scholar': means a national of a third country other than those from EEA EFTA States and countries candidate for accession to the European Community; who is not a resident of any of the Member States or the participating countries as provided for in Article 12; who may not have carried out his or her main activity (studies, work, etc.) for more than a total of 12 months over the last five years in any of the Member States or the participating countries; and who has outstanding academic and/or professional experience.

4. 'graduate or postgraduate studies': means courses of higher education study that follow a first degree and lead to a second degree.

Article 3

Objectives of the programme

1. The programme's overall aim is to enhance quality education by improving the perception of European higher education world-wide and by fostering cooperation with third countries in order to improve the development of human resources and to promote dialogue and understanding between peoples and cultures.

2. The programme's specific objectives are:

(a) to promote the emergence of a distinctly European offer in higher education, attractive both within the European Union and beyond its borders;

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

(b) to encourage a greater world-wide interest in the acquisition of European qualifications and/or experience among highly qualified graduates and scholars from all over the world, and to enable them to obtain such qualifications and/or experience;

(c) to strengthen a more structured cooperation between European Union and third country institutions and a greater EU outgoing mobility as part of European study programmes;

(d) to enhance the profile and visibility of, and improved accessibility to, European education.

3. The Commission shall, when pursuing the objectives of the programme, observe the Community's general policy on equal opportunities for men and women. The Commission shall also ensure that no group of citizens or third country nationals is excluded or disadvantaged.

Article 4

Programme Actions

1. The objectives of this programme as set out in article 2 shall be pursued by means of the following actions:

(a) European Union Masters Courses;

(b) a Scholarship scheme;

(c) partnerships with third country higher education institutions;

(d) enhancing the attractiveness of Europe as an educational destination;

(e) technical support measures.

2. These actions shall be realised with the procedures described in the Annex, and through the following types of approaches, which may be combined where appropriate:

(a) support for the development of joint educational programmes and cooperation networks facilitating the exchange of experience and good practice;

(b) support for mobility, between the European Community and third countries, of people in the field of higher education;

(c) promotion of language skills and the understanding of different cultures;

(d) support for pilot projects based on transnational partnerships designed to develop innovation and quality in international higher education;

(e) support for the development of methods of analysis and follow-up of trends in, and evolution of, international higher education.

Article 5

Access to the programme

Under the conditions and arrangements for implementation specified in the Annex, this programme is aimed in particular at:

(a) higher education institutions;

(b) students having obtained a first higher education degree;

(c) scholars or professionals who lecture or conduct research;

(d) staff directly involved in higher education;

(e) public or private bodies involved with higher education.

Article 6

Implementation of the programme and cooperation with the Member States

1. The Commission shall:

(a) ensure the implementation of the Community actions covered by this programme in conformity with the Annex;

(b) take account of bilateral cooperation with third countries undertaken by Member States;

(c) consult the relevant associations and organisations in the field of higher education at European level and shall inform the Committee referred to in Article 8 of their opinions;

(d) seek synergies with other intra-Community programmes and actions in the field of higher education and research.

2. The Member States shall:

(a) take the necessary steps to ensure the efficient running of the programme at Member State level involving all the parties concerned in education in accordance with national practice;

(b) designate appropriate structures that shall cooperate closely with the Commission; particularly as regards information about the programme;

(c) endeavour to adopt such measures as may be deemed appropriate to remove legal and administrative barriers to the effective operation of this programme;

(d) take steps to ensure that potential synergies with other Community programmes are achieved at Member State level.

Article 7

Implementing measures

1. The following measures necessary for the implementation of this Decision shall be adopted in accordance with the management procedure referred to in Article 8(2):

(a) the annual plan of work, including priorities, and the selection criteria and procedures;

(b) the general guidelines for implementing the programme;

(c) the annual budget and the breakdown of funds among the different actions of the programme;

(d) the arrangements for monitoring and evaluating the programme and for the dissemination and transfer of results.

2. All other measures necessary for the implementation of this Decision shall be adopted in accordance with the advisory procedure referred to in Article 8(3).

Article 8

Committee

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

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

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

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

4. The Committee shall adopt its rules of procedure.

Article 9

Cooperation with other programme committees and information on other Community initiatives

To ensure the consistency of this programme with other measures referred to in Article 11, the Commission shall keep the Committee regularly informed about Community initiatives taken in the fields of education, training and youth, including cooperation with third countries and international organisations.

Article 10

Funding

1. The financial framework for the implementation of this programme for the period specified in Article 1 is hereby set at EUR 200 million.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 11

Consistency and complementarity

1. The Commission shall, in cooperation with the Member States, ensure overall consistency and complementarity with other relevant Community policies, instruments and actions, in particular with the sixth framework programme for research and with external cooperation programmes in the field of higher education.

2. The Commission shall ensure efficient linkage and, where appropriate, joint actions, between this programme and the programmes and actions in the area of education undertaken within the framework of the Community's cooperation with third countries, including bilateral agreements, and the competent international organisations.

Article 12

Participation of EEA EFTA States, and candidate countries for accession to the European Union

The conditions and modalities for the participation of EEA EFTA States and countries candidate for accession to the European Union in this programme shall be established in accordance with the relevant provisions of the instruments governing the relations between the European Community and these countries.

Article 13

Monitoring and evaluation

1. The Commission shall regularly monitor this programme in cooperation with the Member States. The results of the monitoring and evaluation process shall be utilised when implementing the programme.

This monitoring shall include the reports referred to in paragraph 3 and specific activities.

2. This programme shall be evaluated regularly by the Commission. This evaluation is intended to assess the relevance, effectiveness and impact of actions implemented with regard to the objectives referred to in Article 3. It will also consider the impact of the programme as a whole. Special attention will be paid to gender issues and equity issues, as well as the prevention of brain drain.

This evaluation will also examine the complementarity between action under this programme and that pursued under other relevant Community policies, instruments and actions.

3. The Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions:

(a) on the accession of new Member States, a report on the financial consequences of these accessions on the programme, followed, if appropriate, by proposals to deal with the financial consequences of these accessions on the programme, in accordance with the provisions of the Inter-institutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and with the conclusions of the Berlin European Council of March 1999. The European Parliament and the Council will take a decision on such proposals as soon as possible;

(b) an interim evaluation report on the results achieved and on the qualitative aspects of the implementation of this programme by 30 June 2007;

(c) a communication on the continuation of this programme by 31 December 2007,

(d) an ex-post evaluation report by 31 December 2009.

Article 14

Entry into force

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

ANNEX

COMMUNITY ACTIONS

This Annex describes five actions:

ACTION 1: EUROPEAN UNION MASTERS COURSES

ACTION 2: SCHOLARSHIPS

Action 2.1: Global Student Scheme

Action 2.2: Visiting Scholar Scheme

ACTION 3: PARTNERSHIPS WTIH THIRD COUNTRY HIGHER EDUCATION INSTITUTIONS

ACTION 4: ENHANCING ATTRACTIVENESS

ACTION 5: SUPPORT MEASURES

ACTION 1: EUROPEAN UNION MASTERS COURSES

1. The Community will identify and grant European postgraduate courses the label of 'European Union Masters Courses' through a rigorous selection process as provided for in Article 7(1) and in accordance with the procedure set out in Article 8(2).

2. For the purpose of this programme, European Union Masters Courses shall:

(a) involve a minimum of three higher education institutions from three different Member States;

(b) implement a study programme which involves a period of study in at least two of the three institutions under (a);

(c) have built-in mechanisms for the recognition of periods of study undertaken in partner institutions in accordance for example with the European Credit Transfer System;

(d) result in the awarding of double or multiple recognised or accredited degrees from the participating institutions.

(e) reserve a minimum of places for, and host, third country students who have been granted financial support under this programme;

(f) establish transparent conditions for admissions which pay due regard, inter alia, to gender issues and equity issues;

(g) agree to respect the rules applicable to the selection procedure of grantees (students and scholars);

(h) put in place adequate arrangements to facilitate access for, and hosting of, third country students (information facilities, accommodation, etc.);

(i) provide, as appropriate, for students' language preparation and assistance.

3. European Union Masters Courses will be selected for a five-year period, subject to a light-weight annual renewal procedure based on progress reporting, which period could include a year's preparatory activities before the actual course begins to run. Funding would be subject to the annual renewal procedure.

ACTION 2: SCHOLARSHIPS

1. The Community will establish a single, global scholarship scheme targeted at the best qualified third country graduate students and scholars.

2. Scholarships will be open to third country students and scholars as defined in Article 2, without any precondition for participation other than the existence of relations between the European Union and the country of origin of the students and scholars in question. Participation of women and less-advantaged students from these countries will be encouraged.

3. Participating institutions will be encouraged to involve stakeholders in the field of higher education in third countries and will be required to make provision in their application and selection processes to avoid or discourage brain drain from less developed countries.

4. In accordance with Article 6(2), Member States shall take the necessary steps to expedite the granting of entry visas and stay permits to grantees and, where required, the granting of degree equivalence.

5. The selection procedure shall ensure appropriate balance across fields of study and students' and scholars' regions of provenance and Member State of destination and will encourage the participation of women and less-advantaged students from third countries.

6. The Commission shall take steps to ensure that no student or scholar receives financial support for the same purpose under more than one Community programme.

Action 2.1: Global Student Scheme

The Community may provide financial support to third country students who have been admitted, through a competitive process, to European Union Masters Courses.

Action 2.2: Visiting Scholar Scheme

The Community shall provide financial support to third country scholars visiting the European Union Masters Courses, with a view to carrying out teaching and research assignments and scholarly work in the institutions participating in European Union Masters Courses.

ACTION 3: PARTNERSHIPS WITH THIRD COUNTRY HIGHER EDUCATION INSTITUTIONS

1. The Community will support structured relations between European Union Masters Courses and third country higher education institutions. Priority will be given to institutions sufficiently well-developed to be able to cooperate on an equal footing.

2. Partnerships will provide the framework for outgoing mobility of European Union students and scholars involved in the European Union Masters Courses.

3. Partnerships will serve to develop, whenever possible, institutionalised networks, based on structured and sustainable cooperation designed to contribute to the development of local capacity through the transfer of know-how.

4. Partnerships will:

— involve a European Union Masters Course and at least one higher education institution from a third country;

— be established for periods of up to three years;

— provide a framework for outgoing mobility for students enrolled in the European Unions Masters Courses and the Courses' teachers; eligible students and scholars must be citizens of the European Union or third country nationals who had been legal residents in the European Union for at least three years (and for purposes other than study) before the start of the outgoing mobility;

— ensure recognition of study periods at the host (i.e., non-European) institution.

5. Partnership project activities may also include:

— teaching assignments at a partner institution supporting the project's curriculum development;

— exchanges of teachers, trainers, administrators, and other relevant specialists;

— development and dissemination of new methodologies in higher education, including the use of information and communication technologies, e-learning, and open and distance learning;

— development of cooperation schemes with third country universities with a view to offering a course in the country in question.

ACTION 4: ENHANCING ATTRACTIVENESS

1. Through this action, the Community shall support activities aimed at enhancing the profile and visibility of, and accessibility to, European education. The Community shall also support complementary activities that contribute to the objectives of this programme.

2. Eligible institutions would include public or private organisations dealing with issues pertaining to the provision of higher education domestically or at international level. Activities shall be conducted within networks involving a minimum of three organisations from three different Member States and may involve organisations from third countries. Activities (which may include seminars, conferences, workshops, development of ICT tools, production of material for publication, etc.) may take place in the Member States or in third countries.

4.1. **Support for joint promotional actions**

1. The Community will provide support to higher education institutions and public non-profit making organisations working towards the promotion of European higher education abroad.

2. Eligible activities may include:

— development of general written or visual common information and dissemination tools contributing towards a better understanding of the value of study in Europe;

— joint representation of European higher education and European Union Masters Courses at international fairs and other events;

— seminars, workshops and other means with a view to coordinating information and dissemination efforts;

— activities targeting geographical areas having a significant potential in terms of international student mobility.

3. Promotional activities shall seek to establish links between higher education and research, and exploit whenever possible potential synergies.

4.2. **Support for services facilitating access of third country students to European education**

1. The European Community will support collaborative activities aimed at facilitating access to, and encouraging study in, Europe.

2. Eligible activities may include:

— joint development of pedagogic tools for language training and cultural preparation;

— joint development of more effective methods of hosting and integrating third country students;

— development of joint distance education modules targeting third county students;

— services facilitating mobility between university partnerships within and outside European Union Masters Courses as defined above;

— services facilitating mobility with children and other dependent people;

— further development of an internet gateway to facilitate access to European Union Masters Courses as well as to other European courses suitable for third country students.

4.3. **Complementary activities**

1. The Community shall support complementary activities dealing with issues crucial to the internationalisation of higher education such as the international dimension of:

— quality assurance, including accreditation or other types of quality labels or specifications;

— credit recognition;

— recognition of European qualifications abroad and mutual recognition of qualifications with third countries;

— evolving curriculum development needs;

— changes in society and in education systems;

— safety and health for exchange students;

— consumer protection issues linked to education;

— surveys and studies (e.g. on the decision-making process of foreign students seeking study abroad, on obstacles to study in Europe, etc.).

2. Through this action the Community may support international thematic networks to deal with these issues.

3. The Community may support pilot projects with third countries with a view to developing further cooperation in the field of higher education with the countries in question.

4. The Community may provide, on a pilot basis, scholarships to third country students seeking a postgraduate degree from a European university or a consortium of European universities where no other Community action provides for such financial support, and where complementarity with bilateral schemes at Member State level can be ensured.

5. The Community shall support an Alumni Association of all students (third country and Europeans) graduating from European Union Masters Courses.

ACTION 5: TECHNICAL SUPPORT MEASURES

In carrying out the programme, the Commission may have recourse to experts, to an executive agency, to existing competent agencies in Member States and, if necessary, to other forms of technical assistance, the financing of which may be provided from within the overall financial framework of the programme.

Proposal for a Council Regulation amending Regulation (EC) No 2965/94 as regards the budgetary and financial rules applicable to the Translation Centre for the Bodies of the European Union and access to the Centre's documents

(2002/C 331 E/06)

COM(2002) 406 final — 2002/0167(CNS)

(Submitted by the Commission on 17 July 2002

EXPLANATORY MEMORANDUM

1. General

The new Financial Regulation applicable to the general budget of the EC will enter into force on 1 January 2003. It presents a new approach concerning the budgetary and financial status of the decentralised Community Agencies.

The most important novelties concerning Community Agencies are as follows:

— Article 185:

  — The Commission adopts a framework Financial Regulation applicable to the bodies set up by the Communities, having legal personality and which actually receive grants from the general budget. The financial rules of these bodies may not depart from the framework Regulation unless specifically required for their operation and with the Commission's prior consent.

  — Discharge for the implementation of the budgets of the bodies referred to in paragraph 1 is to be given by the European Parliament, acting on a recommendation by the Council.

  — The Commission's internal auditor exercises the same powers over these bodies as over Commission departments.

  — The above-mentioned bodies must apply the accounting rules established by the Commission's accounting officer so that their accounts can be consolidated with the Commission's accounts.

— Article 46(3)(d):

  — The establishment plans of the bodies defined in Article 185(1) are to be decided by the general budgetary authority.

These novelties require corresponding amendments to the legal acts establishing the Agencies concerned. While the full details of the financial and budgetary regime applicable to a given Agency are contained in the respective Financial Regulation, the legal act establishing the Agency (typically a Council Regulation) also contains provisions concerning financial and budgetary issues (e.g. the establishment and implementation of the budget, arrangements for budget control, the presentation of accounts, discharge and the procedure for adopting the Agency's Financial Regulation).

It is therefore necessary to make changes to the various legal acts establishing the Agencies in order to implement the new system. These changes are the subject of the present proposals.

Concerning those decentralised bodies which do not fall within the definition of Article 185(1), one change in their regulatory framework seems unavoidable in the light of one fundamental aspect of the new Financial Regulation, i.e. the dropping of all centralised *ex ante* financial control.

In these proposals the Commission also tackles two further questions concerning the decentralised Community bodies.

The first is connected with the current general reform process, viz. the question of transparency and public access to documents. During the recasting process the institutions agreed to include in the new Financial Regulation a provision that the public should have access to information relating to the decentralised bodies to the extent laid down by the EC regulatory framework. Furthermore, when adopting European Parliament and Council Regulation (EC) No 1049/2001 on public access to Parliament, Council and Commission documents, the three institutions agreed in a joint declaration that the Community Agencies should apply the same rules as regards access to documents. To put this agreement into effect, the Commission is proposing to amend the basic acts setting up the 15 decentralised bodies.

The second question concerns the procedure for appointing the Directors of the Community bodies. When the constituent acts were adopted, it was the Council's intention to allow for the possibility of renewing the terms of office of these Directors, but the Commission considers that the way most of them are worded at the moment does not properly reflect this aim. The provision for renewing a term of office suggests only that the present holder of the post may apply for a further term of office. However, this does not exempt the Community bodies from applying the procedure laid down in the constituent acts. This interpretation is derived from the parallel wording used in Article 214(1) of the EC Treaty on the appointment of Commission Members, and in Articles 223 and 225 on the appointment of judges to the Court of Justice. The special position of Directors of Community bodies warrants retaining this parallel approach and so departing from the interpretation of Article 8 of the Conditions of Employment of Other Servants of the European Communities, which allows a contract to be extended without a new selection procedure.

In order to make it clear that a new selection procedure is not necessary at the end of each Director's term of office, the Commission therefore proposes to clarify the existing texts.

On a proposal from the relevant management organ, it will be possible to extend the contract without engaging a new selection procedure. This possibility would make for a balance between the need for continuity in the management of Community bodies and the advantage of opening up the body to new ideas and new policies. The restriction to a single extension would not stop the person concerned applying for the same post at the end of the second term of office and taking part in a new selection procedure. A person could then have more than two terms of office after successfully passing a new selection procedure.

2. **Scope of the proposals:**

Taking into account the above-mentioned development of the general recasting process, it is assumed that the new arrangements (Articles 185 and 46(3)(d)) will apply to the thirteen existing Community Agencies, namely

— the European Centre for the Development of Vocational Training (Thessaloniki) ([1]);

— the European Foundation for the Improvement of Living and Working Conditions (Dublin) ([2]);

— the European Environment Agency (Copenhagen) ([3]);

— the European Training Foundation (Turin) ([4]);

— the European Monitoring Centre for Drugs and Drug Addiction (Lisbon) ([5]);

— the European Agency for the Evaluation of Medicinal Products (London) ([6]);

— the European Agency for Safety and Health at Work (Bilbao) ([7]);

— the Translation Centre for the Bodies of the EU (Luxembourg) ([8]);

([1]) Regulation (EC) No 337/75 of 10 February 1975.
([2]) Regulation (EC) No 1365/75 of 26 May 1975.
([3]) Regulation (EC) No 1210/90 of 7 May 1990.
([4]) Regulation (EC) No 1360/90 of 7 May 1990.
([5]) Regulation (EC) No 302/93 of 8 February 1993.
([6]) Regulation (EC) No 2309/93 of 22 July 1993.
([7]) Regulation (EC) No 2062/94 of 18 July 1994.
([8]) Regulation (EC) No 2965/94 of 28 November 1994.

— the European Monitoring Centre on Racism and Xenophobia (Vienna) ([1]);

— the European Agency for Reconstruction (Thessaloniki) ([2]);

— the European Food Safety Authority ([3]);

— the European Aviation Safety Agency ([4]);

— the European Maritime Safety Agency ([5]);

as well as to one body established under the Third Pillar, but treated as a traditional Community body in budgetary and financial terms, Eurojust ([6]).

There are two decentralised Community bodies which do not receive grants from the general budget, namely

— the Office for Harmonisation in the Internal Market (Alicante) ([7])

and

— the Community Plant Variety Office (Angers) ([8]).

They therefore do not fall within the definition of Article 185. However, they are affected by the proposals to bring their internal control mechanisms into line with the new Financial Regulation.

Finally, it was also intended to cover the European Railway Agency (COM(2002) 23 final). However, since the legislative procedure to set up this new agency is at an early stage, it has been decided not to include it in the present proposal.

As regards transparency, the amendments to include provisions regarding access to documents will concern the fifteen existing Community Agencies (irrespective of the applicability of Article 185), but not Eurojust ([9]).

Clarification of the provisions covering the procedure for appointing the Directors of the agencies is proposed for these thirteen Community bodies. This is not necessary in the case of Regulation 1360/90 as amended by Regulation 1572/98, which is used as the model for the proposed wording, or for Eurojust. In the case of Eurojust, the Administrative Director is not the head of the agency but comes under the authority of the College and its President (Article 29(4) of Decision 2002/187/JHA). In this case, therefore, the Administrative Director's position is not commensurable with that of Members of the Commission or of the Court of Justice. Regulation 2667/2000 establishing the European Agency for Reconstruction makes no provision for renewing the term of office of its Director. There is therefore no proposal to amend that Regulation in that particular respect.

3. **The substance of the present proposals**

3.1. Concerning the fourteen bodies receiving grants from the general budget and therefore covered by Article 185 of the new Financial Regulation, the main elements of the proposals are as follows:

([1]) Regulation (EC) No 1035/97 of 2 June 1997.

([2]) Regulation (EC) No 2667/2000 of 5 December 2000.

([3]) Regulation (EC) No 178/2002 of 28 January 2002.

([4]) COM(2000) 595 final, 4.12.2000. Regulation (EC) No .../2002 of ... June 2002.

([5]) COM(2002) 802 final, 8.12.2000. Regulation (EC) No ... /2002 of ... June 2002.

([6]) Council Decision 2002/187/JHA of 28 February 2002.

([7]) Regulation (EC) No 40/94 of 20 December 1993.

([8]) Regulation (EC) No 2100/94 of 27 July 1994.

([9]) Regulation (EC) No 1049/2001 is not directly applicable to the Third Pillar.

— as a result of Article 185 itself:

— the European Parliament, acting on a recommendation from the Council, becomes the discharge authority;

— the powers of the Commission's Internal Auditor are spelled out and centralised *ex ante* control is dropped;

— provisions are laid down on the presentation of accounts that are in line with the recasting;

— in line with a declaration made by the Commission on Article 185:

— The Commission has committed itself to consulting Parliament, the Council and the Court of Auditors on the framework Financial Regulation to be adopted under Article 185(1). For this reason, there will be no further need to maintain in the legal acts establishing the various decentralised bodies a formal requirement to consult the Court on each individual Financial Regulation;

— as a result of Article 46(3)(d):

— a rule provides that the establishment plan is adopted by the general budget authority;

— in order to provide a degree of technical harmonisation:

— the responsibility for implementing the budget will lie with the Director (which is currently not the case for the two 'first-generation' Agencies, CEDEFOP Thessaloniki and the Dublin Foundation);

— competence for the adoption of each Agency's individual Financial Regulation will rest with the respective body's management board or equivalent (after the Commission has been consulted). This will harmonise the individual procedures considerably. Currently, responsibility for adopting each body's Financial Regulation rests either with the Council or with the management board or equivalent, with or without the involvement of the Commission and the Court of Auditors in the process. These disparities are simply historical accidents in the development of the agencies, and are not objectively justified;

— the terminology used in the field of budgetary procedure is harmonised to some extent with the terminology of the new general Financial Regulation;

— the present Financial Regulations [1] of the two 'first-generation' agencies are repealed:

— hitherto, the Financial Regulations of CEDEFOP Thessaloniki and the Dublin Foundation have been Council Regulations. As already mentioned, there is no justification for maintaining these exceptions to the general rule. In the present circumstances, such a procedure no longer seems appropriate for this kind of instrument.

3.2. As regards the two Community agencies not covered by Article 185, it must be borne in mind that the new Financial Regulation implies a fundamental change concerning the audit and control mechanisms. Thus, it seems logical that in the Regulations setting up these agencies, at least the control provisions should be modernised (in particular as one of them — CPVO Angers — still relies upon the Commission's Financial Controller, a function which is to be abolished with the entry into force of the new general Financial Regulation).

3.3. It will be recalled that the Commission in 1997 had already presented proposals for amending the Regulations setting up nine of the aforementioned decentralised bodies [2]. Taking into account that these proposals have in part become obsolete and are in part covered by the present proposals as well, the Commission takes the opportunity formally to withdraw them.

[1] Regulations (EC) No 1416/76 and No 1417/76 of 1 June 1976.

[2] COM(1997) 489 final, 6.10.1997, amended by COM(1998) 289 final, 4.5.1998.

3.4. As regards the question of transparency in the fifteen existing agencies, it is proposed to introduce a clause to the following effect:

— Regulation No 1049/2001 applies to documents of the agencies;

— the management boards will adopt the necessary implementing rules;

— the Court of Justice is competent to decide on appeals against decisions made by the agencies on access to documents.

3.5. As for the procedure for appointing the Directors of the Community bodies, it is proposed to align the wording of the relevant provisions of the constituent acts on Article 7(1) of Regulation No 1360/90 of 7 May 1990 [1] as amended by Regulation No 1572/98 of 17 July 1998 [2].

4. **Procedural issues**

4.1. The following procedures apply to the 18 basic acts directly affected by the present document:

— Article 308 (Council unanimity after consulting Parliament): Regulations (EC) Nos 337/75, 1365/75, 1360/90, 302/93, 2309/93, 2062/94, 2100/94, 40/94, 2965/94, 1035/97 (with Article 213) and 2667/2000;

— Article 175 (Article 251 procedure, plus consultation of the Economic and Social Committee and the Committee of the Regions): Regulation (EC) No 1210/90;

— Article 251 (codecision): Regulation (EC) No 178/2002 (with Articles 37, 95, 133 and 152(4)(b); i.e. also with the consultation of the Economic and Social Committee and the Committee of the Regions), COM(2000) 595 final (with Article 80(2)), COM(2000) 802 final (with Article 80(2));

— Article 279 (Council unanimity, after consulting Parliament and the Court of Auditors): Regulations (EC) Nos 1416/76 and 1417/76;

— Article 34(2)(c) (with Article 31 of the EU Treaty (Council unanimity): Council Decision 2002/187/JHA.

4.2. As regards the European Agency for the Evaluation of Medicinal Products, the constituent act in force (Regulation No 2309/93) is to be replaced by a new constituent act following the Commission proposal COM(2001) 404 final.

If Regulation No 2309/93 is replaced by a new constituent act, the proposal for the amendment of that constituent act should be read as a proposal for the amendment of this new constituent act.

In that event the Commission will provide all the technical expertise necessary to help the legislative authority to adapt the proposal to the relevant provisions of this new act.

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[1] OJ L 131, 23.5.1990, p.1.

[2] OJ L 206, 23.7.1998, p.1.

5. **Need for a fast track procedure**

Since the new Financial Regulation must, as already mentioned, enter into force on 1 January 2003, the present proposals must be adopted, under the appropriate legislative procedure, by the end of 2002.

The Commission invites all institutions concerned by the adoption of these proposals to speed up the procedure so that the amendments to the legal bases of the bodies concerned may enter into force in parallel with the new Financial Regulation.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Regulation (EC) No 2965/94 of 28 November 1994 should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) Article 10 of Regulation (EC) No 2965/94 should be revised to clarify the arrangements for financing the Centre.

(3) The general principles and limits governing right of access to documents provided for in Article 255 of the EC Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([1]).

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(5) Appropriate provisions should therefore be included in Regulation (EC) No 2695/94 to make Regulation (EC) No 1049/2001 applicable to the Translation Centre for the Bodies of the European Union, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(6) Regulation (EC) No 2965/94 should therefore be amended accordingly.

(7) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

([1]) OJ L 145, 31.5.2001, p. 43.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2965/1994 is amended as follows:

1. Paragraph 3 of Article 8 is replaced by the following:

'The Management Board shall adopt the annual report on the Centre's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the bodies referred to in Article 2.'

2. Article 9(1) is replaced by the following:

'The Centre shall be under the authority of a Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be extended for one further period not exceeding five years.'

3. Paragraph 2(b) of Article 10 is replaced by the following:

'Subject to the provisions set out in subparagraph (c), the Centre's revenue shall comprise

— payments made by the bodies for which the Centre works and by the institutions and organs with which collaboration has been agreed in return for work performed by it, and

— a Community subsidy, in particular to finance interinstitutional activities.'

4. Article 13 is replaced by the following:

'*Article 13*

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre, which shall include an establishment plan.

2. The revenue and expenditure shown in the budget shall be in balance.

3. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Centre for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.

The Commission shall take account of the statement of estimates in drawing up the forecasts of subsidies for the bodies referred to in Article 2 in the preliminary draft general budget of the European Communities (hereinafter "the general budget").

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget.

The budgetary authority shall adopt the establishment plan for the Centre.

4. The Management Board shall adopt the Centre's budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy referred to in Article 10(2)(b) in the light of the payments made by the bodies referred to in Article 2.'

5. Paragraphs 2 and 3 of Article 14 are replaced by the following:

'2. The Commission's internal auditor shall exercise the same powers over the Centre as over Commission departments.

3. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No . . . (*) (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

6. The Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.

8. The Centre's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director of the Centre in respect of the implementation of the budget for year N.

(*) OJ L . . .'

6. Article 15 is replaced by the following:

'*Article 15*

The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Centre's operation and with the Commission's prior consent.'

7. A new Article 18a is inserted:

'*Article 18a*

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Centre.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Centre under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EC) No 2667/2000 as regards the budgetary and financial rules applicable to the European Agency for Reconstruction and access to the Agency's documents

(2002/C 331 E/07)

COM(2002) 406 final — 2002/0168(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 2667/2000 of 5 December 2000 on the European Agency for Reconstruction ([1]), amended by Regulation (EC) No 2415/2001 ([2]), should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([3]).

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No 2667/2000 to make Regulation (EC) No 1049/2001 applicable to the European Agency for Reconstruction.

(5) Regulation (EC) No 2667/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2667/2000 is amended as follows:

1. Paragraph 14 of Article 4 is replaced by the following:

'The Governing Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission and the Court of Auditors.'

2. Article 5(1) point (f) is replaced by the following:

'(f) preparation of the draft statement of estimates of the Agency's revenue and expenditure, and execution of its budget;'

3. Article 7 is replaced by the following:

'Article 7

1. Each year, by 15 February at the latest, the Governing Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Governing Board to the Commission.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget of the European Communities.

2. The Commission shall examine the statement of estimates, taking account of the priorities it has agreed and the overall financial guidelines for Community assistance to the reconstruction of the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia.

It shall establish on this basis, within the proposed limits of the overall amount to be made available for Community assistance to the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, the indicative annual contribution for the budget of the Agency to be included in the preliminary draft general budget of the European Communities.

3. The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

4. The budgetary authority shall adopt the establishment plan for the Agency.

5. The Governing Board, after receiving the Commission's opinion, shall adopt the budget of the Agency at the beginning of each financial year, adjusting it to the various contributions granted to the Agency and to funds from other sources.

([1]) OJ L 306, 7.12.2000, p. 7.

([2]) OJ L 327, 12.12.2000, p. 3.

([3]) OJ L 145, 31.5.2001, p. 43.

6. In the interests of budgetary transparency, funds from sources other than the Community budget shall be shown separately in the Agency's revenue. In the expenditure, administrative and staff costs shall be clearly separate from operating costs for the programmes referred to in the first indent of Article 2(3).'

4. Article 8 is replaced by the following:

'Article 8

1. The Director shall implement the budget of the Agency.

2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

3. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Regulation (EC, Euratom) No . . . (*) (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Governing Board for an opinion.

6. The Director shall, by 1 July at the latest following each financial year, transmit these final accounts to the European Parliament, the Council, the Court of Auditors and the Commission, together with the Governing Board's opinion.

7. The final accounts shall be published.

8. The Agency's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Governing Board.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director of the Agency in respect of the implementation of the budget for year N.

(*) OJ L . . .'

5. Article 9 is replaced by the following:

'Article 9

The financial rules applicable to the Agency shall be adopted by the Governing Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.'

6. A new Article 13 is inserted:

'Article 13a

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Agency.

The Governing Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

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.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 1210/90 as regards the budgetary and financial rules applicable to the European Environment Agency and the European Environment Information and Observation Network and access to the Agency's documents

(2002/C 331 E/08)

COM(2002) 406 final — 2002/0169(COD)

(Submitted by the Commission on 17 July 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 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 provisions of Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network [1] should be harmonised with Council Regulation (EC, Euratom) No . . . of . . . on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 1210/90 to make Regulation (EC) No 1049/2001 applicable to the European Environment Agency, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Executive Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

(6) Regulation (EEC) No 1210/90 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1210/90 is amended as follows:

1. Article 6 is replaced by the following:

'*Article 6*

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Agency.

The Management Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

2. Article 8(6) is replaced by the following:

'6. The Management Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.'

3. Article 9(1) is replaced by the following:

'The Agency shall be under the authority of an Executive Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be extended for one further period not exceeding five years.'

[1] OJ L 120, 11.5.1990, p. 1. Regulation as amended by Regulation (EC) No 933/1999 (OJ L 117, 5.5.1999, p. 1).

[2] OJ L 145, 31.5.2001, p. 43.

4. Article 12(1) and (2) are replaced by the following:

'1. Each year the Management Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.'

5. Article 13(2), (3) and (4) are replaced by the following:

'2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

3. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC) No . . . on the Financial Regulation applicable to the general budget of the European Communities (*) (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

6. The Management Board of the Agency shall deliver an opinion on the Agency's final accounts.

7. The Executive Director of the Agency shall, by 1 July at the latest following each financial year, transmit these final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

8. The final accounts shall be published.

9. The Agency's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

(*) OJ L . . .'

6. Article 14 is replaced by the following:

'*Article 14*

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EEC) No 2309/93 as regards the budgetary and financial rules applicable to the European Agency for the Evaluation of Medicinal Products and access to the Agency's documents

(2002/C 331 E/09)

COM(2002) 406 final — 2002/0170(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 2309/92 to make Regulation (EC) No 1049/2001 applicable to the European Agency for the Evaluation of Medicinal Products, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Executive Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

(6) Regulation (EEC) No 2309/93 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2309/93 is amended as follows:

1. Article 55(1) is replaced by the following:

'1. The Agency shall be under the authority of an Executive Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be extended for one further period not exceeding five years.'

(a) in paragraph 2, the fifth indent is replaced by the following:

'— for the preparation of the draft statement of estimates of the Agency's revenue and expenditure, and execution of its budget,'

(b) paragraph 3 is replaced by the following:

'Each year the Executive Director shall submit a draft work programme for the coming year to the Management Board for approval, making a distinction between the Agency's activities concerning medicinal products for human use and those concerning veterinary medicinal products.'

(c) Paragraph 4 is deleted.

2. Article 56(5) is replaced by the following:

'The Management Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Economic and Social Committee, the Court of Auditors and the Member States.'

3. Article 57 is replaced by the following:

'*Article 57*

1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Agency.

The revenue and expenditure shown in the budget shall be in balance.

2. The Agency's revenues shall consist of a contribution from the Community and fees paid by undertakings for obtaining and maintaining Community marketing authorisations and for other services provided by the Agency. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure costs, and operating expenses, and expenses resulting from contracts entered into with third parties.

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[1] OJ L 214, 24.8.1993, p. 1. Regulation as amended by Commission Regulation (EC) No 649/98 (OJ L 88, 24.3.1998, p. 7).

[2] OJ L 145, 31.5.2001, p. 43.

3. Each year, by 15 February at the latest, the Management Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

4. The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

5. The budgetary authority shall adopt the establishment plan for the Agency.

6. The Management Board shall adopt the Agency's definitive budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy and the Agency's other resources.

7. The Executive Director shall implement the budget of the Agency.

8. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

9. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Regulation (EC, Euratom) No ... (*) (hereinafter "the general Financial Regulation").

10. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

11. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

12. The Management Board of the Agency shall deliver an opinion on the Agency's final accounts.

13. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

14. The final accounts shall be published.

15. The Agency's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

16. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

17. The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.

(*) OJ L ...'

4. A new Article 63a is inserted:

'*Article 63a*

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Agency.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EEC) No 1360/90 as regards the budgetary and financial rules applicable to the European Training Foundation and access to the Foundation's documents

(2002/C 331 E/10)

COM(2002) 406 final — 2002/0171(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 1360/90 of 7 May 1990 establishing a European Training Foundation [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 1360/90 to make Regulation (EC) No 1049/2001 applicable to the European Training Foundation, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) Regulation (EEC) No 1360/90 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1360/90 is amended as follows:

1. The following Article 4a is inserted:

'Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Foundation.

The Governing Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Foundation under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

2. Article 5(9) is replaced by the following:

'The Governing Board shall adopt the Foundation's annual report and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Court of Auditors. The report shall also be transmitted to the Member States and, for information, to the eligible countries.'

3. The third indent of Article 7(1) is replaced by the following:

'— for the preparation of the draft statement of estimates of the Foundation's revenue and expenditure, and execution of its budget,'

4. Article 10(1), (2) and (3) are replaced by the following:

'1. Each year, by 15 February at the latest, the Governing Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Foundation for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Governing Board to the Commission.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

[1] OJ L 131, 23.5.1990, p. 1. Regulation last amended by Regulation (EC) No 2555/2000 (OJ L 306, 7.12.2000, p. 1).

[2] OJ L 145, 31.5.2001, p. 43.

2. The Commission shall examine the statement of estimates, having regard to the vocational training priorities in the eligible countries and to the overall financial orientations on economic aid to these countries.

It shall establish on this basis, and within the proposed limits of the overall amount to be made available for economic aid to the eligible countries, the annual contribution for the budget of the Foundation to be included in the preliminary draft general budget of the European Communities.

The budgetary authority shall determine the appropriations available for the subsidy to the Foundation.

3. The budgetary authority shall adopt the establishment plan for the Foundation.'

5. Article 11(2), (3) and (4) are replaced by the following:

'2. The Commission's internal auditor shall exercise the same powers over the Foundation as over Commission departments.

3. By 1 March at the latest following each financial year, the Foundation's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No . . . on the Financial Regulation applicable to the general budget of the European Communities (*) (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Foundation's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Foundation's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Governing Board for an opinion.

6. The Governing Board of the Foundation shall deliver an opinion on the Foundation's final accounts.

7. The Director shall, by 1 July at the latest following each financial year, transmit these final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Governing Board's opinion.

8. The final accounts shall be published.

9. The Foundation's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Governing Board.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

(*) OJ L . . .'

6. Article 12 is replaced by the following:

'*Article 12*

The financial rules applicable to the Foundation shall be adopted by the Governing Board after the Commission has been consulted.

They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Foundation's operation and with the Commission's prior consent.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EEC) No 1365/75 as regards the budgetary and financial rules applicable to the European Foundation for the Improvement of Living and Working Conditions and access to the Foundation's documents and repealing Regulation (EEC) No 1417/76

(2002/C 331 E/11)

COM(2002) 406 final — 2002/0172(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 279 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 1365/75 of 7 May 1990 on the creation of a European Foundation for the Improvement of Living and Working Conditions should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. Pursuant to that Article, the European Foundation for the Improvement of Living and Working Conditions must adopt a Financial Regulation in conformity with the framework Financial Regulation adopted by the Commission. Consequently, Council Regulation (EEC) No 1416/76 must be repealed with effect from the entry into force of the Financial Regulation adopted by the Administrative Board of the Foundation.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 1365/75 to make Regulation (EC) No 1049/2001 applicable to the European Foundation for the Improvement of Living and Working Conditions, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1365/75 is amended as follows:

1. Article 8(3) is replaced by the following:

'3. The director and deputy director shall be appointed for a maximum period of five years. The term of office of the director may be extended for one further period not exceeding five years. The term of office of the deputy director may be extended for further periods not exceeding five years each.'

2. Articles 13, 14, 15 and 16 are replaced by the following:

'*Article 13*

The Administrative Board shall adopt the annual report on the Foundation's activities and prospects, and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Court of Auditors.

Article 14

1. Estimates of all the revenue and expenditure of the Foundation shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Foundation, which shall include an establishment plan.

2. The revenue and expenditure shown in the budget of the Foundation shall be in balance.

Article 15

1. Each year the Administrative Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Foundation for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest.

[1] OJ L 145, 31.5.2001, p. 43.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to the Foundation.

The budgetary authority shall adopt the establishment plan for the Foundation.

3. The Administrative Board shall adopt the Foundation's budget before the beginning of the budget year, adjusting it to the subsidy granted by the budgetary authority. The budget as thus adopted shall be transmitted by the Commission to the budgetary authority.

Article 16

1. The financial rules applicable to the Foundation shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Foundation's operation and with the Commission's prior consent.

2. The Director shall implement the budget of the Foundation.

3. The Commission's internal auditor shall exercise the same powers over the Foundation as over Commission departments.

4. By 1 March at the latest following each financial year, the Foundation's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

5. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Foundation's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

6. On receipt of the Court of Auditors' observations on the Foundation's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Administrative Board for an opinion.

7. The Administrative Board of the Foundation shall deliver an opinion on the Foundation's final accounts.

8. The Director of the Foundation shall, by 1 July at the latest following each financial year, transmit these final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

9. The final accounts shall be published.

10. The Foundation's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.

11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director of the Foundation in respect of the implementation of the budget for year N.'

3. The following Article 18a is inserted:

'*Article 18a*

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Foundation.

The Administrative Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Foundation under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

Regulation (EEC) No 1417/76 is repealed with effect from entry into force of the financial regulation adopted by the Administrative Board pursuant to Article 16(1) of Regulation (EEC) No 1365/75, as amended by this Regulation.

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.

Proposal for a Council Decision amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

(2002/C 331 E/12)

COM(2002) 406 final — 2002/0173(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(c) thereof,

Having regard to the initiative of the Commission,

Having regard to the opinion of the European Parliament,

Whereas

(1) Although Eurojust is a body established under the Treaty on European Union, on the basis of Article 41 of the Treaty on European Union, it is widely assimilated to the decentralised bodies set up by the Communities as far as budgetary and financial issues are concerned;

(2) For this reason, the provisions of Decision 2002/187/JHA should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the financial regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(3) Decision 2002/187/JHA should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2002/187/JHA is hereby amended as follows:

1. Article 32(1) is replaced by the following:

'1. The President, on behalf of the College, shall report to the Council in writing every year on the activities of Eurojust.

For this purpose the College shall adopt an annual report on the activities of Eurojust and on any criminal policy problems within the Union highlighted as a result of those activities. In that report, Eurojust may also make proposals for the improvement of judicial cooperation in criminal matters.

The annual report shall be transmitted by 15 June at the latest to the European Parliament, the Council, the Commission and the Court of Auditors.

The President shall also submit any report or any other information on the operation of Eurojust which may be required of him by the Council.'

2. Articles 35, 36 and 37 are replaced by the following:

'*Article 35*

Drawing up of the budget

1. Each year the College, on the basis of a draft drawn up by the Administrative Director, shall produce a statement of estimates of revenue and expenditure for Eurojust for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the College to the Commission by 31 March at the latest.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget of the European Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to Eurojust.

3. The budgetary authority shall adopt the establishment plan for Eurojust.

4. On the basis of the annual subsidy decided upon by the budgetary authority, the College shall adopt the definitive budget of Eurojust before the beginning of the budget year, adjusting it to the various contributions granted to Eurojust and to the funds from other sources.

Article 36

Implementation of the budget and discharge

1. The Administrative Director shall, as authorising officer, implement the Eurojust budget. He shall report to the College on the implementation of the budget.

2. By 1 March at the latest following each financial year, the accounting officer of Eurojust shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation No ... (*).

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit Eurojust's provisional accounts to the European Parliament, the Council and the Court of Auditors, together with a report on the budgetary and financial management for that financial year.

4. On receipt of the Court of Auditors' observations on Eurojust's provisional accounts, pursuant to Article 129 of Regulation (EC) No . . ., the Administrative Director shall draw up Eurojust's final accounts under his own responsibility and transmit them to the College of Eurojust for an opinion.

5. The College of Eurojust shall deliver an opinion on Eurojust's final accounts.

6. The Administrative Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the College's opinion.

7. The final accounts shall be published.

8. The Administrative Director of Eurojust shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the College of Eurojust.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Administrative Director of Eurojust in respect of the implementation of the budget for year N.

Article 37

Financial regulation applicable to the budget

The financial rules applicable to Eurojust's budget shall be adopted by the College after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for Eurojust's operation and with the Commission's prior consent.

_____

(*) OJ L . . .'

3. Article 38(1) is replaced by the following:

'1. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.'

Article 2

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

Proposal for a Council Regulation amending Regulation (EC) No 2100/94 as regards the internal audit and control systems applicable to the Community Plant Variety Office and access to the Office's documents

(2002/C 331 E/13)

COM(2002) 406 final — 2002/0174(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. With the entry into force of Council Regulation (EC, Euratom) No ... of ... on the financial regulation applicable to the general budget of the European Communities, the concept of *ex ante* financial control in the European institutions and bodies to which Article 185 of the Financial Regulation applies will be replaced by more modern control and audit systems.

(2) The Community Plant Variety Office should have control and audit systems comparable with those of the above-mentioned European institutions and bodies.

(3) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(5) Appropriate provisions should therefore be included in Regulation (EC) No 2100/94 to make Regulation (EC) No 1049/2001 applicable to the Community Plant Variety Office, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(6) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the President and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(7) Regulation (EC) No 2100/94 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2100/1994 is amended as follows:

1. The following Article 33a is inserted:

'*Article 33a*

Access to documents

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Office.

The Administrative Council shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

2. Article 43(2) is replaced by the following:

'2. The President's term of office shall not exceed five years. The term may be extended, on a proposal from the Commission after the Administrative Council has been consulted, for one further period not exceeding five years.'

In Article 43(3) the words 'in paragraphs 1 and 2' are replaced by 'in paragraph 1' and the following sentence is added:

'Their term of office may be extended, on a proposal from the Commission after the Administrative Council has been consulted, for additional periods not exceeding five years each.'

[1] OJ L 227, 19.4.1994, p. 1. Regulation amended by Regulation (EC) No 2506/95 (OJ L 258, 28.10.1995, p. 3).

[2] OJ L 145, 31.5.2001, p. 43.

3. Article 111(1) is replaced by the following:

'1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the President, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures.

The internal auditor shall advise the President on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EEC) No 302/93 as regards the budgetary and financial rules applicable to the European Monitoring Centre for Drugs and Drug Addiction and access to the Centre's documents

(2002/C 331 E/14)

COM(2002) 406 final — 2002/0175(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 302/93 of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction [1] should be harmonised with Council Regulation (EC, Euratom) No . . . of . . . on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 302/93 to make Regulation (EC) No 1049/2001 applicable to the European Monitoring Centre for Drugs and Drug Addiction.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EEC) No 302/93 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 302/93 is amended as follows:

1. The following Article 6a is inserted:

'*Article 6a*

Access to documents

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Centre.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

(*) OJ L 145, 31.5.2001, p. 43.'

2. Article 8(5) is replaced by the following:

'The Management Board shall adopt the annual report on the Centre's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.'

3. Article 9(1) is replaced by the following:

'The Agency shall be under the authority of a Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be renewed for one further period not exceeding five years.'

In Article 9(1), the fourth indent is replaced by the following:

'— the preparation of the draft statement of estimates of the Centre's revenue and expenditure and on the implementation of the budget,'

4. Article 11 is replaced by the following:

'*Article 11*

Budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

[1] OJ L 36, 12.2.1993, p. 1. Regulation last amended by Regulation (EC) No 2220/2000 (OJ L 253, 7.10.2000, p. 1).

[2] OJ L 145, 31.5.2001, p. 43.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The Centre's revenue shall, without prejudice to other resources, consist of a subsidy from the Community entered under a specific heading of the general budget of the European Communities (Commission Section), payments for services rendered and any financial contributions from the organisations and bodies and non-Community countries mentioned in Articles 12 and 13 respectively.

4. The Centre's expenditure shall include:

(a) staff remuneration, administrative and infrastructure expenses, and operating costs

(b) expenditure in support of the national information networks which form part of the Reitox network and expenditure relating to contracts with the specialised centres.

5. Each year, by 15 February at the latest, the Management Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Centre for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest, together with the Centre's work programme.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget of the European Communities.

6. The budgetary authority shall determine the appropriations available for the subsidy to the Centre.

7. The budgetary authority shall adopt the establishment plan for the Centre.

8. The Management Board shall adopt the Centre's definitive budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy and the Centre's other resources.

9. The Director shall implement the budget of the Centre.

10. The Commission's internal auditor shall exercise the same powers over the Centre as over Commission departments.

11. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No . . . (*) (hereinafter "the general Financial Regulation").

12. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

13. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

14. The Management Board of the Centre shall deliver an opinion on the Centre's final accounts.

15. The Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

16. The final accounts shall be published.

17. The Centre's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

18. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director in respect of the implementation of the budget for year N.

19. The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Centre's operation and with the Commission's prior consent.

(*) OJ L . . .'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EC) No 1035/97 as regards the budgetary and financial rules applicable to the European Monitoring Centre on Racism and Xenophobia and access to the Centre's documents

(2002/C 331 E/15)

COM(2002) 406 final — 2002/0176(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 284 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 1035/97 to make Regulation (EC) No 1049/2001 applicable to the European Monitoring Centre on Racism and Xenophobia.

(5) A clause should also be included to provide a right of appeal against a refusal of access under Article 8 of Regulation (EC) No 1049/2001.

(6) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(7) Regulation (EC) No 1035/97 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1035/97 is amended as follows:

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

'(g) publish an annual report on the situation regarding racism and xenophobia in the Community, also highlighting examples of good practice, and an annual report on the Centre's own activities;'

2. The following Article 5a is inserted:

'Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Centre.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.'

3. Article 8 is amended as follows:

(a) paragraph 3(b) is replaced by the following:

'(b) adopt the two annual reports referred to in Article 2(2)(g) and its conclusions and opinions and transmit them to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Committee of the Regions; it shall ensure publication of the annual reports referred to in Article 2(2)(g); the annual report on the Centre's activities shall be transmitted by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions.'

4. Article 10(1) is replaced by the following:

'1. The Centre shall be under the authority of a Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be extended for one further period not exceeding five years.'

5. Article 12 is replaced by the following:

'*Article 12*

Budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

[1] OJ L 151, 10.6.1997, p. 1.

[2] OJ L 145, 31.5.2001, p. 43.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The revenue of the Centre shall, without prejudice to other resources, comprise:

(a) a subsidy from the Community, entered under a specific heading in the general budget of the European Communities (Commission section);

(b) payments received for services rendered;

(c) any financial contributions from the organisations referred to in Article 7;

(d) any voluntary contribution from the Member States.

4. The expenditure of the Centre shall include staff remuneration, administrative and infrastructure costs, and operating expenses, and expenses resulting from contracts entered into with the institutions and bodies belonging to the Raxen network or with third parties.

5. Each year, by 15 February at the latest, the Management Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Centre for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the Communities.

6. The budgetary authority shall determine the appropriations available for the subsidy to the Centre.

The budgetary authority shall adopt the establishment plan for the Centre.

7. The Management Board shall adopt the Centre's definitive budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy and the Centre's other resources.

8. The Director shall implement the budget of the Centre.

9. The Commission's internal auditor shall exercise the same powers over the Centre as over Commission departments.

10. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No ... (hereinafter "the general Financial Regulation").

11. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be transmitted to the European Parliament and the Council.

12. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

13. The Management Board of the Centre shall deliver an opinion on the Centre's final accounts.

14. The Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

15. The final accounts shall be published.

16. The Centre's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

17. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director in respect of the implementation of the budget for year N.

18. The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted.

They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Centre's operation and with the Commission's prior consent.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EC) No 40/94 as regards the internal audit and control systems applicable to the Office for Harmonisation in the Internal Market and access to the Office's documents

(2002/C 331 E/16)

COM(2002) 406 final — 2002/0177(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark [1], which established the Office for Harmonisation in the Internal Market, should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. With the entry into force of Council Regulation (EC, Euratom) No ... of ... on the financial regulation applicable to the general budget of the European Communities, the concept of *ex ante* financial control in the European institutions and bodies to which Article 185 of the Financial Regulation applies will be replaced by more modern control and audit systems.

(2) The Office for Harmonisation in the Internal Market should have control and audit systems comparable with those of the above-mentioned European institutions and bodies.

(3) The general principles and limits governing right of access to documents provided for in Article 255 of the EC Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(5) Appropriate provisions should therefore be included in Regulation (EC) No 40/94 to make Regulation (EC) No 1049/2001 applicable to the Office for Harmonisation in the Internal Market, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(6) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the President and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(7) Regulation (EC) No 40/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 40/94 is amended as follows:

1. The following Article 118a is inserted:

'**Access to documents**

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Office.

The Administrative Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.'

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

'2. The President's term of office shall not exceed five years. The term of office may be extended, on a proposal from the Commission after the Administrative Board has been consulted, for one further period not exceeding five years.'

In Article 120(3) the following sentence is added:

'Their term of office may be extended, on a proposal from the Commission after the Administrative Board has been consulted, for additional periods not exceeding five years each.'

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[1] OJ L 11, 14.1.1994, p. 1. Regulation amended by Regulation (EC) No 3288/94 (OJ L 349, 31.12.1994, p. 83).

[2] OJ L 145, 31.5.2001, p. 43.

3. Article 136 is replaced by the following:

'*Article 136*

Financial control

1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the President, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures.

2. The internal auditor shall advise the President on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

3. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EC) No 2062/94 as regards the budgetary and financial rules applicable to the European Agency for Safety and Health at Work and access to the Agency's documents

(2002/C 331 E/17)

COM(2002) 406 final — 2002/0178(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No 2062/94 to make Regulation (EC) No 1049/2001 applicable to the European Agency for Safety and Health at Work, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the President and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EC) No 2064/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2062/94 is amended as follows:

1. Article 6 is replaced by the following:

'*Article 6*

Access to documents

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Agency.

The Administrative Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

2. Article 10(2) is replaced by the following:

'The Administrative Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Economic and Social Committee, the Court of Auditors, the Member States and the Advisory Committee on Safety, Hygiene and Health Protection at Work.'

3. Article 11(1) is replaced by the following:

'1. The Agency shall be under the authority of a Director appointed by the Administrative Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission after the Administrative Board has been consulted, may be extended for one further period not exceeding five years.'

[1] OJ L 216, 20.8.1994, p. 1. Regulation as amended by Regulation (EC) No 1643/95 (OJ L 156, 7.6.1995, p. 1).

[2] OJ L 145, 31.5.2001, p. 43.

4. Articles 13, 14 and 15 are replaced by the following:

'*Article 13*

Estimates — Adoption of the budget

1. Each year, by 15 February at the latest, the Administrative Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget of the European Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

3. The budgetary authority shall adopt the establishment plan for the Agency.

4. The Administrative Board shall adopt the Agency's definitive budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy and the Agency's other resources.

Article 14

Implementation of the budget

1. The Director shall implement the budget of the Agency.

2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

3. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No ... (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Administrative Board for an opinion.

6. The Administrative Board of the Agency shall deliver an opinion on the Agency's final accounts.

7. The Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

8. The final accounts shall be published.

9. The Agency's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director in respect of the implementation of the budget for year N.

Article 15

Financial regulation

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.'

Article 2

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.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the budgetary and financial rules applicable to the European Food Safety Agency and access to the Agency's documents

(2002/C 331 E/18)

COM(2002) 406 final — 2002/0179(COD)

(Submitted by the Commission on 17 July 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, 95, 133 and Article 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 referred to in Article 251 of the Treaty,

Whereas:

(1) The provisions of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No 178/2002 to make Regulation (EC) No 1049/2001 applicable to the European Food Safety Authority, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Executive Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EC) No 178/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 178/2002 is amended as follows:

1. Article 25(9) is replaced by the following:

'9. The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of Council Regulation (EC, Euratom) No ... (hereinafter "the general Financial Regulation") unless specifically required for the Authority's operation and with the Commission's prior consent.'

2. The first sentence of Article 26(1) is replaced by the following:

'The Executive Director shall be appointed by the Management Board, on the basis of a list of candidates proposed by the Commission after an open competition, following publication in the Official Journal of the European Communities and elsewhere of a call for expressions of interest. This appointment shall be for a period of five years, which, on a proposal from the Commission, may be renewed for one further period not exceeding five years.'

Article 26 is amended as follows:

(a) paragraph 2(f) is replaced by the following:

'(f) the preparation of the Authority's statement of estimates of revenue and expenditure, and the execution of its budget;'

[1] OJ L 31, 1.2.2002, p. 1.

[2] OJ L 145, 31.5.2001, p. 43.

(b) Article 26(3) is replaced by the following:

'3. Each year, the Executive Director shall submit to the Management Board for approval:

(a) a draft general report covering all the activities of the Authority in the previous year;

(b) draft programmes of work.

The Executive Director shall, following adoption by the Management Board, transmit the programmes to the European Parliament, the Council, the Commission and the Member States, and shall have them published.

The Executive Director shall, following adoption by the Management Board and by no later than 15 June, transmit the Authority's general report to the European Parliament, the Council, the Commission, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and shall have it published.'

(c) Paragraph 4 is deleted.

3. Article 41 is replaced by the following:

'*Article 41*

Access to documents

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Authority.

The Management Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Authority under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.'

4. Article 43(5) is replaced by the following:

'5. By 31 March at the latest each year the Management Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Authority for the following financial year. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall be transmitted by the Management Board to the Commission and to the countries with which the Community has concluded agreements in accordance with Article 49.

On the basis of this statement of estimates, the Commission shall enter the corresponding amounts in the preliminary draft general budget of the European Communities, which it shall submit to the European Parliament and the Council (hereinafter referred to as "the budgetary authority") in accordance with Article 272 of the Treaty.

The budgetary authority shall determine the appropriations available for the subsidy to the Authority.

The budgetary authority shall adopt the establishment plan for the Authority.'

5. Article 44 is replaced by the following:

'*Article 44*

1. The Executive Director shall implement the Authority's budget.

2. The Commission's internal auditor shall exercise the same powers over the Authority as over Commission departments.

3. By 1 March at the latest following each financial year, the Authority's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Authority's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Authority's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

6. The Management Board of the Authority shall deliver an opinion on the Authority's final accounts.

7. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

8. The final accounts shall be published.

9. The Authority's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.'

Article 2

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.

Proposal for a Council Regulation amending Regulation (EEC) No 337/75 as regards the budgetary and financial rules applicable to the European Centre for the Development of Vocational Training and access to the Centre's documents and repealing Regulation (EEC) No 1416/76

(2002/C 331 E/19)

COM(2002) 406 final — 2002/0180(CNS)

(Submitted by the Commission on 17 July 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 279 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The provisions of Council Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof. Pursuant to that Article, the European Centre for the Development of Vocational Training must adopt financial rules in conformity with the framework Financial Regulation adopted by the Commission. Consequently, Council Regulation (EEC) No 1416/76 must be repealed with effect from the entry into force of the financial rules adopted by the Management Board of the Centre.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EEC) No 337/75 to make Regulation (EC) No 1049/2001 applicable to the European Centre for the Development of Vocational Training, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EEC) No 337/75 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 337/75 is amended as follows:

1. Article 6(2) is replaced by the following:

'2. The Director's term of office shall not exceed five years and may be renewed, on a proposal from the Management Board, for a single period not exceeding five years.'

2. Article 10 is replaced by the following:

'*Article 10*

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre, which shall include an establishment plan.

2. The revenue and expenditure shown in the budget shall be in balance.'

3. Article 11 is replaced by the following:

'*Article 11*

Establishment of the budget

1. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Centre for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.

[1] OJ L 145, 31.5.2001, p. 43.

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget of the European Communities.

2. The budgetary authority shall determine the appropriations available for the subsidy to the Centre.

The budgetary authority shall adopt the establishment plan for the Centre.

3. The Management Board shall adopt the Centre's budget before the beginning of the budget year, adjusting it to the subsidy granted by the budgetary authority. The budget as thus adopted shall be transmitted by the Commission to the budgetary authority.'

4. Article 12 is replaced by the following:

'*Article 12*

1. The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of Council Regulation (EC, Euratom) No ... (hereinafter "the general Financial Regulation") unless specifically required for the Authority's operation and with the Commission's prior consent.

2. The Director shall implement the budget of the Centre.

3. The Commission's internal auditor shall exercise the same powers over the Centre as over Commission departments.'

5. Article 12a is replaced by the following:

'*Article 12a*

1. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

2. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be transmitted to the European Parliament and the Council.

3. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

4. The Centre's Management Board shall deliver an opinion on the Centre's final accounts.

5. The Director of the Centre shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

6. The final accounts shall be published.

7. The Centre's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

8. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Director of the Centre in respect of the implementation of the budget for year N.'

6. The following Article 12b is inserted:

'*Article 12b*

The Management Board shall adopt the annual report on the Centre's activities and prospects, and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Economic and Social Committee and the Court of Auditors.'

7. The following Article 14a is inserted:

'*Article 14a*

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Centre.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Centre under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.'

Article 2

Regulation (EEC) No 1416/76 is repealed with effect from entry into force of the financial rules adopted by the Management Board pursuant to Article 12(1) of Regulation (EEC) No 337/75, as amended by this Regulation.

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.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No . . ./2002 of the European Parliament and of the Council concerning common rules in the field of civil aviation and creating a European Aviation Safety Agency

(2002/C 331 E/20)

COM(2002) 406 final — 2002/0181(COD)

(Submitted by the Commission on 17 July 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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

Following consultation of the Committee of the Regions,

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

Whereas:

(1) The provisions of Regulation (EC) No . . ./2002 should be harmonised with Regulation . . . on the financial regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the EC Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No . . ./2002 to make Regulation (EC) No 1049/2001 applicable to the European Aviation Safety Agency, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EC) No . . ./2002 should therefore be amended accordingly,

[1] OJ L 145, 31.5.2001, p. 43.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No . . ./2002 is amended as follows:

1. A new Article 23a is added:

'Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Agency.

The Administrative Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 by . . .

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice, under Articles 195 and 230 of the EC Treaty respectively.'

2. Paragraph 2(b) of Article 24 is replaced by the following:

'The Administrative Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.'

3. Article 30(4) is replaced by the following:

'4. The term of office of the Executive Director and of the Directors shall not exceed five years. The Executive Director's term of office may, on a proposal from the Commission, be extended for one further period not exceeding five years. The terms of office of the Directors may, on a proposal from the Commission, be extended for further periods not exceeding five years each.'

4. Article 48(3), (4), (5), (6) and (7) are replaced by the following:

'*Article 48*

3. Revenue and expenditure shall be in balance.

4. Each year the Administrative Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.

This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be transmitted by the Administrative Board to the Commission and to the States with which the Community has concluded agreements within the meaning of Article 55.

On the basis of this statement of estimates, the Commission shall enter the corresponding amounts in the preliminary draft general budget of the European Communities, which it shall submit to the European Parliament and the Council (hereinafter referred to as "the budgetary authority").

The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

On receipt of the statement of estimates, the States mentioned in the second subparagraph shall draw up their own preliminary draft budget.

After the general budget has been adopted by the budgetary authority, the Administrative Board shall adopt the Agency's final budget and work programme, adjusting them if necessary to the Community subsidy. It shall transmit them without delay to the Commission and the budgetary authority.

Any change to the budget, including the establishment plan, shall be subject to the procedure set out in this paragraph.'

5. Article 49(2), (3) and (4) are replaced by the following:

'*Article 49*

2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

3. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Administrative Board for an opinion.

6. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

7. The final accounts shall be published.

8. The Agency's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.'

6. Article 52 is replaced by the following:

'*Article 52*

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.'

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No . . . of the European Parliament and of the Council setting up a European Maritime Safety Agency

(2002/C 331 E/21)

COM(2002) 406 final — 2002/0182(COD)

(Submitted by the Commission on 17 July 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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

Following consultation of the Committee of the Regions,

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

Whereas:

(1) The provisions of Regulation (EEC) No 2002/95 should be harmonised with Regulation . . . on the financial regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No . . ./2002 to make Regulation (EC) No 1049/2001 applicable to the European Maritime Safety Agency, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Executive Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EC) No . . ./2002 should therefore be amended accordingly,

[1] OJ L 145, 31.5.2001, p. 43.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No . . ./2002 is amended as follows:

1. In Article 4, the following new paragraph 3 is added:

'3. Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Agency.

The Administrative Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 by . . .

Decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice, under Articles 195 and 230 of the EC Treaty respectively.'

2. Article 10(2)(b) is replaced by the following:

'The Administrative Board shall adopt the annual report on the Agency's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.'

3. Article 16(2) is replaced by the following.

'2. The term of office of the Executive Director shall not exceed five years. This term of office may, on a proposal from the Commission, be extended for one further period not exceeding five years.'

4. Article 18(5) is replaced by the following:

'*Article 18*

5. Each year the Administrative Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.

This statement of estimates, which shall include a draft establishment plan, shall by 31 March at the latest be transmitted by the Administrative Board to the Commission and to the States with which the Community has concluded agreements within the meaning of Article 54.

On the basis of this statement of estimates, the Commission shall enter the corresponding amounts in the preliminary draft general budget of the European Communities, which it shall submit to the Council and the European Parliament (hereinafter referred to as "the budgetary authority") in accordance with Article 272 of the Treaty.

The budgetary authority shall determine the appropriations available for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.'

5. Article 19(2), (3) and (4) are replaced by the following:

'*Article 19*

2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.

3. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year.

5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and transmit them to the Administrative Board for an opinion.

6. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.

7. The final accounts shall be published.

8. The Agency's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.'

6. Article 21 is replaced by the following:

'*Article 21*

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Agency's operation and with the Commission's prior consent.'

Proposal for a Council Decision on the signing and conclusion on behalf of the European Community of the International Cocoa Agreement 2001

(2002/C 331 E/22)

COM(2002) 438 final — 2002/0190(ACC)

(Submitted by the Commission on 30 July 2002)

EXPLANATORY MEMORANDUM

On 2 March 2001, during its second session in Geneva, the conference organised by UNCTAD to negotiate a successor to the International Cocoa Agreement 1993, as extended, approved a new text. The current Agreement is to remain in force until 30 September 2003 at the latest.

In the discussions the Community negotiated on the basis of the negotiating mandate and directives proposed by the Commission and approved by the Council on 6 September 2000.

In the light of the discussions and the content of the new instrument, which reflects the Community's position, the Commission considers the International Cocoa Agreement 2001 should be signed and the instrument of approval deposited with the Treaty Section of the United Nations in New York.

From a strictly legal viewpoint it should be noted that, although they are trade agreements covered by Article 133 of the Treaty establishing the European Community, commodity agreements such as this have been concluded by the Community jointly with the Member States under the arrangement between the Council and the Commission known as PROBA 20.

In this case, since the international agreement in question expressly excludes a financial instrument supported by the Members, and the Member States' contributions to the operating budget of the International Cocoa Organisation cannot in themselves justify the Member States' participation in the conclusion of the Agreement, the new Agreement 2001 should be concluded by the Community.

Consequently, under Article 133 of the Treaty establishing the European Community, this recommendation is for a decision authorising the Commission to conclude, on behalf of the Community, the International Cocoa Agreement 2001.

Under Article 58(3) of the International Cocoa Agreement 2001, the instrument of acceptance should be signed and lodged as soon as possible, preferably before 1 September 2002. The Council is therefore requested to adopt this decision before that deadline.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) On 2 March 2001 the UNCTAD negotiating conference formally approved the text of the International Cocoa Agreement 2001.

(2) This new agreement has been negotiated to replace the International Cocoa Agreement 1993, as extended, which will remain in force until 30 September 2003 at the latest.

(3) The International Cocoa Agreement 2001 is open for signature and deposit of the instruments of ratification, acceptance or approval.

(4) The Community is a member of the 1993 International Agreement, as extended, and it is therefore in its interest to approve the agreement which succeeds it,

HAS DECIDED AS FOLLOWS:

Article 1

The International Cocoa Agreement 2001 is hereby approved on behalf of the European Community. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is authorised to designate the person authorised to sign the agreement and deposit the instrument of approval on behalf of the Community.

PART ONE

OBJECTIVES AND DEFINITIONS

CHAPTER I

OBJECTIVES

Article 1

Objectives

1. The objectives of the Sixth International Cocoa Agreement are:

(a) To promote international cooperation in the world cocoa economy;

(b) To provide an appropriate framework for the discussion of all matters relating to all sectors thereof;

(c) To contribute to the strengthening of the national cocoa economies of Member countries, in particular through the preparation of appropriate projects to be submitted to the relevant institutions for financing and implementation;

(d) To contribute to a balanced development of the world cocoa economy in the interest of all Members through appropriate measures, including:

(i) Promoting a sustainable cocoa economy;

(ii) Promoting research and the implementation of its findings;

(iii) Promoting transparency in the world cocoa economy through the collection, analysis and dissemination of relevant statistics and undertaking of appropriate studies; and

(iv) Promoting and encouraging consumption of chocolate and cocoa-based products in order to increase demand for cocoa in close cooperation with the private sector.

2. In pursuing these objectives, Members shall, within the appropriate framework, encourage the greater participation of the private sector in the work of the Organization.

CHAPTER II

DEFINITIONS

Article 2

Definitions

For the purposes of this Agreement:

1. *Cocoa* means cocoa beans and cocoa products;

2. *Cocoa products* means products made exclusively from cocoa beans, such as cocoa paste/liquor, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs, as well as any other products containing cocoa as the Council may determine;

3. *Cocoa year* means the period of 12 months from 1 October to 30 September inclusive;

4. *Contracting party* means a Government, or an intergovernmental organization as provided for in article 4, which has consented to be bound by this Agreement provisionally or definitively;

5. *Council* means the International Cocoa Council referred to in article 6;

6. *Daily price* is the representative indicator of the international price of cocoa used for the purposes of this Agreement and computed in accordance with the provisions of article 40;

7. *Entry into* force means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively;

8. *Exporting country* or *exporting Member* means a country or a Member respectively whose exports of cocoa, expressed in terms of beans, exceed its imports. However, a country whose imports of cocoa, expressed in terms of beans, exceed its exports but whose production exceeds its imports may, if it so chooses, be an exporting Member;

9. *Export of cocoa* means any cocoa which leaves the customs territory of any country and import of cocoa means any cocoa which enters the customs territory of any country; provided that, for the purposes of these definitions, customs territory shall, in the case of a Member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that Member;

10. *Fine or flavour cocoa* is cocoa recognized for its unique flavour and colour, and produced in countries designated in annex C of this Agreement;

11. *Importing country* or *importing Member* means a country or a Member respectively whose imports of cocoa, expressed in terms of beans, exceed its exports;

12. *Member* means a Contracting Party as defined above;

13. *Organization* means the International Cocoa Organization referred to in article 5;

14. *Private sector* comprises all private sector entities which have main activities in the cocoa sector, including farmers, traders, processors, manufacturers and research institutes. In the framework of this Agreement, the private sector also comprises public enterprises, agencies and institutions which, in certain countries, fulfil roles that are performed by private entities in other countries;

15. *Producing country* means a country which grows cocoa in commercially significant quantities;

16. *Simple distributed majority vote* means a majority of votes cast by exporting Members and a majority of votes cast by importing Members, counted separately;

17. *Special Drawing Right (SDR)* means the Special Drawing Right of the International Monetary Fund;

18. *Special vote* means two thirds of the votes cast by exporting Members and two thirds of the votes cast by importing Members, counted separately, on condition that at least five exporting Members and a majority of importing Members are present;

19. *Sustainable cocoa economy* is a system in which all stakeholders maintain productivity at levels that are economically viable, ecologically sound and culturally acceptable through the efficient management of resources;

20. *Tonne* means a mass of 1 000 kilograms or 2 204,6 pounds and pound means 453,597 grams;

21. *Stocks of cocoa beans* means all dry cocoa beans that can be identified as at the last day of the cocoa year (30 September), irrespective of location, ownership or intended use.

PART TWO

CONSTITUTIONAL PROVISIONS

CHAPTER III

MEMBERSHIP

Article 3

Membership in the Organization

1. Each Contracting Party shall be a Member of the Organization.

2. There shall be two categories of Members of the Organization, namely:

(a) Exporting Members; and

(b) Importing Members.

3. A Member may change its category on such conditions as the Council may establish.

Article 4

Membership by intergovernmental organizations

1. Any reference in this Agreement to 'a Government' or 'Governments' shall be construed as including the European Union and any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

2. In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with article 10. In such cases, the member States of such intergovernmental organizations shall not exercise their individual voting rights.

3. Such organizations may participate in the Executive Committee on matters within their competence.

CHAPTER IV

ORGANIZATION AND ADMINISTRATION

Article 5

Establishment, headquarters and structure of the International Cocoa Organization

1. The International Cocoa Organization established by the International Cocoa Agreement, 1972, shall continue in being and shall administer the provisions and supervise the operation of this Agreement.

2. The Organization shall function through:

(a) The International Cocoa Council and its subsidiary bodies; and

(b) The Executive Director and other staff.

3. The headquarters of the Organization shall be in London unless the Council, by special vote, decides otherwise.

Article 6

Composition of the International Cocoa Council

1. The highest authority of the Organization shall be the International Cocoa Council, which shall consist of all the Members of the Organization.

2. Each Member shall be represented on the Council by a representative and, if it so desires, by one or more alternates. Each Member may also appoint one or more advisers to its representative or alternates.

Article 7

Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement.

2. The Council shall not have power, and shall not be taken to have been authorized by the Members, to incur any obligation outside the scope of this Agreement; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and of article 24 in such a way as to bring them to the notice of the other parties entering into contracts with the Council, but any failure to incorporate such terms shall not invalidate such a contract or render it *ultra vires* the Council.

3. The Council may at any time, by special vote, delegate any of its powers to the Executive Committee, except the following:

(a) Redistribution of votes under article 10;

(b) Approval of the administrative budget and assessment of contributions under article 25;

(c) Revision of the list of producers of fine or flavour cocoa under article 46;

(d) Relief from obligations under article 47;

(e) Decision of disputes under article 50;

(f) Suspension of rights under paragraph 3 of article 51;

(g) Establishment of conditions for accession under article 56;

(h) Exclusion of a Member under article 61;

(i) Extension or termination of this Agreement under article 63; and

(j) Recommendation of amendments to Members under article 64.

4. The Council may, by special vote, decide on other exceptions in paragraph 3 above. It may revoke any delegation of power under paragraph 3 above by the same vote.

5. The Council shall, by special vote, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith, including its rules of procedure and those of its committees, and the financial and staff regulations of the Organization. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

6. The Council shall keep such records as are required for the performance of its functions under this Agreement, and such other records as it considers appropriate.

7. The Council may set up any working group(s) as appropriate to assist it in carrying out its task.

Article 8

Chairman and Vice-Chairman of the Council

1. The Council shall elect a Chairman and a first and second Vice-Chairman for each cocoa year, who shall not be paid by the Organization.

2. Both the Chairman and the first Vice-Chairman shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members and the second Vice-Chairman from among the representatives of the other category. These offices shall alternate each cocoa year between the two categories.

3. In the temporary absence of both the Chairman and the two Vice-Chairmen or the permanent absence of one or more of them, the Council may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required.

4. Neither the Chairman nor any other officer presiding at meetings of the Council shall vote. His or her alternate may exercise the voting rights of the Member which he or she represents.

Article 9

Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.

2. The Council shall meet in special session whenever it so decides or at the request of:

(a) Any five Members;

(b) A Member or Members having at least 200 votes;

(c) The Executive Committee; or

(d) The Executive Director, for the purposes of articles 23 and 60.

3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency.

4. Sessions shall be held at the headquarters of the Organization unless the Council, by special vote, decides otherwise. If, on the invitation of any Member, the Council meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved.

Article 10

Votes

1. The exporting Members shall together hold 1 000 votes and the importing Members shall together hold 1 000 votes, distributed within each category of Members — that is, exporting and importing Members, respectively — in accordance with the following paragraphs of this article.

2. For each cocoa year, the votes of exporting Members shall be distributed as follows: each exporting Member shall have five basic votes. The remaining votes shall be divided among all the exporting Members in proportion to the average volume of their respective exports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, exports shall be calculated as net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 41.

3. For each cocoa year, the votes of importing Members shall be distributed as follows: 100 shall be divided equally to the nearest whole vote for each Member. The remaining votes shall be distributed on the basis of the percentage which the average of each importing Member's annual imports, in the preceding three cocoa years for which final figures are available in the Organization, represents in the total of the averages for all the importing Members. For this purpose, imports shall be calculated as net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 41.

4. If, for any reason, difficulties should arise in the determination or the updating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this article, the Council may, by special vote, decide on a different statistical basis for the calculation of votes.

5. No Member shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this article shall be redistributed among the other Members on the basis of those paragraphs.

6. When the membership in the Organization changes or when the voting rights of a Member are suspended or restored under any provision of this Agreement, the Council shall provide for the redistribution of votes in accordance with this article.

7. There shall be no fractional votes.

Article 11

Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this article.

2. By written notification to the Chairman of the Council, any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in paragraph 5 of article 10 shall not apply.

3. A Member authorized by another Member to cast the votes held by the authorizing Member under article 10 shall cast such votes in accordance with the instructions of the authorizing Member.

Article 12

Decisions of the Council

1. All decisions of the Council shall be taken, and all recommendations shall be made, by a simple distributed majority vote unless this Agreement provides for a special vote.

2. In arriving at the number of votes necessary for any of the decisions or recommendations of the Council, votes of Members abstaining shall not be taken into consideration.

3. The following procedure shall apply with respect to any action by the Council which under this Agreement requires a special vote:

(a) If the required majority is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall, if the Council so decides by a simple distributed majority vote, be put to a vote again within 48 hours;

(b) If the required majority is again not obtained because of the negative vote of two or less exporting or two or less importing Members, the proposal shall, if the Council so decides by a simple distributed majority vote, be put to a vote again within 24 hours;

(c) If the required majority is not obtained in the third vote because of the negative vote cast by one exporting or one importing member, the proposal shall be considered adopted; or

(d) If the Council fails to put a proposal to a further vote, it shall be considered rejected.

4. Members undertake to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 13

Cooperation with other organizations

1. The Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development, and with the Food and Agriculture Organization of the United Nations and such other specialized agencies of the United Nations and intergovernmental organizations as may be appropriate.

2. The Council, bearing in mind the particular role of the United Nations Conference on Trade and Development in international commodity trade, shall, as appropriate, keep that organization informed of its activities and programmes of work.

3. The Council may also make whatever arrangements are appropriate for maintaining effective contact with international organizations of cocoa producers, traders and manufacturers.

4. The Council shall seek to involve the international financial agencies and other parties with an interest in the world cocoa economy in its work on cocoa production and consumption policy.

Article 14

Admission of observers

1. The Council may invite any non-member State to attend any of its meetings as an observer.

2. The Council may also invite any of the organizations referred to in article 13 to attend any of its meetings as an observer.

Article 15

Composition of the Executive Committee

1. The Executive Committee shall consist of ten exporting Members and ten importing Members. If, however, either the number of exporting Members or the number of importing Members in the Organization is less than ten, the Council may, while maintaining parity between the two categories of Members, decide, by special vote, the total number on the Executive Committee. Members of the Executive Committee shall be elected for each cocoa year in accordance with article 16 and may be re-elected.

2. Each elected member shall be represented on the Executive Committee by a representative and, if it so desires, by one or more alternates. Each such member may also appoint one or more advisers to its representative or alternates.

3. The Chairman and Vice-Chairman of the Executive Committee, elected for each cocoa year by the Council, shall both be chosen from among the representatives of the exporting Members or from among the representatives of the importing Members. These offices shall alternate each cocoa year between the two categories of Members. In the temporary or permanent absence of the Chairman and the Vice-Chairman, the Executive Committee may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required. Neither the Chairman nor any other officer presiding at meetings of the Executive Committee may vote. His or her alternate may exercise the voting rights of the Member which he or she represents.

4. The Executive Committee shall meet at the headquarters of the Organization unless, by special vote, it decides otherwise. If, on the invitation of any Member, the Executive Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved.

Article 16

Election of the Executive Committee

1. The exporting and importing Members of the Executive Committee shall be elected in the Council by the exporting and importing Members respectively. The election within each category shall be held in accordance with paragraphs 2 and 3 of this article.

2. Each Member shall cast all the votes to which it is entitled under article 10 for a single candidate. A Member may cast for another candidate any votes which it is authorized to cast under paragraph 2 of article 11.

3. The candidates receiving the largest number of votes shall be elected.

Article 17

Voting procedure and decisions of the Executive Committee

1. Each Member of the Executive Committee shall be entitled to cast the number of votes received by it under the provisions of article 16, and no member of the Executive Committee shall be entitled to divide its votes.

2. Without prejudice to the provisions of paragraph 1 of this article and by written notification to the Chairperson, any exporting or importing Member which is not a Member of the Executive Committee and which has not cast its votes under paragraph 2 of article 16 for any of the members elected may authorize any exporting or importing Member of the Executive Committee, as appropriate, to represent its interests and to cast its votes in the Executive Committee.

3. In the course of any cocoa year a Member may, after consultation with the Member of the Executive Committee for which it voted under article 16, withdraw its votes from that member. The votes thus withdrawn may be reassigned to another exporting or importing Member of the Executive Committee, as appropriate, but may not be withdrawn from this Member for the remainder of that cocoa year. The Member of the Executive Committee from which the votes have been withdrawn shall nevertheless retain its seat on the Executive Committee for the remainder of that cocoa year. Any action taken pursuant to the provisions of this paragraph shall become effective after the Chairman has been informed in writing thereof.

4. Any decisions taken by the Executive Committee shall require the same majority as that decision would require if taken by the Council.

5. Any Member shall have the right of appeal to the Council against any decision of the Executive Committee. The Council shall prescribe, in its rules of procedure, the conditions under which such appeal may be made.

Article 18

Competence of the Executive Committee

1. The Executive Committee shall be responsible to, and work under the general direction of, the Council.

2. The Executive Committee shall follow up the administrative, financial and structural matters of the Organization, in particular:

(a) Examine the draft annual work programme of the Organization for submission to the Council for approval;

(b) Consider and evaluate the report presented by the Executive Director on the implementation of the work programme and the list of priorities;

(c) Review and recommend annual administrative budgets;

(d) Monitor the execution of the budget; in particular, analyse revenues and expenses;

(e) Assist the Council in the appointment of the Executive Director and senior officials of the Organization;

(f) Approve projects for financing by the Common Fund for Commodities and other donor organizations between Council sessions.

Article 19

Quorum for the Council and the Executive Committee

1. The quorum for the opening meeting of any session of the Council shall be constituted by the presence of at least five exporting Members and a majority of importing Members, provided that such Members together hold in each category at least two thirds of the total votes of the Members in that category.

2. If there is no quorum in accordance with paragraph 1 of this article on the day appointed for the opening meeting of any session, on the second day, and throughout the remainder of the session, the quorum for the opening session shall be constituted by the presence of exporting and importing Members holding a simple majority of the votes in each category.

3. The quorum for meetings subsequent to the opening meeting of any session pursuant to paragraph 1 of this article shall be that prescribed in paragraph 2 of this article.

4. Representation in accordance with paragraph 2 of article 11 shall be considered as presence.

5. The quorum for the opening meeting of any session of the Executive Committee shall be constituted by the presence of at least four exporting Members and four importing Members, provided that such Members together hold in each category at least the simple majority of the votes of the Members in that category.

Article 20

The staff of the Organization

1. The Council shall appoint the Executive Director by special vote for a period of not more than the duration of the Agreement and its extensions, if any. The rules for selection of candidates and the terms of appointment of the Executive Director shall be fixed by the Council.

2. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.

3. The staff of the Organization shall be responsible to the Executive Director.

4. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. In drawing up such regulations, the Council shall have regard to those applying to officials of similar intergovernmental organizations. Staff appointments shall be made in so far as is practicable from exporting and importing Members.

5. Neither the Executive Director nor the staff shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.

6. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

7. No information concerning the operation or administration of this Agreement shall be revealed by the Executive Director or the staff of the Organization, except as may be authorized by the Council or as is necessary for the proper discharge of their duties under this Agreement.

Article 21

Work Programme

1. At its last session of each cocoa year, and on the recommendation of the Executive Committee, the Council shall adopt a work programme for the Organization for the coming year prepared by the Executive Director. The work programme shall include projects, initiatives and activities to be undertaken by the Organization in the following cocoa year. The Executive Director shall implement the work programme.

2. During its last meeting of each cocoa year, the Executive Committee shall evaluate the implementation of the work programme for the current year on the basis of a report by the Executive Director. The Executive Committee shall report its findings to the Council.

3. At its first session under this Agreement and on the recommendation of the Executive Committee, the Council shall adopt a list of priorities for the duration and in accordance with the objectives of the Agreement. This list shall serve as the basis for the elaboration of the yearly work programme. During the last meeting of each cocoa year the Executive Committee shall, on the basis of a report by the Executive Director, review and update this list of priorities with particular emphasis on the following year.

CHAPTER V

PRIVILEGES AND IMMUNITIES

Article 22

Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, its Executive Director, its staff and experts and of representatives of Members whilst in the territory of the United Kingdom of Great Britain and Northern Ireland for the purpose of exercising their functions, shall continue to be governed by the Headquarters Agreement concluded between the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the host Government) and the International Cocoa Organization in London on 26 March 1975, with such amendments as are necessary for the proper functioning of this Agreement.

3. If the headquarters of the Organization is moved to another country, the new host Government shall, as soon as possible, conclude with the Organization a headquarters agreement to be approved by the Council.

4. The Headquarters Agreement referred to in paragraph 2 of this article shall be independent of this Agreement. It shall, however, terminate:

(a) By agreement between the host Government and the Organization;

(b) In the event of the headquarters of the Organization being moved from the territory of the host Government; or

(c) In the event of the Organization ceasing to exist.

5. The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

PART THREE

FINANCIAL PROVISIONS

CHAPTER VI

FINANCE

Article 23

Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with article 25. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.

2. The Council may establish separate accounts for specific purposes that it may establish in accordance with the objectives of the present Agreement. These accounts shall be financed through voluntary contributions from Members or other bodies.

3. The financial year of the Organization shall be the same as the cocoa year.

4. The expenses of delegations to the Council, to the Executive Committee and to any of the Committees of the Council or of the Executive Committee shall be met by the Members concerned.

5. If the financial position of the Organization is or appears likely to be, insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 20 working days unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 24

Liabilities of Members

A Member's liability to the Council and to other Members is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Council shall be deemed to have notice of the provisions of this Agreement regarding the powers of the Council and the obligations of the Members, in particular, paragraph 2 of article 7 and the first sentence of this article.

Article 25

Approval of the administrative budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the administrative budget of the Organization for the following financial year, and shall assess the contribution of each Member to that budget.

2. The contribution of each Member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the Members. For the purpose of assessing contributions, the votes of each Member shall be calculated without regard to the suspension of any Member's voting rights and any redistribution of votes resulting therefrom.

3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by that Member and the period remaining in the current financial year, but the assessment made upon other Members for the current financial year shall not be altered.

4. If this Agreement enters into force before the beginning of the first full financial year, the Council shall, at its first session, approve an administrative budget covering the period up to the commencement of the first full financial year.

Article 26

Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organization shall be due on the date on which they become Members.

2. Contributions to the administrative budget approved under paragraph 4 of article 25 shall be payable within three months of the date of assessment.

3. If, at the end of five months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member has not paid its full contribution to the administrative budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council and the Executive Committee shall be suspended until such time as it has made full payment of the contribution.

4. A Member whose voting rights have been suspended under paragraph 3 of this article shall not be deprived of any of its other rights or relieved of any of its obligations under this Agreement unless the Council, by special vote, decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations under this Agreement.

5. The Council shall consider the question of membership of any Member with two years' contributions unpaid, and by special vote may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations under this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 27

Audit and publication of accounts

1. As soon as possible, but not later than six months after the close of each financial year, the statement of the Organization's accounts for that financial year and the balance sheet at the close of that financial year under the accounts referred to in article 23 shall be audited. The audit shall be carried out by an independent auditor of recognized standing in cooperation with two qualified auditors from Member Governments, one from exporting Members and one from importing Members, to be elected by the Council for each financial year. The auditors from Member Governments shall not be paid by the Organization for their professional services. However, travel and subsistence costs may be reimbursed by the Organization under terms and conditions to be determined by the Council.

2. The terms of appointment of the independent auditor of recognized standing, as well as the intentions and objectives of the audit, shall be laid down in the financial regulations of the Organization. The audited statement of the Organization's accounts and the audited balance sheet shall be presented to the Council at its next regular session for approval.

3. A summary of the audited accounts and balance sheet shall be published.

Article 28

Relationship with the Common Fund and with other multilateral and bilateral donors

1. The Organization shall take full advantage of the facilities of the Common Fund for Commodities in order to assist in the preparation and financing of projects of interest to the cocoa economy.

2. The Organization shall endeavour to cooperate with other international organizations, as well as with multilateral and bilateral donor agencies, in order to obtain financing for programmes and projects of interest to the cocoa economy as appropriate.

3. Under no circumstances shall the Organization undertake any financial obligations related to projects, either on its own behalf or in the name of Members. No Member of the Organization shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

Article 29

Role of the Organization concerning projects

1. The Organization shall endeavour to assist Members in preparing projects of interest to the cocoa economy, to be financed by other agencies or bodies.

2. In exceptional cases, the Council shall approve the involvement of the Organization in the implementation of approved projects. Under no circumstances shall this involvement bring about any additional costs for the administrative budget of the Organization.

CHAPTER VII

THE CONSULTATIVE BOARD ON THE WORLD COCOA ECONOMY

Article 30

Establishment of the Consultative Board on the World Cocoa Economy

1. The Council shall establish the Consultative Board on the World Cocoa Economy with a view to encouraging the active participation of experts from the private sector, as defined in article 2 of this Agreement, in the work of the Organization and to promoting a continuous dialogue among experts from the public and private sectors.

2. The Board shall be a consultative body which may make recommendations to the Council on any matter within the scope of this Agreement.

Article 31

Composition of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall be composed of experts from all sectors of the cocoa economy, such as:

(a) Associations from the trade and industry;

(b) National and regional cocoa producer organizations, from both the public and private sectors;

(c) National cocoa exporter organizations;

(d) Cocoa research institutes; and

(e) Other private sector associations or institutions having an interest in the cocoa economy.

2. These experts shall act in their personal capacity or on behalf of their respective associations.

3. Members of the Organization may participate as observers.

4. The Board shall be composed of seven members from exporting countries and seven members from importing countries as defined in paragraph 1 of this article, appointed by the Council every two cocoa years. The members may designate one or more alternates and advisers. In the light of the experience of the Board, the Council may increase the number of members of the Board.

5. The Board may also invite eminent experts or personalities of high standing in a specific field, from the public and private sectors, to participate in its work.

6. The Chairman of the Board shall be chosen from among its members. The chairmanship shall alternate between exporting and importing countries every two cocoa years.

7. Upon its establishment, the Consultative Board shall draw up its own rules and recommend them for adoption by the Council.

Article 32

Mandate of the Consultative Board of the World Cocoa Economy

1. The Board, acting in an advisory capacity, shall *inter alia*:

(a) Contribute to the development of a sustainable cocoa economy;

(b) Identify threats to supply and demand and propose actions to meet the challenges;

(c) Facilitate the exchange of information on production, consumption and stocks; and

(d) Advise on other cocoa-related matters within the scope of the Agreement.

2. The Board may set up *ad hoc* working groups to assist in fulfilling its mandate provided that their operating costs have no budgetary implications for the Organization.

3. The Executive Director shall assist the Board as appropriate.

Article 33

Meetings of the Consultative Board on the World Cocoa Economy

1. As a general rule, the Board shall meet twice a year at the headquarters of the Organization at the same time as the regular sessions of the Council. The Board may hold additional meetings with the approval of the Council.

2. When the Council accepts an invitation by a Member to hold a meeting in its territory, the Board shall meet in that territory. In this case, the additional costs involved, above those incurred when the meeting is held at the headquarters of the Organization, shall be borne by that Member.

3. The Chairman of the Board shall establish the agendas for its meetings in liaison with the Executive Director.

4. The Board shall report regularly to the Council on its proceedings.

PART FOUR

MARKET-RELATED PROVISIONS

CHAPTER VIII

SUPPLY AND DEMAND

Article 34

Market Committee

1. In order to contribute to the greatest possible growth of the cocoa economy and the balanced development of production and consumption so as to secure a sustainable equilibrium between supply and demand, the Council shall establish a Market Committee composed of all exporting and importing Members. The aim of the Committee shall be to review trends and prospects of cocoa production and consumption, stocks and prices, and to identify market imbalances at an early stage as well as obstacles to the expansion of cocoa consumption in both exporting and importing countries.

2. At its first session after the start of a new cocoa year, the Market Committee shall examine annual forecasts of world production and consumption for the next five cocoa years. The Executive Director shall provide the data necessary for the preparation of these forecasts. The forecasts provided shall be reviewed and revised, if necessary, every year.

3. The Executive Director shall also present, for illustrative purposes only, various scenarios based on indicative figures for annual levels of global production necessary to achieve and maintain equilibrium between supply and demand at given levels of real prices. The factors to be taken into consideration shall include the expected variations in production and consumption in accordance with movements in real prices and the estimated variations in stock levels.

4. On the basis of these forecasts, and in order to deal with the problems of market imbalances in the medium and long term, the exporting Members may undertake to coordinate their national production policies.

5. All Members shall endeavour to encourage cocoa consumption in their countries. Each Member shall be responsible for the means and methods it employs for that purpose. In particular, all Members shall endeavour to remove or reduce substantial domestic obstacles to the expansion of cocoa consumption. In this regard, Members shall regularly provide the Executive Director with information on pertinent domestic regulations and measures and with other information concerning cocoa consumption, including domestic taxes and customs tariffs.

6. The Committee shall submit detailed reports to each regular session of the Council, on the basis of which the Council shall review the general situation, in particular assessing the movement of global supply and demand in the light of the provisions of this article. The Council may make recommendations to Members on the basis of this assessment.

7. The Committee shall draw up its own rules and regulations.

8. The Executive Director shall assist the Committee as required.

Article 35

Market transparency

1. In order to promote market transparency, the Organization shall maintain up-to-date information on Members' grindings, consumption, production, exports (including re-exports) and imports of cocoa and cocoa products and stocks. For this purpose, in so far as possible, Members shall provide the Executive Director with the relevant statistics within a reasonable time and in as detailed and accurate a manner as is practicable.

2. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.

3. The Council shall take such additional measures as it deems necessary to deal with non-compliance with the provisions of this article.

4. The Council shall make appropriate arrangements for the regular collection of other information that it considers relevant for the monitoring of market developments and assessing current and potential cocoa production and consumption capacity.

Article 36

Stocks

1. In order to promote transparency in the market with regard to levels of world cocoa stocks, each Member shall assist the Executive Director in obtaining information on the volume of cocoa stocks in its country. In so far as is possible, Members shall provide the Executive Director, by not later than the end of May, with information on stocks of cocoa held in their respective countries as at the end of the previous cocoa year in as detailed, timely and accurate a manner as is practicable.

2. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information on stocks required by the Council for the proper functioning of the Organization, the Council may require the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.

3. The Executive Director shall seek the full cooperation of the private sector in this exercise, whilst fully respecting the issues of commercial confidentiality associated with this information.

4. The information shall pertain to stocks of cocoa beans.

5. The Executive Director shall make an annual report to the Market Committee on the information received on the levels of cocoa stocks worldwide.

Article 37

Promotion

1. Members undertake to encourage the consumption of chocolate and cocoa-based products in order to increase demand for cocoa by all possible means.

2. To achieve this purpose, the Council shall establish a Promotion Committee to promote cocoa consumption.

3. The Committee shall be open to all Members of the Organization.

4. The Committee shall operate and through the Executive Director administer a Promotion Fund which shall be used solely to finance promotion campaigns, to sponsor research and studies related to the consumption of cocoa and to cover associated administrative expenses.

5. The Committee shall seek the collaboration of the private sector for the implementation of its activities.

6. The promotion activities of the Committee shall be financed by resources which may be pledged by Members, non-Members, other organizations and the private sector. Private sector participants or institutions may also contribute to the promotion programmes in accordance with modalities to be established by the Committee.

7. All decisions of the Committee related to promotion campaigns and activities shall be taken by Members contributing to the Fund.

8. The Committee shall seek the approval of a country before conducting a promotion campaign in the territory of that country.

9. The Committee shall draw up its own rules and regulations, and shall report regularly to the Council.

10. The Executive Director shall assist the Committee as required.

Article 38

Cocoa substitutes

1. Members recognize that the use of substitutes may have negative effects on the expansion of cocoa consumption and the development of a sustainable cocoa economy. In this regard, Members shall take full account of the recommendations and decisions of competent international bodies.

2. The Executive Director shall make regular reports to the Market Committee on the development of the situation. On the basis of these reports, the Market Committee shall assess the situation and, if necessary, make recommendations to the Council for appropriate decisions.

CHAPTER IX

DEVELOPMENT OF A SUSTAINABLE COCOA ECONOMY

Article 39

Sustainable cocoa economy

1. Members shall give due consideration to the sustainable management of cocoa resources in order to provide fair economic returns to all stakeholders in the cocoa economy, bearing in mind the principles and objectives of sustainable development contained in Agenda 21, adopted by the United Nations Conference on Environment and Development (UNCED) on 14 June 1992.

2. The Organization shall serve as a focal point for a permanent dialogue among all stakeholders as appropriate to foster the development of a sustainable cocoa economy.

3. The Council shall adopt and periodically review programmes and projects related to a sustainable cocoa economy and in accordance with paragraph 1 of this Article.

4. In doing so, the Council shall coordinate with other bodies as necessary in order to avoid duplication of effort.

CHAPTER X

MARKET-MONITORING PROVISIONS

Article 40

Daily price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish a daily price of cocoa beans. This price shall be expressed in Special Drawing Rights (SDRs) per tonne.

2. The daily price shall be the average taken daily of the quotations for cocoa beans of the nearest three active future trading months on the London International Financial Futures and Options Exchange (LIFFE) and on the Board of Trade of the City of New York at the time of the London close. The London prices shall be converted into United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States dollar-denominated average of the London and New York prices shall be converted into its SDR equivalent at the appropriate daily official United States dollar/SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.

3. The Council may, by special vote, decide on any other method of computing the daily price if it considers such other method to be more satisfactory than that prescribed in this article.

Article 41

Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste/liquor and nibs 1.25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.

2. The Council may, by special vote, revise the conversion factors in paragraph 1 of this article.

CHAPTER XI

INFORMATION, STUDIES AND RESEARCH

Article 42

Information

1. The Organization shall act as a global information centre for the efficient collection, collation, exchange and dissemination of information on all factors relating to cocoa and cocoa products. Such information shall include:

(a) Statistical information on world production, prices, exports and imports, consumption and stocks of cocoa;

(b) In so far as is considered appropriate, technical information on the cultivation, marketing, transportation, processing, utilization and consumption of cocoa; and

(c) Information on government policies, taxation, national standards, regulations and legislation relating to cocoa.

2. The Council shall at appropriate times, but not less than twice in any cocoa year, publish estimates of production of cocoa beans and grindings for that cocoa year.

Article 43

Studies

The Council shall, to the extent it considers necessary, promote studies of the economics of cocoa production and distribution, including trends and projections, the impact of governmental measures in exporting and importing countries on the production and consumption of cocoa, the opportunities for expansion of cocoa consumption for traditional and possible new uses, and the effects of the operation of this Agreement on exporters and importers of cocoa, including their terms of trade. It may submit recommendations to Members on the subject of these studies. In the promotion of these studies, the Council may cooperate with international organizations and other appropriate institutions and the private sector. The Council may also promote studies likely to contribute to greater market transparency.

Article 44

Scientific research and development

The Council shall encourage and promote scientific research and development in the areas of cocoa production, transportation, processing and consumption as well as the dissemination and practical application of the results obtained in this field. To this end, the Organization may cooperate with international organizations, research institutions and the private sector.

Article 45

Annual report

The Council shall publish an Annual Report.

PART FIVE

OTHER PROVISIONS

CHAPTER XII

FINE OR FLAVOUR COCOA

Article 46

Fine or flavour cocoa

1. The Council shall, at its first session following the entry into force of this Agreement, review annex C of this Agreement and, if necessary, revise it by special vote, determining the proportions in which the countries listed therein produce and export exclusively or partially fine or flavour cocoa. Thereafter, the Council may at any time during the lifetime of this Agreement review annex C and, if necessary, revise it by special vote. The Council shall seek expert advice on this matter, as appropriate.

2. The Market Committee may make proposals for the Organization to devise and implement a system of statistics on production of and trade in fine or flavour cocoa.

3. Giving due consideration to the importance of fine or flavour cocoa, Members shall examine, and adopt as appropriate, projects relating to fine or flavour cocoa in accordance with the provisions of articles 37 and 39.

CHAPTER XIII

RELIEF FROM OBLIGATIONS AND DIFFERENTIAL AND REMEDIAL MEASURES

Article 47

Relief from obligations in exceptional circumstances

1. The Council may, by special vote, relieve a Member of an obligation on account of exceptional or emergency circumstances, *force majeure*, or international obligations under the Charter of the United Nations for territories administered under the trusteeship system.

2. The Council, in granting relief to a Member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the Member is relieved of the obligation and the reasons for which the relief is granted.

3. Notwithstanding the foregoing provisions of this article, the Council shall not grant relief to a Member in respect of the obligation under article 26 to pay contributions, or the consequences of a failure to pay them.

4. The basis for the calculation of the distribution of votes of an exporting Member, for which the Council has recognized a case of *force majeure*, shall be the effective volume of its exports for the year in which the *force majeure* occurred and subsequently for the ensuing three years following the *force majeure*.

Article 48

Differential and remedial measures

Developing importing Members, and least developed countries which are Members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in the light of the provisions of resolution 93 (IV) adopted by the United Nations Conference on Trade and Development.

CHAPTER XIV

CONSULTATIONS, DISPUTES AND COMPLAINTS

Article 49

Consultations

Each member shall accord full and due consideration to any representations made to it by another member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such a procedure shall not be chargeable to the Organization. If such a procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with article 50.

Article 50

Disputes

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by the parties to the dispute shall, at the request of either party to the dispute, be referred to the Council for decision.

2. When a dispute has been referred to the Council under paragraph 1 of this article and has been discussed, Members holding not less than one third of the total votes, or any five Members, may require the Council, before giving its decision, to seek the opinion on the issues in dispute of an *ad hoc* advisory panel to be constituted as described in paragraph 3 of this article.

3. (a) Unless the Council by special vote decides otherwise, the *ad hoc* advisory panel shall consist of:

(i) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members; and

(iii) A chairman selected unanimously by the four persons nominated under (i) and (ii) above or, if they fail to agree, by the Chairman of the Council.

(b) Nationals of Members shall not be ineligible to serve on the *ad hoc* advisory panel.

(c) Persons appointed to the *ad hoc* advisory panel shall act in their personal capacities and without instructions from any Government.

(d) The costs of the *ad hoc* advisory panel shall be paid by the Organization.

4. The opinion of the *ad hoc* advisory panel and the reasons therefore shall be submitted to the Council, which, after considering all the relevant information, shall decide the dispute.

Article 51

Complaints and action by the Council

1. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council, which shall consider it and take a decision on the matter.

2. Any finding by the Council that a Member is in breach of its obligations under this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.

3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to such other measures as are specifically provided for in other articles of this Agreement, including article 61, by special vote:

(a) Suspend that Member's voting rights in the Council and in the Executive Committee; and

(b) If it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.

4. A Member whose voting rights are suspended under paragraph 3 of this article shall remain liable for its financial and other obligations under this Agreement.

CHAPTER XV

STANDARD OF LIVING AND WORKING CONDITIONS

Article 52

Standard of living and working conditions

Members shall give consideration to improving the standard of living and working conditions of populations engaged in the cocoa sector, consistent with their stage of development, bearing in mind internationally recognized principles on these matters. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.

CHAPTER XVI

FINAL PROVISIONS

Article 53

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 54

Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 May 2001 until and including 31 December 2002 by parties to the International Cocoa Agreement, 1993, and Governments invited to the United Nations Cocoa Conference, 2000. The Council under the International Cocoa Agreement, 1993, or the Council under this Agreement may, however, extend once the period of signature of this Agreement. The Council shall immediately notify the depositary of such extension.

Article 55

Ratification, acceptance, approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures.

2. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 31 December 2003. The Council under the International Cocoa Agreement, 1993, or the Council under this Agreement may, however, grant extensions of time to signatory Governments which are unable to deposit their instruments by that date.

3. Each Government depositing an instrument of ratification, acceptance or approval shall, at the time of such deposit, indicate whether it is an exporting Member or an importing Member.

Article 56

Accession

1. This Agreement shall be open to accession by the Government of any State entitled to sign it.

2. The Council shall determine under which of the annexes to this Agreement the acceding State is to be deemed to be listed, if such State is not listed in any of these annexes.

3. Accession shall be effected by deposit of an instrument of accession with the depositary.

Article 57

Notification of provisional application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government which intends to accede to the Agreement, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 58 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.

2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 58

Entry into force

1. This Agreement shall enter into force definitively on 1 October 2003, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.

2. This Agreement shall enter into force provisionally on 1 January 2002 if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2002, the Secretary-General of the United Nations shall, at the earliest time practicable, convene a meeting of those governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the depositary that they will apply this Agreement provisionally. These governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 57.

Article 59

Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 60

Withdrawal

1. At any time after the entry into force of this Agreement, any Member may withdraw from this Agreement by giving written notice of withdrawal to the depositary. The Member shall immediately inform the Council of the action it has taken.

2. Withdrawal shall become effective 90 days after the notice is received by the depositary. If, as a consequence of withdrawal, membership in this Agreement falls below the requirements provided for in paragraph 1 of article 58 for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions.

Article 61

Exclusion

If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude such Member from the Organization. The Council shall immediately notify the depositary of any such exclusion. Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.

Article 62

Settlement of accounts with withdrawing or excluded Members

The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member, and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective, except that, in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph 2 of article 64, the Council may determine any settlement of accounts which it finds equitable.

Article 63

Duration, extension and termination

1. This Agreement shall remain in force until the end of the fifth full cocoa year after its entry into force, unless extended under paragraph 3 of this article, or terminated earlier under paragraph 4 of this article.

2. While this Agreement is in force, the Council may, by special vote, decide to renegotiate it with a view to having the renegotiated agreement enter into force at the end of the fifth cocoa year referred to in paragraph 1 of this article, or at the end of any period of extension decided upon by the Council under paragraph 3 of this article.

3. The Council may, by special vote, extend this Agreement in whole or in part for two periods not exceeding two cocoa years each. The Council shall notify the depositary of any such extension.

4. The Council may at any time, by special vote, decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 26 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the depositary of any such decision.

5. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.

6. Notwithstanding the provisions of paragraph 2 of article 60, a Member which does not wish to participate in this Agreement as extended under this article shall so inform the depositary and the Council. Such Member shall cease to be a party to this Agreement from the beginning of the period of extension.

Article 64

Amendments

1. The Council may, by special vote, recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the depositary has received notifications of acceptance from Contracting Parties representing at least 75 per cent of the exporting Members holding at least 85 per cent of the votes of the exporting Members, and from Contracting Parties representing at least 75 per cent of the importing Members holding at least 85 per cent of the votes of the importing Members, or on such later date as the Council may, by special vote, have determined. The Council may fix a time within which Contracting Parties shall notify the depositary of their acceptance of the amendment, and, if the amendment has not become effective by such time, it shall be considered withdrawn.

2. Any Member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall, as of that date, cease to participate in this Agreement, unless the Council decides to extend the period fixed for acceptance for such Member to enable it to complete its internal procedures. Such Member shall not be bound by the amendment before it has notified its acceptance thereof.

3. Immediately upon adoption of a recommendation for an amendment the Council shall communicate to the depositary copies of the text of the amendment. The Council shall provide the depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.

CHAPTER XVII

SUPPLEMENTARY AND TRANSITIONAL PROVISIONS

Article 65

Special Reserve Fund

1. A Special Reserve Fund shall be maintained for the sole purposes of meeting the eventual liquidation expenses of the Organization. The Council shall decide how the interest earned on this Fund will be used.

2. The Special Reserve Fund established by the Council under the International Cocoa Agreement, 1993, shall be transferred to this Agreement for the purpose set out under paragraph 1.

3. A non-member of the International Cocoa Agreement, 1993, which becomes a Member of this Agreement shall be required to contribute to the Special Reserve Fund. The contribution of such Member shall be assessed by the Council on the basis of the number of votes to be held by the Member.

Article 66

Other supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement, 1993.

2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement, 1993, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

ANNEX A

Exports of cocoa [a] calculated for the purposes of article 58 (Entry into force)

Country [b]		1996/97	1997/98	1998/99	Average Three-year period 1996/97-1998/99	
		(tonnes)	(tonnes)	(tonnes)	(tonnes)	(Share)
Côte d'Ivoire	m	1 080 296	1 162 008	1 325 710	1 189 338	47,72 %
Ghana	m	323 906	381 174	409 578	371 553	14,91 %
Indonesia		321 431	304 558	379 181	335 057	13,44 %
Nigeria	m	145 670	133 784	189 311	156 255	6,27 %
Cameroon	m	115 373	110 334	119 834	115 180	4,62 %
Malaysia	m	89 201	57 761	71 705	72 889	2,92 %
Ecuador	m	107 965	24 069	69 897	67 310	2,70 %
Brazil	m	59 770	58 972	16 736	45 159	1,81 %
Dominican Republic	m	43 712	56 328	22 120	40 720	1,63 %
Papua New Guinea	m	28 220	25 727	35 206	29 718	1,19 %
Venezuela	m	10 162	8 133	9 624	9 306	0,37 %
Togo	m	9 000	5 924	6 849	7 258	0,29 %
Guinea		6 260	9 000	5 090	6 783	0,27 %
Peru	m	6 865	7 302	4 699	6 289	0,25 %
Equatorial Guinea		3 630	5 240	4 140	4 337	0,17 %
Sao Tome and Principe	m	2 850	3 520	4 600	3 657	0,15 %
Solomon Islands		3 729	4 036	2 680	3 482	0,14 %
Haiti		4 070	3 275	1 682	3 009	0,12 %
Sierra Leone	m	4 100	2 110	2 700	2 970	0,12 %
Tanzania		3 200	3 160	2 410	2 923	0,12 %
Congo, Dem. Rep. of		2 500	2 600	2 460	2 520	0,10 %
Madagascar		1 853	3 187	2 482	2 507	0,10 %
Honduras		2 737	1 679	2 766	2 394	0,10 %
Costa Rica		3 746	2 476	– 936	1 762	0,07 %
Liberia		670	1 980	2 000	1 550	0,06 %
Uganda		1 260	710	2 030	1 333	0,05 %
Vanuatu		960	1 207	1 416	1 194	0,05 %
Grenada	m	1 020	1 134	966	1 040	0,04 %
Congo		870	1 085	950	968	0,04 %
Jamaica	m	1 248	1 034	496	926	0,04 %
Colombia		5 567	804	– 3 809	854	0,03 %
Trinidad and Tobago	m	809	973	615	799	0,03 %
Gabon	m	700	542	668	637	0,03 %
Cuba		387	466	179	344	0,01 %
Dominica		230	165	100	165	0,01 %
Nicaragua		98	49	159	102	—
Belize		40	140	50	77	—
Benin	m	– 5	193	– 5	61	—
Fiji		50	20	105	58	—
Saint Lucia		1	22	2	8	—
Samoa		7	2	—	3	—
	Total [c]	2 394 158	2 386 883	2 696 446	2 492 496	100,00 %

Notes:

[a] Three-year average, 1996/97-1998/99 of net exports of cocoa-beans plus net exports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1,33; cocoa powder and cake 1,18; cocoa paste/liquor 1,25.

[b] List restricted to countries which individually exported cocoa in the three-year period 1996/97 to 1998/99, based on information available to the ICCO Secretariat.

[c] Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 1993 as at 31 January 2001.

– nil, negligible or less than the unit employed.

Source: International Cocoa Organization, *Quarterly Bulletin of Cocoa Statistics*, Vol. XXVII, No. 1, Cocoa Year 2000/01.

ANNEX B

Imports of cocoa [a] calculated for the purposes of Article 58 (Entry into force)

Country [b]		1996/97	1997/98	1998/99	Average Three-year period 1996/97-1998/99	
		(tonnes)	(tonnes)	(tonnes)	(tonnes)	(Share)
United States		595 346	680 584	652 266	642 732	19,20 %
Germany	m	449 538	449 604	364 642	421 261	12,59 %
Netherlands	m	505 869	361 629	385 815	417 771	12,48 %
France	m	278 958	278 264	314 113	290 445	8,68 %
United Kingdom	m	223 194	243 177	309 038	258 470	7,72 %
Belgium/Luxembourg	m	152 423	143 102	117 878	137 801	4,12 %
Italy	m	113 478	116 406	111 943	113 942	3,40 %
Spain	m	95 622	123 784	107 130	108 845	3,25 %
Canada		91 592	112 974	101 293	101 953	3,05 %
Russian Federation	m	92 945	98 261	81 676	90 961	2,72 %
Japan	m	90 530	75 848	82 532	82 970	2,48 %
Singapore		72 305	70 593	76 699	73 199	2,19 %
Poland		55 374	52 656	61 167	56 399	1,69 %
Switzerland	m	50 683	45 992	53 261	49 979	1,49 %
Australia		46 378	45 812	51 475	47 888	1,43 %
China		37 038	33 908	35 075	35 340	1,06 %
Austria	m	31 906	34 118	35 848	33 957	1,01 %
Argentina		31 897	34 857	33 864	33 539	1,00 %
Turkey		26 443	24 559	21 945	24 316	0,73 %
Sweden	m	21 687	21 098	20 591	21 125	0,63 %
Czech Republic	m	19 488	17 335	14 551	17 125	0,51 %
Estonia		29 615	26 394	– 6 850	16 386	0,49 %
Denmark	m	13 280	16 937	17 043	15 753	0,47 %
Ireland	m	16 003	15 340	15 048	15 464	0,46 %
South Africa		17 587	13 717	13 359	14 888	0,44 %
Philippines		15 711	13 636	15 257	14 868	0,44 %
Ukraine		9 584	18 684	15 017	14 428	0,43 %
Mexico [c]		7 889	11 694	22 036	13 873	0,41 %
Thailand		15 242	13 446	12 888	13 859	0,41 %
Hungary	m	12 683	13 893	12 893	13 156	0,39 %
Korea, Republic of		14 776	9 999	12 574	12 450	0,37 %
Finland	m	12 110	11 020	10 147	11 092	0,33 %
Greece	m	6 863	14 065	12 124	11 017	0,33 %
Chile		9 622	11 004	9 972	10 199	0,30 %
Norway	m	9 349	8 755	9 225	9 110	0,27 %
Romania		8 943	9 226	8 194	8 788	0,26 %
New Zealand		8 585	8 322	9 231	8 713	0,26 %
Slovak Republic	m	8 846	9 080	8 176	8 701	0,26 %
Israel		8 995	9 347	7 628	8 657	0,26 %
Egypt	m	5 893	6 290	8 841	7 008	0,21 %
Yugoslavia, Fed. Rep. of		6 656	4 704	4 032	5 131	0,15 %
Croatia		4 579	4 670	2 873	4 041	0,12 %
Algeria		2 237	4 024	5 027	3 763	0,11 %
Bulgaria		2 993	2 980	4 979	3 651	0,11 %
Portugal	m	3 605	3 714	3 574	3 631	0,11 %
Lithuania		3 742	3 968	3 006	3 572	0,11 %
Belarus		2 647	3 362	3 582	3 197	0,10 %
Syrian Arab Republic		1 602	4 968	2 828	3 133	0,09 %
Iran		2 548	4 079	1 998	2 875	0,09 %
Hong Kong		1 666	3 183	3 371	2 740	0,08 %
India [c]		1 389	2 677	3 386	2 484	0,07 %
Morocco		2 416	2 611	1 932	2 320	0,07 %

Country [b]	1996/97	1997/98	1998/99	Average Three-year period 1996/97-1998/99	
	(tonnes)	(tonnes)	(tonnes)	(tonnes)	(Share)
Latvia	2 469	2 626	1 653	2 249	0,07 %
Tunisia	1 713	1 598	2 282	1 864	0,06 %
Saudi Arabia	944	2 333	2 070	1 782	0,05 %
Uruguay	1 402	1 377	1 633	1 471	0,04 %
Lebanon	1 004	1 169	1 370	1 181	0,04 %
Kazakhstan	1 572	1 066	898	1 179	0,04 %
Slovenia	873	1 079	1 433	1 128	0,03 %
Macedonia (FYR)	1 343	819	801	988	0,03 %
Jordan	646	1 114	960	907	0,03 %
Iceland	613	965	602	727	0,02 %
Kenya	476	1 075	489	680	0,02 %
Vietnam	413	566	885	621	0,02 %
Pakistan	483	389	885	586	0,02 %
Republic of Moldova	635	474	548	552	0,02 %
Panama [c]	393	304	229	309	0,01 %
Cyprus	318	304	304	309	0,01 %
Bolivia	158	188	505	284	0,01 %
Sri Lanka [c]	176	302	355	278	0,01 %
Uzbekistan	87	133	173	131	—
Zimbabwe	54	141	142	112	—
Libyan Arab Jamahiriya	59	42	224	108	—
Albania	83	116	122	107	—
Guatemala [c]	– 29	– 38	376	103	—
Bosnia and Herzegovina	116	53	135	101	—
Georgia	100	100	100	100	—
Malta	49	40	56	48	—
El Salvador	24	18	71	38	—
Zambia	24	—	48	24	—
Saint Vincent/Grenadines	13	5	18	12	—
Barbados	12	9	5	9	—
Total [d]	3 366 573	3 368 717	3 305 565	3 346 952	100,00 %

Notes:

[a] Three-year average, 1996/97-1998/99 of net imports of cocoa-beans plus gross imports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1,33; cocoa powder and cake 1,18; cocoa paste/liquor 1,25.

[b] List restricted to countries which individually imported cocoa in the three-year period 1996/97 to 1998/99, based on information available to the ICCO Secretariat.

[c] Country may also qualify as an exporting country.

[d] Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 1993 as at 31 January 2000.

– nil, negligible or less than the unit employed.

Source: International Cocoa Organization, *Quarterly Bulletin of Cocoa Statistics*, Vol. XXVII, No. 1, Cocoa Year 2000/01.

ANNEX C

Producing countries exporting either exclusively or partially fine or flavour cocoa

Costa Rica
Dominica
Ecuador
Grenada
Indonesia
Jamaica
Madagascar
Panama
Papua New Guinea
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Sao Tome and Principe
Sri Lanka
Suriname
Trinidad and Tobago
Venezuela

Proposal for a Council Decision on the financing of certain activities carried out by Europol in connection with cooperation in the fight against terrorism

(2002/C 331 E/23)

COM(2002) 439 final — 2002/0196(CNS)

(Submitted by the Commission on 31 July 2002)

EXPLANATORY MEMORANDUM

1. **Introduction**

Article B5-822 of the European Union budget for 2002 carries EUR 5 million to provide Europol with the necessary resources to step up and coordinate action by Member States to combat terrorism and to set up an anti-terrorism control centre and communications systems ([1]).

This appropriation is entered in Chapter B0-40 (provisions) until there is a basic instrument to cover the financing of Europol's activities from the European Union budget. This Decision will make it possible to use this appropriation.

Commission staff have produced a draft Council Decision to create the legal basis to enable the funds to be used and to describe the activities they will finance. The activities indicated in the text have been established on the basis of proposals made by Europol.

According to the budgetary details supplied by Europol, expected expenditure on launching these activities will be EUR 3 038 600, significantly less than the amount in the reserve.

2. **Council Decision: Articles**

Article 1 (purpose of the Decision)

Article 1 defines the activities (in the annex) to be carried out by Europol to step up and improve coordination of the fight against terrorism. The annex is an integral part of the Decision.

Article 2 (type of expenditure)

Article 2 classifies the expenditure approved by this Decision as operational expenditure.

Article 3 (monitoring and evaluation procedures)

This article sets out the procedures for monitoring and evaluating the activities on the basis of quarterly reports to be presented to the Commission. The Commission will also report annually to the European Parliament and the Council on the progress made.

Article 4 (entry into force)

The Decision will take effect on the day following that of its publication.

Annex

The annex provides a summary of the activities proposed by Europol. They are as follows:

([1]) OJ L 29, 31.1.2002, p. 1046.

— The establishment of an information network to exchange information in real time on the characteristics of explosive devices used to carry out terrorist acts.

— The creation of a communications system to enable special police operations units to exchange information swiftly.

— The creation of an operations coordination centre within Europol to support Member States when conducting anti-terrorist operations or dealing with terrorist situations. Member States will be able to use the centre as a communications, control, command or information centre as necessary.

— The development of a European method for analysing terrorist threats and risks.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(2)(a) and (b) and Article 34(2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the field of police and judicial cooperation, particularly in the fight against terrorism.

(2) Terrorism is one of the most serious threats to the life and safety of citizens, to democracy, to the free exercise of human rights and to economic and social development.

(3) The conclusions of the Tampere European Council call for increased cooperation between the authorities in the Member States and Europol on the prevention, analysis and investigation of crime, including terrorism, at Union level.

(4) The European Council of 21 September 2001 drew up a European Union action plan in response to the attacks on the United States and called for operational measures to be taken to step up police cooperation in the fight against terrorism.

(5) The Europol Convention [1] assigns to Europol the objective of improving the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism. The Council Framework Decision of 13 June 2002 on combating terrorism [2] also recalls that Europol's remit includes dealing with crimes committed or likely to be committed in the course of terrorist activities,

HAS DECIDED AS FOLLOWS:

Article 1

Europol shall carry out the activities referred to in the Annex to step up and coordinate the fight against terrorism.

Article 2

The cost of implementing this Decision shall be considered operational expenditure for the purposes of Article 41(3) of the Treaty on European Union.

Article 3

(1) Europol shall submit a quarterly progress report to the Commission on the activities referred to in the annex.

(2) Once a year, Europol shall present a detailed report to the Commission on all activities carried out on the basis of this Decision.

(3) The Commission shall report annually to the European Parliament and the Council on measures taken by Europol on the basis of this Decision. The first report shall be presented before 31 January 2003.

Article 4

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

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[1] OJ C 316, 27.11.1995, p. 2.

[2] OJ C 164, 22.6.2002, p. 3.

ANNEX

ACTIVITIES TO BE FINANCED

Project 1: European Union Bomb Data Network

Summary: An EU wide bomb database accessible from workstations in the Counter-Terrorism Communication Network (an extendable secure communication network for the exchange of confidential operational data in real time in relation to all counter-terrorism related information and intelligence). MS will be able to exchange and disseminate data on explosive devices in real time.

Relevance: Law enforcement agencies need access to EU-wide technical data immediately when faced with bomb incidents and threats. The use of the EU bomb database would help identify terrorists from their modus operandi, and ultimately could save lives and protect property by a fast and targeted response to incidents.

Expected results: An EU bomb data network will contribute to protecting the lives and property of EU citizens and to an approximation of working practices in this area in the EU.

Budget: The total cost of equipment, maintenance, training, travel and operational costs for such a Bomb Data Network is estimated at around EUR 1 700 000.

Project 2: Communication Network for Special Intervention Units

Summary: Secure communications, including mobile links, for sending information quickly to assist the Special Intervention Units of Member States, which act under great time pressure, in resolving terrorist incidents. This will facilitate the planning and preparation of intervention in terrorist incidents by having a fast and secure way of transmitting such information (e.g. voice messages, graphics, video, text, fingerprints).

Relevance: This project is necessary to enable Special Intervention Units to exchange information quickly, reliably and securely in the face of a terrorist threat or incident.

Expected results: The creation of a communication network for Special Intervention Units for the exchange of relevant information. Fast, efficient and secure exchange of information could result in Special Intervention Units being better placed to save the lives of EU citizens.

Budget: The cost of the equipment, maintenance, training and travel involved in setting up such a platform is estimated at around EUR 500 000.

Project 3: Operation Control Centre

Summary: A set of premises with facilities for Member States to carry out communications, intelligence exchange and command and control activities in major terrorism incidents and crisis situations. The premises would be based at Europol and would contain a control room, a co-ordinator room, a meeting room, an analysis room, an archive room and a technical room. It would also involve the counter-terrorism communication network and a computer network.

Relevance: A control centre to handle international information exchange would be necessary in the face of a major terrorism incident, in particular an incident involving weapons of mass destruction (nuclear, biological, chemical, radiological). In the wake of 11 September, Europol had to deal with answers and request on InfoEx, threat assessment, security measures and other reports.

Expected results: Such co-ordination and communication facilities would guarantee an early warning network capable of handling information exchange in real time on terrorist activities or incidents. The communications network would link Europol's Control Centre with National Operation Centres in Member States.

Budget: The cost of equipment, maintenance, training and travel involved in setting up the control centre is estimated at around EUR 500 000.

Project 4: Development of a common methodology for terrorism threat and risk assessments

Summary: Europol and Member States have to produce threat and risk assessments on terrorism. The events of 11 September have highlighted the need for these to be prepared thoroughly. Specialist of Member States and Europol should therefore meet to agree on a common, rigorous methodology for the preparation of such threat and risk assessments. This will be done in the form of a seminar.

Relevance: A common and rigorous methodology would result in improved risk and threat assessments in Member States and in the European Union as a whole. This would, in turn, result in better planning of counter-terrorism activities and a better resource allocation in the fight against terrorism and organised crime projects in the EU.

Expected results: An EU-wide agreed methodology for threat and risk assessments on terrorist issues.

Budget: The total costs (speakers, travel, catering, translation, staff, aftercare and overheads) of the seminar are estimated at EUR 336 800.

Proposal for a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia

(2002/C 331 E/24)

COM(2002) 447 final

(Submitted by the Commission on 2 August 2002)

EXPLANATORY MEMORANDUM

On 1 June 2001, the Commission opened an anti-dumping investigation with regard to imports into the Community of certain tube and pipe fittings, of iron or steel originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia.

The investigation revealed the existence of injurious dumping and consequently the Commission, by Regulation (EC) No 358/2002, imposed provisional anti-dumping duties on these imports. It also accepted an undertaking offered by an exporting producer in Slovakia.

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest which confirmed the provisional findings.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal no later than 27 August 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 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 358/2002 [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel falling within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90, originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia.

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 April 2000 to 31 March 2001 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 to 31 March 2001 ('period under consideration').

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional anti-dumping duties on imports of certain tube and pipe fittings originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

[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 56, 27.2.2002, p. 4.

(6) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(7) In the absence of any comments, the product description and the definition of the like product as set out in recitals 9 to 12 of the provisional Regulation are confirmed.

D. DUMPING

1. General methodology

(8) In the absence of any comments, the general methodology for establishing the dumping margins as set out in recitals 15 to 28 of the provisional Regulation is confirmed.

2. Dumping margins

(9) In the absence of any comments, the determination of the normal value, the export price and the comparison for the Czech Republic, Malaysia, Republic of Korea, Slovakia and the determination of the market economy status and analogue country for Russia, as described in recitals 29 to 60 of the provisional Regulation are confirmed.

(10) The definitive dumping margins, expressed as a percentage of the CIF import price at the Community border, are confirmed as follows:

Country	Company	Dumping margin
Czech Republic	Mavet a.s., Trebic	17,6 %
	Bovex s.r.o.	22,4 %
Malaysia	Anggerik Laksana Sdn Bhd	59,2 %
Republic of Korea		83,9 %
Slovakia	Bohus s.r.o.	7,7 %
	Zeleziarne Podbrezova a.s.	15,0 %
Russia		43,3 %

E. COMMUNITY INDUSTRY

(11) In the absence of any comments, the provisional findings concerning the determination of the Community industry as described in recitals 61 to 62 of the provisional Regulation are confirmed.

F. INJURY

1. Community consumption

(12) In the absence of any new information, the provisional findings concerning the Community consumption as described in recitals 63 to 64 of the provisional Regulation are confirmed.

2. Imports from the countries concerned

Cumulative assessment of the effects of the imports concerned, volume, market share and prices of the imports concerned

(13) The provisional Regulation concluded that the imports originating in the countries concerned should be assessed cumulatively since the criteria set out in the Article 3(4) of the basic Regulation were met. Indeed, the dumping margins found for all the countries concerned were more than *de minimis*, the volume of imports were not negligible and the cumulative assessment was considered appropriate in view of the conditions of competition both between the imports and between the imports and the like Community product. These similar conditions of competition were evidenced by the fact that the imported TPFs and those of the Community industry were alike and distributed *via* the same trade channels under similar commercial conditions. Moreover all import volumes were substantial and resulting in significant market shares, which increased between 1996 and the IP, and were made at prices significantly undercutting the prices of the Community industry thus leading to a price depression of the Community industry's prices.

(14) In the absence of any comments under these headings, the provisional findings as described in recitals 65 to 67 of the provisional Regulation are confirmed.

Price undercutting

(15) One Slovak exporting producer questioned the methodology used by the Commission for the calculation of the price undercutting margins. This relates more specifically to the method of the so called 'zeroing', by which the positive margins for the models that are overcutting are disregarded. This argument is based on the conclusions reached by the WTO Appellate Body in the Bed Linen Case [1] by which, on the facts of the case concerned, the practice of zeroing when establishing the existence of margins of dumping, which in that case was established by a comparison of the weighted average normal value with the weighted average export price as established by the Commission, was found to be inconsistent with the Article 2.4.2 of the WTO Anti-Dumping Agreement.

[1] European Communities — Anti-dumping duties on imports of cotton-type bed linen from India,WT/DS/AB/R, 1.3.2001.

(16) Accordingly, it should be noted that the WTO Appellate Body in any event exclusively examined the practice of 'zeroing' when used to establish the existence of dumping margins. In addition, the WTO Anti-dumping Agreement does not set out any methodological requirements for the calculation of price undercutting.

(17) In any event, in the current case, in view of the very few models for which no undercutting was found, the application of the 'zeroing' methodology does not lead to significantly different results, the difference between applying zeroing or not amounting to less than 1 %. In other words the undercutting margins would remain significant even if no zeroing was applied. The argument had therefore to be rejected.

(18) The Community industry argued that no adjustment for level of trade should be made in order to establish the price undercutting margin. Indeed, both the exporting producers and the Community industry supply the same category of customers, and therefore act on the same level of trade. It was further claimed that consequently only an adjustment covering customs clearance cost was justified.

(19) A further analysis of the information available established that both the Community industry and the exporting producers generally supply the same type of customers in the Community, i.e. wholesalers. This was also supported by the fact that the three co-operating unrelated importers, whose activity is the one of wholesalers, were supplied by both the Community industry and the exporting producers from the countries concerned. The argument was therefore accepted and the undercutting margins revised accordingly. The revised adjustment was limited to an amount covering exclusively the customs clearance costs, on the basis of the information provided by the cooperating unrelated importers.

(20) The Community industry further questioned the level of the undercutting margin calculated for one of the Slovak exporting producers. It was argued that this level of undercutting was inconsistent with the average price level as given by international trade statistics as well as market information.

(21) The calculations of the price undercutting margins were accordingly reviewed, and a clerical error was found in the calculation of the export price used for the establishment of this exporting producer's margin of undercutting. The margin was therefore revised.

(22) Taking the above into consideration, the definitive revised weighted average price undercutting margins found per country, expressed as a percentage of the Community industry prices, are as follows:

— Czech Republic: from 19 % to 21 %

— Malaysia: from 52 % to 72 %

— Russia: 26 %

— Republic of Korea: 23 %

— Slovakia: from 15 to 36 %.

3. **Situation of the Community industry**

(23) It is recalled that the introduction of the measures against China, Croatia and Thailand had a positive impact on the economic situation of the Community industry. Most of the injury indicators showed a positive development between 1996 and 1998. Production, capacity utilisation and sales volume went up, resulting in a gain in market shares and increasing employment. The profitability indicators such as profits/losses as a percentage of turnover, return on investments and cash flow also developed favourably. However, after 1998, the economic situation of the Community industry generally deteriorated: while production remained relatively stable and capacity utilisation, employment and wages slightly increased, crucial indicators such as the volume of sales and market shares decreased as well as profitability, return on investments cash flow and prices. On the basis of the above and of the findings regarding productivity, investments, growth and magnitude of dumping, it was therefore concluded, at a provisional stage, that the Community industry suffered material injury.

(24) In the absence of any comments, the facts and figures as set out in recitals 72 to 87 of the provisional Regulation are confirmed.

4. **Conclusion on injury**

(25) In the absence of any further comments on the findings other than above, the conclusion reached as set out in recital 88 of the provisional Regulation is confirmed.

G. **CAUSATION**

(26) In the absence of any new information submitted on causation, the findings and the conclusion reached as set out in recitals 89 to 97 of the provisional Regulation are confirmed.

H. **COMMUNITY INTEREST**

(27) In the absence of any new information submitted on the Community interest, the findings and the conclusion reached as set out in recitals 98 to 111 of the provisional Regulation are confirmed.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(28) Based on the methodology explained in recitals 112 to 115 of the provisional Regulation an injury elimination level has been calculated for the purposes of establishing the level of measures to be definitively imposed.

(29) One exporting producer questioned the level of the profit margin of 5 % that was used for the purpose of establishing the non-injurious price of the Community industry, claiming it was too high. It also claimed that this level of profit margin was not sufficiently explained in the disclosed document.

(30) As to the first claim, it is recalled that, in view of the negative impact on the profitability of the Community industry resulting from the price depressive effect caused by the dumped imports, as indicated in recital 71 of the provisional Regulation, the calculation of the non-injurious price was based on a level of profit that the Community industry may have reasonably achieved in the absence of injurious dumping. As explained in the recital 114 of the provisional Regulation, a profit margin of 5 % was deemed reasonable, since this level of profit corresponds to the actual level of profit that the Community industry could achieve in 1997, on a Community market free of dumped imports. Indeed, at that time, measures were in place against China, Croatia and Thailand and the market share of imports from the countries concerned was still relatively low. Moreover, it was considered that this profit margin would allow the Community industry to make the necessary investments. As to the second claim, it should be noted that the Commission explained in sufficient detail in the disclosure document on which basis it calculated the level of profit margin used for the non-injurious price, as also explained in recital (114) of the provisional Regulation. The claims have therefore to be rejected.

(31) In addition, the same level of profit was also used for the establishment of the injury margin in the proceeding concerning the above mentioned countries, and there is no reason to believe that significant changes in circumstances have occurred since then.

(32) The use of a profit margin of 5 % of turnover for the calculation of the non-injurious price is therefore confirmed.

(33) On the basis of the above, the methodology used for establishing the injury elimination level as described in recitals 112 to 115 of the provisional Regulation is confirmed.

(34) As mentioned above in relation to price undercutting margins, injury margins were reviewed and amended.

2. **Form and level of the duties**

(35) In the light of the foregoing and in accordance with Article 9(4) of the Basic Regulation, a definitive anti-dumping duty should be imposed in respect of the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia. This duty should be imposed at the level of the dumping margins found, except for the Republic of Korea, where the injury margin was found to be lower than the dumping margin.

(36) On the basis of the above, the definitive duties are as follows:

Country	Company	AD Duty
Czech Republic	All companies	22,4 %
Malaysia	Anggerik Laksana Sdn Bhd	59,2 %
	Others	75,0 %
Russia	All companies	43,3 %
Republic of Korea	All companies	44,0 %
Slovakia	All companies	15,0 %

3. **Collection of provisional duties**

(37) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 358/2002, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

(38) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission, DG Trade, Directorate B, J-79 — 3/35, B-1049 Brussels.

4. **Undertakings**

(39) It is recalled that one exporting producer in Slovakia has offered a price undertaking in accordance with Article 8(1) of the Basic Regulation. This price undertaking was accepted in the provisional Regulation.

(40) Subsequent to the imposition of provisional anti-dumping measures, one exporting producer in the Czech Republic offered a price undertaking in accordance with Article 8(1) of the Basic Regulation. By doing so, it has agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The company will also provide the Commission with regular and detailed information concerning its exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. Furthermore, the sales structure of this exporting producer is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(41) To further enable the Commission to effectively monitor the compliance of the company with its undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(42) In view of this, the offer of undertaking are therefore considered acceptable by the Commission and the company concerned has been informed of the essential facts, considerations and obligations upon which acceptance is based.

(43) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Articles 8(9) and (10) of the Basic Regulation.

(44) The above undertaking is accepted by the Commission Decision 2002/. . ./EC of . . . August 2002,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, falling within CN codes ex 7307 93 11 (TARIC codes 7307 93 11*91 and 7307 93 11*99), ex 7307 93 19 (TARIC codes 7307 93 19*91 and 7307 19 93*99), ex 7307 99 30 (TARIC codes 7307 99 30*92 and 7307 99 30*98) and ex 7307 99 90 (TARIC codes 7307 99 90*92 and 7307 99 90*98) and originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for the products manufactured by:

Country	Company	Definitive anti-dumping duty (%)	TARIC additional code
Czech Republic	Mavet a.s., Trebic	17,6	A323
	All other companies	22,4	A999
Malaysia	Anggerik Laksana Sdn Bhd, Selangor Darul Ehsan	59,2	A324
	All other companies	75,0	A999
Russia	All companies	43,3	
Republic of Korea	All companies	44,0	
Slovakia	All companies	15,0	A999

3. Notwithstanding paragraph 1, the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Imports declared for release into free circulation under the following TARIC additional code which are produced and directly exported (i.e. shipped and invoiced) by the company below to a company in the Community acting as an importer shall be exempt from the anti-dumping duty imposed by Article 1 provided that such imports are imported in conformity with paragraph 2 of this article.

Country	Company	TARIC additional code
Czech Republic	Bovex s.r.o., Hercikova 4, 612 00 Brno	A387
Slovakia	Bohus s.r.o., Nálepkova 310, 976 45 Hronec	A329

2. Imports mentioned in paragraph 1 shall be exempt from the anti-dumping duty on condition that:

(a) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(b) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

Article 3

1. Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 358/2002 on imports of certain tube and pipe fittings, of iron or steel falling within CN codes ex 7307 93 11, ex 7307 93 19, ex 7307 99 30 and ex 7307 99 90 and originating in the Czech Republic, Malaysia, Russia, the Republic of Korea and Slovakia shall be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

Article 4

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.

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of tube and pipe fittings to the Community which are subject to the undertaking.

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'
2. The name of the company mentioned in Article 2(1) issuing the commercial invoice
3. The commercial invoice number
4. The date of issue of the commercial invoice
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier
6. The exact description of the goods, including:
   - Product Code Number (PCN),
   - description of the goods corresponding to the PCN (i.e 'PCN 1 . . .', 'PCN 2 . . .'),
   - company product code number (CPC) (if applicable),
   - CN-code,
   - quantity (to be given in tonnes and pieces).
7. The description of the terms of sale, including:
   - price per tonne and per piece,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company
9. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export by [company name] to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company name], and accepted by the European Commission through [Decision 2002/. . ./EC]. I declare that the information provided in this invoice is complete and correct.'

Proposal for a Council Regulation on the removal of fins of sharks on board vessels

(2002/C 331 E/25)

COM(2002) 449 final — 2002/0198(CNS)

(Submitted by the Commission on 5 August 2002)

EXPLANATORY MEMORANDUM

Sharks and related species such as skates and rays (fish belonging to the taxon Elasmobranchs), are generally very vulnerable to exploitation due to their life-cycle characteristics. Most of shark species are often caught as by-catch in Community fisheries directed to other more valuable species and are therefore difficult to manage using only the traditional tools based on catch and effort restrictions.

The meat of sharks must be subject to special treatment for its preservation; otherwise its high content of ammonia makes it unattractive for human consumption. Consequently shark meat usually fetches low prices, although this has started to change with the improvement in the treatment of the fish on board. Shark fins, however, are much in demand in certain markets of the Far East, as the main ingredient to prepare thickeners for food products, in particular for use in shark fin soup. Fins can be easily preserved by drying or freezing and can reach very high prices.

Since very few regulations exist to restrict fishing of sharks, in particular due to lack of detailed knowledge about the fishing patterns and their biology, this has led to the practice whereby fins are removed from any shark caught by a fishing vessel, only the removed fins are retained on board and the remainder of the shark is discarded at sea (with possibly part of the flesh being re-used as bait for further shark fishing). This practice, known as 'shark finning', results in the death of large quantities of sharks. The retention on board of the fins alone takes up the available storage space of a vessel less rapidly than would be the case if whole sharks were retained, and, therefore, contributes to excessive mortality of sharks with devastating effects on shark populations. The low reproductive rate of sharks makes stock recovery very difficult.

The current scientific knowledge, generally based on examination of catch rates, indicates that many stocks of sharks are seriously under threat [1]. Until more is known about the population dynamics of shark stocks and their response to exploitation, which would allow the designing of well-tailored management plans, any measure preventing the development of unsustainable fishing practices or leading to decreased exploitation will have positive effects on the status of such stocks. Therefore, rules to severely restrict or prevent further development of the practice of shark finning are urgently required.

Techniques have been developed to improve methods of preserving shark meat and to develop markets for human consumption; other parts of the body (liver, skin) are in demand and can also be sold. It is believed that, in these circumstances, fishermen can obtain a higher economic return from their landings and, for a given economic result, fishing pressure can be decreased by a full utilisation of the catch.

In view of these circumstances, it is appropriate to prohibit the finning of sharks. To be effective, the prohibition should apply to all types of fishing in Community waters. In non-Community waters, the prohibition can only apply to Community vessels, and therefore it will not be fully effective in terms of shark protection. However, it is a policy of the Community to show equal commitment towards stock conservation in all waters where its vessels fish. This proactive attitude will also facilitate the promotion of the measure for adoption in international fora, essentially Regional Fisheries Organisations, and will align the Community with other countries which have adopted similar measures.

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[1] See in particular FAO report: A preliminary evaluation of the status of shark species — FAO Fisheries Technical Paper. No 380. Rome, FAO. 1999.

The most effective and practical means to implement a prohibition of finning and to render by-catches of sharks less attractive in fisheries is to prohibit the removal of fins on board, and to prohibit the keeping on board, transhipping or landing of shark fins which have been removed from the fish body. In view of the practical difficulties for control and species identification based on removed fins kept on board or landed, these prohibitions should apply to all Elasmobranchs. However, the practice of cutting ray wings should not be covered by such prohibitions, in particular as it aims at using the most important part of the fish flesh, and as ray wings can be easily distinguished from any other fin removed from a cartilaginous fish.

For certain fisheries there could, however, be a practical need for removing shark fins on board and for separate on-board processing of fins and bodies, even when the carcass is to be kept and used. In those circumstances, it is considered appropriate that a special fishing permit shall be issued under which such a practice would be acceptable, while ensuring at the same time that possession on board, landing or transhipping of fins is accompanied by possession on board, landing or transhipping of a corresponding weight of the carcass. To facilitate enforcement and to limit possible abuses, it is appropriate to adopt a single and restrictive conversion factor applicable to all shark species.

This regulation represents a measure for the conservation of sharks as announced by the Commission in its recent Communication setting out a Community Action Plan to integrate environmental protection requirements into the Common Fisheries Policy (COM(2002) 186 final). The regulation also forms part of the development and implementation, by the Community, of a more comprehensive management plan for the conservation and sustainable use of sharks, in line with the FAO Code of Conduct for Responsible Fisheries and the FAO International Plan of Action for sharks.

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) Article 4 of Regulation (EC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture [1] stipulates that the Council, in order to ensure the rational and responsible exploitation of resources on a sustainable basis, is to establish Community measures laying down the conditions of access to Community waters and resources and the pursuit of fishing activities.

(2) Fish belonging to the taxon *Elasmobranchii*, which includes sharks, skates, rays and similar species are generally very vulnerable to exploitation due to their life-cycle characteristics. Most of these species are often caught as by-catch in Community fishing activities directed to other more valuable species.

(3) Current scientific knowledge, generally based on the examination of catch rates, indicates that many stocks of sharks are seriously under threat.

(4) Until more is known about the population dynamics of stocks of sharks and their response to exploitation, which would allow the drafting of well-tailored and comprehensive management plans, any measure preventing the development of unsustainable practices or leading to decreased exploitation of sharks will have positive effects on their conservation.

(5) The practice of 'shark finning', whereby the fins are removed from sharks, with the remainder of the shark body being discarded at sea, may contribute to the excessive mortality of sharks to such an extent that many stocks of sharks are depleted, and their future sustainability may be endangered.

(6) Measures to restrict or prevent the further development of the practice of shark finning are urgently required, and the removal of shark fins on board vessels should therefore be prohibited. In view of the practical difficulties involved in the identification of species based on removed fins, this prohibition should apply to all Elasmobranchs, except for the removal of ray wings.

(7) However, the removal of shark fins on board may be allowed if the removal is in order to make a more efficient use of all shark parts by the separate processing on board of fins and the remaining parts of the sharks. In this case, the flag Member State should issue and manage, with associated conditions, a special fishing permit in accordance with Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits [2].

[1] OJ L 389, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 1181/98 (OJ L 164, 9.6.1998, p. 1).

[2] OJ L 171, 6.7.1994, p. 7.

(8) In order to ensure that all parts of sharks are kept on board after the removal of fins, masters of vessels which hold a valid special fishing permit should keep records of the weight of shark fins and the remaining parts of sharks after evisceration. Such records should be kept in the logbook as provided for by Regulation No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [1], or in a special register as appropriate.

(9) The problems resulting from the practice of shark finning extend well beyond Community waters. It is appropriate that the Community shows equal commitment towards stock conservation in all maritime waters. This Regulation should therefore be applicable to all Community vessels.

(10) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of conservation of shark stocks to lay down rules on the removal of shark fins on board vessels. 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,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to the removal of shark fins, retention on board, transhipment and landing of sharks:

1. by vessels in maritime waters under the sovereignty or the jurisdiction of Member States;

2. by vessels flying the flag or registered in Member States in other maritime waters.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'shark fins' means any fins of sharks including caudal fins, but excluding the pectoral fins of rays which are a constituent part of ray wings;

2. 'shark' means any fish of the taxon *Elasmobranchii*;

3. 'special fishing permit' means a prior fishing authorisation issued and managed in accordance with Regulation (EC) No 1627/94.

Article 3

Prohibited activities

1. It shall be prohibited to remove shark fins on board vessels, or to retain on board, tranship or land shark fins.

2. It shall be prohibited to purchase, offer for sale or sell shark fins which have been removed, retained on board, transhipped or landed in contravention of this Regulation.

Article 4

Derogation and special fishing permit

1. By way of derogation from Article 3(1), and subject to paragraphs 2, 3, and 4, vessels which hold a valid special fishing permit may be allowed to remove shark fins on board and to retain on board, tranship or land shark fins.

2. Such a special fishing permit shall only be issued to fishing vessels, which have demonstrated a capacity to use all parts of sharks, and have justified the need for the separate processing on board of shark fins and the remaining parts of sharks.

3. Vessels which hold a valid special fishing permit shall be prohibited from discarding at sea the remaining parts of sharks after evisceration and removal of the shark fins. The removed shark fins shall be retained on board, landed or transhipped together with the corresponding weight of remaining parts of sharks.

4. All shark fins and remaining parts of sharks on board a vessel shall be transhipped or landed at the same time.

Article 5

Ratio of weight of shark fins and remaining parts of sharks and records

1. For the purposes of the application of Article 4(3), the weight of the shark fins shall not exceed 5 % of the total weight of the remaining parts of sharks, after evisceration.

2. Masters of vessels which hold a valid special fishing permit shall keep records of the weight of shark fins and the eviscerated remaining parts of sharks retained on board and transhipped or landed.

These records shall be kept in the logbook established by Article 6(1) of Regulation (EEC) No 2847/93, where applicable. For those vessels not subject to Article 6(1) of that Regulation, these records shall be kept in a special register to be provided by the competent authority issuing the special fishing permit.

Article 6

Entry into force

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

It shall apply from [60 days after publication].

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

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[1] OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 1965/2001 (OJ L 268, 9.10.2001, p. 2).

Proposal for a Directive of the European Parliament and of the Council amending Directive 95/2/EC as regards the conditions of use for a food additive E 425 konjac

(2002/C 331 E/26)

(Text with EEA relevance)

COM(2002) 451 final — 2002/0201(COD)

(Submitted by the Commission on 5 August 2002)

EXPLANATORY MEMORANDUM

On 27 March 2002, the Commission adopted a Decision 2002/247/EC [1] to suspend the placing on the market and import of jelly confectionery containing the food additive E 425 konjac. Also the use of E 425 konjac in jelly confectionery was suspended. The measure was adopted under Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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 [2].

The Commission took this measure after being informed by the several Member States and third countries of the risk involved in consuming jelly confectionery (so called jelly mini-cups) containing E 425 konjac. Several children and elderly persons had died in third countries through choking.

In addition to the shape and size of this confectionery, the chemical and physical properties of the food additive konjac are such that it causes jelly mini-cups to constitute a life-threatening risk to humans.

Some manufacturers of jelly mini-cups recognise the risk by affixing a warning on the food package, highlighting the risk for children and the elderly. In the present case, warning through labelling is not sufficient to protect human health, especially with regard to children.

The use of the food additive E 425 konjac is authorised in foodstuffs in the European Community under certain conditions by Directive 95/2/EC of the European Parliament and of the Council of 20 February 1995 on food additives other than colours and sweeteners [3].

It is necessary to amend the current authorisation to withdraw the authorisation to use E 425 konjac in jelly mini-cups in order to protect human health. In addition, the use of konjac in any other jelly confectionery should also be withdrawn, as it may present the same risk as jelly mini-cups.

[1] OJ L 84, 28.3.2002, p. 69.
[2] OJ L 31, 1.2.2002, p. 1.
[3] OJ L 61, 18.3.1995, p. 1.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) Directive 95/2/EC of the European Parliament and of the Council of 20 February 1995 on food additives other than colours and sweeteners [1] authorises the use of the food additive E 425 konjac in foodstuffs under certain conditions.

[1] OJ L 61, 18.3.1995, p. 1. Directive as last amended by Directive 2001/5/EC (OJ L 55, 24.2.2001, p. 59).

(2) The Commission has taken measures to temporarily suspend the placing on the market of jelly mini-cups containing E 425 konjac because they have been found to be dangeours as they have caused the death of several children and elderly persons in third countries through choking.

(3) Some manufacturers of jelly mini-cups recognise the risk to human health by affixing a warning on the food package, highlighting the risk for children and the elderly.

(4) On the basis of the information provided by the Member States which adopted measures at national level, it can be concluded that jelly mini-cups containing E 425 konjac constitute a life-threatening risk. In addition to their shape and size, the chemical and physical properties of konjac are the cause for jelly mini-cups to constitute a serious risk to human health.

(5) In the present case, warning through labelling is not sufficient to protect human health, especially with regard to children.

(6) It is necessary to modify the conditions of use for E 425 konjac as regards its use in jelly confectionery, including jelly-mini cups.

(7) Directive 95/2/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Annex IV to Directive 95/2/EC in the row for E 425: Konjac: (i) Konjac gum, (ii) Konjac glucomannane the text 'Foodstuffs in general (except those referred to in Article 2(3))' is replaced by the text 'Foodstuffs in general (except those referred to in Article 2(3) and jelly confectionery including jelly-mini-cups)'.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2003] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Proposal for a Council Regulation amending Regulation (EC) No 348/2000 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine

(2002/C 331 E/27)

COM(2002) 452 final

(Submitted by the Commission on 5 August 2002)

EXPLANATORY MEMORANDUM

On 19 November 1998, an anti-dumping proceeding was initiated by the Commission and led to the imposition of a definitive anti-dumping duty on certain seamless pipes and tubes of iron or non-alloy steel originating, *inter alia*, in Ukraine by Council Regulation (EC) No 348/2000 [1].

Exemptions to the duties were granted, however, *inter alia* for imports produced and sold for export to the Community by three Ukrainian exporters from which the Commission accepted a joint undertaking (cf Commission Decision 2000/137/EC [2]). These companies are listed in the aforementioned Regulation and Decision.

The three Ukrainian companies advised the Commission that they wished to withdraw the joint undertaking.

In view of the above, it is necessary by means of the attached Regulation, to propose to the Council that the companies benefiting from an exemption to the anti-dumping duty from the Ukraine listed in Article 2(4) of Regulation (EC) No 348/2000 be amended.

In parallel to the attached Regulation, the Commission is amending Article 1 of Commission Decision 2000/137/EC.

[1] OJ L 45, 17.2.2000, p. 1.
[2] OJ L 46, 18.2.2000, p. 34.

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 8 thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) On 19 November 1998, an anti-dumping proceeding was initiated by the Commission [2] on imports of certain seamless pipes and tubes of iron or non-alloy steel ('the product concerned') originating, *inter alia*, in Ukraine.

(2) This proceeding resulted in an anti-dumping duty being imposed by Council Regulation (EC) No 348/2000 [3] in February 2000 in order to eliminate the injurious effects of dumping.

(3) In parallel, by Decision 2000/137/EC [4], the Commission accepted a joint price undertaking up to a certain volume threshold incorporating measures aimed at monitoring the undertaking from three Ukrainian exporting producers, Dnepropetrovsk Tube Works ('DTW'), Nikopol Pivdennotrubny Works (transferred later to Nikopolsky Seamless Tube Plant, 'Niko Tube' [5]) and Nizhnedneprovsky Tube Rolling Plant ('NTRP'). Accordingly, imports of the product concerned from these exporting producers were exempted from the said anti-dumping duty.

[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 C 353, 19.11.1998, p. 13.
[3] OJ L 45, 17.2.2000, p. 1.
[4] OJ L 46, 18.2.2000, p. 34.
[5] OJ C 198, 13.7.2001, p. 2.

B. **VOLUNTARY WITHDRAWAL OF THE JOINT UNDERTAKING**

(4) DTW, Niko Tube and NTRP advised the Commission that they wished to withdraw this joint undertaking. Accordingly, by Commission Decision 2002/. . ./EC, the names of these companies have been deleted from the list of companies from which undertakings are accepted in Article 1 of Decision 2000/137/EC.

C. **AMENDMENT OF REGULATION (EC) No 348/2000**

(5) In view of the above and pursuant to Article 8(9) of Council Regulation (EC) No 384/96, Article 2(4) of Regulation (EC) No 348/2000 should be amended accordingly, and the exporting producers should be subject to the appropriate rate of anti-dumping duty for the Ukraine as set in Article 1(2) of Regulation (EC) No 348/2000 (38,5 %),

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 2(4) of Council Regulation (EC) No 348/2000 is replaced by the following table.

Country	Manufacturer	Taric additional code
Croatia	Zeljezara Sisak d.d., Sisak	A064

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.

Proposal for Council Regulation introducing a system for the statistical monitoring of trade in bluefin tuna, swordfish and bigeye tuna within the Community

(2002/C 331 E/28)

COM(2002) 453 final — 2002/0200(CNS)

(Submitted by the Commission on 5 August 2002)

EXPLANATORY MEMORANDUM

The European Community participates in regional fisheries organisations (RFOs) which provide a framework for regional cooperation in the conservation and management of fish stocks.

In the last ten years a number of RFOs have adopted and implemented various programmes which seek, through the introduction of catch declarations, certificates of origin, monitoring and control arrangements and statistical document programmes, to control unlawful, unregulated and unreported fishing.

The ICCAT has had in place a statistical document programme for bluefin tuna since 1993.

At its seventeenth ordinary meeting in 2001, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted two recommendations, one on the introduction of a statistical document programme for swordfish and the other for bigeye tuna.

At the same time, the Indian Ocean Tuna Commission (IOTC), at its sixth annual meeting in 2001, adopted a resolution on the introduction of a statistical document programme for bigeye tuna.

The aim of these programmes is to improve the reliability of statistical data on catches of the species concerned and to provide information about trade flows.

To that end the programmes seek to control imports, exports and re-exports of the products in question, using a statistical document validated by the competent authorities of the State concerned. The programmes, furthermore, impose an obligation on the contracting parties to ensure the collection and cross-checking of trade data.

The purpose of this proposal is to incorporate in Community law the obligations laid down by the programmes and to establish the Member States' responsibility for seeing to it that they are fulfilled.

In the case of bluefin tuna, the recommendations and resolutions adopted previously by the ICCAT concerning the statistical document programme have been incorporated in Community law by Council Regulation (EC) No 858/94 of 12 April 1994 introducing a system for the statistical monitoring of trade in bluefin tuna (*Thunnus thynnus*) within the Community, as last amended by Regulation (EC) No 1446/99 of 24 June 1999. In order to ensure that the provisions on statistical documents are more easily readable and applied uniformly, Regulation (EC) No 858/94 should be repealed and its provisions incorporated in this proposal.

The Commission proposes therefore that the Council adopt the attached proposal.

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) Since 14 November 1997, and following the adoption of Council Decision 86/238/EEC [1], the Community has been a Contracting Party to the International Convention for the Conservation of Atlantic Tunas signed in Rio de Janeiro on 14 May 1966, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed at Paris on 10 July 1984 (hereinafter called the 'ICCAT Convention').

(2) The ICCAT Convention provides a framework for regional cooperation in the conservation and management of tuna stocks and tuna-like species in the Atlantic Ocean and adjacent seas through the establishment of an International Commission for the Conservation of Atlantic Tunas, hereinafter called the 'ICCAT', and the adoption by the latter of conservation measures which become binding on the contracting parties.

(3) As part of the measures to regulate stocks of bigeye tuna and swordfish, improve the quality and reliability of statistical data and control the spread of illegal fishing, the ICCAT has adopted recommendations on the introduction of statistical document programmes for bigeye tuna and Atlantic swordfish. Since these recommendations have become binding on the Community, they need to be put into effect.

(4) Council Decision 95/399/EC [2] approved the accession of the Community to the Agreement for the establishment of the Indian Ocean Tuna Commission. This Agreement constitutes a framework for strengthening international cooperation for the purpose of conserving and making rational use of Indian Ocean tuna and related species through the establishment of the Indian Ocean Tuna Commission, hereinafter called the 'IOTC' and the adoption by the latter of resolutions on conservation and management in the area of competence of the IOTC which become binding on the contracting parties.

(5) The IOTC has adopted a resolution establishing a statistical document programme for bigeye tuna. As this resolution has become binding on the Community, it needs to be put into effect.

(6) The recommendations and resolution on a statistical document programme for bluefin tuna adopted previously by the ICCAT have been incorporated in Community law by Council Regulation (EC) No 858/94 of 12 April 1994 introducing a system for the statistical monitoring of trade in bluefin tuna (*Thunnus thynnus*) within the Community [3]. In order to ensure that the provisions on statistical documents are more easily readable and applied uniformly, Regulation (EC) No 858/94 should be repealed and all the relevant provisions brought together in this Regulation.

(7) The measures needed to implement this Regulation should be adopted in accordance with Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4],

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Object

This Regulation lays down general rules and conditions for the application by the Community of:

(a) the statistical document programmes for bluefin tuna (*Thunnus thynnus*), swordfish (*Xiphias gladius*) and bigeye tuna (*Thunnus obesus*) adopted by the International Commission for the Conservation of Atlantic Tunas (hereinafter called 'ICCAT');

(b) the statistical document programme for bigeye tuna (*Thunnus obesus*) adopted by the Indian Ocean Tuna Commission (hereinafter called 'IOTC').

Article 2

Scope

This Regulation shall apply to bluefin tuna, swordfish and bigeye tuna as referred to in Article 1:

(a) caught by a Community vessel or producer, or

(b) imported into the Community, or

[1] OJ L 162, 18.6.1986, p. 33.

[2] OJ L 236, 5.10.1995, p. 24.

[3] OJ L 99, 19.4.1994, p. 1. Regulation amended by Regulation (EC) No 1446/1999 (OJ L 167, 2.7.1999, p. 1).

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

(c) exported or re-exported from the Community to a third country.

This Regulation shall not apply to bigeye tuna taken by seiners or baitboats and intended mainly for the canning industry in the areas of application of the Agreement for the establishment of the Indian Ocean Tuna Commission (hereinafter called 'the IOTC Agreement') and the International Convention for the Conservation of Atlantic Tunas (hereinafter called 'the ICCAT Convention').

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) bluefin tuna: fish of the species *Thunnus thynnus* falling within the TARIC codes listed in Annex I;

(b) swordfish: fish of the species *Xiphias gladius* falling within the TARIC codes listed in Annex II;

(c) bigeye tuna: fish of the species *Thunnus obesus* falling within the TARIC codes listed in Annex III;

(d) fishing: capture by a vessel with a view to landing, transshipment or placing in a cage or by a producer using a tuna trap net, of any fish belonging to one of the species listed in Article 1;

(e) Community producer: natural persons or legal entities using the means of production for obtaining fishery products with a view to first-stage marketing;

(f) importation: the customs procedures referred to in Article 4, points 16 (a) to 16 (f), of Council Regulation (EEC) No 2913/92 [1].

CHAPTER 2

STATISTICAL MONITORING

Section 1

Requirements on Member States in respect of imports

Article 4

Statistical document for importation

1. All quantities of fish belonging to one of the species referred to in Article 1 imported from a third country into the territory of the Community shall be accompanied by a statistical document drawn up in accordance with the specimen shown at:

— Annex IVa in the case of bluefin tuna,

— Annex V in the case of swordfish,

— Annex VI or Annex VII in the case of bigeye tuna.

2. A statistical document shall:

(a) contain all the information specified in the relevant Annexes referred to in paragraph 1 and all the signatures required by the appropriate operators, who shall be answerable for the declarations made therein;

(b) be validated:

(i) where the fishing has been carried out by a vessel: by a civil servant duly approved by the flag State of the vessel which carries out the fishing or by any other person or institution duly approved by that State. In the case of the third countries listed in Annex IVb, validation may be undertaken by an institution recognised for that purpose by that country;

(ii) where the fishing has been carried out using a trap net: by a civil servant duly approved by the State in whose territorial waters the catch has been taken;

(iii) in the case of swordfish and bigeye tuna caught by a vessel operating under a charter agreement: by a civil servant or any other person or institution duly approved by the exporting State;

(iv) in the case of bigeye tuna caught by one of the vessels listed in Annexes VIIIa and VIIIb: by a Japanese or Taiwanese government official or by any other person duly approved for that purpose by the Governments of those countries.

3. The statistical document shall be delivered to the competent authorities of the Member State in which the product is placed in free circulation.

4. The Member States shall ensure that their customs authorities or other competent official agents request and examine all documents, including the statistical document, for imports of fish belonging to one of the species referred to in Article 1.

Those authorities may also examine the content of any cargo in order to verify the accuracy of the information contained in those documents.

5. The importation of fish belonging to one of the species referred to in Article 1 shall be prohibited where the cargo concerned is not accompanied by the statistical document for the relevant importation, validated and completed in accordance with paragraphs 1 and 2.

Section 2

Requirements on Member States in respect of exports

Article 5

Statistical document for exportation

1. All quantities of fish belonging to one of the species referred to in Article 1 caught by a Community vessel or taken by a Community producer and exported to a third country shall be accompanied by a statistical document drawn up in accordance with the specimen shown at:

[1] OJ L 302, 19.10.1992, p. 1.

— Annex IV in the case of bluefin tuna;

— Annex V in the case of swordfish;

— Annex VI or Annex VII in the case of bigeye tuna.

2. A statistical document shall:

(a) contain all the information specified in the relevant Annexes referred to in paragraph 1 and all the signatures required by the appropriate operators, who shall be answerable for the declarations made therein;

(b) be validated by:

(i) the competent authorities of the flag Member State, or

(ii) the competent authorities of another Member State in which the products are landed, provided the corresponding quantities are exported outside the Community from the territory of that Member State. The latter shall transmit a copy of the validated statistical document to the flag State within two months.

3. The Member States shall ensure that their customs authorities or other competent official agents request and examine all documents, including the statistical document, for exports of all fish belonging to one of the species referred to in Article 1.

These authorities may also examine the content of any cargo in order to verify the accuracy of the information contained in those documents.

4. Each Member State shall send the Commission the information concerning its competent authorities referred to in paragraph 2(b). The Commission shall forward this information to the other Member States.

5. The exportation of fish belonging to one of the species referred to in Article 1 shall be prohibited where the load concerned is not accompanied by the statistical document for the relevant exportation, validated and completed in accordance with paragraphs 1 and 2.

Section 3

Requirements on Member States in respect of re-exports

Article 6

Re-export licences

1. A re-export licence shall accompany all quantities of fish belonging to one of the species referred to in Article 1 which are:

(a) re-exported from the Community to a third country following importation into the Community; or

(b) imported into the territory of the Community from a third country after having been re-exported by that third country.

Re-export licences shall be drawn up in accordance with the specimen shown at:

(a) Annex IX in the case of bluefin tuna;

(b) Annex X in the case of swordfish;

(c) Annex XI or Annex XII in the case of bigeye tuna.

2. Re-export licences shall:

(a) contain all the information specified in the relevant Annexes referred to in the second subparagraph of paragraph 1 and all the signatures required by the appropriate operators, who shall be answerable for the declarations made therein;

(b) be validated by the competent authorities of the Member State from which the re-export is to take place or the competent authorities of the third country from which the re-export has taken place;

(c) be accompanied by a duly validated copy of the statistical document for importation referred to in Article 4.

3. Member States which authenticate re-export licences in accordance with paragraph 2(b) shall require re-exporters to provide the necessary documents certifying that the cargo of fish re-exported corresponds to the cargo of fish originally imported. The Member States shall provide the flag State or the exporting State, upon request, with a copy of the licence.

4. The re-export licence shall be delivered to the competent authorities of the Member State of importation or re-exportation.

5. The Member States shall ensure that their customs authorities or other competent official agents request and examine all documents, including the re-export licence, for the re-export of fish belonging to one of the species referred to in Article 1.

These authorities may also examine the content of any cargo in order to verify the accuracy of the information contained in those documents.

6. The re-export and import following the re-export of fish belonging to one of the species referred to in Article 1 shall be prohibited where the cargo concerned is not accompanied by the corresponding licence, validated and completed in accordance with paragraphs 1 and 2.

Article 7

Repeated re-exports

1. All quantities of fish belonging to one of the species referred to in Article 1, re-exported after having already been re-exported, shall be accompanied by a new re-export licence, validated and completed in accordance with Article 6(1) and (2).

Article 6(3), (4), (5) and (6) shall apply.

2. The new licence referred to in paragraph 1 shall be accompanied by a certified copy of the preceding, duly validated, re-export licences which accompanied the cargo.

CHAPTER 3

TRANSMISSION OF DATA

Article 8

Information concerning validation

Each Member State shall forward to the Commission not later than 30 days following the entry into force of this Regulation a specimen of its statistical documents and re-export licences. It shall also forward to the Commission all necessary information concerning validation and, in good time, any changes to those documents and licences, in accordance with:

(a) the ICCAT specimen shown at Annex XIII for bluefin tuna, swordfish and bigeye tuna;

(b) the IOTC specimen shown at Annex XIV for bigeye tuna.

Article 9

Transmission of data

1. Member States which import, export or re-export fish belonging to one of the species referred to in Article 1 shall forward to the Commission by computer transmission before 15 March for the period from 1 July to 31 December of the preceding year and before 15 September for the period from 1 January to 30 June of the current year, a report on:

(a) the quantities of each commercial presentation of fish belonging to one of the species referred to in Article 1 imported into their territory, broken down by third country of origin, place of catch and type of fishing gear used;

(b) the quantities of each commercial presentation of fish belonging to one of the species referred to in Article 1 imported into their territory after having been re-exported by a third country, broken down by third country of origin, place of capture and type of fishing gear used.

2. The report referred to in paragraph 1 shall contain the information specified in:

(a) Annex XV for bluefin tuna;

(b) Annex XVI for swordfish;

(c) Annex XVII or Annex XVIII for bigeye tuna.

Article 10

National report

Member States which export fish belonging to one of the species referred to in Article 1 shall check that the information on imports transmitted by the Commission corresponds to their own information. They shall inform the Commission of the outcome of such cross-checks in the national report referred to in Article 9 of Council Regulation (EC) No 1936/2001 [1].

CHAPTER 4

FINAL PROVISIONS

Article 11

Amendment of Annexes

The Annexes hereto may be amended in accordance with the ICCAT and the IOTC conservation measures which become binding on the Community and in accordance with the procedure laid down in Article 12(2).

Article 12

Committee procedure

1. The Commission shall be assisted by the Management Committee for Fisheries and Aquaculture established by Article 17 of Council Regulation (EEC) No 3760/92 [2].

2. Where reference is made to this paragraph, Articles 4 and 7 of 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 13

Repeal

1. Regulation (EC) No 858/94 is hereby repealed.

2. References to the repealed Regulation shall be understood as references to this Regulation and are to be read in accordance with the table of equivalence shown in Annex XIX.

Article 14

Entry into force

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.

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[1] OJ L 263, 3.10.2001, p. 1.

[2] OJ L 389, 31.12.1992, p. 1.

ANNEX I

PRODUCTS REFERRED TO IN ARTICLE 3(a)

Without prejudice to the rules for the interpretation of the Combined Nomenclature, the wording of the description of the goods is regarded as being for information purposes only. In the context of this Annex, the TARIC codes will apply, as they exist when this Regulation is adopted.

TARIC code
0301 99 90 60
0302 35 10 00
0302 35 90 00
0303 45 11 00
0303 45 13 00
0303 45 19 00
0303 45 90 00
0304 10 38 60
0304 10 98 50
0304 20 45 10
0304 90 97 70
0305 20 00 18
0305 20 00 74
0305 30 90 30
0305 49 80 10
0305 59 90 40
0305 69 90 30
1604 14 11 20
1604 14 16 20
1604 14 18 20
1604 20 70 30

ANNEX II

PRODUCTS REFERRED TO IN ARTICLE 3(b)

Without prejudice to the rules for the interpretation of the Combined Nomenclature, the wording of the description of the goods is regarded as being for information purposes only. In the context of this Annex, the TARIC codes will apply, as they exist when this Regulation is adopted.

TARIC code
0301 99 90 70
0302 69 87 00
0303 79 87 10
0303 79 87 20
0303 79 87 90
0304 10 38 70
0304 10 98 55
0304 20 87 00
0304 90 65 00
0305 20 00 19
0305 20 00 76
0305 30 90 40
0305 49 80 20
0305 59 90 50
0305 69 90 50
1604 19 91 30
1604 19 98 20
1604 20 90 60

ANNEX III

PRODUCTS REFERRED TO IN ARTICLE 3(c)

Without prejudice to the rules for the interpretation of the Combined Nomenclature, the wording of the description of the goods is regarded as being for information purposes only. In the context of this Annex, the TARIC codes will apply, as they exist when this Regulation is adopted.

TARIC code
0301 99 90 75
0302 34 10 00
0302 34 90 00
0303 44 11 00
0303 44 13 00
0303 44 19 00
0303 44 90 00
0304 10 38 75
0304 10 98 65
0304 20 45 20
0304 90 97 75
0305 20 00 21
0305 20 00 78
0305 30 90 75
0305 49 80 60
0305 59 90 45
0305 69 90 40
1604 14 11 30
1604 14 16 30
1604 14 18 30
1604 20 70 40

ANNEX IVa

SPECIMEN ICCAT BLUEFIN TUNA STATISTICAL DOCUMENT

DOCUMENT No	ICCAT BLUEFIN TUNA STATISTICAL DOCUMENT

EXPORT SECTION

1. FLAG COUNTRY

2. NAME OF VESSEL AND REGISTRATION No (where available)

3. TRAP (where applicable)

4. PLACE OF EXPORT (town, state, province, country)

5. DESCRIPTION OF FISH

Product/Type [a]		Gear code [b]	Catch area [c]	Net weight (kg)	Tag No (where appropriate)
F/FR	RD/GG/DR/FL/OT				

(a) F = fresh, FR = frozen, RD = round GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (Describe the type of product)
(b) If gear code OT, describe type of gear
(c) Ocean area (East Atlantic, West Atlantic, Mediterranean, Pacific)

6. EXPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, true and accurate.

Name Address Signature Date Licence No (where appropriate)

7. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, true and correct.

Name and position of official Signature Date Government seal

IMPORT SECTION

8. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, true and correct. (Transit country)

Name Address Signature Date Licence No (where appropriate)

IMPORTER'S DECLARATION (Transit country)

Name Address Signature Date Licence No (where appropriate)

IMPORTER'S DECLARATION (Final destination)

Name Address Signature Date Licence No (where appropriate)

FINAL PLACE OF IMPORT:

Town State or province Country

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

BLUEFIN TUNA STATISTICAL DOCUMENT INSTRUCTION SHEET

Pursuant to the 1992 ICCAT recommendations, importers of bluefin tuna into the territory of an ICCAT contracting party or who bring it for the first time into the area of a regional economic organisation will be required to complete the appropriate sections of this document. Only complete and valid documents will ensure that shipments of bluefin tuna will be allowed to enter the territory of contracting parties. Shipments of bluefin tuna that are accompanied by incorrectly documented Bluefin Tuna Statistical Documents (i.e. the statistical document is either missing from the consignment or is incomplete, invalid or falsified) will be considered illegitimate consignments of bluefin tuna, that are contrary to ICCAT conservation efforts, and their entry into the territory of a contracting party will be suspended (PENDING RECEIPT OF A PROPERLY COMPLETED DOCUMENT) or subject to administrative or other sanction.

Please use this instruction sheet as a guide to complete the sections of the Bluefin Tuna Statistical Document that apply to exporters, importers, and Government validation. IF A LANGUAGE OTHER THAN ENGLISH IS USED WHEN COMPLETING THIS DOCUMENT, PLEASE ATTACH A TRANSLATION INTO ENGLISH. NOTE: IF A BLUEFIN TUNA PRODUCT IS EXPORTED DIRECTLY TO JAPAN WITHOUT FIRST PASSING THROUGH ANOTHER COUNTRY, ALL FISH MAY BE ENTERED ON ONE DOCUMENT. HOWEVER, IF THE BLUEFIN TUNA PRODUCT IS EXPORTED THROUGH AN INTERMEDIATE COUNTRY (i.e. A COUNTRY OTHER THAN THE COUNTRY WHICH IS THE FINAL DESTINATION OF THE PRODUCT) SEPARATE DOCUMENTS MUST BE PREPARED FOR DIFFERENT FINAL DESTINATIONS OR EACH FISH MAY BE ACCOMPANIED BY A SEPARATE DOCUMENT TO IDENTIFY ANY POSSIBLE DIVISION OF SHIPMENTS BY AN INTERMEDIATE COUNTRY. THE IMPORT OF FISH PARTS OTHER THAN THE MEAT (i.e. HEAD, EYES, ROE, GUTS, TAILS) MAY BE PERMITTED WITHOUT THE DOCUMENT.

INSTRUCTIONS

DOCUMENT No: Country coded document number to be provided by country issuing document.

1. FLAG COUNTRY: Enter the name of the country of the vessel that harvested the bluefin tuna in the shipment and issued this document. According to the ICCAT Recommendation, only the flag State of the vessel that harvested the bluefin tuna can issue this document.

2. NAME OF VESSEL AND REGISTRATION No (where available): Enter the name and registration number of the vessel that harvested the bluefin tuna in the shipment. Where tag numbers are provided in section 5, this section need not be completed.

3. TRAP (where applicable): Enter the name of the trap that harvested the bluefin tuna in the shipment.

4. PLACE OF EXPORT: Enter the town, state or province, and country from which the bluefin tuna was exported.

5. DESCRIPTION OF FISH: The exporter must provide the following information with the highest possible degree of accuracy. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form (RD/GG/DR/FL/OT). For OTHER, describe the type of products in the shipment. (2) Gear code: identify the type of gear used to harvest the bluefin tuna using the list below. (3) Area of catch: identify the general area of the ocean in which the bluefin tuna was harvested (i.e. east Atlantic, west Atlantic, Mediterranean (see map below 4), Pacific). (4) Net weight in kg. (5) Country coded tag number (where applicable).

6. EXPORTER'S DECLARATION: The persons or bodies exporting the bluefin tuna shipment must provide their name and address, the date the shipment was exported, and the licence number (where applicable).

7. GOVERNMENT VALIDATION: Enter the name and position of the official signing the document. The official must be in the employment of the competent Government authority of the flag State of the vessel that harvested the bluefin tuna described in the document. This requirement may be waived according to the ICCAT RESOLUTION CONCERNING VALIDATION BY A GOVERNMENT OFFICIAL OF THE BLUEFIN TUNA STATISTICAL DOCUMENT.

8. IMPORTER'S DECLARATION: The persons or bodies importing the bluefin tuna must provide their name and address, the date the bluefin tuna was imported, and the licence number (where applicable). This includes imports into intermediate countries. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

GEAR CODES:

BB	Baitboat	MWT	Mid-water trawl	SURF	Surface fisheries unclassified
GILL	Gillnet	PS	Purse seine	TL	Tended line
HAND	Handline	RR	Rod and reel	TRAP	Trap
HARP	Harpoon	SPHL	Sport handline	TROL	Troll
LL	Longline	SPOR	Sport fisheries unclassified	UNCL	Unspecified methods
				OT	Other — describe gear type

ANNEX IVb

Third countries recognised by ICCAT for which the statistical document can be validated by an institution authorised for this purpose, for example a chamber of commerce: Angola, Brazil, Canada, Cape Verde, China, Côte d'Ivoire, Croatia, Equatorial Guinea, Gabon, Ghana, Guinea-Bissau, Guinea-Conakry, Japan, Korea, Libya, Morocco, Russia, São Tomé and Principe, South Africa, Tunisia, Uruguay, USA, Venezuela.

ANNEX V

SPECIMEN ICCAT SWORDFISH STATISTICAL DOCUMENT

DOCUMENT No	ICCAT SWORDFISH STATISTICAL DOCUMENT

EXPORT SECTION

1. FLAG COUNTRY/BODY/FISHING BODY

2. PLACE OF EXPORT (town, state or province, country/body/fishing body)

[3. AREA OF CATCH (tick one area)

(a) North Atlantic ☐ (b) South Atlantic ☐ (c) Mediterranean ☐ (d) Pacific ☐ (e) Indian Ocean ☐

If (d) or (e) is ticked, please do not complete sections 4 and 5]

4. DESCRIPTION OF FISH

Type of product [a]		Name of vessel and registration No	Gear code [b]	Net weight (kg)
F/FR	RD/GG/DR/FL/ST/OT			

(a) F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, ST = steak, OT = other (describe type of product)

(b) If gear code OT, describe type of gear

5. EXPORTER'S DECLARATION: To export to countries that have adopted the alternative minimum size provided for by the ICCAT for swordfish, exporters must declare that the Atlantic swordfish listed above weighs more than 15 kg (33 lb) or, if it is in parts, that the parts are from a swordfish weighing >15 kg

I hereby declare that the above information is, to the best of my knowledge, complete, true and accurate.

Name Name of body Address Signature Date (where appropriate) Licence No

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, true and accurate.

Name and position of official Signature Date Government seal [Net weight (kg)]

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, true and accurate.

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date Licence No

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date Licence No

IMPORTER'S DECLARATION (Final destination of shipment)

Name Address Signature Date Licence No

FINAL PLACE OF IMPORT

Town State or Province Country/Body/Fishing body

ICCAT SWORDFISH STATISTICAL DOCUMENT INSTRUCTION SHEET

Pursuant to the 2001 ICCAT recommendation, swordfish imported into the territory of a contracting party or entering the area of a regional economic organisation for the first time must be accompanied by an ICCAT Swordfish Statistical Document from 1 January 2003. Exporters or importers of swordfish from all ocean areas will be required to complete the relevant sections of the ICCAT Swordfish Statistical Document. Only complete and valid documents will guarantee shipments of swordfish admission to the territory of contracting parties (e.g. Japan, Canada, United States, Spain, etc.). Shipments of swordfish that are accompanied by incorrectly documented Statistical Documents (i.e. the Statistical Document is missing from the shipment or is incomplete, invalid or falsified) will be considered illegitimate consignments that are contrary to ICCAT conservation efforts, and their entry into the territory of a contracting party will be suspended (PENDING RECEIPT OF A PROPERLY COMPLETED DOCUMENT) or subject to administrative or other sanctions.

Please follow this instruction sheet when completing the sections that apply to exporters, importers, and Government validation. If a language other than English is used when completing this document, please attach a translation into English either to the document or under separate cover. Note: If a swordfish product is exported directly from the country/body/fishing body to a contracting party without first passing through an intermediate country/body/fishing body (i.e. country/body/fishing body other than the country/body/fishing body which is the final destination of the product), separate documents must be completed for fish intended for different final destinations or each fish must be accompanied by a separate document to identify any possible division of shipments by an intermediate country/body/fishing body. The import of swordfish parts other than the meat (i.e. head, eyes, roe, guts, tails) may be allowed without the document.

DOCUMENT No: Country coded document number to be provided by the country/body/fishing body issuing the document.

1. FLAG COUNTRY/BODY/FISHING BODY: Enter the name of the country/body/fishing body of the vessel that harvested the swordfish shipment and issued this document. According to the ICCAT Recommendation, only the flag State of the vessel which harvested the swordfish or, if the vessel is operating under a charter agreement, the country of exportation can issue this document.

2. PLACE OF EXPORT: Enter the town, state or province, and country/body/fishing body from which the swordfish was exported.

[3. AREA OF CATCH: Indicate the area in which the catch was taken. (If (d) or (e) is ticked, there is no need to complete sections 4 and 5 below.)]

4. DESCRIPTION OF FISH: The exporter must provide the following information with the highest degree of accuracy possible. (NOTE: one row should be used to describe one product type.) (1) Product type: identify the type of product being shipped as FRESH or FROZEN, and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) NAME OF VESSEL AND REGISTRATION No: Enter the name and registration number (where available) of the vessel which harvested the swordfish. If the product in the shipment comes from several vessels, list all the vessels whose products are included in the shipment. (3) Gear code: enter the type of gear used to harvest the swordfish using the list below. (4) Net weight in kg.

5. EXPORTER'S DECLARATION: The persons or bodies exporting the swordfish must provide their name, address, signature and date the shipment was exported, and the licence number of the body (where applicable). For countries that have adopted the alternative minimum size provided for by ICCAT for swordfish, exporters must declare that the Atlantic swordfish listed weighs more than 15 kg (33 l.) or, if it is in parts, that the parts are from a swordfish weighing >15 kg.

6. GOVERNMENT VALIDATION: Enter the name and position of the official signing the document. The official must be in the employment of the competent Government authority of the flag State of the vessel that harvested the swordfish described in the document. The document may be signed by any other person or institution duly accredited for this purpose by the Government of the flag State or, if the vessel is operating under a charter agreement, by the government official or any other person or institution authorised by the exporting State. [The net weight of the shipment must also be entered in kg in this section.]

7. IMPORTER'S DECLARATION: The persons or bodies importing the swordfish must provide their name, address, signature and date the swordfish was imported, the licence number of the body (where applicable), and the final place of import. This includes imports into intermediate countries/bodies/fishing bodies. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

GEAR CODE

BB	Baitboat	PS	Purse seine	TRAP	Trap
GILL	Gillnet	RR	Rod and reel	TROL	Troll
HAND	Handline	SPHL	Sport handline	UNCL	Unspecified methods
HARP	Harpoon	SPOR	Sport fisheries unclassified	OT	Other
LL	Longline	SURF	Surface fisheries unclassified		
MWT	Mid-water trawl	TL	Tended line		

The original of the completed document must accompany the shipment exported. Keep a copy for information purposes. The original (imports) or a copy (exports) must be stamped and sent by mail or fax within 24 hours following import or export to: (. . .)

ANNEX VI

SPECIMEN ICCAT BIGEYE TUNA STATISTICAL DOCUMENT

DOCUMENT No	ICCAT BIGEYE TUNA STATISTICAL DOCUMENT

EXPORT SECTION

1. NAME OF VESSEL AND REGISTRATION No (where available)

2. TRAP (where applicable)

3. PLACE OF EXPORT (town, state/province, country/body/fishing body)

4. AREA OF CATCH (tick one area)

(a) Atlantic ☐ (b) Pacific ☐ (c) Indian Ocean ☐

If (b) or (c) is ticked, please do not complete sections 6 and 7. 5.

5. DESCRIPTION OF FISH

Product type [a]		Gear code [b]	Net weight (kg)
F/FR	RD/GG/DR/FL/OT		

(a) F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)
(b) If gear code OT, describe the type of gear

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.
Total weight of shipment kg

Name and position of official Signature Date Government seal

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

IMPORTER'S DECLARATION (Transit country/body/fishing body)
Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION (Transit country/body/fishing body)
Name Address Signature Date (where appropriate) Licence No

FINAL PLACE OF IMPORT
Town State/Province Country/Body/Fishing Body

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

INSTRUCTIONS

DOCUMENT No: Document number coded according to country/body/fishing body to be provided by country/body/fishing body issuing document.

1. FLAG COUNTRY/BODY/FISHING BODY: Enter the name of the country/body/fishing body of the vessel that harvested the swordfish shipment and issued this document. According to the ICCAT Recommendation, only the flag State of the vessel which harvested the bigeye tuna, or if the vessel is operating under a charter agreement, an official or any other person or institution duly accredited by the exporting country can issue this document.

2. NAME OF VESSEL AND REGISTRATION No (where available): Enter the name and registration number of the vessel which harvested the shipment of bigeye tuna.

3. TRAP (where applicable): Enter the name of the trap in which the bigeye tuna in the shipment was harvested.

4. PLACE OF EXPORT: Indicate the town, state, province, and country/body/fishing body from which bigeye tuna was exported.

5. AREA OF CATCH: Indicate the area in which the catch was taken. (If (d) or (e) is ticked, there is no need to complete sections 6 and 7 below.)

6. DESCRIPTION OF FISH: The exporter must provide the following information with the highest degree of accuracy possible. (NOTE: one row should be used to describe one product type.) (1) Product type: identify the type of product being shipped as FRESH or FROZEN, and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Gear code: enter the type of gear used to harvest the bigeye tuna using the list below. If gear code OT, describe the type of gear, including fish farming. (3) Net weight in kg.

7. EXPORTER'S DECLARATION: The persons or bodies exporting the bigeye tuna must provide their name, name of the body, address, signature, the date the shipment was exported, and the licence number of the body (where applicable).

8. GOVERNMENT VALIDATION: Enter the name and position of the official signing the document. The official must be in the employment of the competent Government authority of the flag State of the vessel that harvested the bigeye tuna described in the document. The document may be signed by any other person or institution duly accredited for this purpose by the Government of the flag State. This requirement may be waived in accordance with the validation of the document by a Government official, or if the vessel is operating under a charter agreement by an official or any other person or institution duly authorised by the exporting country. The total weight of the shipment must also be entered in this section.

9. IMPORTER'S DECLARATION: The persons or bodies importing the bigeye tuna must provide their name, address, signature and the date the bigeye tuna was imported, the licence number of the body (where applicable), and the final place of import. This includes imports into intermediate countries. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

GEAR CODES:

BB	Baitboat	PS	Purse seine	TRAP	Trap
GILL	Gillnet	RR	Rod and reel	TROL	Troll
HAND	Handline	SPHL	Sport handline	UNCL	Unspecified methods
HARP	Harpoon	SPOR	Sport fisheries unclassified	OT	Other
LL	Longline	SURF	Surface fisheries unclassified		
MWT	Mid-water trawl	TL	Tended line		

RETURN A COPY OF COMPLETED DOCUMENT TO: (the name of the office of the competent authority of the flag State).

ANNEX VII

SPECIMEN IOTC BIGEYE TUNA STATISTICAL DOCUMENT

DOCUMENT No	IOTC BIGEYE TUNA STATISTICAL DOCUMENT

EXPORT SECTION

1. FLAG COUNTRY/BODY/FISHING BODY

2. NAME OF VESSEL AND REGISTRATION No (where available)

3. TRAP (where applicable)

4. PLACE OF EXPORT (town, State/province, country/body/fishing body)

5. AREA OF CATCH (tick one area)

(a) Indian Ocean ☐ (b) Pacific Ocean ☐ (c) Atlantic Ocean ☐

If (b) or (c) ticked, do not complete sections 6 and 7 below.

6. DESCRIPTION OF FISH

Product type [a]		Gear code [b]	Net weight (kg)
F/FR	RD/GG/DR/FL/OT		

(a) Description of product type: F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other
(b) Where the gear code is OT, describe the type of gear used

7. EXPORTER'S DECLARATION: I, the undersigned, hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name Name of body Address Signature Date (where appropriate) Licence No

8. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Total weight of shipment kg

Name and position Signature Date Government seal

IMPORT SECTION

9. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION (Country/body/fishing body)

Name Address Signature Date (where appropriate) Licence No

FINAL PLACE OF IMPORTATION:

Town State/Province Country/Body/Fishing body

INSTRUCTIONS

DOCUMENT No: Document number coded according to country to be provided by country issuing document.

1. FLAG STATE/BODY/FISHING BODY: Enter the name of the country of the vessel that harvested the bigeye tuna shipment and issued this document. According to the ICCAT Recommendation, only the flag State of the vessel which harvested the bigeye tuna, or if the vessel is operating under a charter agreement, the exporting country can issue this document.

2. NAME OF VESSEL AND REGISTRATION No (where available): Enter the name and registration number of the vessel which harvested the shipment of bigeye tuna.

3. TRAP (where available): Enter the name of the trap in which the shipment of bigeye tuna was harvested.

4. PLACE OF EXPORT: Indicate the town, state, province, and country from which bigeye tuna was exported.

5. AREA OF CATCH: Indicate the name of the area where the catch was taken. (If (c) or (d) is ticked, there is no need to complete sections 6 and 7 below).

6. DESCRIPTION OF FISH: The exporter must provide the following information with the highest degree of accuracy possible. (NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN, and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Gear code: enter the type of gear used to harvest the bigeye tuna using the list below. If gear code OT, describe the type of gear, including gear used in fish farming (3) Net weight in kg.

7. EXPORTER'S DECLARATION: The persons or bodies exporting the bigeye tuna must provide their name, name of the body, address, signature, the date the shipment was exported, and the licence number of the body (where applicable).

8. GOVERNMENT VALIDATION: Enter the name and position of the official signing the document. The official must be in the employment of the competent Government authority of the flag State of the vessel that harvested the bigeye tuna described in the document. The document may be signed by any other person or institution duly accredited for this purpose by the Government of the flag State. This requirement may be waived in accordance with the validation of the document by a Government official, or if the vessel is operating under a charter agreement by an official or any other person or institution duly authorised by the exporting country. The total weight of the shipment must also be entered in this section.

9. IMPORTER'S DECLARATION: The persons or bodies importing the bigeye tuna must provide their name, address, signature and date the bigeye tuna was imported, the licence number of the body (where applicable), and the final place of import. This also concerns imports into intermediate countries. For fresh and chilled products, the importer's signature may be replaced by that of a representative of the customs clearance agency on condition that that signature is duly accredited by the importer.

GEAR CODES:

BB	Baitboat	PS	Purse seine	TRAP	Trap
GILL	Gillnet	RR	Rod and reel	TROL	Troll
HAND	Handline	SPHL	Sport handline	UNCL	Unspecified methods
HARP	Harpoon	SPOR	Sport fisheries unclassified	OT	Other
LL	Longline	SURF	Surface fisheries unclassified		
MWT	Mid-water trawl	TL	Tended line		

RETURN A COPY OF COMPLETED DOCUMENT TO: (the name of the office of the competent authority of the flag State).

ANNEX VIIIa

LIST OF VESSELS PARTICIPATING IN THE JAPANESE BREAKING-UP PROGRAMME

(At 1 November 2001)

	Year of breaking up	Flag State	Name of vessel	Tonnage	Year of construction	Fishing area
1	2002	BOLIVIA	YING CHIN HSIANG 66	379	1979	INDIAN OCEAN
2	2002	CAMBODIA	HUA CHENG 707	606	1980	INDIAN OCEAN
3	2002	CAMBODIA	HUA CHUNG 808	549	1980	INDIAN OCEAN
4	2002	PHILIPPINES	CHEN FA 736	636	1979	ATLANTIC
5	2002	BOLIVIA	ZHONG I 85	437	1976	PACIFIC
6	2002	BELIZE	LIEN TAI	491	1979	ATLANTIC
7	2003	BELIZE	JEFFREY 131	597	1980	PACIFIC
8	2003	EQUATORIAL GUINEA	WIN FAR 236	672	1978	INDIAN OCEAN
9	2003	EQUATORIAL GUINEA	WIN FAR 266	535	1979	INDIAN OCEAN
10	2003	BOLIVIA	CHIN I MING	663	1979	ATLANTIC
11	2003	BOLIVIA	CHIN CHANG MING	578	1980	ATLANTIC
12	2003	BOLIVIA	GOLDEN RICH (previously: ZHONG XIN 26)	520	1974	ATLANTIC
13	2003	BOLIVIA	CHI MAN	556	1982	INDIAN OCEAN
14	2003	BOLIVIA	HUNG YU 112	690	1981	INDIAN OCEAN
15	2003	EQUATORIAL GUINEA	CHEN CHIANG 1	578	1988	INDIAN OCEAN

ANNEX VIIIb

LIST OF VESSELS FLYING THE TAIWANESE FLAG PARTICIPATING IN THE RE-REGISTRATION PROGRAMME

No	Flag State	Name of vessel	Tonnage	Fishing area	Year of construction
1	EQUATORIAL GUINEA	YIH SHUEN No 212	470	INDIAN OCEAN	1999
2	SEYCHELLES	SEYGEM	573	PACIFIC	1997
3	SEYCHELLES	SEYSTAR	573	PACIFIC	1998
4	VANUATU	NINE LUCKY No 1	508	PACIFIC	1998
5	BELIZE	WIN FAR No 868	498	PACIFIC	1999
6	EQUATORIAL GUINEA	WEI CHING	498	ATLANTIC	1997
7	BELIZE	JUI YING No 666	498	PACIFIC	1997
8	BELIZE	CHEN FA No 1	550	INDIAN OCEAN	1997
9	SEYCHELLES	SEYPERAL	680	PACIFIC	1998
10	BELIZE	PING YUAN No 201	706	INDIAN OCEAN	1996
11	BELIZE	LIAN HORNG No 777	499	PACIFIC	1998
12	BELIZE	FONG KU No 36	521	PACIFIC	1997
13	BELIZE	SHYE SIN No 1	598	O. INDIAN OCEAN	1997
14	BELIZE	HUNG YU No 212	470	ATLANTIC	1997
15	BELIZE	HWA CHIN No 202	470	ATLANTIC	1997
16	BELIZE	SUNG HUI	573	ATLANTIC	1998
17	BELIZE	HSIEN HUA 106	625	PACIFIC	2000
18	BELIZE	HSIEN HUA 107	625	PACIFIC	2000
19	BELIZE	FU YUAN No 66	683	PACIFIC	1998
20	BELIZE	LONG CHANG No 3	589	ATLANTIC	1997

ANNEX IX

SPECIMEN ICCAT BLUEFIN TUNA RE-EXPORT LICENCE

DOCUMENT No	ICCAT BLUEFIN TUNA RE-EXPORT LICENCE

EXPORT SECTION

1. RE-EXPORTING COUNTRY/BODY/FISHING BODY

2. PLACE OF RE-EXPORT

3. DESCRIPTION OF IMPORTED FISH

Product type		Net weight (kg)	Flag country/body/fishing body	Date of importation
F/FR	RD/GG/DR/FL/OT			

F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)

4. DESCRIPTION OF RE-EXPORTED FISH

Product type		Net weight (kg)
F/FR	RD/GG/DR/FL/OT	

F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)

5. RE-EXPORTER: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name Address Signature Date (where appropriate) Licence No

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name and position of official Signature Date Government seal

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country)

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country):

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Final destination)

Name Address Signature Date (where appropriate) Licence No

FINAL PLACE OF IMPORT:

Town State or Province Country/Body/Fishing body

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

BLUEFIN TUNA RE-EXPORT LICENCE INSTRUCTION SHEET

Demand has been growing for the establishment of a re-export system under the ICCAT bluefin tuna statistical document programme. A recommendation was adopted in 1997 to establish the ICCAT bluefin tuna statistical document programme for re-exports. This provides that traders who import bluefin tuna which is re-exported ([1]) to Japan must present an ICCAT bluefin tuna re-export licence ([2]) which must be validated by the Government authorities of the country or area of transit ([3]) or by a recognised institution, such as a chamber of commerce and industry, accredited by the Government of the country or area of transit. A copy of the original bluefin tuna statistical document (BTSD) accompanying the bluefin tuna when it is imported must be attached to the licence. This copy must be certified by the Government authorities of the country or area of transit, or by a recognised institution, such as a chamber of commerce and industry, accredited by the Government of the country or area of transit. Where the bluefin tuna is again re-exporteds ([4]), all copies of the document, including a certified copy of the BTSD and the licence which accompanied the bluefin tuna, must be attached to a new re-export licence which will be validated by the Government authorities of the last country/area of transit, or by a recognised institution, such as a chamber of commerce and industry, accredited by the Government of the last country or area of transit. Only bluefin tuna that is accompanied by a complete, validated licence will be permitted to enter Japan. Shipments of re-exported bluefin tuna accompanied by an incorrectly documented ([5]) licence will be regarded as unlawful consignments of re-exported bluefin tuna, contrary to ICCAT conservation efforts, and their entry to Japan will be suspended subject to the presentation of a properly documented licence.

NOTE:

([1]) 'Re-exported' means that the bluefin tuna passes through a country or zone (not including free zones) after having been exported from the flag country or zone (not including free zones) of the fishing vessel which harvested the bluefin tuna.

([2]) Now called a 're-export licence'

([3]) 'A country or area of transit' means a country or area through which the bluefin tuna transits after having been exported from the flag country or area (not including free zones) of the fishing vessel which harvested the bluefin tuna.

([4]) This rule does not apply to the re-export of bluefin tuna from one European Union member country to another.

([5]) 'Incorrectly documented' means that there is no licence accompanying the consignment, or it is incomplete, invalid or falsified.

Please use this Instruction Sheet as a guide to complete the sections of the Bluefin Tuna Statistical Document that apply to exporters, importers, and Government validation. If a language other than English is used when completing this document, please attach a translation into English. NOTE: IF A BLUEFIN TUNA PRODUCT IS RE-EXPORTED DIRECTLY TO JAPAN WITHOUT FIRST PASSING THROUGH AN INTERMEDIATE COUNTRY, BODY OR FISHING BODY, ALL FISH CAN BE ENTERED ON ONE DOCUMENT. HOWEVER, IF THE BLUEFIN TUNA PRODUCT IS RE-EXPORTED THROUGH AN INTERMEDIATE COUNTRY (i.e. A COUNTRY, BODY OR FISHING BODY OTHER THAN THAT WHICH IS THE FINAL DESTINATION OF THE PRODUCT) SEPARATE DOCUMENTS MUST BE PREPARED FOR DIFFERENT FINAL DESTINATIONS OR EACH FISH MAY BE ACCOMPANIED BY A SEPARATE DOCUMENT TO IDENTIFY ANY POSSIBLE DIVISION OF SHIPMENTS BY AN INTERMEDIATE COUNTRY. THE IMPORT OF FISH PARTS OTHER THAN THE MEAT (i.e. HEAD, EYES, ROE, GUTS, TAILS) MAY BE PERMITTED WITHOUT THE DOCUMENT.

INSTRUCTIONS

DOCUMENT No: Document number coded according to country, body or fishing body to be provided by country, body or fishing body issuing document.

1. COUNTRY/BODY/FISHING BODY CARRYING OUT RE-EXPORT: Enter the name of the country/body/fishing body which re-exports the bluefin tuna in the shipment and which issued this licence. According to the ICCAT Recommendation, only the country/body/fishing body carrying out re-export is authorised to issue this licence.

2. PLACE OF RE-EXPORT: Indicate the town, State or province and country/body/fishing body from which the bluefin tuna was re-exported.

3. DESCRIPTION OF IMPORTED FISH: The exporter must provide the following information with the highest degree of accuracy possible. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of the product in kg. (3) Flag country/body/fishing body: enter the name of the country/body/fishing body of the vessel which harvested the bluefin tuna in the shipment. (4) Date of import.

4. DESCRIPTION OF RE-EXPORTED FISH: The exporter must provide the following information with the highest degree of accuracy possible. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of product in kg.

5. RE-EXPORTER'S DECLARATION: The persons or bodies exporting the bluefin tuna shipment must provide their name, address, the date the shipment was exported, and the licence number of the body (where applicable).

6. GOVERNMENT VALIDATION: Enter the name and position of the official signing the licence. The official must be in the employment of the competent Government authority of the of the country/body/fishing body carrying out the re-export referred to in the licence. This requirement may be waived according to the ICCAT RESOLUTION CONCERNING VALIDATION BY A GOVERNMENT OFFICIAL OF THE BLUEFIN TUNA STATISTICAL DOCUMENT.

7. IMPORTER'S DECLARATION: The persons or bodies importing the bluefin tuna must provide their name and address, signature, the date the bluefin tuna was imported, the licence number of the body (where applicable) and the final destination of the import. This includes imports into intermediate countries/bodies/fishing bodies. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

RETURN A COPY OF COMPLETED LICENCE TO: (the name of the office of the competent authority of the country/body/fishing body carrying out the re-export).

ANNEX X

SPECIMEN ICCAT SWORDFISH RE-EXPORT LICENCE

DOCUMENT No	ICCAT SWORDFISH RE-EXPORT LICENCE

RE-EXPORT SECTION

1. RE-EXPORTING COUNTRY/BODY/FISHING BODY

2. PLACE OF RE-EXPORT

3. DESCRIPTION OF IMPORTED FISH

Product type (*)		Net weight (kg)	Flag country/body/fishing body	Date of importation
F/FR	RD/GG/DR/FL/ST/OT			

4. DESCRIPTION OF RE-EXPORTED FISH

Product type (*)		Net weight (kg)
F/FR	RD/GG/DR/ST/FL/OT	

(*) F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, ST = steaks, FL = fillets, OT = other (describe the type of product)

5. EXPORTER'S DECLARATION: To export to countries/bodies/fishing bodies that have adopted the alternative minimum size provided for by ICCAT for swordfish, exporters must declare that the Atlantic swordfish listed above weighs more than 15 kg (33 lb) or, if it is in parts, that the parts are from a swordfish weighing >15 kg.
I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name Name of body Address Signature Date (where appropriate) Licence No

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name and position of official Administration Signature Date

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date Licence No

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date Licence No

IMPORTER'S DECLARATION (Transit country/body/fishing body)

Name Address Signature Date Licence No

FINAL PLACE OF IMPORTATION:

Town State or Province Country/Body/Fishing Body

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

INSTRUCTIONS

DOCUMENT No: Document number coded according to country, body or fishing body to be provided by country, body or fishing body issuing document.

1. COUNTRY/BODY/FISHING BODY CARRYING OUT RE-EXPORT: Enter the name of the country/body/fishing body which re-exports the shipment of swordfish and which issued this licence. According to the ICCAT Recommendation, only the country/body/fishing body carrying out re-export is authorised to issue this licence.

2. PLACE OF RE-EXPORT: Identify the town, State or province and country/body/fishing body from which the swordfish was re-exported.

3. DESCRIPTION OF IMPORTED FISH: The exporter must provide the following information with the highest degree of accuracy possible. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of the product in kg. (3) Flag country/body/fishing body: enter the name of the country/body/fishing body of the vessel which harvested the swordfish in the shipment. (4) Date of import.

4. DESCRIPTION OF RE-EXPORTED FISH: The exporter must provide the following information with the highest possible degree of accuracy. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of product in kg.

5. RE-EXPORTER'S DECLARATION: The persons or bodies exporting the swordfish shipment must provide their name and address, signature and the date the shipment was re-exported, and the licence number of the body (where applicable).

6. GOVERNMENT VALIDATION: Enter the name and position of the official signing the licence. The official must be in the employment of the competent Government authority of the country/body/fishing body carrying out the re-export referred to in the licence, or a person or institution authorised to authenticate these licences by the competent Government authority. The substitute measure referred to in paragraphs A to D of the ICCAT Resolution on the validation of the Bluefin tuna statistical document by a Government official, adopted by the Commission in 1993, can be applied to the conditions set out above for validations under the Swordfish Statistical Document Programme.

7. IMPORTER'S DECLARATION: The persons or bodies importing the swordfish must provide their name and address, signature, the date the swordfish was imported, the licence number of the body (where applicable) and the final destination of the import. This includes imports into intermediate countries/bodies/fishing bodies. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

RETURN A COPY OF THE COMPLETED DECLARATION TO: (the name of the office of the competent authority of the country/body/fishing body carrying out the re-export).

ANNEX XI

SPECIMEN ICCAT BIGEYE TUNA RE-EXPORT LICENCE

DOCUMENT No	ICCAT BIGEYE TUNA RE-EXPORT LICENCE

EXPORT SECTION

1. RE-EXPORTING COUNTRY/BODY/FISHING BODY

2. PLACE OF RE-EXPORT

3. DESCRIPTION OF IMPORTED FISH

Product type		Net weight (kg)	Flag country/body/fishing body	Date of importation
F/FR	RD/GG/DR/FL/OT			

F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)

4. DESCRIPTION OF RE-EXPORTED FISH

Product type		Net weight (kg)
F/FR	RD/GG/DR/FL/OT	

F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)

5. RE-EXPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name Address Signature Date (where appropriate) Licence No

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name and position of official Signature Date Government seal

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country)

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country):

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Final destination)

Name Address Signature Date (where appropriate) Licence No

FINAL PLACE OF IMPORT:

Town State or Province Country/Body/Fishing body

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

INSTRUCTIONS

DOCUMENT No: Document number coded according to country, body or fishing body to be provided by country, body or fishing body issuing document.

1. COUNTRY/BODY/FISHING BODY CARRYING OUT RE-EXPORT: Enter the name of the country/body/fishing body which re-exports the shipment of swordfish and which issued this licence. According to the ICCAT Recommendation, only the country/body/fishing body carrying out re-export is authorised to issue this licence.

2. PLACE OF RE-EXPORT: Identify the town, State or province and country/body/fishing body from which the bigeye tuna was re-exported.

3. DESCRIPTION OF IMPORTED FISH: The exporter must provide the following information with the highest degree of accuracy possible. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of the product in kg. (3) Flag country/body/fishing body: enter the name of the country/body/fishing body of the vessel which harvested the swordfish in the shipment. (4) Date of import.

4. DESCRIPTION OF RE-EXPORTED FISH: The exporter must provide the following information with the highest possible degree of accuracy. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of product in kg.

5. RE-EXPORTER'S DECLARATION: The persons or bodies exporting the bigeye tuna shipment must provide their name and address, signature and the date the shipment was re-exported, and the licence number of the body (where applicable).

6. GOVERNMENT VALIDATION: Enter the name and position of the official signing the licence. The official must be in the employment of the competent Government authority of the country/body/fishing body carrying out the re-export referred to in the licence, or a person or institution authorised to authenticate these licences by the competent Government authority. The substitute measure referred to in paragraphs A to D of the ICCAT Resolution on the validation of the Bluefin tuna statistical document by a Government official, adopted by the Commission in 1993, can be applied to the conditions set out above for validations under the Swordfish Statistical Document Programme.

7. IMPORTER'S DECLARATION: The persons or bodies importing the swordfish must provide their name and address, signature, the date the swordfish was imported, the licence number of the body (where applicable) and the final destination of the import. This includes imports into intermediate countries/bodies/fishing bodies. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

RETURN A COPY OF THE COMPLETED DECLARATION TO: (the name of the office of the competent authority of the country/body/fishing body carrying out the re-export).

ANNEX XII

SPECIMEN IOTC BIGEYE TUNA RE-EXPORT LICENCE

DOCUMENT No	IOTC BIGEYE TUNA RE-EXPORT LICENCE

RE-EXPORT SECTION

1. RE-EXPORTING COUNTRY/BODY/FISHING BODY

2. PLACE OF RE-EXPORT

3. DESCRIPTION OF IMPORTED FISH

Product type (*)		Net weight (kg)	Flag country/body/fishing body	Date of importation
F/FR	RD/GG/DR/FL/OT			

4. DESCRIPTION OF RE-EXPORTED FISH

Product type (*)		Net weight (kg)
F/FR	RD/GG/DR/FL/OT	

(*) F = fresh, FR = frozen, RD = round, GG = gilled and gutted, DR = dressed, FL = fillets, OT = other (describe the type of product)

5. RE-EXPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name Address Signature Date (where appropriate) Licence No

6. GOVERNMENT VALIDATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true.

Name and position of official Signature Date Government seal

IMPORT SECTION

7. IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country)

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Transit country):

Name Address Signature Date (where appropriate) Licence No

IMPORTER'S DECLARATION: I hereby declare that the above information is, to the best of my knowledge, complete, accurate and true. (Final destination)

Name Address Signature Date (where appropriate) Licence No

FINAL PLACE OF IMPORT:

Town State or Province Country/Body/Fishing body

NOTE: IF THIS DOCUMENT IS COMPLETED IN A LANGUAGE OTHER THAN ENGLISH, PLEASE ATTACH A TRANSLATION INTO ENGLISH.

INSTRUCTIONS

DOCUMENT No: Document number coded according to country, body or fishing body to be provided by country, body or fishing body issuing document.

1. COUNTRY/BODY/FISHING BODY CARRYING OUT RE-EXPORT: Enter the name of the country/body/fishing body which re-exports the shipment of bigeye tuna and which issued this licence. According to the ICCAT Recommendation, only the country/body/fishing body carrying out re-export is authorised to issue this licence.

2. PLACE OF RE-EXPORT: Identify the town, State or province and country/body/fishing body from which the bigeye tuna was re-exported.

3. DESCRIPTION OF IMPORTED FISH: The exporter must provide the following information with the highest degree of accuracy possible. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of the product in kg. (3) Flag country/body/fishing body: enter the name of the country/body/fishing body of the vessel which harvested the swordfish in the shipment. (4) Date of import.

4. DESCRIPTION OF RE-EXPORTED FISH: The exporter must provide the following information with the highest possible degree of accuracy. NOTE: one row should be used to describe one product type. (1) Product type: identify the type of product being shipped as FRESH or FROZEN (F/FR), and in ROUND, GILLED AND GUTTED, DRESSED, FILLETS or OTHER form. For OTHER, describe the type of products in the shipment. (2) Net weight: net weight of product in kg.

5. RE-EXPORTER'S DECLARATION: The persons or bodies exporting the bigeye tuna shipment must provide their name and address, signature and the date the shipment was re-exported, and the licence number of the body (where applicable).

6. GOVERNMENT VALIDATION: Enter the name and position of the official signing the licence. The official must be in the employment of the competent Government authority of the country/body/fishing body carrying out the re-export referred to in the licence, or a person or institution authorised to authenticate these licences by the competent Government authority. The substitute measure referred to in paragraphs A to D of the ICCAT Resolution on the validation of the Bluefin tuna statistical document by a Government official, adopted by the Commission in 1993, can be applied to the conditions set out above for validations under the Swordfish Statistical Document Programme.

7. IMPORTER'S DECLARATION: The persons or bodies importing the swordfish must provide their name and address, signature, the date the bigeye tuna was imported, the licence number of the body (where applicable) and the final destination of the import. This includes imports into intermediate countries/bodies/fishing bodies. For fresh and chilled products, the importer's signature may be replaced by that of an employee of the customs clearance agency where that signature is duly accredited by the importer.

RETURN A COPY OF THE COMPLETED DECLARATION TO: (the name of the office of the competent authority of the country/body/fishing body carrying out the re-export).

ANNEX XIII

INFORMATION CONCERNING THE VALIDATION OF ICCAT STATISTICAL DOCUMENTS

1. Flag: .....

2. Statistical document (Bluefin tuna, Bigeye tuna, Swordfish, all): .....

3. Government/Government body(ies) authorised to authenticate statistical documents

Name of body	Address of body	Model seal

NOTE: For each body, attach a list of the names, positions and addresses of persons authorised to authenticate documents.

4. Other institutions accredited by the Government/body to authenticate statistical documents.

Name of body	Address of body	Model seal

NOTE: For each body, attach a list of the names, positions and addresses of persons authorised to authenticate documents.

Instructions: Contracting Parties and cooperating non-contracting parties, bodies or fishing bodies whose vessels fish for species for which international trade requires the presentation of ICCAT Statistical Documents are asked to submit the information shown on this sheet to the ICCAT Executive Secretary (*), and to ensure that any changes are forwarded to him in good time.

(*) ICCAT: Calle Corazón de María 8 (6th floor), E-28002 Madrid, Spain.

ANNEX XIV

INFORMATION CONCERNING THE VALIDATION OF IOTC STATISTICAL DOCUMENTS

1. Flag: .....

2. Government organisations/authority(ies) accredited for the validation of statistical documents

Name of organisation	Address of organisation	Model stamp

NB: For each organisation, please attach a list showing the name, position and address of persons authorised to certify the documents.

3. Other institutions accredited by the Government/authority for the certification of statistical documents

Name of organisation	Address of organisation	Model stamp

NB: For each organisation, please attach a list showing the name, position and address of persons authorised to certify the documents.

Instructions: Contracting Parties, non-contracting parties, bodies and fishing bodies some of whose vessels fish for species for which international trade requires the presentation of a statistical document are asked to submit information using this sheet and to ensure that any changes are forwarded to the Secretariat (*) in good times.

(*) IOTC, B.P. 1011, Port de pêche, Victoria, Seychelles.

ANNEX XV

HALF-YEARLY REPORT ON THE ICCAT BLUEFIN TUNA STATISTICAL DOCUMENT

Period from ..... (Month) to ..... (Month) (Year) Importing country.....

Flag country	Area code	Gear code	Place of export	Product type		Weight (kg)
				F/FR	RD/GG/DR/FL/OT	

Type of gear code

BB	Baitboat
GILL	Gillnet
HAND	Hand line
HARP	Harpoon
LL	Longline
MWT	Mid-water trawl
PS	Purse seine
RR	Rod and reel
SPHL	Sport hand line
SPOR	Sport fisheries unclassified
SURF	Surface fisheries unclassified
TL	Tended line
TRAP	Trap
TROL	Troll
UNCL	Unclassified methods
OT	Other type (indicate gear type:)

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillet
OT	Other

Area code

WA	West Atlantic
EA	East Atlantic
MED	Mediterranean
PAC	Pacific

HALF-YEARLY REPORT ON THE ICCAT BLUEFIN TUNA RE-EXPORT LICENCE

From ..... (Month) to ..... (Month) (Year) Importing country .....

Flag country	Re-exporting country	Place of export	Product type		Weight (kg)
			F/FR	RD/GG/DR/FL/OT	

Type of gear code

BB	Baitboat
GILL	Gillnet
HAND	Handline
HARP	Harpoon
LL	Longline
MWT	Mid-water trawl
PS	Purse seine
RR	Rod and reel
SPHL	Sport handline
SPOR	Sport fisheries unclassified
SURF	Surface fisheries unclassified
TL	Tended line
TRAP	Trap
TROL	Troll
UNCL	Unspecified methods
OT	Other (give details)

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
OT	Other

Area code

WA	West Atlantic
EA	East Atlantic
MED	Mediterranean
PAC	Pacific

ANNEX XVI

HALF-YEARLY REPORT ON THE ICCAT SWORDFISH STATISTICAL DOCUMENT

From ..... (Month) to ..... (Month) (Year) Importing country/body/fishing body .....

Flag country/body/ fishing body	Area code	Gear code	Place of export	Product type		Weight of product (kg)
				F/FR	RD/GG/DR/FL/OT	

Gear code

BB	Baitboat
GILL	Gillnet
HAND	Handline
HARP	Harpoon
LL	Longline
MWT	Mid-water trawl
PS	Purse seine
RR	Rod and reel
SPHL	Sport handline
SPOR	Sport fisheries unclassified
SURF	Surface fisheries unclassified
TL	Tended line
TRAP	Trap
TROL	Troll
UNCL	Unclassified methods
OTH	Other (give details)

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
ST	Steak
OT	Other form; describe the type of products in the shipment

Area code

NAT	North Atlantic
SAT	South Atlantic
MED	Mediterranean
PAC	Pacific Ocean
ID	Indian Ocean

HALF-YEARLY REPORT ON THE ICCAT SWORDFISH RE-EXPORT LICENCE

From ..... (Month) to ..... (Month) (Year) Importing country .....

Flag country	Re-exporting country	Place of re-export	Product type		Weight of product (kg)
			F/FR	RD/GG/DR/FL/OT	

Product Type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
ST	Steak
FL	Fillets
OT	Other form; describe the type of products in the shipment

ANNEX XVII

HALF-YEARLY REPORT ON THE ICCAT BIGEYE TUNA STATISTICAL DOCUMENT

From ..... (Month) to ..... (Month) (Year) Importing country/body/fishing body .....

Flag country/body/ fishing body	Area code	Gear code	Place of export	Product type		Weight of product (kg)
				F/FR	RD/GG/DR/FL/OT	

Gear code

BB	Baitboat
GILL	Gillnet
HAND	Handline
HARP	Harpoon
LL	Longline
MWT	Mid-water trawl
PS	Purse seine
RR	Rod and reel
SPHL	Sport handline
SPOR	Sport fisheries unclassified
SURF	Surface fisheries unclassified
TL	Tended line
TRAP	Trap
TROL	Troll
UNCL	Unclassified methods
OTH	Other (give details)

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
OT	Other form; describe the type of products in the shipment

Area code

ID	Indian Ocean
PA	Pacific Ocean
AT	Atlantic Ozean

HALF-YEARLY REPORT ON THE ICCAT SWORDFISH RE-EXPORT LICENCE

From ..... (Month) to ..... (Month) (Year) Importing country/body/fishing body .....

Flag country/body/ fishing body	Country/body/fishing body carrying out re-export	Place of re-export	Product type		Weight of product (kg)
			F/FR	RD/GG/DR/FL/OT	

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
OT	Other form; describe the type of products in the shipment

ANNEX XVIII

HALF-YEARLY REPORT ON THE IOTC BIGEYE TUNA STATISTICAL DOCUMENT

From ..... (Month) to ..... (Month) (Year) Importing country/body/fishing body .....

Flag country/body/ fishing body	Area code	Gear code	Place of export	Product type		Weight of product (kg)
				F/FR	RD/GG/DR/FL/OT	

Gear code

BB	Baitboat
GILL	Gillnet
HAND	Handline
HARP	Harpoon
LL	Longline
MWT	Mid-water trawl
PS	Purse seine
RR	Rod and reel
SPOR	Sport fisheries unclassified
SPHL	Sport handline
SURF	Surface fisheries unclassified
TL	Tended line
TRAP	Trap
TROL	Troll
UNCL	Unspecified methods
OT	Other (give details)

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
OT	Other form; describe the type of products in the shipment

Area code

ID	Indian Ocean
PA	Pacific Ocean
AT	Atlantic Ocean

HALF-YEARLY REPORT ON THE IOTC BIGEYE TUNA RE-EXPORT LICENCE

From ..... (Month) to ..... (Month) (Year) Importing country/body/fishing body .....

Flag country/body/ fishing body	Country/body/fishing body carrying out re-export	Place of re-export	Product type		Weight of product (kg)
			F/FR	RD/GG/DR/FL/OT	

Product type

F	Fresh
FR	Frozen
RD	Round
GG	Gilled and gutted
DR	Dressed
FL	Fillets
OT	Other type; describe the type of products in the shipment

ANNEX XIX

Regulation (EC) No 858/94	This Regulation
Article 1	Article 2
Article 2	Article 4
Article 2a	Article 5
Article 3(1), (2) and(3)	Article 4
Article 3(4)	Article 6
Article 3a	Article 6
Article 4	—
Article 5	Article 9
Annex I	Annex IVa
Annex II	Annex IVb
Annex III	Annex IX

Proposal for a Council Decision authorising Austria to apply a measure derogating from Article 21 of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2002/C 331 E/29)

COM(2002) 470 final

(Submitted by the Commission on 18 August 2002)

EXPLANATORY MEMORANDUM

INTRODUCTION

In a request addressed to the Commission, registered by the Commission's Secretariat-General on 7 May 2002, the Government of Austria sought authorisation under Article 27 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment [1] (hereinafter referred to as 'the Sixth Directive') to apply a measure derogating from Article 21(1)(a) of the Directive, as amended by Directive 2000/65/EC of 17 October 2000. The purpose of the derogation is to make the person to whom the services are provided liable for the tax due where these services consist in construction work carried out by subcontractors.

PURPOSE OF THE DEROGATIONS SOUGHT

The Austrian authorities stress that they have recorded considerable revenue losses in the construction sector. These losses occur in the business transactions between the general contractor and the subcontractor. The subcontractor charges VAT to the general contractor but fails to pay the tax to the Treasury. At the same time, the general contractor may exercise its right to deduct VAT, since it holds a valid invoice corresponding to services actually provided.

According to the Austrian authorities, this type of tax evasion is difficult to curb by applying the normal rules of the common VAT system because in many cases it is virtually impossible to recover the VAT from the subcontractor. Experience has shown that it is extremely difficult to trace the subcontractors concerned, especially in the construction sector, for the following reasons: either the subcontracting company is set up, mostly as a limited company, by a person having no stake in the company, or the subcontracting company acquires a pre-registered company. As soon as the company is set up, a very high level of turnover is achieved; the VAT entered on the invoice is not paid; after a short period bankruptcy proceedings are initiated against the company; the addresses of the company directors are unknown, or the directors have officially moved abroad; it is not known who is really controlling the whole operation.

DESCRIPTION OF THE REQUESTED DEROGATIONS

The derogation requested would mean that Austria would be able to designate as the person liable to pay tax the person to whom the services are provided, by derogation from Article 21(1)(a) of the Sixth Directive, instead of the person supplying the services, in the following cases:

— where construction work and labour are provided by a subcontractor to a general contractor;

— where construction work and labour are provided by a subcontractor to a company which carries out its own construction work;

— where construction work and labour are provided by a subcontractor to another subcontractor.

[1] OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

Under this arrangement, subcontractors would no longer charge VAT for the services they supply. This would therefore solve the problem of non-payment of the tax owed by a subcontractor, who is in practice often not traceable.

However, the normal taxation rules would apply to all other operations in the construction industry, especially those carried out by general contractors for clients.

OPINION OF THE COMMISSION

Article 27 of the Sixth Directive allows for derogations in order to simplify the procedure for charging tax or to prevent certain types of tax evasion or avoidance.

Although the measure does simplify the work of the tax authorities, which very frequently have major problems collecting tax from subcontractors in the construction sector, the Commission is of the opinion that the measure envisaged by Austria is to be considered first and foremost as a measure aiming at preventing certain types of tax evasion or avoidance.

The planned measure also seems proportionate to the objective pursued, since it would not apply to all taxable operations in a given sector (here the construction sector) but would merely target specific operations which pose real and considerable problems of tax evasion or avoidance. The measure therefore deviates from the general principles laid down in Article 21 of the Sixth Directive only to the extent strictly necessary to attain that objective.

Note that the proposed derogation would have no effect on the amount of tax due. The amount of tax due under the derogation would therefore be exactly the same as if the normal rules of Article 21 of the Sixth Directive were applied.

This is why the Commission is proposing that the Council authorise Austria to apply the requested derogations from Article 21(1)(a).

The Commission does, however, believe that this derogation should apply only up to 31 December 2007. This will offer an opportunity to assess whether the derogation should be maintained in the light of Austria's experience over that five-year period.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment [1] and in particular Article 27(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In a request addressed to the Commission, registered by the Commission's Secretariat-General on 7 May 2002, Austria sought authorisation to apply a measure derogating from Article 21(1)(a) of Directive 77/388/EEC.

(2) The other Member States were informed of Austria's request by letter of 21 June 2002.

(3) Article 21(1) of Directive 77/388/EEC, as amended by Article 28g thereof, stipulates that, under the internal system, the taxable person supplying taxable goods or services is normally liable to pay value added tax.

[1] OJ L 145, 13.6.1977, p. 1. Directive last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

(4) The purpose of the requested derogation is to enable Austria to designate the person to whom the services are provided as the person liable to pay tax, in the following cases: where construction work and labour are provided by a subcontractor to either a general contractor, a company which carries out its own construction work, or another subcontractor.

(5) The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion or avoidance in the construction sector, such as subcontractors who fail to pay the invoiced VAT to the Treasury and then disappear. The measure also has the effect of simplifying the work of the tax authorities, which very frequently have major problems collecting the VAT due by subcontractors in that sector; the measure has no effect on the amount of tax due.

(6) The measure is proportionate to the objectives pursued, since it would not apply to all taxable operations in the sector concerned but would merely target specific operations which pose real and considerable problems of tax evasion or avoidance.

(7) The authorisation should be granted until 31 December 2007, which will enable the derogation to be reviewed in the light of experience.

(8) This derogation does not adversely affect the Communities' own resources from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as amended by Article 28g thereof, Austria is hereby authorised to designate the recipients of the supplies of services referred to in Article 2 of this Decision as the persons liable to pay value added tax.

Article 2

The recipient of the supply of services may be designated as the person liable to pay VAT in the following instances:

1. where construction work and labour are provided by a subcontractor to a general contractor;

2. where construction work and labour are provided by a subcontractor to a company which carries out its own construction work;

3. where construction work and labour are provided by a subcontractor to another subcontractor.

Article 3

This Decision shall expire on 31 December 2007.

Article 4

This Decision is addressed to Austria.

Proposal for a Council Regulation amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community

(2002/C 331 E/30)

COM(2002) 462 final — 2002/0203(CNS)

(Submitted by the Commission on 19 August 2002)

EXPLANATORY MEMORANDUM

1. **Background**

On 30 May 2001 the European Parliament and the Council adopted Regulation (EC) No 1049/2001 laying down the general framework for public access to European Parliament, Council and Commission documents.

Article 18 of the Regulation states that the Commission will examine the conformity of Regulation No 354/83 concerning the opening to the public of the historical archives of the EEC and the EAEC with the principles and limits laid down by the new Regulation on public access to documents.

Article 4(7) of the Regulation (EC) No 1049/2001 states that exceptions to the right of access referred to in paragraphs 1 to 3 of that Article apply only for a maximum of thirty years. However, exceptions relating to protection of privacy (Article 4(1)(b)) or of commercial interests (first indent of Article 4(2)) and the specific provisions relating to sensitive documents (Article 9) may, if necessary, be applied after that period.

2. **Institutions covered *(Article 1)***

Now that the Court of Auditors is an institution, pursuant to Article 7 of the EC Treaty [1], it is no longer necessary for Article 1 to specify that it be treated in the same way as an institution. For the purposes of the new Regulation, the Economic and Social Committee and the Committee of the Regions will be treated in the same way as the institutions referred to in Article 7(1) of the Treaty.

3. **Exceptions applicable after thirty years**

— Protection of privacy: Regulation (EEC, Euratom) No 354/83 does not apply to the files of staff of the European Communities or to documents containing information on the private or professional life of an individual; there is no right of access to these documents. Excluding a category of documents in this way is not compatible with the general principle of Regulation (EC) No 1049/2001, which grants access to all documents unless disclosure of its contents is liable to harm one of the interests specifically protected by the Regulation.

  Protection of privacy constitutes an exception to right of access and it can last beyond the thirty-year deadline laid down by Regulation (EC) No 45/2001 [2].

— Protection of commercial interests: before deciding, on expiry of the thirty-year period, to give the public access to documents and records which could affect commercial interests if disclosed, the institution will inform the firms or other interested parties, in accordance with rules to be defined by each institution, of its intention to make the documents accessible to the public.

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[1] OJ C 340, 10.11.1997, p. 173.

[2] OJ L 8, 12.1.2001, p. 1.

— Protection of sensitive documents: Regulation No 1049/2001 defines sensitive documents as documents classified as 'confidential' or higher in order to protect the public interest, notably public security, defence and military matters, international relations and financial, monetary and economic policy of the Community or a Member State.

At the end of the thirty-year period, the Institution decides whether sensitive documents should be declassified. Documents not declassified are not given public access and will be re-examined periodically under Article 5(1) of Regulation (EEC, Euratom) No 354/83.

4. **Abolition of category exemptions *(Article 3)***

Article 3(1)(b), (c) and (2) of Regulation (EEC, Euratom) No 354/83 excludes certain categories of documents from the right to public access: contracts concluded by the Euratom Supply Agency, documents and records of cases submitted for judgment to the Court of Justice of the European Communities and documents classified as 'confidential' or higher.

In Regulation (EC) No 1049/2001, these documents are covered by the right of access and their disclosure may be refused only on the basis of the exceptions in Article 4 and the special provisions of Article 9. It is therefore necessary to abolish the category exceptions in Regulation (EEC, Euratom) No 354/83 and, if necessary, protect documents on the basis of one of the exceptions to right of access, the application of which may be extended under Regulation (EC) No 1049/2001.

It is, however, necessary to maintain the exception to public access provided for in Article 3(1)(a) of Regulation (EEC, Euratom) No 354/83, which concerns documents classified in accordance with Regulation No 3 of 1958 implementing Article 24 of the Euratom Treaty. The Court of Justice has ruled (Judgment of 15 December 1987 in *Deutsche Babcock*, Case 328/85, [1987] ECR 5119) that the provisions of the EC Treaty and those adopted under the Treaty are applicable to matters covered by the Euratom Treaty only by default. The classifications in question are therefore not covered by the access rules of Regulation (EC) No 1049/2001 and Regulation (EEC, Euratom) No 354/83. On the other hand, as there are no Euratom provisions requiring that supply contracts be excluded, Article 3(1)(b) cannot be retained. However, the protection of supply contracts is ensured through the exception relating to commercial interests.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The general principles and the limits governing the public's right of access to documents of the European Parliament, the Council and the Commission were laid down in European Parliament and Council Regulation (EC) No 1049/2001 [1].

(2) The exceptions to public right of access provided for in Regulation (EC) No 1049/2001 are applicable for a maximum period of thirty years. The exceptions relating to protection of privacy or commercial interests and the specific provisions on sensitive documents may, however, apply beyond that period if necessary.

(3) Council Regulation (EEC, Euratom) No 354/83 [2] provides that the public will not be given access to certain categories of documents thirty years after the documents were created. It is necessary to bring these exceptions into line with the exceptions to right of access provided for in Regulation (EC) No 1049/2001.

[1] OJ L 145, 31.5.2001, p. 43.

[2] OJ L 43, 15.2.1983, p. 1.

(4) For the purposes of Regulation (EEC, Euratom) No 345/83, the Economic and Social Committee and the Committee of the Regions should henceforth be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community.

(5) Regulation No 354/83 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 354/83 is amended as follows:

1. Paragraph 1 of Article 1 is replaced by the following:

'1. The institutions of the European Community and of the European Atomic Energy Community (hereinafter referred to as "the institutions") shall establish historical archives and open them to the public on the terms provided for by this Regulation after the expiry of a period of thirty years starting from the date of the creation of the document. For the purposes of this Regulation the Economic and Social Committee and the Committee of the Regions shall be treated in the same way as the institutions referred to in Article 7(1) of the Treaty establishing the European Community.'

2. Articles 2 and 3 are replaced by the following:

'*Article 2*

1. In the case of documents covered by the exceptions relating to privacy and the integrity of the individual and the business interests of an individual or firm, including intellectual property, the exceptions may continue to apply after this period if the relevant conditions for their application are satisfied.

2. Documents containing information on the private or professional life of individual persons, including files of staff of the European Communities, shall be disclosed in accordance with Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, and in particular Articles 4 and 5 thereof.

3. Before deciding to make available to the public documents which, if disclosed, could harm the commercial interests of a firm or individual, including those relating to intellectual property, the institution shall inform the firm or the person concerned, in accordance with the rules to be defined by each institution, of its intention to make the documents in question accessible to the public. The documents shall not be released if, taking account of the observations of the third parties, the institution considers that their disclosure could jeopardise such commercial interests, unless there is an overriding public interest in disclosure.

4. Sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001 shall be accessible within the limits laid down in that Article.

Article 3

The public shall not have access to documents and records that have been classified in accordance with Article 10 of Council Regulation No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community [1], and have not been declassified.

[1] OJ 17, 6.10.1958, p. 406.'

3. Article 4 is deleted.

4. Article 6 is replaced by the following:

'*Article 6*

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document must or must not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

The Member State may instead refer the request to the institution.'

Article 2

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

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

Proposal for a Council Regulation further amending Council Regulation (EC) No 384/96 on the protection against dumped imports from countries not members of the European Communities

(2002/C 331 E/31)

COM(2002) 467 final — 2002/0204(ACC)

(Submitted by the Commission on 19 August 2002)

EXPLANATORY MEMORANDUM

Council Regulation No 384/96 on the protection against dumped imports from countries not Members of the European Community (the 'Basic Regulation') requires amendment for two reasons.

First, in the interests of transparency and legal certainty, most of the amendments provide for clarifications to the Basic Regulation in the light of experience gained up to now in current anti-dumping practice.

The amendments provide for a clarification of the terms 'related parties' (for the purpose of determining dumping) and 'commissions' and provide guidance of the content of a 'particular market situation' that does not permit a proper comparison. They also give indications as to what has to be done when certain costs are distorted. Another amendment concerns the use of facts available; where it is clarified that also prices on the world market or other representative markets can be used.

They also specify the criteria for granting 'individual treatment' to certain exporters from non-market economy countries and countries in transition, i.e. an individual rate of duty (calculated by comparing the normal value for the non-market economy country as a whole with the exporter's individual export prices).

Second, in view of the significant progress made by the Russian Federation towards the establishment of market economy conditions, as recognised by conclusions of the Russia-European Summit on 29 May 2002, it is appropriate to grant the Russian Federation full market economy status. Consequently, this country will be taken out of the list of countries with an economy in transition, i.e. countries to which market economy status is granted on a company-by-company basis. This means that normal value for Russian exporters and producers will be established in accordance with the provisions of paragraphs 1 to 6 of Article 2 of the Basic Regulation.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) By Regulation (EC) No 384/96 of 22 December 1995 [1], the Council adopted common rules for protection against dumped imports from countries which are not members of the European Communities.

(2) It is expedient to give guidance as to when parties may be considered as being related for the purpose of determining dumping. Article 143 of Commission Regulation (EEC) 2454/93 of 2 July 1993 concerning the implementation of the Community Customs Code [2] contains such a definition which reflects the definition set out in Art. 15.4 of the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 [3].

[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 253, 11.10.1993, p. 1 as last amended by Regulation (EC) No 444/2002 (OJ L 68, 11.3.2002, p. 11).

[3] OJ L 336, 23.12.1994, p. 119.

(3) Article 2(3) of Regulation (EC) No 384/96 stipulates, *inter alia*, that where because of a particular market situation sales of the like product do not permit a proper comparison, the normal value shall be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits, or on the basis of the export prices, in the ordinary course of trade, to an appropriate third country. It is prudent to provide for a clarification as to what circumstances could be considered as constituting a particular market situation in which sales of the like product do not permit a proper comparison. Such circumstances can, for example, occur because of the existence of barter-trade and other non-commercial processing arrangements or other market impediments. As a result market signals may not properly reflect supply and demand which in turn may have an impact on the relevant costs and prices and may also result in domestic prices being out of line with world-market prices or prices in other representative markets. Obviously, any clarification given in this context cannot be of an exhaustive nature in view of the wide variety of possible particular market situations not permitting a proper comparison.

(4) It is considered appropriate to give some guidance as to what has to be done if, pursuant to Article 2(5) of Regulation (EC) No 384/96, the records do not reasonably reflect the costs associated with the production and sale of the product under consideration, in particular in situations where because of a particular market situation sales of the like product do not permit a proper comparison. In such circumstances, the relevant data should be obtained from sources which are unaffected by such distortions. Such sources can be the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, any other reasonable basis, including information from other representative markets. The relevant data can be used either for adjusting certain items of the records of the party under consideration or, where this is not possible, for establishing the costs of the party under consideration.

(5) Article 2(7) of Regulation (EC) No 384/96, as amended by Regulation (EC) No 905/98 [1] and Regulation (EC) No 2238/2000 [2] provides, *inter alia*, that in case of imports from the Russian Federation, normal value may be determined in accordance with the rules applicable in market-economy countries for those producers which demonstrate that market conditions prevail in relation to the manufacture and sale of the product concerned. In view of the very significant progress made by the Russian Federation towards the establishment of market economy conditions, as recognised by the conclusions of the Russia-European Union Summit on 29 May 2002, it is appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of Regulation (EC) No 384/96.

(6) Pursuant to Article 2(10)(i) of Regulation (EC) No 384/96, adjustments to normal value and export price are made when commissions are paid. It is prudent to clarify, in line with the consistent practice of the Commission and the Council, that such adjustments shall also be made, if the parties do not act on the basis of a principal — agent relationship, but achieve the same economic result by acting as buyer and seller.

(7) Regulation (EC) No 384/96 does not indicate the criteria according to which an exporter for which a normal value is established pursuant to Article 2(7)(a) may be assigned an individual rate of duty calculated by comparing this normal value with the exporter's individual export prices. It is appropriate in the interests of transparency and legal certainty to lay down clear criteria for the granting of such individual treatment.

Export prices of exporters falling under Article 2(7)(a) of Regulation (EC) No 384/96 may therefore be taken into account where the export activities of the company are freely determined, where ownership and control of the company are sufficiently independent and where State interference is not such as to permit circumvention of individual anti-dumping measures.

Such individual treatment may be granted to exporters for which it can be demonstrated, on the basis of substantiated claims, that, in the case of wholly or partly foreign owned firms or joint ventures, they are free to repatriate capital and profits; that export prices and quantities and conditions and terms of sale are freely determined and that exchange rate conversions are carried out at the market rate. It shall also be demonstrated that the majority of shares belong to private persons and that State officials appearing on the Board of Directors or holding key management positions are either in a minority or that the company is sufficiently independent from State interference.

(8) Article 18(5) of Regulation (EC) No 384/96 specifies that, in case of use of facts available, the information used shall be checked by reference to information from a number of sources. It is considered useful to specify that such sources can, where appropriate, also pertain to data concerning the world market or other representative markets.

(9) In the interests of legal certainty, it is necessary to provide that these amendments shall apply as soon as possible to all new investigations.

[1] OJ L 128, 30.4.1998, p. 18.

[2] OJ L 257, 11.10.2000, p. 2.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 384/96 is amended as follows:

1. In Article 2(1), the following sentence is added:

'In order to determine whether two parties are associated account may be taken of the definition of related parties set out in Article 143 of Commission Regulation (EEC) 2454/93 of 2 July 1993 concerning the implementation of the Community Customs Code [1].

[1] OJ L 253, 11.10.1993, p. 1.'

2. In Article 2(3), the following sentence is added:

'A particular market situation for the product concerned in the meaning of the preceding sentence may be deemed to exist, *inter alia*, when prices are artificially low, when there is significant barter trade, or when there are non-commercial processing arrangements.'

3. In Article 2(5), the following sentence is inserted after the first sentence:

'If costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned, they shall be adjusted or established on the basis of the costs of other producers or exporters in the same country or, where such information is not available or cannot be used, on any other reasonable basis, including information from other representative markets.'

4. In Article 2(7)(b) first sentence, the word 'Russian Federation' is deleted.

5. In Article 2(10)(i), the following sentence is added:

'The term "commissions" shall be understood to include the mark-up received by a trader of the product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis.'

6. Article 9(5) is replaced by the following:

'5. An anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this Regulation have been accepted. The Regulation imposing the duty shall specify the duty for each supplier or, if that is impracticable, and in general where Article 2(7)(a) applies, the supplying country concerned.

Where Article 2(7)(a) applies, an individual duty shall, however, be specified for the exporters which can demonstrate, on the basis of properly substantiated claims that:

(a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

(b) export prices and quantities, and conditions and terms of sale are freely determined;

(c) the majority of the shares belong to private persons. State officials appearing on the board of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

(d) exchange rate conversions are carried out at the market rate; and

(e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.'

7. In Article 18(5), the following sentence is added:

'Such information may include relevant data pertaining to the world market or other representative markets, where appropriate.'

Article 2

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

It shall apply to all investigations initiated pursuant to Council Regulation (EC) No 384/96 after the date of entry into force of this Regulation.

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

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 331 E/32)

COM(2002) 469 final

(Submitted by the Commission on 19 August 2002)

EXPLANATORY MEMORANDUM

1. In response to requests from several Member States, the Commission's departments, together with the government experts concerned, considered whether to open autonomous tariff quotas for certain industrial products.

2. Following the discussion, at a meeting of the Economic Tariff Questions Group, it was concluded that the Member States could approve new quotas for the products covered by the proposal for a Regulation, without disturbing the markets for such products.

   Hence the attached proposal for a Regulation.

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 zero rates of duty for appropriate volumes, while avoiding any disturbance to the markets for these products.

(2) Regulation (EC) No 2505/96 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

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 2

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
09.2610	ex 2925 20 00	20	(Chloromethylene)dimethylammonium chloride	25 tonnes	0	1.7.-31.12.2002
09.2976	ex 8407 90 10	10	Four-stroke petrol engines of a cylinder capacity not exceeding 250 cc, for use in the manufacture of lawnmowers of sub-heading 8433 11 (a)	650 000 units	0	1.7.2002-30.6.2003

(a) Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions.

Proposal for a Council Regulation concerning Community financial contributions to the International Fund for Ireland (2003-2004)

(2002/C 331 E/33)

COM(2002) 472 final — 2002/0210(CNS)

(Submitted by the Commission on 22 August 2002)

EXPLANATORY MEMORANDUM

The International Fund for Ireland (IFI) was established in 1986 in order to contribute to the implementation of Article 10(a) of the Anglo-Irish Agreement of 15 November 1985 which provides that 'the two governments shall cooperate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and shall consider the possibility of securing international support for this work'.

The objectives of the IFI are 'to promote economic and social advance and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland' ([1]).

Following early contributions from the United States and other countries, the European Community, recognising that the objectives of the IFI were a reflection of those pursued by itself, wished to give practical support to the initiative. It began contributing to the IFI in 1989. EC funding now represents 34 % of annual contributions to the IFI and 38 % of cumulative contributions to date. The Commission has been represented by an observer at all IFI Board meetings since the beginning of 1989.

The political background of the region has evolved over the years: in 1994, the main paramilitary groups announced cease-fires; in April 1998, the Belfast ('Good Friday') Agreement set a political settlement for a peace process, including the devolution of powers to a Northern Ireland Assembly and Executive Committee, which were set up at the end of 1999. However, violence and division between the main communities remain high and various suspensions of the devolved institutions have illustrated the threats and uncertainties surrounding the peace process in the region.

In this context, economic and social development in support of peace and reconciliation at grassroots level is a long term process. As an instrument towards this goal, the IFI complements the action carried out by the EU Programmes for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland ('PEACE I' 1995-1999, and 'PEACE II' 2000-2004).

In accordance with the current round of contributions ([2]), the European Commission has recently submitted an assessment of the IFI's activities to the Budgetary Authority ([3]). This acknowledges the IFI's very valuable and positive actions for peace and reconciliation in the region, and thereby the fulfilment of its objectives. The report concluded that 'the Commission believes that funding after 2002 should be provided on the basis of the observations made in this report, which could be reflected either in the future Council Regulation on the EC contribution to the IFI, or through other appropriate means of cooperation between the Commission and the IFI'.

([1]) Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the International Fund for Ireland, 18 September 1986 (last amended 10 October 2000); UK Treaty Series No 58 (1987) Cm 266/Republic of Ireland No 1 (1986) Cmnd 9908.

([2]) Council Regulation (EC) No 214/2000 of 24 January 2000 (OJ L 24, 29.1.2000, p. 7).

([3]) COM(2001) 548 final, 1 October 2001.

In light of the above assessment, it is proposed that the Commission adopts the following proposal for a Council Regulation on the EC contributions to the IFI which will:

— continue the EU contributions of EUR 15 million per year to the IFI, for a further period of 2 years. The proposed new period will therefore end in 2004, which would coincide with the end of the PEACE II Programme.

— take account of the observations made in the Commission report, in particular those reinforcing synergy of objectives and coordination with Structural Funds interventions, in particular with the PEACE Programme.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The International Fund for Ireland (hereinafter 'the Fund') was established in 1986 by the Agreement of 18 September 1986 between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the International Fund for Ireland [1] (hereinafter 'the Agreement') in order to promote economic and social advance, and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland, in implementation of one of the objectives specified by the Anglo-Irish Agreement of 15 November 1985.

(2) The sum of EUR 15 million a year has been provided from the Community budget from 1989 until 1995 to support projects of the Fund which have a genuine additional impact in the areas concerned.

(3) Pursuant to Council Regulation (EC) No 2687/94 of 31 October 1994 on Community financial contributions to the International Fund for Ireland [2], the sum of EUR 20 million was committed from the Community budget for each of the years 1995, 1996 and 1997.

(4) Pursuant to Council Regulation (EC) No 2614/97 of 15 December 1997 on Community financial contributions to the International Fund for Ireland [3], the sum of EUR 17 million was committed from the Community budget for each of the years 1998 and 1999.

(5) Pursuant to Council Regulation (EC) No 214/2000 of 24 January 2000 on Community financial contributions to the International Fund for Ireland [4], the sum of EUR 15 million was committed from the Community budget for each of the years 2000, 2001 and 2002.

(6) The assessments carried out in accordance with Article 5 of Council Regulation (EC) No 214/2000 have confirmed the need for further support for Fund activities, while reinforcing synergy of objectives and coordination with Structural Funds interventions, in particular with the Special Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland (hereinafter 'the PEACE Programme').

(7) Council Regulation (EC) No 214/2000 expires on 31 December 2002.

(8) The peace process in Northern Ireland requires a continuation of European Community support to the Fund beyond that date.

(9) At its meeting in Berlin on 24 and 25 March 1999, the European Council decided that the PEACE Programme should be continued for five years, that is to say, from 2000 until 2004, with a total Community contribution of EUR 500 million.

(10) The Community contribution to the Fund should take the form of financial contributions for the years 2003 and 2004, thus terminating at the same time as the PEACE programme.

(11) In allocating the Community contribution, the Fund should give priority to projects of a cross-border or cross-community nature, in such a way as to complement the activities funded by the PEACE programme for the period 2000 to 2004.

(12) In accordance with the Agreement, all financial contributors to the Fund participate as observers at the meetings of the Board of the International Fund for Ireland.

(13) It is vital to ensure proper coordination between the activities of the Fund and those financed under the Community Structural Funds provided for by Article 159 of the Treaty, in particular the PEACE programme.

(14) Assistance from the Fund will be regarded as effective only in so far as it brings about sustainable economic and social improvement and is not used as a substitute for other public or private expenditure.

[1] UK Treaty Series No 58 (1987) Cm 266/Republic of Ireland No 1 (1986) Cmnd 9908.

[2] OJ L 286, 5.11.1994, p. 5.

[3] OJ L 353, 24.12.1997, p. 5.

[4] OJ L 24, 29.1.2000, p. 7.

(15) An assessment reviewing the performance of the Fund and the need for further Community support should be carried out before 1 April 2004.

(16) A financial reference amount, within the meaning of Point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure is inserted in this Regulation for the entire duration of the programme, without the powers of the budgetary authority as defined by the Treaty being affected thereby. The amount of the Community contribution to the Fund should be EUR 15 million for each of the years 2003 and 2004, expressed in current values.

(17) That support will contribute to reinforcing solidarity between the Member States and between their peoples.

(18) The Treaty provides no powers other than those in Article 308 for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the annual budget procedure and in accordance with the second paragraph of Point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure [1], an annual contribution of EUR 15 million shall be made to the International Fund for Ireland (hereinafter 'the Fund') for each of the years 2003 and 2004, amounting to a total contribution, over these years, of EUR 30 million.

Article 2

The contribution shall be used by the Fund in accordance with the Agreement of 18 September 1986 between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the International Fund for Ireland (hereinafter 'the Agreement') under which it was established, priority being given to projects of a cross-border or cross-community nature, in such a way as to complement the activities financed by the Structural Funds, and especially those of the Special Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland (hereinafter 'the PEACE Programme').

It shall be used in such a way as to bring about sustainable economic and social improvement in the areas concerned. It shall not be used as a substitute for other public and private expenditure.

Article 3

The Commission shall represent the Community as an observer at the meetings of the Board of the International Fund for Ireland (hereinafter 'the Board').

The Fund shall be represented as an observer at the Monitoring Committee meetings of the PEACE programme, and of other Structural Funds interventions as appropriate.

Article 4

The Commission shall foster coordination at all levels between the Fund's Board and agents, and the managing bodies set up under the Structural Funds interventions concerned, in particular under the PEACE programme.

Article 5

The Commission shall, in cooperation with the Fund's Board, determine appropriate publicity and information procedures in order to publicise the Community's contribution to the projects financed by the Fund.

Article 6

By 31 March 2004 at the latest, the Commission shall submit a report to the Budgetary Authority, assessing the results of the activities of the Fund and the need for continuing contributions beyond 2004, taking into account developments in the peace process in Northern Ireland. That report shall incorporate, *inter alia*, the following:

(a) a survey of the Fund's activities;

(b) a list of projects which have received aid;

(c) an assessment of the nature and impact of the Fund's activities, notably in relation to its objectives and the criteria laid down in Articles 2 and 8;

(d) an assessment of action taken by the Fund to ensure cooperation and coordination with Structural Funds interventions, taking account, in particular, of obligations under Articles 3, 4 and 5;

(e) an annex setting out the results of the verifications and controls carried out by the Commission pursuant to the undertaking referred to in Article 7.

Article 7

The Commission shall administer the contributions.

Subject to an assessment of the Fund's financial needs, to be carried out by the Commission on the basis of the Fund's cash balance at the time scheduled for each payment. The annual contribution shall normally be paid in instalments as follows:

(a) a first advance payment of 40 % shall be made after the Commission has received an undertaking, signed by the Chairman of the Fund's Board, to the effect that the Fund will comply with the conditions attaching, in accordance with this Regulation, to the grant of the contribution;

(b) a second advance payment of 40 % shall be made six months later;

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

(c) a final payment of 20 % shall be made after the Commission has received and accepted the Fund's annual activity report and audited accounts for the year in question.

If the assessment referred to in the second subparagraph leads to the conclusion that, at the material date, the Fund's financial needs do not justify payment of one of those instalments, the payment concerned shall be suspended until such time as the Commission concludes, on the basis of new information provided by the Fund, that it is justified.

Article 8

The contribution referred to in Article 1 shall be subject to the condition that, in the case of an operation which receives or is due to receive financial assistance under a Structural Funds intervention, a contribution from the Fund may be allocated to that operation only if the sum arrived at when the figure representing 40 % of the amount of the Fund's contribution is added to the figure representing the amount of assistance from the Structural Funds does not exceed 75 % of the operation's total eligible costs.

Article 9

This Regulation shall enter into force on 1 January 2003.

It shall expire on 31 December 2004.

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

Proposal for a Council Regulation amending Regulation (EC) No 1950/97 imposing definitive anti-dumping measures on imports of sacks and bags made of polyethylene or polypropylene originating, inter alia, in India

(2002/C 331 E/34)

COM(2002) 461 final

(Submitted by the Commission on 26 August 2002)

EXPLANATORY MEMORANDUM

In 1997, by Regulation (EC) No 1950/97 the Council imposed definitive anti-dumping duties on imports of sacks and bags made of polyethylene or polypropylene originating in India. Two subsequent reviews have introduced individual antidumping duties for a number of new exporters.

The present interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 was initiated on 26 January 2001. The review was limited to the aspects of dumping.

Dumping has been established at significant levels for all companies concerned and ranges from 6,7 % to 33,5 %.

Member States were consulted and unanimously supported the proposal of the Commission Services.

It is consequently proposed to amend the existing duties applicable to imports of sacks and bags made of polyethylene or polypropylene originating in India, and approve the publication of the attached Regulation in the *Official Journal of the European Community*.

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') and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations

(1) By Regulation (EC) No 1950/97 [2], the Council imposed definitive anti-dumping measures on certain imports of sacks and bags made of polyethylene and polypropylene ('product concerned') originating, inter alia, in India.

(2) This Regulation was subsequently amended by Regulations (EC) No 96/1999 [3] and (EC) No 2744/2000 [4] with the purpose of determining dumping margins for new exporters as foreseen in Article 11(4) of the Basic Regulation.

2. Present investigation

(i) *Initiation*

(3) The European Association for Textile Polyolefins ('the applicant') lodged a request for an interim review, limited to the aspects of dumping for the product concerned originating in India, pursuant to Article 11(3) of the Basic Regulation, on behalf of European producers representing a major proportion, in this case 65 %, of the total Community production of the product concerned.

(4) Having determined, after consultation of the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission published a notice of initiation in the *Official Journal of the European Communities* [5] and commenced the investigation.

[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 276, 9.10.1997, p. 1.

[3] OJ L 11, 12.1.1999, p. 1.

[4] OJ L 316, 15.12.2000, p. 67.

[5] OJ C 26, 26.1.2001, p. 2.

(ii) *Investigation and sampling*

(5) The Commission officially advised the exporting producers known to be concerned, the representatives of the originating country, and the applicant, of the initiation of the review investigation, and gave all parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(6) A number of exporting producers in the countries concerned, as well as Community importers made their views known in writing. All parties who so requested were granted the opportunity to be heard.

(7) The Commission has determined that the number of exporting producers of the product concerned in India has increased significantly since the original investigation. It has therefore been decided to apply sampling techniques in accordance with Article 17 of the Basic Regulation.

(8) In order to enable the Commission to select a sample, exporting producers and representatives acting on their behalf were requested to make themselves known within 15 days of the date of publication of the notice of initiation and to provide basic information on their production, domestic and export sales. The authorities of the country concerned were also contacted by the Commission with a request to assist it in the selection of the sample.

(9) A total of forty-five companies replied to the sampling questionnaire within the time limits. Of those, 22 had production and sales to the Community of the product concerned during the period between 1 December 2000 and 30 November 2001 ('investigation period' or 'IP').

(10) The choice of the sample was made in consultation with the representatives of the companies and the authorities of the country concerned. An agreement was reached on a sample of eight companies covering more than 80 % of the total exports of the product concerned to the Community during the IP.

(11) Nine companies not selected in the sample have requested individual examination. In view of the large number of requests which was even exceeding the number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome in the sense of Article 17(3) of the Basic Regulation. Therefore, no such requests could be granted.

(12) The Commission sent questionnaires to the companies selected in the sample, and carried out verifications at the premises of the following selected companies in India:

— Gilt Pack Ltd, Indore,

— Hyderabad Polymers Private Ltd, Hyderabad,

— Kanpur Plastipack Ltd, Kanpur,

— Neo Sack Ltd, Indore,

— Polyspin Private Ltd, Rajapalayam and its related company Polyspin Exports Ltd, Rajapalayam,

— Pithampur Poly Products Ltd, Indore,

— Shankar Packaging Ltd, Vadodara.

(13) Subsequent to the verification carried out in India, the Commission collected information from importers of the product concerned in the Community. The following importers were also visited:

— Cojubel NV, Lendelede, Belgium,

— Eurea BVBA, Antwerp, Belgium,

— Rova NV, Oudenaarde, Belgium,

— Texbern SARL, Lyon, France,

— Markopulos SA, Athens Greece,

— Alex Pak SA, Athens, Greece.

(14) The Commission also collected information from and visited custom authorities in the Member States.

(15) Owing to the complexity of the case and the difficulties found, the duration of the investigation has taken more than 12 months.

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

(16) The product covered by the current review is the same product as the one under consideration in Regulation (EC) No 1950/97.

(17) The product concerned is woven sacks and bags of a kind used for the packaging of goods, not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like of woven fabrics, weighing 120 g/m^2 or less and originating in India. This product is currently classifiable within CN codes 6305 32 81, 6305 33 91, ex 3923 21 00, ex 3923 29 10 and ex 3923 29 90.

2. **Like product**

(18) It was established that the sacks and bags sold on the Indian market and the sacks and bags exported from India to the Community were identical, or closely resembling, in terms of physical characteristics and end uses. Therefore, these sacks and bags were considered alike within the meaning of Article 1(4) of the Basic Regulation.

C. **DUMPING**

1. **Non-cooperation**

(19) The Commission's investigation revealed that 4 exporters representing the majority of exports from India supplied false and misleading information, and in a number of cases even deliberately forged and manipulated documents. A number of irregularities has been established including the incorrect reporting of product types, specifications, export destination, quantities and/or values on invoices and shipping documents in order to increase the average export price to non-dumped levels, the deliberate omission of transactions, or the presentation of unreliable accounting information. Product descriptions, quantities and weights found on the official documents provided by unrelated importers and custom authorities were often different from the ones submitted during the on-spot verification and from the information that had been reported to the Commission in the questionnaire reply. Evidence was also received of at least two attempts to persuade importers to submit manipulated documents to the Commission.

(20) The non-cooperating exporters have been informed individually in detail of the Commissions findings in this respect. Some of them nevertheless argued that the verified data for domestic sales and cost of production should not be disregarded because those irregularities would relate only to the export data.

(21) However, the nature and extent of the false and misleading information cast doubt on the integrity of all the data submitted by the companies, be it for the export or domestic market. It has therefore been decided to entirely disregard all the information provided and use other information available in respect of these four companies, in accordance with Article 18 of the Basic Regulation. No individual dumping margin was calculated for these companies.

(22) For another company, whose information on the costs of production could not be considered entirely reliable, it was necessary to disregard some of the information provided and make partial use of facts available, in accordance with Article 18(1) of the Basic Regulation. Findings were nevertheless mostly based on the information provided by the company.

(23) For the remaining three companies, it was considered that reasonably accurate findings could be established on the basis of the information provided, adjusted wherever necessary in view of the results of the on-spot verifications, in order to arrive at a dumping determination.

2. **Normal value**

(24) Normal value was established according to Article 2 of the Basic Regulation. Therefore, it was first established whether the companies' total domestic sales of the like product were representative in comparison with their total export sales of the product concerned to the Community. In accordance with Article 2(2) of the Basic Regulation, and since the total domestic sales volume exceeded 5 % of the total export sales volume to the Community, the domestic sales of the like product were found to be representative for three of the four companies for which an individual dumping margin was calculated.

(25) A similar test was subsequently performed for each of the product types sold domestically that were identical or directly comparable to the types sold for export to the Community. For each product type, it was established that the domestic sales were sufficiently representative in accordance with Article 2(2) of the Basic Regulation, when the sales volume of that type exceeded 5 % of the sales volume of the identical or comparable types exported to the Community.

(26) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of the profitable sales to independent customers of the type in question. Domestic sales were considered profitable when the net sales value was equal or above the calculated cost of production of each type concerned ('profitable sales').

(27) As far as the costs of production are concerned, none of the companies had an established cost accounting system. A number of corrections had to be introduced to the cost allocation methods, which the companies had elaborated exclusively for the purpose of the present investigation, in particular regarding the allocation of raw material costs, on the basis of the findings of the on-spot verification.

(28) The cost of production of each product type sold on the domestic market, corrected as explained above, was compared to its net domestic sales price. In cases where profitable sales of each type represented 80 % or more of the total sales volume, the normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether all these sales were profitable or not. In cases where the proportion of profitable sales amounted to less than 80 %, but at least 10 % of total domestic sales, normal value was established as a weighted average of the domestic prices of profitable sales.

(29) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. This was the case for all but one product type of one company.

(30) In the absence of domestic sales made by other producers in the ordinary course of trade, normal value could not be established on the basis of prices of other sellers or producers.

(31) Normal value was therefore constructed in accordance with Article 2(3) of the Basic Regulation, by adding to the manufacturing cost of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative costs ('SG&A') and a reasonable margin of profit.

(32) For the companies with a representative volume of domestic sales their own SG&A expenses were used. One company did not have a representative volume of domestic sales. For this company the weighted average of the actual amounts determined for the other three companies subject to investigation in respect of production and sales of the like product in the domestic Indian market was used, in accordance with Article 2(6)(a) of the Basic Regulation.

(33) None of the cooperating companies had profitable sales representing 10 % or more of total domestic sales volume of the product concerned. In the absence of sales of the same general category of products from which a profit rate could have been derived, the Commission decided to use a profit rate of 5 % according to Article 2(6)(c) of the Basic Regulation. This is considered a conservative estimate and is in line with the findings of the previous investigations.

3. **Export price**

(34) All companies made their export sales to the Community directly to independent importers. In accordance with Article 2(8) of the Basic Regulation, their export prices were therefore established on the basis of the prices actually paid or payable by these independent importers.

4. **Comparison**

(35) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences in transportation, insurance, handling, loading and ancillary costs, credit cost, commissions and level of trade, affecting price comparability in accordance with Article 2(10) of the Basic Regulation.

(36) All companies claimed adjustments for differences in the level of trade on the basis that they sell to end users on the domestic market and to traders on the export market.

(37) The investigation showed export prices which were at a different level of trade than the normal value, and that there were distinct differences in functions for these levels of trade as required by Article 2(10)(d) of the Basic Regulation. However, as the existing difference in level of trade could not be quantified because of the absence of the relevant levels of trade on the Indian domestic market, a special adjustment was granted under Article 2(10)(d)(ii). This allowance was 10 % of the gross margin as used for the construction of the normal values, in the absence of any other information.

(38) Some companies claimed an adjustment for duty drawback under Article (2)(10)(b) of the Basic Regulation. However, none of the companies could demonstrate that any import charges or indirect taxes were borne by the like product or by materials physically incorporated therein, when intended for consumption in the exporting country, as required by Article (2)(10)(b) of the Basic Regulation. Therefore, no such adjustment could be granted.

(39) Some companies claimed an adjustment to the normal value for alleged differences in raw material costs between those used for the production of exported products and those used for domestic products. The claimed differences arise, in the case where raw materials are purchased domestically, either because a producer can still claim an amount equivalent to drawback when the products are exported, or because he can obtain an import license, endorse it to a domestic supplier and in exchange for a discount in the raw material price.

(40) However, this kind of mechanism falls under Article (2)(10)(b) of the Basic Regulation. and therefore any such claims should be discussed in the scope of that Article. Consequently, there is no justification to make an adjustment under Article 2(10)(k). As explained under recital (38) an adjustment under Article 2(10)(b) is also not justified.

(41) Several companies claimed that in this review investigation a different methodology was applied as compared to the one applied in the investigation which led to the duty. Their allegation was that the Commission had requested a more detailed product classification had been requested in order to compare normal value to export price than in the original investigation.

(42) This claim cannot be accepted. It is not considered that a request for a clear, precise and realistic identification of the different types of product concerned produced and sold constitutes a change in methodology. The investigation has confirmed that the request of the Commission was relevant, justified and would not constitute an unduly burdensome requirement for the companies in question. The number of specifications having an impact on the cost and market value of the product concerned required a more detailed product specification than the one provided in the original investigation. This more detailed product description would allow a more precise comparison between normal value and export price of clearly defined and identical product types. In fact, when confronted with the striking discrepancies in terms of prices and costs within what the companies claimed to be a same product type, one of these companies has reconsidered its refusal to report the product types as requested, and within 24 hours has provided such information.

5. **Dumping margins**

(i) *Companies with an individual dumping margin*

(43) For the companies within the sample for which no use was made of the provisions of Article 18 of the Basic Regulation (see recital (23)) dumping margins were established individually on the basis of a comparison of the weighted average normal value by product type with a weighted average export price by product type.

(44) Polyspin Exports was found to be related to Polyspin Private during the investigation period. Both companies have two directors in common. In view of the close relationship found between these companies, there would be a high risk that the anti-dumping measures could be circumvented by channelling exports to the Community through the company with the lower dumping if two different dumping margins were established. It was therefore concluded that only one margin, based on the weighted average of the dumping margins found in each company, should be established for the two companies as was also the case in the original investigation. The dumping margins are, expressed as a percentage of the CIF net free-at-Community-frontier price, before duty:

— Hyderabad Polymers Pvt Ltd: 24,3 %

— Polyspin Export Ltd and Polyspin Private Ltd: 17,2 %.

(45) For the company in respect of which partial use was made of the provisions of Article 18 of the Basic Regulation (see recital (22)), a pattern of export prices which differ significantly between purchasers and regions was established. The export prices varied significantly by region, and by purchaser. Hence, the full degree of dumping being practised was not reflected in the comparison of a weighted average normal value by product type with a weighted average export price by product type. The company argued that the variation among customers and regions could actually be attributed to different product types. However, a breakdown by product type shows a similar range of variation for the types which are sold in sufficient quantity to allow for such an analysis. This argument was therefore rejected. A comparison of individual export prices and individual normal values for individual transactions, on the other hand, would have not have been feasible and consequently would not have reflected the full degree of dumping due in particular to the lack of a sufficient number of comparable domestic transactions. Since it was found that there was a pattern of export prices which differed significantly between purchasers and regions, and as neither the weighted average to weighted average nor the transaction by transaction method would have reflected the full degree of dumping, the dumping margin was established on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions in accordance with Article 2(11) of the Basic Regulation. The dumping margin, expressed as a percentage of the CIF net free-at-Community-frontier price, before duty is:

— Pithampur Poly Products Ltd: 6,7 %.

(ii) *Companies for which no individual margin was calculated*

(46) The dumping margin for companies which submitted the necessary information requested in Article 17 of the Basic Regulation in due time, which expressed their willingness to cooperate in the sample, and which produced and exported the product concerned to the Community during the investigation period, but which were not selected in the sample and were not examined individually, has been established on the basis of the weighted average dumping margin of the companies in the sample pursuant to Article 9(6) of the Basic Regulation. Since, according to this Article, the margins established in the circumstances referred to in Article 18 of the Basic Regulation must be disregarded, the sample now represents only 20 % of the exports of the product concerned to the Community during the investigation period by the companies willing to cooperate. Given the circumstances, namely the impossibility of re-constituting a new and more representative sample, this is still considered sufficiently representative of the total exports to the Community. It should also be noted that the companies which were not chosen for the sample also account for only 20 % of total Indian exports to the Community (see recital (10)). This weighted average dumping margin was, expressed as a percentage of the CIF net free-at-Community-frontier price before duty, 20,6 %.

(47) For the four companies for which an individual dumping margin could not be calculated for the reasons given in recital (20) the Commission made use of the information available pursuant to Article 18 of the Basic Regulation. The Commission also considered that the level of the dumping margin established for these companies, relative to that found for the cooperating companies, should not provide an incentive to non-cooperation. Accordingly it was decided to apply the weighted average of the highest dumping margins found for a number of product types sold in representative quantities by the companies for which an individual calculation could be made, that is, 33,5 %. This duty should also apply to Naviska Packaging, a company related to Gilt Pack Ltd which changed its name to Giltpac International India Private Limited after the investigation period.

(48) The dumping margin for all other non-cooperating companies was set according to the information available, at the same level as that for companies under recital (47). This approach was considered necessary in view of the high degree of non-cooperation and in order to avoid the risk of circumvention.

D. **PROPOSED AMENDMENT OF THE MEASURES UNDER REVIEW**

(49) According to Article 9(4) of the Basic Regulation, the duties should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury of the Community industry. Given the fact that this review is limited to the examination of the dumping aspects, the level of duties imposed should not be higher than the injury levels found in the original investigation.

(50) Since the injury levels found in the original investigation are in every case higher than the dumping margins found in the present review, the level of the duties should be set at that of the dumping margins found:

— Aditya Bags Ltd: 20,6 %

— Big Bags India Pvt Ltd: 20,6 %

— Big Bags International Pvt Ltd: 20,6 %

— Buildmet Fibres Private Ltd: 20,6 %

— Cigfil Limited: 20,6 %

— Gilt Pack Ltd and Giltpac International India Private Ltd: 33,5 %

— Hyderabad Polymers Pvt Ltd: 24,3 %

— Innova Polypak Private Ltd: 20,6 %

— Kanpur Plastipack Ltd: 33,5 %

— M/S Polyweave: 20,6 %

— M/S TPI India Limited: 20,6 %

— Neo Sack Ltd: 33,5 %

— Olive Commercial Co Ltd: 20,6 %

— Polyspin Export Ltd and Polyspin Private Ltd: 17,2 %

— Pithampur Poly Products Ltd: 6,7 %

— Sangam Cirfab Pvt Ltd: 20,6 %

— Shankar Packaging Ltd: 33,5 %

— Subham Polymers Ltd: 20,6 %

— Superpack Ltd: 20,6 %

— Synthetic Fibres (Mysore) Pvt Ltd: 20,6 %

— Tulsyan Nec Ltd: 20,6 %

— Vijay Chemicals & Plastics Pvt Ltd: 20,6 %

— Virgo Polymer Ltd: 20,6 %

— All other companies: 33,5 %.

E. **UNDERTAKINGS**

(51) In the light of the provisions of Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 concerning Developing Country Members, the Commission informed the co-operating exporting producers that it was ready to explore the possibilities of constructive remedies, including any offer of price undertakings.

(52) Fourteen Indian exporting-producers offered price undertakings in accordance with Article 8(1) of the Basic Regulation.

(53) The investigation has shown that the product concerned comprises numerous and evolving differentiating features, which can substantially affect sales prices. These features would make any system of undertaking prices (in the form of minimum import prices) particularly complex and difficult to enforce, in particular given the poor record of cooperation shown in the sampling exercise.

(54) Moreover, in a number of cases the product classification proposed was not sufficiently detailed to allow a proper monitoring, or the price level proposed did not allow for the removal of the injurious dumping.

(55) In addition, most of the exporters which offered undertakings also sell similar products not covered by the present investigation (such as 'jumbo bags') to by and large the same customers in the Community and perform different types of job work for other Indian companies. The potential for circumvention of the measures through price compensation and export channelling is therefore considered high.

(56) In view of the above, it was concluded that any undertakings would present both considerable monitoring and enforcement difficulties and unacceptable risks. Therefore, it was not considered appropriate to accept any of the undertakings offered.

F. **DISCLOSURE AND DURATION OF THE MEASURES**

(57) The companies concerned were informed of the facts and considerations on the basis of which it is intended to propose the amendment of the Regulation (EC) No 1950/97 and were given the opportunity to comment. Comments were received and taken into consideration where appropriate.

(58) The review carried out does not affect the date on which Regulation (EC) No 1950/97 will expire pursuant to Article 11(2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 1950/97, Article 1(2)(a) is replaced by:

'(a) 33,5 % for sacks and bags originating in India (Taric code additional 8900) with the exception of imports manufactured by the following companies, which shall be subject to the following rates of duty:

Company	Rate of duty (%)	Taric additional code
Aditya Bags Ltd	20,6 %	8424
Big Bags India Pvt Ltd	20,6 %	8424
Big Bags International Pvt Ltd	20,6 %	8424
Buildmet Fibres Private Ltd	20,6 %	8944
Cigfil Limited	20,6 %	8424
Gilt Pack Ltd and Giltpac International India Private Ltd	33,5 %	8945
Hyderabad Polymers Pvt Ltd	24,3 %	8106
Innova Polypak Private Ltd	20,6 %	8424
Kanpur Plastipack Ltd	33,5 %	8946
M/S Polyweave	20,6 %	8424
M/S TPI India Limited	20,6 %	8424
Neo Sack Ltd	33,5 %	8947
Olive Commercial Co Ltd	20,6 %	8424
Polyspin Export Ltd and Polyspin Private Ltd	17,2 %	8948
Pithampur Poly Products Ltd	6,7 %	8155
Sangam Cirfab Pvt Ltd	20,6 %	8156
Shankar Packaging Ltd	33,5 %	8949
Subham Polymers Ltd	20,6 %	8424
Superpack Ltd	20,6 %	8424
Synthetic Fibres (Mysore) Pvt Ltd	20,6 %	8157
Tulsyan Nec Ltd	20,6 %	8424
Vijay Chemicals & Plastics Pvt Ltd	20,6 %	8424
Virgo Polymer Ltd	20,6 %	8424'

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 Directive of the European Parliament and of the Council amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs [1]

(2002/C 331 E/35)

(Text with EEA relevance)

COM(2002) 464 final — 2001/0199(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 3 September 2002)

(Amendments are indicated by underlining/strikeout in the text)

EXPLANATORY MEMORANDUM

A. **Principles**

1. In September 2001 the Commission submitted the proposal for a European Parliament and Council Directive amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs COM(2001) 433 — 2001/0199(COD) with a view to its adoption under the codecision procedure provided for in Article 251 of the Treaty establishing the European Community.

On 11 June 2002 the European Parliament adopted a number of amendments at first reading. The Commission then indicated its position on each amendment, specifying which amendments it could accept and which it could not.

Subsequently the Commission drafted this amended proposal.

2. The modifications incorporate the amendments accepted as such by the Commission, as well as the new provisions resulting from the amendments which were accepted in principle though worded differently.

B. **Presentation of the modifications**

1. *Amendments accepted as such*

— Amendment 2

This amendment adds mixtures of mushrooms to the other mixtures (fruits or vegetables) whose labelling must not necessarily respect the rule of descending order of weight and specifies that this option applies only in the case of mixtures used in proportions which are likely to vary. These details are useful and reduce the risks of uncertainty both for the manufacturer and the consumer.

The Commission accepts this amendment.

— Amendment 6

The main purpose of this amendment is to abolish the labelling derogation provided for in the proposal in respect of ingredients consisting of preparations of sauces or mustards constituting less than 5 % of the finished product in foodstuffs.

The purpose of this provision in the initial proposal was to avoid overly long lists of ingredients.

The amendment removes this advantage but thus reduces the possibilities of ingredients being omitted from the labelling, hence increasing the degree of consumer information. Besides, this amendment improves the wording of the text.

The Commission accepts this amendment.

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[1] OJ C 332 E, 27.11.2001, p. 257.

2. *Amendments accepted in principle but not as regards the wording*

— Amendment 7, part two

This amendment makes it incumbent on the European Food Safety Authority to establish criteria for updating the Annex and to review it at regular two-yearly intervals.

In fact, the amendment of the Annex with a view to updating it, which is indeed necessary, is a matter for the legislator, after consulting the Authority at scientific level.

Thus the Commission can accept the principle of regular review of the list annexed to the proposal.

— Amendment 11

This amendment requires the Commission to issue detailed guidelines for the interpretation of the annex to the proposal.

The Commission cannot accept this amendment as it stands but considers it useful that the Directive include a provision requiring that technical details be added to the list of allergenic ingredients, if necessary.

C. **Rejected amendments**

— Amendment 13

As regards ingredients used in small quantities (less than 5 % of the finished product), this amendment eliminates the possibility of not strictly respecting the descending order of weight when enumerating them in the list of ingredients.

This flexibility as regards presentation in the labelling is however technically justified, in view of the obligation to list all the ingredients, including those used in minute quantities.

Hence this amendment is not acceptable.

— Amendment 14

This amendment eliminates the possibility of not repeating an ingredient used several times in the preparation of a foodstuff, both as a simple ingredient and as an ingredient of a compound ingredient.

Hence the elimination of this flexibility is not acceptable.

— Amendment 5

This amendment eliminates the possibility of not indicating the composition of compound ingredients used in small quantities (less than 5 % of the finished product) when the composition of the compound ingredient is defined in current Community legislation, which indicates the composition in line with the sales name. The products potentially concerned by this derogation are chocolates, fruit juices, fruit jams, jellies, marmalades and chestnut purée.

This derogation does not apply either to additives or to allergenic substances.

The purpose of the derogation is to avoid uselessly lengthening the lists of ingredients while maintaining consistency with the proposal's objectives.

Hence this amendment is not acceptable.

— Amendment 7, part one

This amendment exempts processing aids derived from allergenic ingredients from the labelling requirement on the grounds that these substances are eliminated during the manufacturing process.

However, residues may be present in the finished products and allergic reactions may occur even in the presence of simple residues or traces of allergenic substances.

Hence this part of amendment 7 is not acceptable.

— Amendments 8, 9 and 10

These amendments add the named ingredients to the list in the Annex.

However, the list proposed by the Commission is based on the available scientific data and should be extended only on the basis of objective scientific criteria.

The Commission, with a view to updating the list in the future, has invited the Scientific Committee on Food to prepare a rapid procedure for amending the list (comitology). It will also raise the question as to the necessity of adding these ingredients to the list.

Hence these amendments are not acceptable.

Pursuant to Article 250(2) of the EC Treaty, the Commission amends the proposal as described above.

The amendments to the Commission's initial proposal are shown as follows: deleted passages are struck through and new or amended passages are indicated in bold and underlined characters.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) In order to achieve a high level of health protection for consumers and guarantee their right to information, it must be ensured that consumers are appropriately informed about foodstuffs, *inter alia* through the listing of all ingredients on labels.

(2) By virtue of Article 6 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1] certain substances need not appear in the list of ingredients.

(3) Certain ingredients contained in foodstuffs are the cause of allergies or intolerances in consumers in the Community, and some of those allergies or intolerances constitute a danger to the health of those concerned.

(4) The Scientific Committee for Food (SCF) has stated that the incidence of food allergy is such as to affect the lives of many people, causing conditions ranging from very mild to potentially fatal.

(5) The SCF has acknowledged that common food allergens include cow's milk, fruits, legumes (especially peanuts and soybeans), eggs, crustaceans, tree nuts, fish, vegetables (celery and other foods of the Umbelliferae family), wheat and other cereals; it has also noted that adverse reactions to food additives may occur and that food additive avoidance is often difficult since not all food additives may be included in labelling.

(6) The most common food allergens are found in a wide variety of processed foods.

(7) Even if labelling, which is intended for consumers in general, must not be regarded as the only means of information, taking over the role of the medical establishment, it is nevertheless advisable to assist consumers who have allergies or intolerances as much as possible by providing them with more comprehensive information about the composition of foodstuffs.

[1] OJ L 109, 6.5.2000, p. 29. Directive amended by Commission Directive 2001/101/EC (OJ L 310, 28.11.2001, p. 19).

(8) The list of allergenic substances includes those foodstuffs and ingredients recognised as causing hypersensitivity and likely to benefit from an exemption under Directive 2000/13/EC. In order to keep up with the development of scientific knowledge, it is important to be able to revise this list rapidly, when necessary. Such revisions should take the form of implementing measures of a technical nature, and their adoption should be entrusted to the Commission in order to simplify and accelerate the procedure.

(9) To provide all consumers with better information and to protect the health of certain consumers, it should be made obligatory to include in the list of ingredients all ingredients present in the foodstuff and, in the case of ingredients known to be allergenic, to declare them by their specific name in all cases, including in alcoholic drinks, with no possibility of using the name of the category to which they belong or, in the case of additives, of an exemption from the obligation of their being included in the list of ingredients.

(10) In order to prevent the risk of labelling becoming too complex and difficult to read, procedures are needed which make it possible to avoid excessively long lists of ingredients while still ensuring that the above-mentioned objectives are achieved. In order to take account of the technical constraints associated with the manufacture of foodstuffs, it is also necessary to authorise greater flexibility with regard to the listing of ingredients used in very small quantities.

(11) Directive 2000/13/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2000/13/EC is amended as follows:

1. Article 6 is amended as follows:

(a) The following paragraph 3a is inserted:

'3a. Without prejudice to the rules to be established in application of paragraph 3, the presence of one or more of the ingredients listed in Annex IIIa in a drink referred to in paragraph 3 shall be mentioned, unless the ingredient(s) concerned is/are included under its/their specific name(s) in the name under which the drink is sold. This indication shall comprise the term "contains", followed by the name of the ingredient(s) concerned.

Where necessary, detailed rules for applying this paragraph may be adopted:

(a) as regards the products referred to in Article 1, paragraph 2, of Council Regulation (EC) No 1493/99 (*), under the procedure laid down in Article 75 of the said Regulation;

(b) as regards the products referred to in Article 2, paragraph 1, of Council Regulation (EEC) No 1601/91 (**), under the procedure laid down in Article 13 of the said Regulation;

(c) as regards the products referred to in Article 1, paragraph 2, of Council Regulation (EEC) No 1576/89 (***), under the procedure laid down in Article 14 of the said Regulation;

(d) as regards other products, under the procedure laid down in Article 20, paragraph 2, of this Directive.

(*) OJ L 179, 14.7.1999, p. 1.
(**) OJ L 149, 14.6.1991, p. 1.
(***) OJ L 160, 12.6.1989, p. 1.'

(b) The second sub-paragraph of paragraph 5 is amended as follows:

(i) The fourth indent is replaced by the following text:

'— where fruits, ~~or~~ vegetables or mushrooms, none of which significantly predominates in terms of weight, and which are used in proportions that are likely to vary, are used in a mixture as ingredients of a foodstuff, they may be grouped together in the list of ingredients under the designation "fruits", ~~or~~ "vegetables" or "mushrooms" followed by a phrase such as "in varying proportions", immediately followed by a list of the fruits, ~~or~~ vegetables or mushrooms present ~~and a phrase such as "in varying proportions"~~; in such cases, the mixture shall be included in the list of ingredients, in accordance with the first sub-paragraph, on the basis of the total weight of the fruits, ~~or~~ vegetables or mushrooms present,'

(ii) The following sixth and seventh indents are added:

'— ingredients constituting less than 5 % of the finished product may be listed in a different order after the other ingredients,

— where ingredients which are similar or mutually substitutable are likely to be used in the manufacture or preparation of a foodstuff without altering its composition, and in so far as they constitute less than 5 % of the finished product, they may be referred to in the list of ingredients by means of the phrase "contains ... and/or ..." where at least one of no more than two ingredients is present in the finished product, or "contains at least one of the following ingredients: ..., ..., ..." where at least one of no more than three ingredients is present in the finished product.'

(c) Paragraph 8 is amended as follows:

(i) The following sentence is added to the first sub-paragraph:

'However, where the ingredients of the compound ingredient are already listed as single ingredients in the list of ingredients, repetition is not compulsory, as long as an explanatory note, placed near the list of ingredients, clearly informs the purchaser that they are present in the foodstuff as single ingredients and as ingredients of the compound ingredient.'

(ii) The second sub-paragraph is replaced by the following text:

'However, the list referred to under the first sub-paragraph shall not be compulsory:

(a) where the composition of the compound ingredient is defined in current Community legislation, and in so far as the compound ingredient constitutes less than 5 % of the finished product; however, this provision shall not apply to additives, subject to paragraph 4(c);

(b) for ~~the~~compound ingredients consisting of mixtures of spices and/or herbs that constitute less than 2 % of the finished product, ~~listed below,~~ with the exception of additives, subject to paragraph 4(c);

~~(i) preparations of sauces or mustards constituting less than 5 % of the finished product,~~

~~(ii) mixtures of spices and/or herbs constituting less than 2 % of the finished product;~~

(c) where the compound ingredient is a foodstuff for which a list of ingredients is not required under Community legislation.'

(d) The following paragraphs 10 and 11 are~~is~~ added:

'(10) The provisions of paragraph 4(c)(ii) and (iii), paragraph 6 (second sub-paragraph, first indent) and paragraph 8 (second sub-paragraph) shall not apply to the ingredients listed in Annex IIIa.

(11) The list in Annex IIIa shall be reexamined and, where necessary, updated, every two years, and for the first time two years after the entry into force of this Directive, on the basis of the most recent scientific knowledge.

To this end Annex IIIa may be amended, in compliance with the procedure referred to in Article 20(2), after obtaining the opinion of the European Food Safety Authority issued on the basis of Article 29 of Regulation (EC) No 178/2002 of the European Parliament and of the Council [1].

Where necessary, the list in Annex IIIa may be the subject of technical guidelines for its interpretation, ~~Annex IIIa may be amended~~ in compliance with the procedure referred to in Article 20(2).'

2. In Annex I, the designations 'crystallised fruit' and 'vegetables', and the corresponding definitions, are deleted.

3. Annex IIIa, the text of which is appended to this Directive, is inserted.

Article 2

Member States shall bring into force, by 31 December 2003 at the latest, the laws, regulations and administrative provisions necessary to:

— permit, by 1 January 2004 at the latest, the sale of products that comply with this Directive,

— prohibit, as from 1 January 2005, products that do not comply with this Directive; any products that do not comply with this Directive but have been placed on the market or labelled prior to this date may, however, be sold while stocks last.

They shall forthwith inform the Commission thereof.

When these provisions are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

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[1] OJ L 31, 1.2.2002, p. 1.

ANNEX

'ANNEX IIIa

INGREDIENTS REFERRED TO IN ARTICLE 6, PARAGRAPHS 3a AND 10

Cereals containing gluten and products thereof

Crustaceans and products thereof

Eggs and products thereof

Fish and products thereof

Peanuts and products thereof

Soybeans and products thereof

Milk and dairy products (including lactose)

Nuts and nut products

Sesame seeds and products thereof

Sulphite at concentrations of at least 10 mg/kg'

Proposal for a Council Regulation amending Regulation (EC) No 1098/98 introducing special temporary measures for hops

(2002/C 331 E/36)

COM(2002) 493 final

(Submitted by the Commission on 10 September 2002)

EXPLANATORY MEMORANDUM

It is proposed that the Council adopt the annexed proposal for a Regulation the purpose of which is to extend for one year application of the special temporary measures for hops introduced in 1998. Those measures are of two types: temporary resting and grubbing-up.

The aim of the measures is to reduce the amount of land under hops in the European Union so as to better balance supply and demand and thus stabilise the market.

Although the area of land has been reduced by 10 % (by comparison with 1997), the balance has yet to be achieved and it is therefore necessary to continue to reduce the amount of land for another year.

The evaluation report which the Commission is obliged to present to the Council by 31 December 2003 at the latest will, of course, cover all provisions under the common market organisation, including the special measures.

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 Council Regulation (EEC) No 1696/71 of 26 July 1971 on the common organisation of the market in hops ([1]), as last amended by Regulation (EC) No 1514/2001 ([2]), and in particular Article 16a thereof,

Whereas:

(1) To rectify a surplus on the market in hops Council Regulation (EC) No 1098/98 of 25 May 1998 ([3]) introduces special temporary measures under the procedure provided for in Article 16a of Regulation (EEC) No 1696/71. Thus, in the Member States deciding to apply those special measures, producer groups may, up to and including the 2002 harvest, have recourse to temporary resting and/or permanent grubbing-up of land under hops.

(2) Although application of the special resting and grubbing-up measures over the first four years of the five-year programme adopted by the Council has permitted a reduction in land under hops of 10 % by comparison with 1997, efforts to balance the market are still required and the measures should be retained for another year.

(3) Articles 2 and 4 of Council Regulation (EC) No 1098/98 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1098/98 is amended as follows:

1. In Article 2(1):

   — in the first subparagraph '2002 harvest' is replaced by '2003 harvest',

   — in the second subparagraph '2003 harvest' is replaced by '2004 harvest'.

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

   'It shall apply from the 1998 harvest up to and including the 2004 harvest'.

Article 2

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.

([1]) OJ L 175, 4.8.1971, p. 1.

([2]) OJ L 201, 26.7.2001, p. 8.

([3]) OJ L 157, 25.5.1998, p. 7.

Proposal for a Council Regulation amending Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of Central and Eastern Europe in the pre-accession period

(2002/C 331 E/37)

COM(2002) 519 final — 2002/0227(CNS)

(Submitted by the Commission on 18 September 2002)

EXPLANATORY MEMORANDUM

In mid August 2002 considerable damage was caused *inter alia* in various candidate countries by floods. These floods severely affected the Czech Republic and Slovakia.

The Commission considers that the Community needs to be able to respond appropriately to such exceptional natural disasters whenever they occur in candidate countries through various instruments including the pre-accession SAPARD instrument set up under Council Regulation (EC) No 1268/1999.

The scope of the SAPARD instrument does not however have any specific provisions relating to actions taken in the wake of natural disasters. However Article 1.2(b) of Regulation (EC) No 1268/1999 includes as an objective 'solving priority and specific problems for the sustainable adaptation of the agricultural sector and rural areas in the applicant countries'. The Commission considers that actions to help restore rural areas following exceptional natural disasters can be considered as falling within the scope of SAPARD and that consequently specific provisions should be made for such action within Regulation (EC) No 1268/1999. In the view of the Commission the appropriate action is to increase the ceiling on public aid from 50 % to 75 %, and the Community contribution from 75 % to 85 % of public aid, for relevant projects in areas affected by exceptional natural disasters. This is the purpose of the present proposal.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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

Whereas:

(1) In mid August 2002 considerable damage was caused *inter alia* in various candidate countries by floods in their rural areas. The Community needs to be able to respond appropriately to such exceptional natural disasters whenever they occur in candidate countries using various instruments including the pre-accession instrument set up under Council Regulation (EC) No 1268/1999 [1], one of its objectives being to solve priority and specific problems for the sustainable adaptation of the agricultural sector and rural areas in these countries,

(2) No special provision is included in the Regulation for actions to help restore rural areas following exceptional natural disasters,

(3) Appropriate action by the Community in the wake of such disasters is needed. These events place *inter alia* a considerable economic burden on the affected parties both in the public and private sectors and coincide with those to prepare for accession. Under a co-financing policy instrument such as that set up under Regulation (EC) No 1268/1999 appropriate action for the relevant projects in the countries concerned should include an increase both in the rate of Community assistance and in the normal ceilings on aid intensities. Regulation (EC) No 1268/1999 should be modified accordingly,

[1] OJ L 161, 26.6.1999, p. 87. Regulation as amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1268/1999 is hereby amended as follows:

Article 8 is replaced by the following:

'*Article 8*

Rate of Community contribution

1. The Community contribution may amount to up to 75 % of the total eligible public expenditure except:

(a) for relevant projects under any measure where the Commission determines that exceptional natural disasters have occurred the Community contribution may amount to up to 85 % of the total eligible public expenditure;

(b) for measures referred to in the last indent of Article 2 and Article 7(4), the Community contribution to financing may amount to up to 100 % of the total eligible cost.

2. For revenue generating investments

(a) except those referred to in paragraph 1(a), public aid may amount to up to 50 % of the total eligible cost of which the Community contribution may amount to up to 75 %;

(b) referred to in paragraph 1(a) public aid may amount to up to 75 % of the total eligible cost of which the Community contribution may amount to up to 85 % of the public aid.

In any case the Community contribution shall comply with the ceilings on rates of aid and cumulation laid down for State aid.

3. The financial support and the payments shall be expressed in euro.'

Article 2

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.

Proposal for a Council Decision authorising Germany and France to apply a measure derogating from Article 3 of Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2002/C 331 E/38)

COM(2002) 491 final

(Submitted by the Commission on 10 September 2002)

EXPLANATORY MEMORANDUM

INTRODUCTION

By two requests sent to the Commission on 28 December 2001 and 7 January 2002 respectively, Germany and France sought authorisation under Article 27 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment (hereinafter 'the Sixth Directive') ([1]) to apply a measure derogating from Article 3 of the Directive 77/388 in respect of the construction and maintenance of cross-border bridges located on the Rhine. By letter of 25 February 2002 the Commission asked the German and French authorities to give further information on the scope of the derogation requested in respect of Article 3. The German authorities supplied the information requested in a letter of 19 June 2002, endorsed by the French authorities, which was registered by the Commission's Secretariat-General on 22 July 2002. The derogation requested by Germany and France entails deeming that the territorial boundary between Germany and France for the purposes of VAT territorial rules on the construction and maintenance work on certain cross-border bridges lies in the middle of such bridges.

PURPOSE OF THE DEROGATIONS SOUGHT

The German and French authorities point out that, in the absence of a specific measure, the place of taxation for construction and maintenance work on the cross-border bridges would be dictated by the geographical territorial boundary between the two Member States. This boundary lies where the river is deepest.

The geographical territorial boundary on each bridge is determined by the depth of the river and so is not a straight line.

This makes it very difficult in practice to determine the geographical territorial boundary for the purposes of applying VAT legislation. Furthermore, it changes constantly over time.

In view of the above, applying the VAT arrangements to the construction and maintenance of cross-border bridges using the territorial principle would be extremely complex.

DESCRIPTION OF THE DEROGATION REQUESTED

The derogation sought by Germany and France consists in deeming that, for the construction and maintenance of certain cross-border bridges on the Rhine, including winter maintenance services and regular cleaning, the territorial boundary between Germany and France lies in the middle of each bridge.

The cross-border bridges on the Rhine to which the derogation would apply are bridges which will be built in future to link up with public highways not forming part of the network of motorways and trunk roads in France and with public highways not forming part of the Federal trunk road network in Germany.

([1]) OJ L 145, 13.6.1977, p. 1; Directive last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

Other bridges, to which different derogating measures may be applicable, would not be concerned by this measure. Council Decision 97/189/EC of 17 March 1997 would therefore remain applicable [1].

OPINION OF THE COMMISSION

Article 27 of the Sixth Directive provides for derogations in order to simplify the procedure for charging tax or to prevent certain types of tax evasion or avoidance.

It is undeniable that application of the normal VAT territoriality rules would, as described earlier, cause major difficulties for operators involved in construction or maintenance work on cross-border bridges on the Rhine.

The measure proposed by Germany and France, namely deeming that the territorial boundary between the two Member States for the purposes of applying VAT legislation, lies in the middle of each bridge concerned, would eliminate these difficulties. The criterion chosen for fixing the boundary appears both simple to apply and equitable.

The proposed measure is therefore a tax collection measure.

Lastly, the derogation would have no effect on the taxable amount for VAT and thus would not adversely affect the Communities' own resources from VAT.

For these reasons the Commission proposes that the Council authorise Germany and France to apply the measure derogating from Article 3 that they have requested.

[1] OJ L 80, 21.3.1997, p. 20.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment, and in particular Article 27(1) thereof [1],

Having regard to the proposal from the Commission,

Whereas:

(1) By two requests sent to the Commission on 28 December 2001 and 7 January 2002 respectively, Germany and France sought authorisation to apply a measure derogating from Article 3 of Directive 77/388/EEC in respect of the construction and maintenance of certain cross-border bridges on the Rhine.

(2) By letter of 25 February 2002 the Commission asked the German and French authorities to give further information on the scope of the derogation.

(3) The German authorities gave the Commission the supplementary information requested in a letter of 19 June 2002, endorsed by the French authorities, which was registered by the Commission's Secretariat-General on 22 July 2002.

(4) The other Member States were informed of Germany and France's request and the supplementary information by letter dated 31 July 2002.

(5) The cross-border bridges on the Rhine concerned by this measure are bridges which will be built in future to link up with public highways not forming part of the network of motorways and trunk roads in France and with public highways not forming part of the Federal trunk road network in Germany.

[1] OJ L 145, 13.6.1977, p. 1; Directive last amended by Directive 2002/38/EC (OJ L 128, 15.5.2002, p. 41).

(6) The derogation sought by Germany and France consists in deeming that, for the construction and maintenance of cross-border bridges on the Rhine, the territorial boundary between Germany and France lies in the middle of each bridge.

(7) In the absence of a specific measure, the place of taxation of construction and maintenance work on the cross-border bridges would be dictated by the geographical territorial boundary between the two Member States, which runs where the river is deepest. This boundary is difficult in practice to determine and also changes over time. The VAT arrangements applicable to construction and maintenance work on the cross-border bridges would therefore be extremely complex for the operators carrying it out.

(8) This derogation, which fixes the territorial boundary between Germany and France in the middle of the cross-border bridges concerned, will therefore simplify the collection of VAT on the construction and maintenance of these bridges.

(9) The derogation will not reduce the taxable amount for VAT. It therefore does not adversely affect the Communities' own resources from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 3 of Directive 77/388/EEC Germany and France are hereby authorised, in the case of the cross-border bridges on the Rhine referred to in Article 2, to set the territorial boundary between the two States in the middle of the bridges concerned as the place of taxation for the supply of goods and services, intra-Community acquisitions and imports of goods for the construction and maintenance of these bridges, including winter maintenance and regular cleaning.

Article 2

The cross-border bridges on the Rhine to which this Decision applies are those to be built in future which will link up with public highways not forming part of the network of motorways and trunk roads in France and with public highways not forming part of the Federal trunk road network in Germany.

Article 3

This Decision is addressed to the Federal Republic of Germany and the French Republic.

Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers

(2002/C 331 E/39)

COM(2002) 443 final — 2002/0222(COD)

(Submitted by the Commission on 11 September 2002)

EXPLANATORY MEMORANDUM

1. GENERAL POINTS

1.1. Background

Directive 87/102/EEC concerning consumer credit [1], amended in 1990 and 1998 [2], established the Community framework for consumer credit with a view to promoting the setting-up of a common market for credit and establishing minimum Community rules to protect consumers.

In 1995 the Commission presented a report on the operation of the 1987 directive [3], following which the Commission undertook a very broad consultation of the parties involved. In 1996 the Commission presented a report on the operation of Directive 90/88/EEC amending Directive 87/102/EEC, concerning the annual percentage rate of charge (APR) [4]. In 1997 the Commission presented a summary report of reactions and comments [5].

The reports and the consultations show that there are enormous differences between the laws of the various Member States in relation to credit for natural persons in general and consumer credit in particular. Directive 87/102/EEC no longer reflects the current situation on the consumer credit market and is therefore in need of revision [6].

To this end the Commission ordered a series of studies on various specific issues [7] and carried out a detailed and comparative study of all the Member States' national transposal legislation.

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[1] Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.

[2] Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 61, 10.3.1990, p. 14), itself amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 101, 1.4.1998 p. 17).

[3] European Commission, report on the operation of Directive 87/102/EEC, COM(95) 117 final.

[4] European Commission, report on the operation of Directive 90/88/EEC, COM(96) 79 final of 12 April 1996.

[5] COM(97) 465 final of 24 September 1997.

[6] Communication from the Commission — Financial services: enhancing consumer confidence — follow-up to the Green Paper on 'Financial services: meeting consumers' expectations', COM(97)309 final.

[7] Lea, M.J., Welter, R., Dübel, A., 'Study on the mortgage credit in the European Economic Area. Structure of the sector and application of the rules in the directives 87/102 and 90/88'. Final report on tender n° XXIV/96/U6/21 Seckelmann, R., 'Methods of calculation, in the European Economic Area, of the annual percentage rate of charge', Final Report 31 October 1995, Contract n° AO 2600/94/00101, Reifner, U., 'Harmonisation of cost elements of the annual percentage rate of charge, APR', Hamburg 1998, Project n° AO-2600/97/000169. Domont-Naert, F., et Lacoste, A.-C., 'Etude sur le problème de l'usure dans certains états membres de l'espace économique européen', Louvain-la-Neuve 1997, Contrat n° AO-2600/96/000260; Domont-Naert, F., et Dejemeppe, P, 'Etude sur le rôle et les activités des intermédiaires de crédit aux consommateurs', contrat n° AO-2600/95/000254, 1996, Balate, E., et Dejemeppe, P., 'Conséquences de l'inexécution des contrats de crédit à la consommation.' Etude AO-2600/95/000270 Commission européenne, rapport final.

A number of Member States have meanwhile made it known that they were also planning to revise their national legislation. This proposal for a directive is an opportunity for the Commission to anticipate these reforms and to incorporate them in a harmonised Community system.

The Commission departments concerned presented a discussion paper on 8 June 2001 setting out six guidelines for a revision of Directive 87/102/EEC and in early July 2001 they held consultations with parties representing the Member States as well as the sector and consumers. The texts proposed in this proposal for a directive take account of these consultations.

1.2. **Overall assessment**

Generally speaking, the first point to be made is that the concept of 'consumer credit' has undergone substantial change since the time that this legislation was initially conceived. In the 1960s and '70s we lived in a 'cash society' with credit playing a very small part and involving essentially two products, namely the 'hire-purchase' agreement or 'instalment plan' to fund the purchase of moveable property and the traditional form of credit, the personal loan. Today credit is made available to consumers via a wide range of financial instruments and it has become the lubricant of economic life. Between 50 and 65 % ([1]) of consumers currently use consumer credit to fund the purchase of a vehicle, for example, or other goods or services and 30 % of consumers enjoy an overdraft facility on their current account. This latter credit instrument was not even in use in the 1970s to meet consumers' needs.

In macroeconomic terms the amount of credit circulating in the 15 Member States of the European Union exceeds EUR 500 000 million, corresponding to more than 7 % of GDP. The annual growth rate is overall around 7 % ([2]).

Although credit remains a driving force for economic growth and the well-being of consumers it nevertheless represents a risk for credit providers and, for a growing number of consumers, also the threat of being surcharged and suffering insolvency.

It is hardly surprising, therefore, that the Member States have found the level of protection available under the existing directives to be inadequate and have made provision in their legislation to include other types of credit and/new credit agreements which were not covered by the directives. There have also been signs that national legislation is to be amended along the same lines.

The result has been a distortion of competition between creditors in the internal market and restricted scope for consumers to obtain credit in other Member States.

Such distortions and restrictions in turn affect the volume and type of credit sought as well as the purchase of goods and services. Differences in legislation and banking/financial practices also mean that the consumer is unable to enjoy the same degree of protection in all the Member States as regards consumer credit.

Consequently, the legal framework currently in place needs to be revised so that consumers and businesses can benefit fully from the single market.

This would also be a response to concerns expressed repeatedly by consumers. The data gathered for the Eurobarometer since 1997 reveal a considerable degree of dissatisfaction with the quality of national consumer protection legislation in connection with financial services:

— more than 40 % consider that the legislation does not ensure enough transparency with regard to financial services, credit included;

— 40 % consider that the legislation does not provide adequate scope for seeking remedy against banks;

— more than 35 % consider that the legislation does not protect their rights.

([1]) cf. Eurobarometer 54, February 2001 'Les Européens et les services financiers' and EB 56, December 2001: 'Europeans and the financial services'.

([2]) See monthly BEU bulletins.

Moreover, no less than 70 % of consumers are calling for greater, European-level harmonisation of the regulations that protect consumers.

2. SUBSIDIARITY AND PROPORTIONALITY ASSESSMENT

2.1. **The aims of the directive as regards Community obligations**

Various factors can explain the sluggish development of the European cross-border credit market and these include, as the main contributing factors:

— technical problems in connection with accessing another market,

— a lack of adequate harmonisation as regards national legislation,

— the changes to the methods and styles of credit that have occurred since the 1980s.

A revision of the directive calls for:

— changes to the legal framework to reflect new methods of credit,

— a realignment of the rights and obligations both of consumers and credit providers to redress the balance,

— a high degree of consumer protection.

The aim is to pave the way for a more transparent market, a more effective market and to offer such a degree of protection for consumers that the free movement of offers of credit can occur under the best possible conditions both for those who offer credit and those who require it.

To achieve these objectives the directive would need to be revised in a way that takes account of the following six guidelines:

1. a redefinition of the scope of the directive in order to ensure that it reflects the new situation on the market and is better able to draw the line between consumer credit and housing credit;

2. the inclusion of new arrangements that take account not only of creditors but also of credit intermediaries;

3. the introduction of a structured information framework for the credit provider in order to allow him to assess more fully the risks involved;

4. a specification requiring more comprehensive information for the consumer and any guarantors;

5. a fairer sharing of responsibilities between the consumer and the professional;

6. the improvement of the arrangements and practices that determine how professionals deal with payment defaults, both for the consumer and for the credit provider.

2.2. **The measure falls within the Community's competence**

The aim of the measure is to establish and ensure the operation of the internal market. The measure will be conducive to achieving the objective of protecting consumers by harmonising practice within the Single Market. It is for this reason that Article 95 has been selected as the measure's legal basis. As a result, the Commission's proposal is presented to the Council and to the European Parliament for adoption under the Codecision Procedure provided by Article 251 of the Treaty. Article 95 also requires the consultation of the Economic and Social Committee.

By resorting to the minimum clause provided by Article 15 of Directive 87/102/EEC and in order to protect their consumers, Member States have adopted in respect of most aspects of consumer credit provisions that are more detailed, more precise and more stringent than those contained in the directive . These differences will probably make it more difficult to conclude cross-border agreements, to the detriment of consumers and creditors alike.

The scope of the various national laws transposing Directive 87/102/EEC generally exceeds that of the directive and it also differs from one Member State to another. Legislation governing consumer credit in a number of Member States regulates leasing to private individuals with a purchase option, in other words even the lease itself for movable property held by consumers, whereas other Member States have included no such agreements in the scope of their legislation.

This means that the various styles of credit agreement calculate rates and costs in a way which differs from one style of credit to another and from one Member State to another. Directive 87/102/EEC, as amended by Directives 90/88/EEC and 98/7/EC, therefore introduced the calculation of an annual percentage rate of charge that covered all interest and costs to be borne by the consumer, allowing him more easily to compare them. However, there were two recurrent problems affecting the introduction of the APR: first, the calculation conventions for expressing both the time periods and the rounding of amounts and second, the fixing of cost — 'the cost base' — to be taken into account. To make sure that the APR is completely reliable and serviceable throughout the Community the Member States must calculate it in a uniform way and include in the same way all the cost elements linked to the credit agreement. However, despite the changes introduced by Directive 98/7/EC this is not always the case.

There are signs, for example, of difficulties with substantiating the 'obligatory' nature of insurance and sureties covering the repayment of the credit. The fact that they are obligatory means that they have to be included as costs in the cost base and this prompted a number of Member States to regulate this area beyond the requirements of the directive by use of the minimum clause. The exclusion of certain types of costs from the directive serves no (or no longer any) purpose and several Member States have therefore included these costs in their national cost bases. There are also a number of cases where the directive is not sufficiently clear, for example with regard to the effect of the commissions payable to intermediaries or taxes due when the credit agreement is concluded or performed. All of the foregoing means that there can be differences of ten, twenty or more percent depending on how strictly a Member State defines the composition of its cost base.

This proposal for a directive contains a reassessment both of the calculation conventions and of the inclusion or exclusion of certain costs on the basis of their economic justification so that a minimum of credit costs will be excluded and a maximum of clarity achieved. This should, as a rule, bring about the maximum possible harmonisation of the national cost bases and a greater degree of uniformity as regards calculation.

These measures for comparing costs are only feasible if implemented on a European scale. They will only have sufficient impact if the directive is applicable to all credit agreements offered to consumers.

Further examples can be provided: for example, the Member States' legislations use different procedures and apply different time limits for 'withdrawal', 'cooling-off' and 'cancellation' in connection with a credit agreement. These differences in terms of periods of time and procedure create obstacles for creditors who would like to offer credit in other Member States but face a waiting period of three days in Luxembourg, a period of seven days in Belgium and in the case of France they are not permitted to take any action on the credit agreement for the duration of the cooling-off period, while in other cases the credit agreement must include references to any time periods or procedures involved. The various legislations do not lay down the conditions governing the drawing up, conclusion and cancellation of credit agreements in a uniform way and distortion of competition is the result.

Some Member States absolutely forbid the door-to-door selling of credit agreements to consumers while others require a cooling-off period or even take particular steps when aggressive marketing is detected. Something that is perfectly legal in one Member State may lead to conviction in another. A creditor working in a very strictly regulated Member State could access the market more easily in another Member State that is less strictly regulated and would consequently have an advantage over his competitors.

In the event of the non-performance of a credit agreement or surety agreement a creditor will be faced with different procedures and time limits for injunctions depending on whether the consumer is a resident of one Member State or of another. The legislations of the Member States differ considerably with regard to waiting periods before any action can be taken in respect of consumers, guarantors or the repossession of goods. Longer periods and special procedures entail extra costs for creditors, who must run the risk of the agreement remaining unperformed and they may be at a disadvantage compared with a competing creditor who has no extra costs or operates in a less strictly regulated environment while all the time having granted credit to the same consumer.

Measures offering a high degree of consumer protection have been drawn up in accordance with Article 153(1)(3)(a) of the Treaty in conjunction with Article 95, as mentioned earlier. The aim of these protective measures is to strengthen the provisions put in place to establish the single market and they should enable the Member States to accept maximum harmonisation with no need for a general resort to further protective measures.

It is with this aim in view that this directive encourages recourse to out-of-court arrangements before initiating recovery procedures, the consistency of such recovery procedures with the content of the agreement, the striking of a balance between the interests both of the creditor and the consumer when payments are late, the defence of the interests of both parties when agreeing the repossession of goods financed with the credit and the possibility for the consumer to change to a different creditor, if necessary, without having to pay an unjustifiable indemnity.

2.3. **The instrument most suited to the aims pursued**

The measure proposed is aimed at satisfying the needs of the single market by establishing common and harmonised rules applicable to all actors — creditors, credit intermediaries etc., — thus allowing creditors to make their services more easily available and consumers to enjoy the high degree of protection.

The idea of introducing uniform legislation in the shape of a regulation that would be directly applicable under the national legislation of the Member States without transposal was studied but rejected. A directive will enable the Member States to amend the legislation in force subsequent to the transposal of Directive 87/102/EEC to the extent that is needed to ensure compliance. In drawing up its proposal for a directive the Commission has endeavoured to strike a balance reflecting the maximum possible extension of the scope of the directive to include all styles of credit and surety agreements and the desire to contain the impact of such a reform on the Member States' legislative systems. In view of the new approach to harmonisation and the many substantial changes that have been made, this new proposal will replace Directive 87/102/EEC as amended by Directives 90/88/EEC and 98/7/EEC.

2.4. **Advantages of the directive being proposed**

Harmonising the rules applicable to consumer credit will improve the operation and stability of European credit markets.

The proposed directive will improve the operation of the market because the scope for cross-border activities within the Single Market will be extended and competition on the market will increase. Although the rules are the same both with regard to creditors, credit intermediaries, consumers and guarantors the latter should feel more confident about credit that in some cases is unfamiliar and provided at rates or in forms that are very interesting and offered by creditors or intermediaries based in other Member States.

The directive will improve stability by putting in place a raft of provisions on responsible lending, on providing information and protection both when the credit agreement is concluded and during its performance (or in the event of its possible non-performance) that will reduce the probability of a creditor or credit intermediary being able to mislead consumers in another Member State or jeopardise their financial situation or even of acting irresponsibly. The directive being proposed, and in particular its provisions relating to the prevention of overin-debtedness, together with the rules on consulting central databases, will further improve the quality of loans and lessen the risk of consumers falling victim to disproportionate commitments that they are unable to meet, resulting in their economic exclusion and costly action on the part of Member States' social services.

3. **EXAMINATION OF THE ARTICLES**

Article 1 (aim)

The aim of this directive is to secure maximum harmonisation with regard to the credit on offer to consumers by guaranteeing them a high level of protection. All types and forms of credit that are available to private individuals will, in principle, be harmonised. It is for this reason that the title of the directive is worded 'credit for consumers' rather than 'consumer credit'. The few exceptions to the scope of the directive, which is very broad compared with that of Directive 87/102/EEC, are listed in Article 3.

The directive also covers surety agreements. The harmonisation being sought for these agreements will centre mainly on the information to be provided to consumers concluding such agreements, even if they guarantee credit that is granted for employment-related purposes.

Article 2 (definitions)

This article defines a number of the terms used in the directive. In principle, the terminology is identical to that of Directive 87/102/EEC. A number of changes have been introduced to cover the broader scope of the directive or to clarify some concepts. A number of new definitions have been included to cover recent additions to the text.

The definitions of 'creditor', 'consumer' and 'credit agreement' have undergone no change compared with the text of the original directive, with the exception of an improvement to the manner in which the concept of 'agreement promising to grant credit' is included. All credit transactions are covered, including promises to conclude agreements.

Credit agreements for the supply of services are also covered.

The second sentence of the definition is not intended to create an exemption. The sentence clarifies cases, such as the supply of gas water or electricity where the — continuous — supply of the services is in step with a corresponding payment but where no 'credit' is granted.

The concept of 'credit intermediary' is a general concept which could cover several types of activity and several categories of intermediary:

— an agent who is delegated and authorised to sign — exclusively — on behalf of the creditor;

— a credit broker, in other words a self-employed person working under his own name who submits credit applications to a number of different creditors;

— a 'supplier of goods or provider of services', in other words a person, (such as a salesman) who can be either a delegated agent or a credit broker, even a creditor who immediately transfers his rights to another creditor/principal funds provider who will (co)decide on the granting of credit and whose role as broker is no more than an activity supporting his principal one, namely the sale of products or services.

The definition proposed covers any person who assists in the conclusion of a credit agreement, in other words not only the credit broker but also the delegated agents or bank agents as well as the suppliers of goods and the providers of services, main or subsidiary business undertakings, including marketing assistants.

The directive thus covers any person who provides a creditor with information to identify a consumer and directs the latter, for a fee, to a creditor for the conclusion of a credit agreement. This fee may take the form of cash or some other agreed form of consideration, such as computer support, access to the creditor's business network or overdraft facilities, for example. In principle, lawyers and notaries are not covered even if a consumer approaches them for advice about the scope of a credit agreement or if they provide assistance in the drafting of an agreement or authenticate it, as long as their role is limited to providing legal advice and they do not direct their clients to particular creditors.

The 'surety' agreement covers all sureties, both personal and in material form: bonds, joint and several liability, mortgages and sureties etc. The agreement must be signed by a consumer, known as the 'guarantor' in order to distinguish him from the consumer who has concluded the credit agreement. The surety agreement may relate to any credit transaction undertaken for private or employment-related reasons provided that the guarantor is not acting in a professional capacity.

The 'total cost of credit to the consumer' must include all costs linked to the credit, including interest and other indemnities, commissions, taxes and charges of any kind that the consumer is required to pay for the credit, whether or not these costs are payable to the creditor, to the credit intermediary, to the authority responsible for levying taxes on a particular style of credit or to any other third party authorised to demand payment for services as an intermediary or in connection with the conclusion of a credit agreement or surety agreement. Although Directive 87/102/EEC already includes this interpretation, the definition has been amended slightly to clarify the inclusion of some costs but without producing a positive and exhaustive list of all cost elements.

The concepts of 'sums levied by the creditor' and 'total lending rate' are new compared with Directive 87/102/EEC and will make it possible clearly to identify the costs that are specific to the credit service offered and are payable to the creditor as distinct from all other associated charges payable to third parties, such as notary's fees, surety charges, commissions due to credit intermediaries, optional insurance charges and the like.

The borrowing rate is the interest rate used to calculate a regular payment reflecting the amount of credit drawn down and the duration of the drawdown and it excludes all other costs. An indication of this rate will enable consumers to check the interest that they are required to pay for a given period. Article 6 of Directive 87/102/EEC used the term 'annual rate of interest' but gave no other details. Some Member States opted for an annual percentage rate in conjunction with the equivalent method for conversion, where the credit was long-term credit, possibly involving a mortgage. There was a need for them to avoid the periodic rate being calculated in an infinite number of ways using different *pro rata temporis* rules that are only very vaguely linked to the linear nature of time. Other Member States permit a nominal periodic rate using a proportional conversion method. This directive seeks to make a distinction between any further regulation of the interest rates and the annual rates and indicate only the rate that is used. However, the term 'borrowing rate' has been kept in order to distinguish it from a lending rate or the rate of interest earned by savings.

The borrowing rate is thus a rate that on the basis of a particular method devised by the creditor allows the interest due on capital drawn down to be calculated periodically. This rate is different from the rate known as the 'charge' rate, that some Member States use, which is a rate calculated on the net price of goods or services to be financed but one that does not provide added value for the consumer. The annual percentage rate of charge will make it possible to pinpoint the true 'weight' of the method used to calculate this borrowing rate.

The term 'residual value' is frequently used in connection with leasing. The payment of the residual value when the option to purchase is taken up or when the credit agreement expires must enable the consumer to become the owner of the goods financed.

The expression 'credit drawdown' refers to the amount that a consumer may draw down or has drawn down as a single transaction at any given time. It represents the overall amount of credit that may be drawn down and in principle it marks the upper limit, in other words 'the total amount of credit'.

The definition of the 'durable medium' is the same as that used in the Directive of the European Parliament and of the Council of [. . .] on the protection of consumers in respect of distance contracts and amending Directives 97/7/EC and 98/27/EC.

The term 'third party providing constitution of capital' identifies the person other than the creditor or the consumer who undertakes in respect of the consumer, and where necessary the creditor, to constitute the capital due under the terms of a credit agreement so that the consumer is able to reimburse the creditor in accordance with the conditions of the credit agreement. This person will normally be an insurer or an investment fund.

Article 3 (scope)

This article defines the types of agreements to which the directive applies. Directive 87/102/EEC applied only to credit agreements ([1]). It thus covered an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, a loan or other similar financial accommodation. This proposal for a directive is intended to extend the scope to include any guarantor, and thus any consumer, who stands surety, whether in person or in material terms and regardless of whether it covers credit granted to a consumer or to a trader. These persons must be provided with a minimum amount of information and protection similar to that enjoyed by the consumer/borrower ([2]).

The exemptions permitted by Article 2 of Directive 87/102/EEC concerning minimum and maximum amounts, free credit or credit at a reduced rate of interest, hiring agreements with an option to purchase goods or services, credit agreements in the form of an authentic act, credit in the form of advances on a current account, authorised, non-authorised or tacit overdraft as well as any other form of short-term credit involving charges or interest to the consumer need to be removed. ([3])

There is, however, a case for exempting credit agreements, the purpose of which is to grant credit for the purchase or transformation of a private immovable property as covered by a Commission recommendation. However, the directive will apply to such credit agreements if their purpose is to finance, possibly by means of a new drawdown of credit, transactions other than the purchase or transformation of private immovable property.

There should also be exemptions in respect of agreements with provision for deferred payment or similar financial accommodation, possibly involving the use of a payment or debit card, where such transactions are free of charge and completed within three months.

([1]) Court of Justice. Judgment of 23 March 2000, Case C-208/98, Berliner Kindl Brauerei AG.

([2]) Similar or comparable legislation in the MS — non-exhaustive list for F, UK, L, B, IRL, and S.

([3]) The Member States have comprehensively stretched the limit of scope of Directive 87/102/EEC. Similar or comparable legislation in the Member States — a non-exhaustive list grouped by exemption: Art. 2(1)(a) IRL, F (in part), NL, A. (moreover, several MS, including Belgium, have clear cut protective legislation); Art. 2(1)(b) IRL, F, L, UK, B, NL; Art. 2(1)(c) DK, NL, F, IRL, B; Art. 2(1)(d) DK, NL, F, IRL, B; Art. 2(1)(e) D, F, P, B, DK, A, UK; Art. 2(1)(f) D, A, DK, IRL no upper limit; B and S very fragmentary upper limit, F and NL fragmentary upper limit, L and UK higher upper limit IRL, F, NL no lower limit, S and B fragmentary lower limit, L lower minimum; Art. 2(1)(g) B, F, IRL, L, NL; Art. 2(2) Exception cited only by IRL, UK (Credit Unions), NL, B (social loans), and D (credit from employers). New text covers NL, B and D; Art. 2(3) A, IRL, in part NL and L; Art. 2(4) Exclusion linked to and to be compared with 2,1, a).

This directive is not intended to cover situations where an employer occasionally, and not as part of his or her main business or professional activities, grants credit or an advance on his or her salary to a member of his or her staff. However, there is no case for allowing Member States to exempt from the scope of this directive certain forms of credit that are made available to particular groups of people or at a reduced rate of interest under special circumstances, where such credit is offered systematically as part of business or professional activities either to members of a cooperative created specifically for the purpose or whenever an employer sets up a 'credit' facility within his or her undertaking. In such cases the credit must be granted with the same degree of caution as that required under this directive and be accompanied by the same amount of information, advice and measures aimed at protecting consumers.

Lastly, there is a case for exempting credit agreements concluded between investment firms such as those referred to in Article 1(2) of Directive 93/22/EEC and investors [1]. Such agreements cover credit of a very specific type to which similar provisions apply, in particular as regards information and advice.

Article 4 (advertising)

Article 3 of Directive 87/102/EEC states that: 'any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable'. The purpose here was to avoid unfair or misleading advertising based on the display of a rate of interest or of a cost without the consumer being advised of the real cost of, or rate for, the credit agreement.

The wording of Articles 1(a)(3) and (3) shows that from the outset the Member States were in doubt as to the scope and methods for calculating the annual percentage rate of charge (APR). A number of derogations were therefore accepted that would allow the reference to the APR to be replaced by an approximate method using a representative example wherever it was impossible to state the APR in clear and simple terms without, however, explaining either the exact circumstances under which the representative example was to be used or how it was made up. It was, in fact, always possible to calculate an APR but this involved using the assumptions listed in Article 1(2)(7) of Directive 87/102/EEC as replaced by Article 12 of this proposal for a directive.

The advantage of a reference to the APR compared with a separate reference to the various cost elements — annual or periodical — is that the APR takes account of the 'periods' at which the creditor requires payment. The APR is thus the prime indicator par excellence of the weight of the cost to be met during a given period in connection with the repayment of any kind of credit agreement. However, it was not always clear beforehand in connection with advertising what the frequency of drawdown and/or repayment would be and this explains the need for the use of assumptions. It is possible, however, that in certain circumstances, such as the case of advances on current accounts, that three or four assumptions might be applicable at the same time: immediate drawdown, repayment after one year, fixed rate for a given period. Imposing a requirement that similar information in a representative example should be made available via audiovisual advertising could be seen as disproportionate and the prohibiting of any reference to cost or rate in the cases covered by Article 3 appears equally inconceivable.

The most flexible solution proposed in Article 4 of this proposal for a directive is to include a reference to the provisions of Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising. An assessment of the misleading content will depend on the type of credit agreement and on the factual information accompanying the advertising.

[1] OJ L 141, 11.6.1993, p. 27.

Article 5 (ban on negotiation of credit and surety agreements outside business premises)

A number of Member States ([1]) found the active door-to-door selling of credit agreements unthinkable in a normal commercial relationship between a creditor or credit intermediary and a consumer, in particular given the impact of door-to-door selling on consumers' commitments. Door-to-door selling of credit agreements may have particularly serious consequences for consumers who, in the situation referred to in Directive 85/577/EEC ([2]) and in spite of the protection afforded by the said directive, are unable to assess the full financial impact of any credit agreement that is concluded. The impact will not be felt until the first repayment is made. In view of the specific nature of the credit and the attendant financial consequences it has been deemed necessary to adopt a stricter approach than that required by Directive 85/577/EEC and to ban any unsolicited door-to-door selling of credit of the type to which this directive refers. It is therefore proposed that there should be a ban on credit agreements and surety agreements concluded under circumstances that are similar to those for agreements described in Article 1 of the said directive with provision for the fact that the term 'trader' can relate both to a creditor and to a credit intermediary.

Article 6 (exchange of information in advance and duty to provide advice)

This article regulates the information to be provided for consumers in advance and the duty on the part of the creditor or credit intermediary to provide advice ([3]).

The creditor and, where appropriate, the credit intermediary may only ask information of the consumer or garantor that under the terms of Article 6 of the directive is appropriate, relevant and does not exceed that which is required for the purpose for which the information is collected and processed. The consumer and the garantor are required to answer sincerely the precise questions put by the creditor and, where appropriate, the credit intermediary.

Before the credit agreement is concluded the consumer must be provided with enough information about the cost of the credit and his obligations. The rules proposed mainly reflect that which was stipulated concerning information in advance in the Commission's recommendation of 1 March 2001 on pre-contractual information to be given to consumers by creditors offering home loans ([4]). The information must therefore cover all aspects of the credit agreement (whether it is a fixed-rate or variable-rate credit agreement, what conditions govern variations in the rate, drawdown, repayment etc.) and some of this information must constitute the compulsory information to be included in the credit agreement. As regards distance contracts the preliminary information must be provided in a way that is consistent with the requirements of Article 5 of Directive ... of the European Parliament and of the Council on the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC.

The tailored information must include a reference to the annual percentage rate of charge. The APR mentioned in the said information must be the same as the final APR shown in the credit agreement unless it is based on contractual elements that are unknown when the information is provided. The consumer should at least know that assumptions have been used and what they are so that he can be notified and is able to check the components of the APR and, by extension, of the credit being offered: amounts to be drawn down, amounts to be repaid and the periods. The same argument must apply to the total lending rate. Any reference to a rate or a cost that does not feature in any such assumption is considered to be misleading. It is with this aim in view that for distance credit agreements the preliminary information is given over the voice telephone as referred to in Article 3(3) of Directive ... must include the APR and the total lending rate as well as their respective components.

([1]) Similar or comparable legislation in the MS — non-exhaustive list: UK, B and L; partial legislation in respect of certain effects or door-to-door selling situations: IRL and NL.

([2]) See Court of Justice. Judgment of 13 December 2001, Case C-481/99.

([3]) Similar or comparable legislation in the MS — non-exhaustive list: paragraph 1 and paragraph 2: most of the MS, for example, F and B: offer in advance, NL: prospectus; IRL and L: information relating to advertising, the activities pursued by the credit provider, UK: the duty to provide information and to specify this information for each credit agreement etc. paragraph 3: B

([4]) JO L 69, 10.3.2001, p. 25.

The use of assumptions is limited. Article 1(a)(7) of Directive 87/102/EEC already imposed strict conditions which have been incorporated into this proposal for a directive. Replacing the timetable by the assumed full repayment after one year, for example, is only possible if the said timetable is not shown in the text of the agreement or is not evident from the means by which the credit granted is to be paid.

As regards the creditor and, where appropriate, the credit intermediary, there is a need to ensure that they have a general duty to provide advice so that the consumer can choose the best type of credit from the range normally offered by the latter. This advice must take account of the consumer's ability to repay, the risk entailed, the existence or not of a fixed timetable, the scope for drawing down the credit and the purpose for which the credit sought is to be used.

Article 28 of the directive regulates the status of credit intermediaries who, without being registered, work for a licensed creditor or a credit intermediary who assumes responsibility for them. Here, the credit intermediary must provide the information and advice but responsibility is assumed by the licensed creditor or credit intermediary. Article 6(4) regulates the case where a credit intermediary is a supplier of goods or a provider of services that are only subsidiary in terms of their impact on the procedure for offering and concluding the credit agreement. The duty to provide information and advice is thus fully that of the creditor or the credit intermediary for whom this supplier acts when concluding credit agreements, possibly acting as a marketing assistant.

Article 7 (collection and processing of data)

Highly personal information that the consumer or the guarantor provides in connection with the conclusion, management or performance of a credit agreement or surety agreement is frequently collected for the purpose of processing it for applications other than risk assessment: advertising, marketing, offers of insurance contracts, marketing and sales of such data to third parties etc. The consumer's agreement is often obtained using the credit application form or a clause featuring in the credit or surety agreement that under certain circumstances do not allow the consumer really to refuse in view of the risk he would run in having the credit or the financial accommodation withheld. In most cases the consumer is even unaware that he has put his signature to such a clause.

This article authorises the collection and, *a fortiori*, the processing of this information by persons acting in the transactions covered by this directive only in order to assess the financial circumstances of the consumer or of any guarantor and of their ability to repay. It is, in other words, a formal obligation that rules out any purpose linked to marketing or the sale of personal data collected under the terms of this directive. The directive must offer an assurance that the obligation, referred to in Article 6, namely without prejudice to the application of Directive 95/46/EC, to provide data that in some cases are highly personal and sensitive, to the creditor and the credit intermediary is complied with. However, this clearly defined objective applies equally to information collected during the management of the credit or surety agreement and this includes non-performance. The persons concerned are therefore not only creditors and credit intermediaries but also information bureaux as well as credit insurers whom the creditor contacts in his information search in accordance with Article 9. The list could be extended to include debt recovery agencies and in general any person who takes over the debt owed to the creditor.

Article 8 (central database)

The avoidance of overin-debtedness, both on the part of the consumer and of the guarantor, is a matter of general interest. The setting-up of centralised databases can to an extent solve this problem and at the same time the creditor could be made responsible by the imposition of civil and trade sanctions if on the basis of the information he obtained he ought to have decided not to grant new credit. The Member States ([1]) should make it compulsory to maintain a central database holding negative, neutral and reliable data recording late payments, containing identification of consumers and guarantors and covering at least the territory of the Member State in question with guaranteed access to all creditors.

([1]) Similar or comparable legislation in the MS — non-exhaustive list: the situation differs widely from one MS to another: NL and B: virtually similar legislation but extended to include positive files, D, A and I: positive files that go beyond the positive recording of data on credit and surety agreements with no consultation requirement; F and DK: only negative files with no consultation requirement. By way of contrast, UK: no central database, virtually unrestricted freedom to set up private decentralised databases with no common criteria or consultation requirement.

Article 8 makes the existence of such a database compulsory and introduces a common platform for accessing, processing and consulting the data.

The final paragraph in Article 8 has provision for the Member States to go further by setting up central positive databases recording all consumer commitments relating to credit. The creditor would thus have at his disposal an instrument that is more reliable than a negative database and which would offer him scope for checking whether a consumer, or possibly a guarantor, had concluded other credit or surety agreements that have not been the subject of litigation but where the associated total financial burden rules out the receipt of any further credit.

The concept of 'responsible lending' as it appears in Article 9, obliges the creditor to consult the central database before the consumer can conclude a credit agreement or a guarantor has undertaken to guarantee repayment of the credit in question. Clearly, consulting this central database is for the creditor no more than an initial and helpful indication that must be backed up by other measures, as described in Article 9. Nevertheless it is considered appropriate that for the sake of transparency the creditor should inform the consumer, at his behest, of the results of this consultation of the centralised data base. This information must enable the consumer and the garantor, if necessary, to require the controller of the file to carry out any corrections that are necessary.

The database may only be consulted on a case-by-case basis. The data released by the database may be used only for assessing the risk of non-performance of the credit or surety agreement and any marketing or sales application is prohibited. The personal data may be held only for the time needed to assess the risk and must be then immediately destroyed once the credit or surety agreement has been completed or the credit application turned down. The controller of the file at the central database may, however, retain a record of the consultation and if required may make it available to the person concerned in court if, for example, the responsibility of the creditor were to be called into question or contested under the provisions governing 'responsible lending'.

Article 9 (responsible lending)

Some Member States [1] have a number of rules in connection with credit requiring creditors to apply caution or to act as 'good creditors'. This article is intended to establish a similar principle on a European scale, not only in the interests of all consumers or guarantors but also of all creditors. The latter are at risk of seeing their clients' solvency diminished because their competitors subsequently conclude credit agreements under circumstances that seriously jeopardise the consumer's or the guarantor's ability to repay.

The principle of 'responsible lending' represents an obligation to consult centralised databases and to examine the replies provided by the consumer or the guarantor, to request the provision of sureties, to check the data supplied by credit intermediaries and to select the type of credit to be offered. It is not an obligation targeted at obtaining results such as the existence or otherwise of fault on the part of the consumer. Similar rules requiring caution call, moreover, for an assessment of the facts and for an examination on a case-by-case basis, preferably by the legal authorities. Any assessment by the creditor of a consumer's ability to repay is, however, in no way impartial: he is contractually bound and it is matter of some importance that the link should be made clear between the conclusion of the credit agreement and the preliminary assessment..

This provision is without prejudice to the obligation on the consumer to act with prudence when he looks for credit and to respect his contractual obligations.

Article 10 (information that must be included in credit and surety agreements)

As regards the information that must appear in the credit agreement, Article 4(2) of Directive 87/102/EEC indicates that only a minimum of information is to appear. The third paragraph of this Article makes a reference to the Directive's Annex I that lists the 'essential' conditions which the Member States *may* require to be mentioned in the written agreement. Almost all the Member States have therefore regulated the form and content of credit agreements in a general manner and other specific credit agreements in a variety of ways.

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[1] Similar or comparable legislation in MS — non-exhaustive list: NL, B and for guarantors F and S.

The first paragraph of Article 10 contains a paragraph common to credit agreements and surety agreements alike. All the parties must receive a copy of the credit agreement, including the credit intermediary who, strictly speaking, is not a 'party', but who needs to be kept informed, in particular regarding the payment of his salary. Both the credit agreement and the surety agreement must contain an indication of any extrajudiciary procedures that might apply.

Article 10 of this directive proposes that there should be a complete and compulsory list of information, essentially the information referred to in Article 6. If a minimum of compulsory information in the credit agreement is required, there is also a need for this information to be relevant, legible and accurate and for it to be consistent with the information that was provided prior to the conclusion of the credit agreement. The general conditions, in particular those governing the operation of an account or that regulate a variable rate of interest, form an integral part of the credit agreement.

The total amount of credit must always be shown (since no creditor grants limitless credit) and this amount cannot be changed without a new agreement (novation). The words 'if any' appearing in the Annex to Article 4 of Directive 87/102/EEC have therefore to be deleted. Some creditors set intermediate upper limits and raise (or lower) these upper or lower limits unilaterally depending, *inter alia*, on whether the consumer makes regular repayments or not, whether or not he uses his credit line, whether the credit is profitable or not or whether the national maximum rates have changed.

If one of the parties seeks to increase the total amount of credit (i.e. raise the upper limit), he must request a new contract and the creditor is obliged to carry out a new solvency check (which implies that 'intermediate upper limits' are not, or no longer, permitted.

The reference to the 'amount drawn down' in the credit agreement is pointless and has been removed. On the other hand, additional information relating to Article 6 of this proposal for a directive is required and this information should include the amortisation table, a reference to the object being financed in the case of an 'assigned credit', any cash downpayment required if it relates to hire purchase and the rates and charges applicable should the credit agreement not be performed.

Surety agreements must also contain a minimum amount of data, namely a reference to the 'amount guaranteed' and the charges associated with the non-performance of the surety agreement that are quite separate from those of the credit agreement. Charges associated with the conclusion of the surety agreement are in practice payable by the consumer and should therefore be included in the annual percentage rate of charge. Even if the guarantor were required to pay them himself he would under national law in all the Member States be entitled to seek remedy against the consumer, which means that the payment of any such debt should also be included in the total cost of the credit.

Article 11 (right of withdrawal)

The cooling-off period and the option to withdraw are well-established traditions ([1]) by means of which the consumer may release himself from an ill-considered commitment and change a decision taken at a time when the pressure applied by the salesman outweighed the consumer's free and enlightened will to choose. This article proposes there should be the option of withdrawal under circumstances similar to those referred to in the Directive of the European Parliament and of the Council [. . .] on the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC. The Commission has selected this approach in order to harmonise the procedures for exercising the right to withdrawal in similar situations. The Commission is aware of existing differences in other directives on consumers' rights. As it reported in its Strategy for Consumers 2002-2006 the Commission is planning a revision of the matter to follow up its Communication on European Contract Law.

([1]) Almost all the MS have something similar. Similar or comparable legislation in the MS — non-exhaustive list: B: right of 'renonciation' during a period of seven working days, R: 'rétractation' period lasting seven days, IRL right to 'withdraw' for 10 calendar days, L: right 'à se départir' but only for credit agreements granted by a supplier and within two days. UK: 'cooling-off period' various arrangements, D and A: 'Widerrufsrecht'.

The article is not an obstacle to the immediate drawing-down of credit. The creditor may in this instance require a consumer who is exercising his right to withdrawal to pay a maximum indemnity that is consistent with the amount obtained by applying the annual percentage rate of charge to the amount drawn down with effect from the date of drawdown and up until such time as the APR ceases to apply following the repayment of the funds or the return of the goods. Any such indemnity would be very small in the case of small amounts of credit but it should at least help to stem abuse and speculation in the case of larger amounts. Moreover, the consumer will be required to return the goods that he obtained in connection with the credit agreement to the creditor whenever the credit agreement stipulates that the goods are to be returned. Where there is a legal difference between a credit agreement and a purchase agreement the consumer will be required to honour the purchase agreement unless it was concluded as a resolutive condition linked to the conclusion of the credit agreement.

Article 12 (annual percentage rate of charge)

Article 12 shows how the annual percentage rate of charge is calculated. It replaces and extends Article 1(a) of Directive 87/102/EEC as inserted by Directive 90/88/EEC.

The formula for the annual percentage rate of charge, to which reference is made in Annex 1, is retained with the exception that different terminology is used to reflect the new definitions appearing in the proposal for a directive. The proposal is for complete standardisation in respect of rounding-off and what is understood by a year. Only the method for calculating fractions of a year has been retained. Annex 2 shows a number of examples of calculations that cover all types of credit agreement.

The total cost of the credit must include all costs, including borrowing rate plus all the other indemnities, commissions, taxes and charges of any kind that the consumer is required to pay for the credit regardless of whether these costs are payable to the creditor, to the credit intermediary, to the competent authority levying the taxes or to any other third party authorised to receive payments following the brokering or conclusion of a credit agreement or surety agreement.

Directive 90/88/EEC established two exemptions and these have been retained in paragraph 2: the charges for non-performance and the charges payable in cash or by credit. Clarification is provided regarding some 'media' associated with the credit agreement: cards and accounts. Charges linked to these media must be included in the total cost of the credit and thus also in the APR unless the creditor has clearly and distinctly defined in connection with these media the costs that are linked to credit transactions and the costs that are linked to other payment transactions.

Clearly, any insurance guaranteeing repayment of the credit reduces the level of risk to which the creditor is exposed and the premium in such cases must be viewed as a constituent element of the cost of the credit. This principle has been kept for certain types of insurance in exemption (v) of Article 1(a) of Directive 87/102/EEC. Some Member States [1] have broadened the 'freedom of choice' aspect to include other types of insurance and have widened the concept of 'total cost of the credit' to include any compulsory insurance, the premium for which must be included in the calculation of the APR. These countries have noted that there was in practice no freedom of choice for consumers and that the creditor, acting with circumspection or with a view to his profits, preferred to negotiate — automatically — insurance cover even if the consumer had not initially asked for such insurance. The Member States also had problems proving the 'compulsory' aspect of the insurance and sureties covering repayment of the credit as the compulsory nature of such was the condition governing their inclusion as cost elements in the base. This proposal for a directive aims to end this discussion by proposing to include automatically any insurance premium in the total cost of the credit, provided that the insurance is taken out at the time that the credit agreement is concluded.

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[1] Similar or comparable legislation in the MS with regulations that in general terms exceed the directive by guaranteeing a fuller base: B, E, F, NL, A, S; MS with unique solutions or which include the insurance charges: B, DK, E, F, NL, A, S, UK.

On the other hand, the gains resulting from insurance covering death, invalidity, sickness and unemployment, namely the amount corresponding to early repayment of the capital and early repayment indemnity or the commitment fee, are not to be included in the APR. The payment of these amounts is not agreed on an exact date shown in the credit agreement and the consumer, in point of fact, has no plans to effect such transactions.

However, the gains from life assurance covering reconstitution of the capital when the credit agreement comes to term amounts to an obligation within a period and on an agreed date even if the conditions are described in an additional agreement annexed to the credit agreement.

Whenever necessary, a number of the assumptions referred to in paragraphs 3, 4 and 5 should be used to calculate the annual percentage rate of charge. The consumer should be notified of these assumptions every time that a calculation is carried out that is based on them. They may only be used if the constituents of the calculation in question are not known at the time of the advertising, at the time the information is provided or are not evident from clauses in the agreement or from the means of payment used to access the credit granted.

The assumption based on the absence of any credit limits, as shown in the first indent of Article 1(a)(7) of Directive 87/102/EEC has been abandoned. This proposal for a directive provides for a total amount of credit always remaining and being mentioned. However, an assumption has been included in respect of credit drawdowns. Where a consumer may draw down credit at any time and in any amount — but within the limits imposed by the credit agreement — the creditor would be unable, when calculating the APR, to include such aspects in advance. He must therefore presume that the whole amount of credit has been drawn down immediately so that a credit agreement of this type can be compared to a traditional loan.

Paragraph 6 regulates the special case of leasing. Credit agreements of this type generally have provision for parameters on which the residual value of the goods financed can be determined, this residual value being payable when the consumer opts to purchase the goods. In this case, either the credit agreement has an arrangement whereby this amount can be calculated in advance down to the last euro-cent, and these figures are used to calculate the annual percentage rate of charge, or else the contract includes parameters that do not allow an ex-post calculation and, accordingly, the assumption of the linear amortisation of the goods applies.

Lastly, Annex III shows a formula and some examples for working out the impact of compulsory, front-end saving on the annual percentage rate of charge.

Article 13 (total lending rate)

The total lending rate is a rate showing what is payable to the creditor for his 'credit service' and it excludes all charges payable to third parties. It is calculated in the same way as the APR and its one base reflects only the costs payable to the creditor. These costs include the interest payable, administration and management charges, credit insurance premiums, and in general terms the insurance premiums payable by the consumer upon conclusion of a credit agreement provided that it is the creditor who stipulates the insurance requirement and chooses the insurer. In other words the premium is not a component of the base if the insurance — like all other associated services — is optional. All charges relating to sureties, notaries' services, taxes and registration fees and the like are similarly not taken into account for the purpose of establishing the total lending rate.

Article 14 (borrowing rate)

Article 2(k) has defined the concept of borrowing rate as an interest rate that excludes all other costs. This proposal for a directive essentially lays down rules governing how the borrowing rate may vary. The periods during which the borrowing rate may vary must be indicated in the credit agreement. Indices or reference rates may be chosen freely on condition that they are governed by objective rules that are clear and cannot be influenced by what the parties prefer.

It is only this rate that may be varied. No other charge may be varied and it is unthinkable that 'costs' may vary. It would be very difficult to allow the costs associated with the conclusion or the management of a credit agreement (commissions, stamp duty, postal charges etc.) to vary, either downwards or upwards. It is, in fact, only the cost of money that can vary over time. It is for this reason that the charge rate cannot be allowed to vary. The price of goods or of a service is fixed in advance and payments are staggered over time. The possible cost of refinancing this transaction by the creditor is already included in the rate of charge and is therefore, by its very nature, not subject to variations of any kind.

The consumer must be advised of any change to this rate, for example by providing a statement of account. A reference to a new annual percentage rate of charge will allow the consumer to know whether his credit, following application of the rules governing variations in rates, has not become too expensive compared with the market rate.

Article 15 (unfair terms)

The list of unfair terms contained in this article should be seen as a 'black list' of specific clauses that should not appear in any credit or surety agreement. It should not be understood as a special list to replace the (grey) list or the general clause in Directive 93/13/EEC on unfair terms. It is for this reason that there is a mention to the effect that the article applies 'without prejudice to the application of Directive 93/13/EEC to the agreement as a whole'.

The ban referred to in point (a) covers practices that require or reserve some part of the sums borrowed, for example, to constitute a surety, deposit or bond, or to purchase shares in a bonding company or a financing company, as these are practices that would double the profits of the creditor or, where applicable, the credit intermediary.

The provision of point (b) is to regulate the joint offer of a credit agreement and another agreement that most frequently relates to the provision of some ancillary service — insurance, maintenance, current account, etc. without the consumer being given the choice of declining the service or selecting a different provider. Where there is no freedom of choice the related charges must form part of the total cost of the credit.

The provision of point (c) requires any change to the APR to apply only to variations in the borrowing rate and to no other charges. It is difficult to imagine costs relating to stamps, customer records, account statements and management etc. being subject to rules on variability. For any unilateral raising of costs a new credit agreement must be drawn up.

The provision of point (d) relates to a ban on any condition permitting disproportionate variability vis-à-vis the consumer where such a condition uses, for example, different calculations depending on whether the rate rises or falls, uses rates or indices for variability that are not quite neutral or even depend on the creditor's personal preferences etc.

The ban referred to in point (e) relates to a practice that takes the form of applying initially a call-in rate or a discounted rate that are then followed by a cost base that is higher and subject to the rules on variability. The rate advertised must be the cost base and any discount must be advised separately.

The provision of point (f) relates to agreements known as 'balloon agreements'. It has been noted that this type of 'timetable', the last payment under which — the residual value — is fairly high, is made available by captive companies, the purpose of whose trade is to retain consumers for their particular make of car. These agreements frequently involve refinancing or a return of the object financed as a deposit for a second purchase of a car that includes a new credit agreement. Such business practice appears questionable in that it is likely to prevent consumers changing the make of car owing to the final financial burden involved.

Article 16 (early repayment)

Article 8 of Directive 87/102/EEC grants the consumer the right 'to discharge his obligations under a credit agreement before the time fixed by the agreement'. This right was amended and the article then read as follows: 'in this event, in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit'. Accordingly, the creditor is also entitled to require an early repayment indemnity — a fair one — to offset his charges and lost investment.

A number of Member States have specified, even banned, this indemnity [1]. It is difficult nowadays, given the scope for reinvesting capital on the international capital market, to justify any indemnity or financial compensation. The proposal is therefore first and foremost to confirm the right to early repayment, either in part or in full.

By seeking to strike a balance between the advantages for the consumer and the disadvantages for the creditor — relating to the management of the early repayment and the reinvestment of the capital received — the proposal is therefore to include provision for an early repayment indemnity for creditors only if it is objective, fair and calculated on the basis of actuarial principles. In other words, the method used must be objective and must pinpoint cases where an indemnity is not called for, for example when market rates are on the rise, which would make the indemnity negative and in fact offer a profit to the consumer. The principle of 'actuarial fairness' is fully respected so that the points of view of both parties can be given the best possible consideration.

The proposal is nonetheless to exempt the consumer from the payment of an indemnity for any credit agreement whose conditions do not justify an indemnity:

— point (a) is therefore aimed at excluding credits at variable borrowing rates where the cost of early repayment is largely passed on through the rate. However, the variable rate must apply to periods of less than one year.

— point (b) excludes credits covered by insurance. None of the parties concerned is interested in maintaining the credit — quite the contrary, for the sums paid under the terms of an insurance agreement should allow the contractual relationship to be terminated.

— point (c) concerns credits without capital amortisation, such as advances on current accounts, and in general any form of credit where the interest is calculated ex post to reflect the duration of the drawdowns that occurred. The absence of any obligation to repay 'in instalments' or by periods means, moreover, that there is no 'early' repayment. Credit agreements with provision for constitution of capital, to which Article 20 refers, are not covered by point (c) because they have special procedural methods for repayment at the end of periods and special conditions apply to the calculation of interest.

Article 17 (assignment of rights)

This article corresponds to Article 9 of Directive 87/102/EEC. The wording was changed only to incorporate new definitions and enhanced protection for the guarantor. An assignee is understood as any person to whom the creditor's rights have been assigned, in other words a credit insurer, debt collection agency, a rediscounting company or securitisation company etc. without reference having been made to the legal procedure followed — assignment of credit, subrogation, delegation etc.

Article 18 (ban on the use of bills of exchange and other securities)

This article replaces Article 10 of Directive 87/102/EEC and completely abandons the use of bills of exchange, promissory notes or cheques as a means of payment and/or form of personal surety.

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[1] Similar or comparable legislation in the MS — non-exhaustive list: (1) with restrictions regarding the calculation and/or the amount of the indemnity: IRL, NL, B, L, UK, (2) with ban: F

Article 19 (joint and several liability)

This article replaces Article 11 of Directive 87/102/EEC. Article 11 was based on the concept of joint and several liability under common law, i.e. the responsibility of a number of people who, in law, are held jointly and severally responsible for the discharge of an obligation. The wording ultimately used for Directive 87/102/EEC, termed 'subsidiary responsibility', is a compromise with provision for the 'consumer' under certain circumstances being able to claim payment from the creditor if his complaint against the vendor is justified and the latter refuses to pay. A number of Member States simply transposed Article 11 and created legislation that was ineffective. Other Member States went beyond the requirements of the provision and deleted the concept of 'exclusive link' in relations between the creditor and the supplier or provider [1].

The consumer needs to be given a right to act directly against the creditor when the creditor enjoys trade benefits by working with specific suppliers and is able to seek remedy against them. Whenever the creditor has close trade links with the supplier of the goods or the provider of the service the damage, in the event that the consumer receives only faulty goods or services, or only some of the goods or services he ordered or even receives none at all, should not be borne by the consumer but by the creditor or the supplier. The consumer should have the option of going to court against one or the other or both in order to recover the amount of his damage.

The proposal is therefore to adopt comprehensively the joint and several liability solution when the credit supplier and the supplier of the goods or services are joint market operators. A case in question would therefore be where the supplier has acted, even in an ancillary capacity, as a credit intermediary. An existing agreement and effective checks by the creditor can be taken for granted in such cases and the consumer should not be required to provide proof. This possibility covers not only the credit that has been assigned in the strict sense but also any other form of credit availability or debit account that the supplier proposes to the consumer on the occasion of the first purchase. It will be remembered in this respect that this proposal for a directive contains a provision requiring the identity of the intermediary to be shown in the credit agreement.

Article 20 (credit agreement providing constitution of capital)

For some years now the range of credit available has been growing to include new mortgage-linked credit tied to either life assurance or to investment funds, the latter being generally known, in the UK, as endowment mortgages. Up until quite recently only traditional life assurance was used for the constitution of credit. However, the new method, which uses a fund, is not without its risks for consumers. As in the case of variable-capital investment companies or shareholdings, the sums constituted are dependent on how the financial markets behave. It is possible, therefore, that when the main credit agreement comes to term there is not enough capital to repay the credit, something that is not permissible in connection with a product that is offered to the general public. Moreover, a similar situation has arisen on the UK market with the result that consumers have encountered difficulties with repayments. It is therefore appropriate that where there is no constitution of capital the creditor should assume one way or another responsibility for its repayment, possibly using an additional insurance for this purpose. Paragraphs 1 and 2 are intended to regulate such situations.

Paragraph 3 sets out special rules governing the calculation of the APR and the total lending rate that include all payments to be made by the consumer both in respect of the main credit agreement and the additional contract covering the reconstitution of capital.

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[1] Similar or comparable legislation in the MS — non-exhaustive list: in the UK there is a system of 'pure' joint and several liability without any exclusive link but which has now a lower and an upper limit. Other MS such as F and D have developed 'independent' systems. The B, IRL, F and L have not kept a lower limit. NL has a lower limit.

Article 21 (credit agreement in the form of an advance on a current account or a debit account)

This article proposes the establishment of a standard method for providing information during the term of the credit agreement so that the consumer is able to check the accuracy of the credit drawdowns that have occurred, the borrowing rate applied, the costs to be paid etc., in particular in connection with credit agreements linked to the operation of an account for which the borrowing rates are calculated ex post.

Article 22 (open-end credit agreement)

This article proposes that the consumer — and the creditor — should be entitled to terminate an open-end credit agreement by giving three months' notice. It is felt that a period of three months is the minimum period for the consumer, who must be able to repay the total amount of credit he drew down. The consumer retains the right to seek damages and interest if such termination by the creditor is to the prejudice of the consumer.

Article 23 (performance of a surety agreement)

The first paragraph prohibits surety agreements that relate to open-end credit agreements. A guarantor frequently only has a brief look at a consumer's solvency. Requiring a guarantor to provide a 'lifelong' surety must be considered excessive from the point of view of his own interests and may risk leading him into debt.

The second and third paragraphs place restrictions on the action that can be taken against the guarantor. The provisions of this directive place the emphasis on risk assessment relating to the consumer whereas the guarantor's solvency and risk assessment in his case are of no more than secondary importance.

The proposal is therefore that the creditor may not approach the guarantor until a period of 'insolvency' has passed. The creditor must alert the guarantor — in good time — if the consumer is defaulting on payments so that the guarantor can, if necessary, take steps to ensure that the consumer's indebtedness does not deteriorate further.

Lastly, the proposal is that the amount guaranteed by the surety may relate only to the outstanding balance of the total amount of credit owed by the consumer and to any arrears or possible charges with the exclusion of any form of penalty or non-performance indemnities payable by the consumer. These indemnities, that in principle are the consumer's responsibility, may be limited to this amount on condition that the guarantor immediately meets his obligations. It would indeed be unfair if the guarantor were required to pay additional penalties owing to the consumer's inability to discharge his obligations. If, on the other hand, the guarantor were late in meeting his own obligations the creditor could seek arrears and additional penalties in line with the amount that was guaranteed but not paid.

Article 24 (default notice and enforceability)

Paragraph 1(a) of this article should be seen as the principal element linking all the articles in this chapter covering the non-performance of credit agreements. It establishes a general principle of proportionality in respect of the recovery of debts arising out of a credit agreement or surety agreement.

The aim of Paragraph 1(b) is to prevent the consumer or the guarantor being required to repay immediately the total amount of the credit without previously having been invited to make good any delay or to submit a proposal for reaching an amicable agreement on the rescheduling of the debt. The Member States must encourage the parties concerned to seek out-of-court agreements or settlements. Two exceptions to this principle are envisaged: manifest fraud and the particular case of the disposal of the property financed, which must be likened to fraud if the consumer has been properly informed in good time concerning the rights to property and privilege enjoyed by the creditor. The fact that the consumer has moved away without leaving an address, even gone abroad, is in itself not enough reason for withholding the default notice. Examples would be hospitalisation or admission to an institution for a long stay, clerical errors by the local authorities, problems with postal deliveries etc.

Paragraph 1(c) covers the suspending of the consumer's rights by the creditor in respect of future credit drawdown. Similar measures may prove indispensable for the creditor in order to rule out fraud or even the manifest indebtedness of the consumer, who might have concealed other credit or who might be facing a court appearance for bankruptcy. In any event the creditor must alert the consumer of his decision, setting out the reasons that prompted him to take the measure in question so that the consumer can, if necessary, contest it before the appropriate courts.

Paragraph 1(d) regulates the provision of statements of account

Article 25 (overrunning of the total amount of credit and tacit overdraft)

The overrunning to which this directive refers implies that a credit agreement already exists. Overrunning or an overdraft where there is no initial agreement runs counter to the general principles of caution and information referred to in this directive. In contrast to the requirements of Article 6 of Directive 87/102/EEC, the charges and rates applicable must be shown in the credit agreement.

The first paragraph deals with the question of authorised overrunning. Tacit overrunning is considered to be the same thing. The conditions are identical to those shown in the credit agreement in relation to the borrowing rate and attendant charges except as regards the total amount of credit that is temporarily overrun.

Paragraph 2 covers unauthorised overrunning. In line with the requirements of Article 10, the additional charges must be shown in the agreement in the form of a statement of cost factors that are not included in the calculation of the annual percentage rate of charge but that are payable by the consumer under certain circumstances.

In both these cases the consumer must be alerted when the account is overrun and advised of the conditions that apply. The situation must be rectified within three months either on the basis of a new credit agreement indicating a higher total amount of credit, by returning to the 'normal' situation or by otherwise terminating the contract or temporarily suspending drawdown.

Article 26 (repossession of goods)

Article 7 of Directive 87/102/EEC makes the recovery of goods a matter for an optional, but not compulsory, court decision. The involvement of a court is necessary to check whether it is appropriate to repossess goods that have been financed when the consumer has shown willingness to repay. A similar check was proposed in the report on the operation of Directive 87/102/EEC ([1]). Even if the situation may differ depending on the legal interpretation used ('hire-purchase', loan with subrogation in the rights of the vendor who has expressed a reservation of title, leasing etc.) and the resultant civil and judicial procedures, it is nevertheless proposed that Article 7 should be extended to include provisions guaranteeing the involvement of a third party ([2]) for all credit agreements when the market value of the goods and the financial interest of the creditor have clearly become less important than the interests of the consumer and the latter has not consented to the repossession of the goods financed.

Article 27 (recovery)

This article refers to any person responsible for enforcing a credit agreement, in other words creditors, credit insurers, recovery agencies etc. but excepts any persons who are responsible for the recovery of money as part of a judicial procedure or for initiating repossession procedures, namely bailiffs. The intention is not to regulate the profession of the 'collection agencies' or 'debt counsellors' but to prohibit certain practices in connection with the non-performance of credit agreements.

([1]) Report on the operation of Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit — COM(95) 117 final of 11 May 1995 paragraphs 184-188. Summary report of reactions and comments COM(97) 465 final of 24 September 1997, No II.5.

([2]) Similar or comparable legislation in the MS — non-exhaustive list: B, IRL, NL, L, UK.

The first paragraph confirms a principle that is already established by Article 10: the charges relating to non-performance must be specified in the credit agreement or surety agreement and the persons responsible for collection may not demand more than that which was fixed in the agreement.

Paragraph 2 lists illegal practices.

— the use of envelopes showing words or logos etc. that give the impression that the letter concerned is from an official body, i.e. a judicial authority or a debt counsellor;

— letters threatening the consumer or the guarantor with repossession or prosecution in circumstances where such action is not an option;

— recoveries that disregard the procedures for recovery of goods such as referred to in Article 26 or that entail extra charges that were not detailed in the credit agreement;

— any action that can be likened to a violation of a consumer's or guarantor's privacy, for example harassment in cases where the debt is contested or no longer exists, as well as indirect harassment by contacting a consumer's or guarantor's neighbours, relatives or employers etc. This type of 'doorstep' activity, to which point (f) refers, must involve questions relating to personal data, such the consumer's 'solvency', that are similar in type to the data to which Article 7 of this directive applies. In principle, information in the public domain relating to changes of address is not considered here.

Article 28 (registration of creditors and credit intermediaries)

This article replaces and extends Article 12 of Directive 87/102/EEC. The proposal is to make it compulsory to take all the steps referred to in Article 12(1) [1]. The introduction of more stringent checks on creditors and credit intermediaries implies that these persons are registered from the outset, that checks are carried out in the first place, that the registration can be suspended or withdrawn (where necessary) and that any complaints are made known. Creditors and credit intermediaries are required, pursuant to this article, to be registered by an official institute or body that will supervise them, in particular monitoring their compliance with the provisions of this directive that are applicable to them.

There is another serious problem in connection with the information that is to be provided for consumers by the 'vendors'. These people frequently do not have the basic knowledge that is required to sell the financial products that they distribute while supervision and statutory requirements in the Member States relating to the quality of the information to be provided by these people and on their suitability to distribute credit are frequently lacking. The solution proposed is to consider them as credit intermediaries and at the same time to make creditors aware of their responsibilities when they resort to vendors as distribution channels for their credit agreements, in particular as regards the provision of information in advance and the duty to offer advice as referred to in Article 6 of this directive and with which credit intermediaries are required to comply. The same status is envisaged for freelance 'delegated agents'. It is still possible for a vendor to work without being under the direct supervision of a creditor, but in this case he must be licensed.

Exceptions are envisaged — as in Directive 87/102/EEC — in relation to creditors and credit intermediaries who are to be considered as credit establishments within the meaning of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

Article 29 (obligations of credit intermediaries)

This article contains provisions for special measures in relation to credit intermediaries.

The provision in point (a) establishes the definition of a credit intermediary. Accurate information for consumers must be ensured in relation to the quality and extent of the credit intermediary's powers and on any possible exclusive business connection he has with the creditor so that the consumer does not confuse the intermediary with the creditor.

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[1] Similar or comparable legislation in the MS — non-exhaustive list: IRL, UK, and B have merged the three options. NL has provision for a licensing and monitoring system in respect of creditors and this includes a description of their distribution channels plus a separate law on financial intermediaries.

The provision in point (b) is aimed at preventing situations where the intermediary encourages the consumer to contract credit beyond his ability to repay or to opt for a grouping of debts that would be prejudicial to the consumer, in particular by submitting simultaneously two or three credit applications to secure a total amount of credit from several creditors, where each application relates to a small amount which, in itself, may well be acceptable to the creditors individually. However, no creditor would accept funding the total amount of credit being sought. The proposal in point (b) is therefore that intermediaries are to be obliged to inform all creditors that they have previously contacted in connection with an offer or a credit agreement about the total amount of credit being sought.

The provisions in point (c) relate to the regulation of an intermediary's remuneration. It should be remembered that a credit intermediary's commission must be included in the APR. A credit intermediary should not be authorised to contact consumers directly in order to request payment in connection with a credit application or the provision of information unless three conditions are all met:

— the creditor must be informed by a reference to the amount of the fee shown in the credit agreement;

— the credit intermediary shall not be entitled to receive commission from the consumer if he is paid by the creditor;

— the credit agreement must be concluded.

Article 30 (maximum harmonisation and imperative nature of the directive's provisions)

Paragraph 1 confirms the principle of total harmonisation. Member States shall not be entitled to have in place other provisions in relation to the areas covered by this directive unless otherwise stipulated. A similar exception is possible in relation to Article 33 in respect of the burden of proof and in relation to Article 8(4) in connection with the setting-up of a database for positive data. National-level provisions covering maximum or exorbitant APRs or any other type of setting or evaluation of maximum or exorbitant rates may continue to apply. This directive does regulate this area.

Paragraph 2 replaces Article 14(1) of Directive 87/102/EEC and includes the concept of 'guarantor'.

Paragraph 3 retains Article 14(2) and adds another example. The original example spread the total amount of credit over a number of contracts, the lower limit of which allowed an exemption whereas in this current proposal for a directive any reference to lower limits in relation to the scope of the directive has been removed. On the other hand, it must be ensured that the exemptions referred to in Article 3, namely for housing credit and lease agreements, cannot be circumvented so that the transactions covered by this directive can be included in such contracts. In other words, if a consumer requests a credit drawdown under the terms of his housing credit or if, under the terms of his lease contract, he has a tacit option to purchase and the drawdown in question is to allow him to finance the purchase of a car, the directive will apply. Member States are requested to ensure that no such distortion occurs.

Paragraphs 4 and 5 make it clear that the provisions of the directive are imperative. Paragraph 4 lays down that the rights granted to consumers and provided by the directive may under no circumstances be surrendered by consumers.

Paragraph 5 is intended to ensure that consumers' enjoyment of the rights conferred by this directive cannot be denied to them on the grounds that the legislation applicable to the credit agreement or the surety agreement is that of a third country. However, for this rule to apply, it is important that the agreement should have a close link with the jurisdiction of one or more Member States. Similar, identically worded provisions are contained in Directives 93/13/EC relating to unfair terms and 97/7/EC on distance contracts as well as in the Directive of the European Parliament and of the Council of [. . .] on the distance marketing of consumer financial services modifying Council Directives 90/619/EEC, 97/7/EC and 98/27/EC.

Article 31 (penalties)

The new Article 31 of this proposal for a directive provides that the Member States may impose appropriate penalties on the creditors, etc. concerned who fail to comply with the provisions of national legislation implemented pursuant to this directive. Possibilities include a loss of interest and/or penalties as well as the withdrawal of their licence.

Article 32 (out-of-court redress)

This article is aimed at easing the out-of-court settlement of cross-border disputes by inviting Member States to encourage the bodies responsible for the out-of-court settlement of disputes to cooperate. A cooperation arrangement that could be envisaged is for consumers to contact the out-of-court settlement body in their country of residence which, in turn, would contact its counterpart in the supplier's country. In this way the consumer would not have to pursue the dispute in another Member State. Article 32 is worded in a similar way to the provisions of other directives, such as Article 14 of the Directive of the European Parliament and of the Council of [. . .] on the distance marketing of consumer financial services modifying Council Directives 90/619/EEC, 97/7/EC and 98/27/EC and which encourages out-of-court settlement in the interests of all concerned.

Article 33 (burden of proof)

Article 33, which is new, is worded in a similar way to the provisions of other directives, such as Article 15 of the Directive of the European Parliament and of the Council of [. . .] on the distance marketing of consumer financial services modifying Council Directives 90/916/EEC, 97/7/EC and 98/27/EC. The points that have been inserted are necessary to clarify, *inter alia*, the concept of 'credit intermediary'. It has been presumed that the latter works for payment and Member States are free to decide that the burden of proof does not lie with the consumer.

Articles 34 (existing agreements)

This article establishes a transitional arrangement aimed at ensuring that this directive does not apply to existing agreements, specifically long-term credit agreements and open-end credit agreements. Although compulsory references cannot be imposed ex post on a credit agreement, on the rules governing responsibility or in relation to the pre-contractual information requirement, it nevertheless remains that a major part of the provisions can and must be applied to existing credit agreements, in particular as regards the information to be given to consumers and guarantors during the performance or in the event of the non-performance of a credit agreement or surety agreement.

Article 36 (repeal)

Article 36 contains formal provisions repealing Directive 87/102/EEC as amended by Directives 90/88/EEC and 98/7/EEC since this directive replaces it.

Articles 35, 37 and 38 (transposition — entry into force — addressees)

These articles contain standard provisions and formulae and require no special comment.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) In 1995 the Commission presented a report [1] on the operation of Council Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit [2], following which it undertook a very broad consultation of the interested parties. In 1997 it presented a summary report of reactions to the 1995 report [3]. A second report was produced in 1996 [4] on the operation of Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit [5].

(2) These reports and consultations reveal substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. Analysis of the national texts transposing Directive 87/102/EEC shows that Member States have considered the degree of protection offered by the directive to be inadequate. They have therefore taken account, in their implementing legislation, of other types of credit and new types of credit agreement not covered by the directive. Consequently, it is necessary to anticipate the reforms of national legislation envisaged by several Member States and to make provision for a harmonised Community framework.

(3) The *de facto* and *de jure* situation resulting from these national differences leads to distortions of competition among creditors in the Community and restricts consumers' scope for obtaining credit in other Member States. These distortions and restrictions in turn affect the scale and nature of the demand for cross-border credit, which may have consequences in terms of the demand for goods and services. A further effect of the differences between national laws and practices is that consumers do not enjoy the same protection in all Member States.

(4) In recent years the types of credit offered to and used by consumers have evolved considerably. New credit instruments have appeared, and their use continues to develop. It is therefore necessary to adapt, amend and complete the existing provisions and to extend their scope.

(5) It is also necessary to promote the creation of a more transparent and efficient credit market. It is important that this market should offer a degree of consumer protection such that the free movement of credit offers can take place under optimum conditions for both those who offer credit and those who require it. This necessitates a process of maximum harmonisation, to assure all consumers in the Community of a high degree of protection of their interests and an equivalent level of information.

(6) In view of the growing diversity among the types of credit and credit providers, any person who provides a creditor with information allowing a consumer to be identified and who assists in the conclusion of a credit agreement for a remuneration must be regarded as a credit intermediary, regardless of the form of such remuneration. However, lawyers and notaries should not, in principle, be regarded as credit intermediaries where the consumer contacts them for advice on the scope of a credit agreement or if they help to draft or authenticate an agreement, as long as their role is limited to providing legal or financial advice and they do not direct their clients towards specific creditors.

(7) Credit agreements covering the granting of credit for the purchase or transformation of immovable property should be excluded from the scope of this directive. This type of credit is of a very specific nature and is the subject of a Commission Recommendation of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans [6].

(8) In view of the risks to their financial interests, the situation of natural persons who stand as guarantors necessitates specific provisions ensuring a level of information and protection comparable to that provided for consumers.

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[1] COM(95) 117 final.

[2] OJ L 42, 12.2.1987, p. 48. Directive most recently amended by Directive 98/7/EC (OJ L 101, 1.4.1998, p. 17.

[3] COM(97) 465 final.

[4] COM(96) 79 final.

[5] OJ L 61, 10.3.1990, p. 14.

[6] OJ L 69, 10.3.2001, p. 25.

(9) Council Directive 84/450/EEC of 10 September 1984 concerning misleading advertising and comparative advertising [1] is intended to provide protection with regard to the mention of a figure, cost or rate in advertising or advertising offers relating to a credit agreement. It requires such figure, cost or rate to be accompanied by calculation details making it possible to assess the figure in the context of all the consumer's obligations under a credit agreement.

(10) In order to ensure real consumer protection, it is necessary to adopt an approach to unsolicited doorstep selling of credit which is stricter than that laid down in Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises [2].

(11) The provisions of this directive must apply without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [3]. However, a suitable framework for the collection and processing of personal data needed in order to assess the credit risk should be envisaged in certain cases.

(12) In order to help reduce the credit risk for both the creditor and the consumer, experience and practice testify to the benefits of sufficient and reliable information on cases of default. Member States must therefore ensure that there is a public or private central database in their territory, where appropriate in the form of a network of databases. Consumers and guarantors in the Member State who have defaulted should be registered in this database or network. With a view to working effectively, creditors must be obliged to consult this central database before accepting any commitment on the part of the consumer or guarantor. To prevent any distortion of competition among creditors, it must be ensured that persons and businesses have access to the central database of another Member State under the same conditions as persons and businesses in that Member State, either directly or through the central database of their own Member State.

(13) In order to ensure the confidentiality of information and protection of personal data, it is essential that the data obtained may be used solely to assess the risk of non-performance by the consumer or guarantor. Any other processing or use of personal data obtained through the central database must be prohibited. Finally, to avoid any risk, the data must be destroyed immediately after the conclusion of the credit agreement or the refusal of the application for credit.

(14) So that consumers can make their decisions in full knowledge of the facts, they must receive adequate information, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure absolute transparency and comparability of offers, such information should in particular include the annual percentage rate of charge applicable to the credit, illustrated by a representative example, and the total lending rate.

(15) In view of the technical and legal complexity of credit instruments, it is necessary to impose a general obligation on the credit intermediary and creditor to provide advice, so that the consumer can choose in full knowledge of the facts among the types of credit offered. Similarly, it is the responsibility of the creditor, in accordance with the principle of 'responsible lending', to check whether the consumer and, where applicable, the guarantor are in a position to meet new commitments.

(16) The conditions laid down in a credit agreement may in some cases be to the consumer's disadvantage. Better consumer protection must be ensured by imposing certain conditions which apply to all forms of credit. The credit agreement must confirm and add to the information provided before the conclusion of the agreement, where appropriate with the help of an amortisation table and details of the charges for defaulting.

(17) In view of the specific nature of the terms used in credit and surety agreements, clarification is needed as to which terms are regarded as unfair, without prejudice to the application to the agreement as a whole of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [4].

(18) In order to approximate the procedures for exercising the right of withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by the Directive of the European Parliament and of the Council of [. . .] on the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC.

[1] OJ L 250, 19.9.1984, p. 17. Directive amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p. 18).

[2] OJ L 372, 31.12.1985, p. 31.

[3] OJ L 281, 23.11.1995, p. 31.

[4] OJ L 95, 21.4.1993, p. 29.

(19) In order to promote the establishing and functioning of the internal market and ensure a high degree of protection for consumers throughout the Community, it is necessary to fine-tune the method of calculating the annual percentage rate of charge and to determine the components in the total cost of the credit to be used in the calculation. The annual percentage rate of charge is in fact an instrument of comparison allowing the consumer to gauge and compare the impact on his budget, in time and space, of commitments resulting from the conclusion of a credit agreement. The total cost of the credit must therefore include all costs which the consumer is required to pay for the credit, regardless of whether those costs are payable to the creditor, the credit intermediary or any other party. Accordingly, even if the consumer voluntarily takes out insurance on concluding the credit agreement, the costs associated with such insurance must be included in the total cost of the credit.

(20) It is also necessary to provide the consumer with information, in the form of a total lending rate, on the sums payable to the creditor, excluding those payable to third parties. This rate allows the consumer to compare the costs specific to a creditor in respect of the various products he offers and the various products available on the market.

(21) The consumer should have the right to discharge his obligations before the due date. In the case of early repayment either in part or in full, the creditor must be entitled to claim a fair and objective indemnity only, and provided that such repayment results in a corresponding financial loss for the creditor.

(22) If the supplier of goods or services acquired under a credit agreement can be regarded as a credit intermediary, the consumer must be able to enforce rights against the creditor which go further than his normal contractual rights against a supplier of goods or services.

(23) The transfer of the creditor's rights under a credit agreement must not have the effect of placing the consumer or guarantor in a less favourable position. For the same reasons a creditor who offers a credit agreement providing constitution of capital must assume the risk if the third party providing such constitution of capital defaults on his obligations.

(24) It is necessary to establish common provisions on measures which apply in the event of non-performance of credit agreements. In particular, certain debt collection practices which are manifestly out of proportion must be considered illegal.

(25) In order to endure market transparency and stability, Member States need to adopt appropriate measures for the registration of persons offering credit or acting as credit intermediaries with a view to the conclusion of credit agreements, for the inspection or monitoring of creditors and intermediaries, and for enabling consumers to lodge complaints concerning credit agreements or conditions.

(26) In order to ensure permanent protection of the interests of the consumer and guarantor, credit or surety agreements should not derogate, to the detriment of the consumer or guarantor, from the provisions implementing or corresponding to this directive.

(27) This directive respects fundamental rights and the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it aims to ensure full compliance with the rules on protection of personal data, the right to property, non-discrimination, protection of family and professional life, and consumer protection pursuant to Articles 8, 17, 21, 33 and 38 of the Charter.

(28) Since the objective of this directive, namely to establish rules allowing the harmonisation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be adequately achieved by the Member States, and can therefore be achieved more effectively at Community level, the Community can take action in accordance with the principle of subsidiarity referred to in Article 5 of the Treaty. In accordance with the principle of proportionality, as referred to in the said Article, this directive does not go beyond what is necessary to achieve these objectives.

(29) Member States must lay down penalties for infringements of the provisions of this directive and must ensure that they are enforced. These penalties must be effective, proportionate and constitute a deterrent.

(30) It is therefore necessary to repeal and replace Directive 87/102/EEC,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

AIM, DEFINITIONS AND SCOPE

Article 1

Aim

The aim of this directive is to harmonise the laws, regulations and administrative procedures of the Member States concerning agreements covering credit granted to consumers and surety agreements entered into by consumers.

Article 2

Definitions

For the purpose of this directive:

(a) 'consumer' means a natural person who, in transactions covered by this directive, is acting for purposes which can be regarded as outside his trade or profession;

(b) 'creditor' means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

(c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation. Agreements for the provision on a continuing basis of services (private or public), where the consumer has the right to pay for them for the duration of their provision by means of instalments, are not deemed to be credit agreements for the purposes of this directive;

(d) 'credit intermediary' means a natural or legal person who, for a fee, habitually acts as an intermediary by presenting or offering credit agreements, undertaking other preparatory work for such agreements, or concluding such agreements; the fee may take the form of cash or any other agreed form of financial consideration;

(e) 'surety agreement' means an ancillary agreement concluded by a guarantor and guaranteeing or promising to guarantee the fulfilment of any form of credit granted to natural or legal persons;

(f) 'guarantor' means a consumer concluding a surety agreement;

(g) 'total cost of credit to the consumer' means all the costs, including borrowing interest, indemnities, commissions, taxes and any other kind of charge which the consumer has to pay for the credit;

(h) 'annual percentage rate of charge' means the total cost of the credit to the consumer expressed as an annual percentage of the total amount of credit granted;

(i) 'sums levied by the creditor' means all the mandatory costs associated with the credit agreement and paid to the creditor by the consumer;

(j) 'total lending rate' means the sums levied by the creditor expressed as an annual percentage of the total amount of credit;

(k) 'borrowing rate' means the interest rate expressed as a periodic percentage applied for a given period to the amount of credit drawn down;

(l) 'residual value' means the purchase price of the financed goods applicable at the time when the purchase option or the property transfer option is exercised;

(m) 'drawdown' means an amount of credit made available to the consumer in the form of a deferred payment, loan or other similar financial accommodation;

(n) 'total amount of credit' means the ceiling or the sum of all drawdowns that are likely to be agreed;

(o) 'durable medium' means any instrument which enables the consumer to store information addressed personally to him in a way which makes it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(p) 'third party providing constitution of capital' means any natural or legal person, other than the creditor or consumer, who gives the consumer or, where applicable, the creditor an undertaking, through an agreement appended to the credit agreement, to constitute the capital to be repaid under such credit agreement.

Article 3

Scope

1. This directive applies to credit agreements and surety agreements.

2. This directive shall not apply to the following credit agreements and, where applicable, any corresponding surety agreements:

(a) credit agreements the aim of which is to grant credit for the purchase or transformation of private immovable property that the consumer owns or is seeking to acquire and which are secured either by a mortgage on immovable property or by a surety commonly used in a Member State for this purpose;

(b) hiring agreements which exclude the passing of the title to the hirer or to persons entitled by him;

(c) credit agreements under the terms of which the consumer is required to repay the credit in a single payment within a period not exceeding three months, without the payment of interest or any other charges;

(d) credit agreements which meet the following conditions:

(i) they are granted by the creditor as a secondary activity, i.e. outside the sphere of his principal commercial or professional activity,

(ii) they are granted at annual percentage rates of charge lower than those prevailing on the market,

(iii) they are not offered to the public generally;

(e) credit agreements concluded with investment firms within the meaning of Article 1(2) of Council Directive 93/22/EEC [1] for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section B of the Annex to that directive, where the firm granting the credit is involved in such transaction.

CHAPTER II

INFORMATION AND PRACTICES PRELIMINARY TO THE FORMATION OF THE AGREEMENT

Article 4

Advertising

Without prejudice to Council Directive 84/450/EEC, any advertising or any offer displayed at business premises that includes information on credit agreements, in particular as regards the borrowing rate, total lending rate and annual percentage rate of charge, shall be provided in a clear and comprehensible manner, with due regard, in particular, to the principles of good faith in commercial transactions. The commercial purpose of this information must be made clear.

Article 5

Ban on negotiation of credit and surety agreements outside business premises

The negotiation of a credit or a surety agreement outside business premises in the circumstances referred to in Article 1 of Council Directive 85/577/EEC shall be prohibited.

Article 6

Exchange of information in advance and duty to provide advice

1. Without prejudice to the application of Directive 95/46/EC, and in particular Article 6 thereof, the creditor and, where applicable, the credit intermediary may request of a consumer seeking a credit agreement, and any guarantor, only such information as is adequate, relevant and not excessive, with a view to assessing their financial situation and their ability to repay.

The consumer and guarantor shall reply accurately and in full to any such request for information.

2. The creditor and, where applicable, the credit intermediary shall provide the consumer with all the exact and complete information needed in respect of the credit agreement under consideration. The consumer shall receive this information on paper or on another durable medium before the conclusion of the credit agreement.

Without prejudice to Article 5 of Directive . . . [on the distance marketing of financial services to consumers and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC], the information provided must included a concise and clear description of the product, its advantages, and any drawbacks. In particular the information must refer to:

(a) the sureties and insurance required;

(b) the duration of the credit agreement;

(c) the amount, number and frequency of payments to be made;

(d) the recurrent and non-recurrent charges, including additional non-recurring costs which the consumer has to pay on concluding a credit agreement, such as taxes, administrative costs, legal fees and assessment costs with regard to the sureties required;

(e) the total amount of credit and the conditions governing the drawdown of the credit;

(f) where applicable, the cash price of the financed goods or services, the down payment due and the residual value;

(g) where applicable, the borrowing rate, the conditions governing the application of this rate and any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for varying the borrowing rate;

(h) the annual percentage rate of charge and the total lending rate, by means of a representative example mentioning all the financial data and assumptions used for calculating the said rates;

(i) the period during which the right of withdrawal may be exercised.

In the cases referred to in Article 3(3) of Directive . . . [on the distance marketing of financial services to consumers and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC], this information must include at least the items referred to in points (c), (e), and (h) of this paragraph.

3. The creditor or, where applicable, the credit intermediary shall seek to establish, among the credit agreements they usually offer or arrange, the most appropriate type and total amount of credit taking into account the financial situation of the consumer, the advantages and disadvantages associated with the product proposed, and the purpose of the credit.

[1] OJ L 141, 11.6.1993, p. 27.

4. Paragraphs 1, 2 and 3 do not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity.

CHAPTER III

PROTECTION OF PRIVACY

Article 7

Collection and processing of data

Personal data obtained from consumers, guarantors or any other person in connection with the conclusion and management of agreements covered by this directive, and in particular by Article 6(1), may be processed only for the purpose of assessing the financial situation of those persons and their ability to repay.

Article 8

Central database

1. Without prejudice to the application of Directive 95/46/EC, Member States shall ensure the operation on their territory of a central database for the purpose of registration of consumers and guarantors who have defaulted. This database may take the form of a network of databases.

Creditors must consult the database prior to any commitment on the part of the consumer or guarantor, subject to the restrictions referred to in Article 9.

The consumer and, where appropriate, the guarantor shall, if they so request, be informed of the result of any consultation immediately and without charge.

2. Access to the central database in another Member State shall be ensured under the same conditions as for firms and individuals in that Member State, either directly or via the central database of the home Member State.

3. Personal data received under paragraph 1 may be processed only for the purpose of assessing the financial situation of the consumer and guarantor and their ability to repay. The data shall be destroyed immediately after the conclusion of the credit or surety agreement or the refusal by the creditor of the application for credit or the proposed surety.

4. The central database referred to in paragraph 1 may include the registration of credit agreements and surety agreements.

CHAPTER IV

FORMATION OF CREDIT AND SURETY AGREEMENTS

Article 9

Responsible lending

Where the creditor concludes a credit agreement or surety agreement or increases the total amount of credit or the amount guaranteed, he is assumed to have previously assessed, by any means at his disposal, whether the consumer and, where appropriate, the guarantor can reasonably be expected to discharge their obligations under the agreement.

Article 10

Information that must be included in credit and surety agreements

1. Credit agreements and surety agreements shall be drawn up on paper or on another durable medium.

All the contracting parties, including the guarantor and the credit intermediary, shall receive a copy of the credit agreement. The guarantor shall receive a copy of the surety agreement.

Agreements shall mention the existence or non-existence of out-of-court complaint and redress procedures accessible to consumers who are party to a contract and, if such procedures exist, the formalities for gaining access to them.

2. The credit agreement shall include:

(a) the names and addresses of the contracting parties as well as the name and address of the credit intermediary involved;

(b) the data referred to in Article 6(2), with the annual percentage rate of charge and the lending rate calculated at the time the credit agreement is concluded on the basis of all the financial data and assumptions applicable to the agreement;

(c) where capital amortisation is involved, a statement of account in the form of an amortisation table, the payments owing, and the periods and conditions relating to the payment of these amounts;

(d) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the borrowing interest and of the associated recurrent and non-recurrent charges;

(e) a statement of the cost components that are not included in the calculation of the annual percentage rate of charge but are to be paid by the consumer under certain circumstances, namely the commitment fee, the charges relating to unauthorised drawdowns in excess of the total amount of credit and the charges for defaulting, plus a list setting out the circumstances;

(f) where applicable, the goods and/or services being financed;

(g) entitlement to early repayment, as well as the procedure to be applied by the consumer in order to exercise this right;

(h) the procedure to be followed to exercise the right of withdrawal.

The table referred to in (c) shall contain a breakdown of each repayment to show capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, the additional costs.

If, in the case referred to in (c), a new drawdown is not possible without the consent of the creditor, the creditor's decision shall be communicated on paper or on another durable medium. It shall be made available to the consumer and contain the amended data to which this paragraph refers.

Where the exact amount of these components referred to in (e) is known, it shall be shown. Otherwise, and as a minimum requirement, these costs must be ascertainable in the credit agreement on the basis of an indication of the percentage linked to a reference rate, a calculation method or the most realistic estimate possible. In such cases the creditor shall make available to the consumer on paper or on another durable medium a breakdown of these costs without delay or, at the latest, when they are to be applied.

3. The surety agreement shall state the maximum amount guaranteed, as well as the charges for defaulting to be applied in accordance with the procedure referred to in paragraph 2(e).

Article 11

Right of withdrawal

1. The consumer shall have a period of fourteen calendar days to withdraw his acceptance of the credit agreement without giving any reason.

This period shall begin on the day a copy of the credit agreement concluded is transmitted to the consumer.

2. The consumer shall notify the creditor of his withdrawal before expiry of the period referred to in paragraph 1 and in accordance with national legislation regarding proof. The deadline shall be deemed to have been observed if this notification, which must be on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires.

3. Exercise of the right of withdrawal shall oblige the consumer simultaneously to return to the creditor the sums of money or goods that he has received by virtue of the credit agreement, in so far as provision thereof is governed by the credit agreement. The consumer shall pay interest due for the period during which credit was drawn, calculated on the basis of the agreed annual percentage rate of charge. No other indemnity may be claimed in connection with withdrawal. Any down-payment effected by the consumer under the credit agreement shall be repaid to the consumer without delay.

4. Paragraphs 1, 2 and 3 shall not apply to credit agreements secured by a mortgage or similar surety, credit agreements for housing or credit agreements cancelled under:

(a) Article 6 of Directive ... [on the distance marketing of financial services to consumers and amending Council Directives 90/619/EC, 97/7/EC and 98/27/EC];

(b) Article 6(4) of Directive 97/7/EC of the European Parliament and of the Council [1];

(c) Article 7 of Directive 94/47/EC of the European Parliament and of the Council [2].

CHAPTER V

ANNUAL PERCENTAGE RATE OF CHARGE AND BORROWING RATE

Article 12

Annual percentage rate of charge

1. The annual percentage rate of charge, which equates, on an annual basis, the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex I.

Examples of the method of calculation are given in Annex II, by way of illustration.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is paid in cash or on credit.

The costs of maintaining an account recording both payment transactions and credit transactions, the costs of using a card or another means of payment for both payment transactions and drawdowns, and the costs relating to payment transactions in general shall be regarded as credit costs unless they have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

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[1] OJ L 144, 4.6.1997, p. 19.

[2] OJ L 280, 29.10.1994, p. 83.

Costs relating to insurance premiums shall be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded.

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit contract will remain valid for the period agreed and the creditor and the consumer will fulfil their obligations under the terms and by the dates agreed

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5. Where necessary, the following assumptions may be adopted in calculating the annual percentage rate of charge:

(a) if a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall deemed to be drawn down immediately and in full;

(b) if there is no fixed timetable for repayment, and one cannot be deduced from the terms of the agreement and the means for repaying the credit granted, the duration of the credit shall be deemed to be one year;

(c) unless otherwise specified, where the agreement provides for more than one repayment date, the credit will be made available and the repayments made on the earliest date provided for in the agreement;

6. Where a credit agreement is drawn up in the form of a hire agreement with an option to purchase and the agreement provides for a number of dates on which the purchase option may be exercised, the annual percentage rate of charge shall be calculated for each of the these dates.

Where the residual value cannot be determined, the goods hired shall be subject to linear amortisation that makes its value equal to zero at the end of the normal hire period laid down in the credit agreement.

7. Where a credit agreement provides for a prior or simultaneous constitution of savings and the borrowing rate is set in relation to these savings, the annual percentage rate of charge shall be calculated in accordance with the procedure set out in Annex III.

Article 13

Total lending rate

1. For the purpose of calculating the total lending rate, the sums levied by the creditor shall be determined, with the exception of charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is paid in cash or on credit.

2. The costs of maintaining an account recording both payment transactions and credit transactions, the costs of using a card or another means of payment for both payment transactions and drawdowns, and the costs relating to payment transactions in general shall be regarded as sums levied by the creditor unless they have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

3. The following shall be excluded from the sums levied by the creditor for the purposes of calculating the total lending rate:

(a) costs associated with ancillary services relating to the credit agreement, which the consumer is free to obtain from the creditor or any other provider;

(b) costs payable by the consumer on conclusion of the credit agreement to persons other than the creditor, in particular the notary, tax authorities, registrar of mortgages, and any costs in general imposed by the authority responsible for registration and sureties.

4. The total lending rate shall be calculated in accordance with the procedures and assumptions referred to in Article 12(3)-(7) and Annexes I and II.

Article 14

Borrowing rate

1. The borrowing rate may be fixed or variable.

2. Where one or a number of fixed borrowing rates have been established, they shall apply for the duration of the period specified in the credit agreement.

3. A variable borrowing rate may not vary until the end of agreed periods provided for in the credit agreement and may do so only in line with the agreed index or reference rate.

4. The consumer shall be informed of any change to the borrowing rate, on paper or on another durable medium.

This information must include the new annual percentage rate of charge, the creditor's new total lending rate and, where applicable, the new amortisation table. The calculation of the new annual percentage rate of charge and the creditor's new total lending rate shall be based on Article 12(3).

CHAPTER VI

UNFAIR TERMS

Article 15

Unfair terms

Without prejudice to the application of Directive 93/13/EEC to the agreement as a whole, terms in a credit agreement or surety agreement shall be regarded as unfair if their object or effect is to:

(a) impose on the consumer, as a condition for a drawdown, a requirement to leave as surety, in full or in part, the sums borrowed or granted, or to use them, in full or in part, to constitute a deposit or purchase securities or other financial instruments, unless the consumer obtains the same rate for such deposit, purchase or surety as the agreed annual percentage rate of charge;

(b) oblige the consumer, when concluding a credit agreement, to enter into another contract with the creditor, credit intermediary or a third party designated by them, unless the costs thereof are included in the total cost of the credit;

(c) vary any contractual costs, indemnities or charges other than the borrowing rate;

(d) introduce rules on the variability of the borrowing rate that discriminate against the consumer;

(e) introduce a system involving a variable borrowing rate which does not relate to the net initial borrowing rate proposed when the credit agreement was concluded and which would exclude all forms of rebate, reduction or other advantages;

(f) oblige the consumer to use the same creditor to refinance the residual value and, in general, any final payment on a credit agreement for financing the purchase of movable property or a service.

CHAPTER VII

PERFORMANCE OF A CREDIT AGREEMENT

Article 16

Early repayment

1. The consumer shall be entitled to discharge fully or partially his obligations under a credit agreement before the time fixed in the agreement.

2. Any indemnity claimed by the creditor for early repayment shall be fair and objective and shall be calculated on the basis of actuarial principles.

No indemnity shall be claimed:

(a) for credit agreements where the period used to fix the borrowing rate is less than one year;

(b) if repayment has been made under an insurance contract intended to provide a conventional credit repayment guarantee;

(c) for credit agreements which provide for payment of charges and interest without capital amortisation, with the exception of the credit agreements referred to in Article 20.

Article 17

Assignment of rights

Where the creditor's rights under a credit agreement or surety agreement are assigned to a third party, the consumer and, where applicable, the guarantor, shall be entitled to plead against the assignee of the creditor's rights under that agreement any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

Article 18

Ban on the use of bills of exchange and other securities

The creditor or assignee of the creditor's rights under a credit agreement or surety agreement shall not require or invite the consumer or guarantor to guarantee payment of their commitments under that agreement by means of a bill of exchange or promissory note.

Moreover, the consumer or guarantor shall not be required to sign a cheque guaranteeing repayment, in full or in part, of the amount due.

Article 19

Joint and several liability

1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply.

2. If the supplier of goods or services has acted as credit intermediary, the creditor and the supplier shall be jointly and severally liable for indemnifying the consumer where the goods or services the purchase of which has been financed by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for their supply.

CHAPTER VIII

SPECIFIC CREDIT AGREEMENTS

Article 20

Credit agreement providing constitution of capital

1. If payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement, such constitution of capital shall be based on an ancillary agreement attached to the credit agreement.

2. The ancillary agreement referred to in paragraph 1 shall provide for an unconditional guarantee of repayment of the total amount of credit drawn down. If the third party providing constitution of capital fails to comply with his obligations, the creditor shall assume the risk.

3. Payments, premiums and recurrent or non-recurrent charges payable by the consumer under the ancillary agreement referred to in paragraph 1, together with interest and charges under the credit agreement, shall constitute the total cost of the credit. The annual percentage rate of charge and the total lending rate shall be calculated on the basis of the total commitment subscribed to by the consumer.

Article 21

Credit agreement in the form of an advance on a current account or a debit account

Where a credit agreement covers credit in the form of an advance on a current account or debit account, the consumer shall be regularly informed of his debit situation by means of a statement of account, on paper or on another durable medium, containing the following information:

(a) the precise period to which the statement of account relates;

(b) the amounts and dates of drawdowns;

(c) where applicable, the outstanding balance due from the previous statement, and the date thereof;

(d) the date and amount of charges due;

(e) the dates and amounts of payments made by the consumer;

(f) the last agreed borrowing rate;

(g) the total amount of interest due;

(h) where applicable, the minimum amount to be paid;

(i) where applicable, the new balance outstanding;

(j) the new total amount outstanding, including any interest on arrears or penalties.

Article 22

Open-end credit agreement

Either party may terminate an open-end credit agreement by giving three months' notice drawn up on paper or on another durable medium in accordance with the procedures laid down in the credit agreement and in accordance with national legislation regarding proof.

CHAPTER IX

PERFORMANCE OF A SURETY AGREEMENT

Article 23

Performance of a surety agreement

1. A guarantor may conclude a surety agreement guaranteeing repayment under an open-end credit agreement for a period of three years only. This surety may be extended only with the specific agreement of the guarantor at the end of that period.

2. The creditor may take action against the guarantor only if the consumer, having defaulted on repayment of the credit, has failed to comply with a default notice within three months.

3. The amount guaranteed may only equal the outstanding balance of the total amount of credit and any arrears in accordance with the credit agreement, with the exclusion of any other indemnities or penalties provided for by the credit agreement.

CHAPTER X

NON-PERFORMANCE OF A CREDIT AGREEMENT

Article 24

Default notice and enforceability

1. Member States shall ensure that:

(a) creditors, their representatives and any other assignee of the creditor's rights under a credit agreement or surety agreement may not take disproportionate measures to recover amounts due to them in the event of non-performance of such agreements;

(b) the creditor may demand immediate payment in the event of default or invoke a clause providing an express resolutive condition only through a prior default notice requesting the consumer or, where applicable, the guarantor to comply with his obligations under the agreement within a reasonable period of time or to apply for rescheduling of the debt;

(c) the creditor may not suspend the consumer's drawdown rights unless he justifies his decision and is required to inform the consumer without delay;

(d) in the event of non-performance of their obligations or in the event of early repayment, the consumer and the guarantor are entitled, on request and without delay, to receive a detailed statement of account, free of charge, allowing them to verify the charges and interest claimed.

2. A default notice as referred to in paragraph 1(b) is not necessary:

(a) in the event of manifest fraud, evidence of which shall be provided by the creditor or the assignee of the creditor's rights;

(b) where the consumer alienates the property financed before the total amount of credit is repaid or uses the property in a manner inconsistent with the conditions of the credit agreement, and where the creditor or the assignee of the creditor's rights has a preferential claim, right of possession or reservation of title on the property financed, provided that the consumer has been informed of the existence of such preferential claim, right of possession or reservation of title prior to the conclusion of the contract.

Article 25

Overrunning of the total amount of credit and tacit overdraft

1. In the event of an authorised temporary overrunning of the total amount of credit or a tacit overdraft, the creditor shall inform the consumer without delay, in writing or on another durable medium, of the amount involved and the borrowing rate applicable. No penalties, charges or interest on arrears shall be included.

2. The creditor shall inform the consumer without delay that he has overrun the credit amount or is in an unauthorised overdraft situation and shall inform him of the borrowing rate and/or the charges or penalties applicable.

3. Any overrunning or overdraft as referred to in this article shall be rectified within three months, where necessary through a new credit agreement providing for a higher total amount of credit.

Article 26

Repossession of goods

In the case of credit agreements for the acquisition of goods, Member States shall lay down the conditions under which goods may be repossessed. If the consumer has not given his specific consent at the moment the creditor proceeds for repossession and if he has already made payments corresponding to a third of the total amount of credit, the goods financed may not be repossessed unless by judicial proceedings.

Member States shall further ensure that, where the creditor repossess the goods, the account between the parties is made up so as to ensure that repossession does not entail any unjustified enrichment.

Article 27

Recovery

1. Natural or legal persons who undertake, as their principal or as a secondary activity, and not as part of any court procedure, the recovery of debts arising from a credit agreement or surety agreement, or who intervene in this respect, may not, in any form whatsoever, either directly or indirectly, claim any fee or indemnity from the consumer or guarantor for their intervention, unless such fees or indemnities are specifically agreed in the credit agreement or surety agreement.

2. In the context of the recovery of debts arising from a credit agreement or surety agreement, the following shall be prohibited:

(a) any document which, as a result of its appearance, wrongly gives the impression that it is from a judicial or debt mediation authority;

(b) written communications containing incorrect information on the consequences of defaulting on payment;

(c) unauthorised repossession of goods without judicial proceedings or the specific consent referred to in Article 26;

(d) any inscription on an envelope which makes it clear that the correspondence concerns the recovery of a debt;

(e) collection of charges not provided for by the credit agreement or surety agreement;

(f) any contact with the neighbours, relatives or employer of the consumer or guarantor, especially any communication of, or request for, information on the solvency of the consumer or guarantor, without prejudice to actions forming part of statutory seizure procedures as established by Member States;

(g) physical or psychological harassment of a consumer or guarantor;

(h) recovery of a lapsed debt.

CHAPTER XI

REGISTRATION, STATUS AND CONTROL OF CREDITORS AND CREDIT INTERMEDIARIES

Article 28

Registration of creditors and credit intermediaries

1. Member States shall ensure that creditors and credit intermediaries apply for registration.

The obligation to register does not apply to credit intermediaries for whom a creditor or another credit intermediary assumes responsibility under the terms of his own registration. This assumption of responsibility must be made clear in a notice on the premises of credit intermediaries not required to register.

2. Member States shall:

(a) ensure that the activities of creditors and credit intermediaries are subject to inspection or monitoring by an institution or official body;

(b) establish appropriate bodies to receive complaints concerning credit agreements, surety agreements and credit and surety conditions, and to provide consumers and guarantors with relevant information or advice on this subject.

3. Member States may stipulate that registration as referred to in the first subparagraph of paragraph 1 of this article shall not be necessary where the creditor or credit intermediary concerned is a 'credit institution' within the meaning of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council [1] and is authorised in accordance with the provisions of that directive.

Where a creditor or credit intermediary is both registered under the provisions of the first subparagraph of paragraph 1 of this article and authorised under the provisions of Directive 2000/12/EC of the European Parliament and of the Council, and the latter authorisation is subsequently withdrawn, the competent authority which has registered the creditor or credit intermediary shall be informed and shall decide whether the creditor or credit intermediary may continue to grant or arrange credit or whether his registration should be cancelled.

Article 29

Obligations of credit intermediaries

Member States shall ensure that a credit intermediary:

(a) indicates in advertising and documentation intended for clients the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;

(b) communicates to all creditors contacted the total amount of other credit offers he has requested or received for the same consumer or guarantor during the two months preceding conclusion of the credit agreement;

(c) does not receive, directly or indirectly, any fee, in whatever form, from a consumer who has requested his services, unless all the following conditions are met:

(i) the amount of the fee is stated in the credit agreement,

(ii) the credit intermediary does not receive a fee from the creditor,

(iii) the credit agreement for which he has acted is actually concluded.

CHAPTER XII

FINAL PROVISIONS

Article 30

Total harmonisation and imperative nature of the directive's provisions

1. Member States may not introduce provisions other than those laid down in this directive, except with regard to:

(a) registration of credit agreements and surety agreements in accordance with Article 8(4);

(b) the provisions concerning the burden of proof referred to in Article 33.

2. Member States shall ensure that credit agreements and surety agreements do not derogate, to the detriment of the consumer or guarantor, from the provisions of national law implementing or corresponding to this directive.

3. Member States shall further ensure that the provisions they adopt in implementation of this directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling under the scope of this directive into credit agreements the character or purpose of which would make it possible to avoid its application.

4. Consumers and guarantors may not waive the rights conferred on them by this directive.

5. Member States shall take the measures needed to ensure that the consumer and the guarantor do not lose the protection granted by this directive by virtue of the choice of the law of a non-member country as the law applicable to the agreement, if the agreement has a close link with the territory of one or more Member States.

[1] OJ L 126, 26.5.2000, p. 1.

Article 31

Penalties

Member States shall lay down penalties for infringements of national provisions adopted in application of this directive, and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and constitute a deterrent. They may provide for the loss of interest and charges by the creditor and continuation of the right of repayment in instalments of the total amount of credit by the consumer, in particular where the creditor does not respect the provisions on responsible lending. Member States shall communicate these provisions to the Commission no later than [. . .] [2 years after the entry into force of this directive] and any subsequent amendments concerning them without delay.

Article 32

Out-of-court redress

Member States shall ensure that adequate and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning credit and surety agreements are put in place, using existing bodies where appropriate.

Member States shall encourage bodies responsible for the out-of-court settlement of consumer disputes to cooperate in order to resolve cross-border disputes concerning credit and surety agreements.

Article 33

Burden of proof

Member States may provide that the burden of proof in respect of compliance with the consumer information obligations imposed on the creditor and credit intermediary, in respect of the consumer's consent to the conclusion of the contract and, where appropriate, its performance, and in respect of the credit intermediary's remunerated activities may lie with the creditor or credit intermediary.

Any term in an agreement which provides that the burden of proof in respect of compliance by the creditor and, where applicable, the credit intermediary with all or part of the obligations incumbent on them pursuant to this directive should lie with the consumer and, where applicable, the guarantor, shall be an unfair term within the meaning of Directive 93/13/EEC.

Article 34

Existing agreements

1. This directive does not apply to credit agreements and surety agreements existing on the date the national implementing measures enter into force, with the exception of the provisions of Articles 1, 2, 3 and 22, 23(1) and (2), 24 to 27, and 30 to 35. Article 9 shall apply to such contracts in so far as an increase in the total amount of credit or the amount guaranteed occurs after the national measures implementing this directive enter into force.

2. For agreements existing on the date the national implementing measures enter into force, the amortisation table referred to in Article 10 must be provided to the consumer free of charge as soon as either of the following conditions applies:

(a) cancellation of the credit agreement or early repayment;

(b) default on payment.

3. Member States shall ensure that open-end credit agreements and surety agreements existing on the date the national implementing measures enter into force have to be replaced by new agreements which comply with this directive no later than [. . .] [two years after the end of the transposition period].

Article 35

Transposition

Member States shall adopt and publish, no later than [. . .] [2 years after the entry into force of this directive] the laws, regulations and administrative provisions necessary to comply with this directive. They shall immediately inform the Commission thereof.

They shall apply these provisions from [. . .] [2 years after the entry into force of this directive].

When Member States adopt these provisions, these shall contain a reference to this directive or shall be accompanied by such reference at the time of their official publication. Member States shall determine how such reference is to be made.

Article 36

Repeal

Directive 87/102/EEC is repealed with effect from [. . .] [the end of the transposition period for this directive].

Article 37

Entry into force

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

Article 38

Addressees

This directive is addressed to the Member States.

ANNEX I

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE OF DRAWDOWNS ON THE ONE HAND AND REPAYMENTS AND CHARGES ON THE OTHER

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^{m} C_k \, (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l \, (1 + X)^{-s_l}$$

where:

— X is the APR

— m is the number of the last drawdown,

— k is the number of a drawdown, therefore $1 \leq k \leq m$,

— C_k is the amount of drawdown k,

— t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, therefore $t_1 = 0$,

— m' is the number of the last repayment or payment of charges,

— l is the number of a repayment or payment of charges,

— D_l is the amount of a repayment or payment of charges,

— s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12) regardless of whether or not it is a leap year.

(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.

(e) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to k, expressed in years, i.e.:

$$S = \sum_{k=1}^{n} A_k \, (1 + X)^{-t_k}$$

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

(f) Member States shall provide that the methods of resolution applicable give a result equal to that of the examples presented in Annexes II and III.

ANNEX II

EXAMPLES OF CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE

Preliminary remarks

Unless otherwise stated, all examples assume a single drawdown of credit equal to the total amount of the credit and placed at the consumer's disposal as soon as the credit agreement is concluded. In this connection, it should be noted that if the credit agreement gives the consumer freedom of drawdown, the total amount of credit is deemed to be drawn down immediately and in full.

Some Member States, in order to express the borrowing rate, have opted for an effective rate and the equivalent conversion method, thus avoiding a situation in which the calculation of periodical interest is carried out in countless ways using different *pro rata temporis* rules which have only a very vague relationship with the linear nature of time. Other Member States permit a nominal periodic rate using a proportional conversion method. This directive seeks to separate any further regulation of borrowing rates from the regulation of effective rates, simply stating the rate used. The examples in this Annex refer to the method that has been used.

Example 1

Total amount of credit (capital) of EUR 6 000,00, repayable in four equal annual instalments of EUR 1 852,00.

The equation becomes:

$$6\,000 = 1\,852\,\frac{1 - \frac{1}{(1 + X)^4}}{X}$$

or:

$$6\,000 = 1\,852\frac{1}{(1 + X)^1} + 1\,852\frac{1}{(1 + X)^2} + \ldots + 1\,852\frac{1}{(1 + X)^4}$$

giving X = 9,00000 %, i.e. an APR of 9,0 %.

Example 2

Total amount of credit (capital) EUR 6 000,00, repayable in 48 equal monthly instalments of EUR 149,31.

The equation becomes:

$$6\,000 = 149{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{48}}}{(1 + X)^{1/12} - 1}$$

or:

$$6\,000 = 149{,}31\frac{1}{(1 + X)^{1/12}} + 149{,}31\frac{1}{(1 + X)^{2/12}} + \ldots + 149{,}31\frac{1}{(1 + X)^{48/12}}$$

giving X = 9,380593 %, i.e. an APR of 9,4 %.

Example 3

Total amount of credit (capital) of EUR 6 000,00, repayable in 48 equal monthly instalments of EUR 149,31. Administrative charges of EUR 60,00 are payable on conclusion of the contract.

The equation becomes:

$$6\,000 - 60 = 149{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{48}}}{(1 + X)^{1/12} - 1}$$

or:

$$5\,940 = 149{,}31\,\frac{1}{(1 + X)^{1/12}} + 149{,}31\,\frac{1}{(1 + X)^{2/12}} + \ldots + 149{,}31\,\frac{1}{(1 + X)^{48/12}}$$

giving X = 9,954966 %, i.e. an APR of 10 %.

Example 4

Total amount of credit (capital) of EUR 6 000,00, repayable in 48 equal monthly instalments of EUR 149,31. Administrative charges of EUR 60,00 are spread over the repayments. The monthly instalment is therefore (EUR 149,31 + (EUR 60/48)) = EUR 150,56.

The equation becomes:

$$6\,000 = 150{,}56\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{48}}}{(1 + X)^{1/12} - 1}$$

or:

$$6\,000 = 150{,}56\,\frac{1}{(1 + X)^{1/12}} + 150{,}56\,\frac{1}{(1 + X)^{2/12}} + \ldots + 150{,}56\,\frac{1}{(1 + X)^{48/12}}$$

giving X = 9,856689 %, i.e. an APR of 9,9 %.

Example 5

Total amount of credit (capital) of EUR 6 000,00, repayable in 48 equal monthly instalments of EUR 149,31. Administrative charges are EUR 60,00, and insurance EUR 3,00 per month. The costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore EUR 152,31.

The equation becomes:

$$5\,940 = 152{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{48}}}{(1 + X)^{1/12} - 1}$$

or:

$$5\,940 = 152{,}31\,\frac{1}{(1 + X)^{1/12}} + 152{,}31\,\frac{1}{(1 + X)^{2/12}} + \ldots + 152{,}31\,\frac{1}{(1 + X)^{48/12}}$$

giving X = 11,1070115 %, i.e. an APR of 11,1 %.

Example 6

Balloon-type credit agreement for a total amount of credit of EUR 6 000,00 (purchasing price of a car to be financed), repayable in 47 equal monthly instalments of EUR 115,02 plus a final payment of EUR 1 915,02 representing the residual value of 30 % of the capital (balloon agreement), plus insurance of EUR 3,00 per month. Again, the costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore EUR 118,02, and the final payment will amount to EUR 1 918,02.

The equation becomes:

$$6\,000 = 118{,}02\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{47}}}{(1+X)^{1/12}-1} + 1\,918{,}02\frac{1}{[(1+X)^{1/12}]^{48}}$$

or:

$$6\,000 = 118{,}02\frac{1}{(1+X)^{1/12}} + 118{,}02\frac{1}{(1+X)^{2/12}} + \ldots 118{,}02\frac{1}{(1+X)^{47/12}} +$$

$$(1\,800 + 115{,}02 + 3)\frac{1}{(1+X)^{48/12}}$$

giving X = 9,381567 %, i.e. an APR of 9,4 %.

Example 7

Credit agreement for a total amount of credit (capital) of EUR 6 000,00 with administrative charges of EUR 60,00 payable on conclusion of the contract, and two payment periods of 22 and 26 months respectively. The second-period instalment corresponds to 60 % of the first-period instalment. The respective monthly instalments are EUR 186,36 and EUR 111,82.

The equation becomes:

$$5\,940 = 186{,}36\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{22}}}{(1+X)^{1/12}-1} + \left\{\left[111{,}82\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{26}}}{(1+X)^{1/12}-1}\right]\frac{1}{\left[(1+X)^{1/12}\right]^{22}}\right\}$$

or:

$$5\,940 = \left[186{,}36\frac{1}{(1+X)^{1/12}} + 186{,}36\frac{1}{(1+X)^{2/12}} + \ldots + 186{,}36\frac{1}{(1+X)^{22/12}}\right] +$$

$$\left\{\left[111{,}82\frac{1}{(1+X)^{1/12}} + 111{,}82\frac{1}{(1+X)^{2/12}} + \ldots + 111{,}82\frac{1}{(1+X)^{26/12}}\right]\frac{1}{\left[(1+X)^{1/12}\right]^{22}}\right\}$$

giving X = 10,04089 %, i.e. an APR of 10,0 %.

Example 8

Credit agreement for a total amount of credit (capital) of EUR 6 000,00, with administrative charges of EUR 60,00 payable on conclusion of the contract, and two payment periods of 22 and 26 months respectively, the first-period instalment corresponding to 60 % of the second-period instalment. The respective monthly instalments are EUR 112,15 and EUR 186,91.

The equation becomes:

$$5\,940 = 112{,}15\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{22}}}{(1+X)^{1/12}-1} + \left\{\left[186{,}91\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{26}}}{(1+X)^{1/12}-1}\right]\frac{1}{\left[(1+X)^{1/12}\right]^{22}}\right\}$$

or:

$$5\,940 = \left[112{,}15\frac{1}{(1+X)^{1/12}} + 112{,}15\frac{1}{(1+X)^{2/12}} + \ldots + 112{,}15\frac{1}{(1+X)^{22/12}}\right] +$$

$$\left\{\left[186{,}91\frac{1}{(1+X)^{1/12}} + 186{,}91\frac{1}{(1+X)^{2/12}} + \ldots + 186{,}91\frac{1}{(1+X)^{26/12}}\right]\frac{1}{\left[(1+X)^{1/12}\right]^{22}}\right\}$$

giving X = 9,888383 %, i.e. an APR of 9,9 %.

Example 9

Credit agreement for a total amount of credit (price of goods) of EUR 500,00 repayable in three equal monthly instalments calculated by applying the borrowing rate T of 18 % (nominal rate), plus administrative charges of 30,00 spread over the payments. The monthly instalment is therefore EUR 171,69 + EUR 10,00 charges = EUR 181,69.

The equation becomes:

$$500 = 181{,}69\,\frac{1 - \dfrac{1}{\left[(1 + X)^{1/12}\right]^{3}}}{(1 + X)^{1/12} - 1}$$

or:

$$500 = 181{,}69\,\frac{1}{(1 + X)^{1/12}} + 181{,}69\,\frac{1}{(1 + X)^{2/12}} + 181{,}69\,\frac{1}{(1 + X)^{3/12}}$$

giving X = 68,474596 %, i.e. an APR of 68,5 %.

This example typifies practices still used by certain specialist 'vendor-credit' establishments.

Example 10

Credit agreement for a total amount of credit (capital) of EUR 1 000, repayable in two instalments of either EUR 700,00 after one year and EUR 500,00 after two years, or EUR 500,00 after one year and EUR 700,00 after two years.

The equation becomes:

$$1\,000 = 700\,\frac{1}{\left[(1 + X)^{1/12}\right]^{12}} + 500\,\frac{1}{\left[(1 + X)^{1/12}\right]^{24}}$$

giving X = 13,898663 %, i.e. an APR of 13,9 %.

or:

$$1\,000 = 500\,\frac{1}{\left[(1 + X)^{1/12}\right]^{12}} + 700\,\frac{1}{\left[(1 + X)^{1/12}\right]^{24}}$$

giving X = 12,321446 %, i.e. an APR of 12,3 %.

This example shows that the annual percentage rate of charge depends on the payment periods and that stating the total cost of the credit in the prior information or in the credit agreement is of no benefit to the consumer. Despite the total cost of credit being EUR 200 in both cases, there are two different APRs (depending on the speed of repayment).

Example 11

Credit agreement for a total amount of credit of EUR 6 000,00, with a borrowing rate of 9 %, repayment in four equal annual instalments of EUR 1 852,01, and administrative charges of EUR 60,00 payable on conclusion of the agreement.

The equation becomes:

$$5\,940 = 1\,852{,}01\,\frac{1 - \dfrac{1}{(1 + X)^{4}}}{X}$$

or:

$$5\,940 = 1\,852{,}01\,\frac{1}{(1 + X)} + 1\,852{,}01\,\frac{1}{(1 + X)^{2}} + \ldots + 1\,852{,}01\,\frac{1}{(1 + X)^{4}}$$

giving X = 9,459052 %, i.e. an APR of 9,5 %.

In the event of early repayment, the equations become:

After one year:

$$5\ 940 = 6\ 540\ \frac{1}{(1\ +\ X)}$$

where 6 540 is the sum due, including interest, before payment of the first scheduled payment according to the amortisation table,

giving X = 10,101010 %, i.e. an APR of 10,1 %.

After two years:

$$5\ 940 = 1\ 852{,}01\ \frac{1}{(1\ +\ X)}\ +\ 5\ 109{,}91\ \frac{1}{(1\ +\ X)^2}$$

where 5 109,91 is the sum due, including interest, before payment of the second scheduled payment according to the amortisation table,

giving X = 9,640069 %, i.e. an APR of 9,6 %.

After three years:

$$5\ 940 = 1\ 852{,}01\ \frac{1}{(1\ +\ X)}\ +\ 1\ 852{,}01\ \frac{1}{(1\ +\ X)^2}\ +\ 3\ 551{,}11\ \frac{1}{(1\ +\ X)^3}$$

where 3 551,11 is the sum due, including interest, before payment of the third scheduled payment according to the amortisation table,

giving X = 9,505315 %, i.e. an APR of 9,5 %.

This shows how the provisional APR decreases in the course of time, especially where charges are payable on conclusion of the agreement.

This example can also serve to illustrate the case of a mortgage credit intended to refinance current credit agreements where the costs (notary's fees, registration, taxes) are due when the authenticated act is completed and the funds are made available to the consumer from the same date.

Example 12

Credit agreement for a total amount of credit of EUR 6 000, with a borrowing rate T of 9 % (nominal rate), repayment in 48 monthly instalments of EUR 149,31 (calculated proportionally), and administrative charges of EUR 60,00 payable on conclusion of the agreement.

The equation becomes:

$$5\ 940 = 149{,}31\ \frac{1 - \frac{1}{\left[(1\ +\ X)^{1/12}\right]^{48}}}{(1\ +\ X)^{1/12} - 1}$$

or:

$$5\ 940 = 149{,}31\ \frac{1}{(1\ +\ X)^{1/12}}\ +\ 149{,}31\ \frac{1}{(1\ +\ X)^{2/12}}\ +\ \ldots\ +\ 149{,}31\ \frac{1}{(1\ +\ X)^{48/12}}$$

giving X = 9,9954957 %, i.e. an APR of 10 %.

However, in the case of early repayment, this becomes:

After one year:

$$5\,940 = 149{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{11}}}{(1 + X)^{1/12} - 1} + 4\,844{,}64\,\frac{1}{\left[(1 + X)^{1/12}\right]^{12}}$$

where 4 844,64 is the sum due, including interest, before payment of the 12th scheduled payment according to the amortisation table,

giving X = 10,655907 %, i.e. an APR of 10,7 %.

After two years:

$$5\,940 = 149{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{23}}}{(1 + X)^{1/12} - 1} + 3\,417{,}58\,\frac{1}{\left[(1 + X)^{1/12}\right]^{24}}$$

where 3 417,58 is the sum due, including interest, before payment of the 24th monthly instalment according to the amortisation table,

giving X = 10,136089 %, i.e. an APR of 10,1 %.

After three years:

$$5\,940 = 149{,}31\,\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{35}}}{(1 + X)^{1/12} - 1} + 1\,856{,}66\,\frac{1}{\left[(1 + X)^{1/12}\right]^{36}}$$

where 1 856,66 is the sum due, including interest, before payment of the 36th monthly instalment according to the amortisation table,

giving X = 9,991921 %, i.e. an APR of 10 %.

Example 13

Total amount of credit (capital) of EUR 6 000,00, repayable in four equal annual instalments of EUR 1 852,00. Let us now assume that the borrowing rate (nominal rate) is variable and increases from 9,00 % to 10,00 % after the second annual instalment. This results in a new annual instalment of EUR 1 877,17. Remember that, in calculating the APR, it is normally assumed that the borrowing rate and other costs remain fixed at the initial level and apply until the end of the credit agreement. In that case (example 1), the APR will be 9 %.

In the event of any change to the rate, the new APR must be communicated and calculated on the assumption that the credit agreement will remain in force for the rest of the agreed duration, and that the creditor and consumer will fulfil their obligations under the terms and by the dates agreed.

The equation becomes:

$$5\,940 = 1\,852{,}01\,\frac{1 - \frac{1}{(1 + X)^2}}{X} + \left[1\,877{,}17\,\frac{1 - \frac{1}{(1 + X)^2}}{X}\frac{1}{X^2}\right]$$

or:

$$5\,940 = 1\,852{,}01\,\frac{1}{(1 + X)} + 1\,852{,}01\,\frac{1}{(1 + X)^2} + \left\{\left[1\,877{,}17\frac{1}{(1 + X)^3} + 1\,877{,}17\frac{1}{(1 + X)^4}\right] + \frac{1}{X^2}\right\}$$

giving X = 9,741569, i.e. an APR of 9,7 %.

Example 14

Total amount of credit (capital) of EUR 6 000,00, repayable in 48 equal monthly instalments of EUR 149,31, with administrative charges of EUR 60,00 payable on conclusion of the agreement, plus insurance of EUR 3,00 per month. The costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore EUR 152,31 and the calculation, as in example 5, gives X = EUR 11,107112, i.e. an APR of 11,1 %.

Let us now assume that the borrowing rate (nominal) is variable and increases to 10 % after the 17th payment. This change requires a new APR to be communicated and calculated on the assumption that the credit agreement will remain in force for the rest of the agreed duration, and that the creditor and consumer will fulfil their obligations under the terms and on the dates agreed.

The equation becomes:

$$5\,940 = 151{,}91\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{17}}}{(1+X)^{1/12}-1} + \left[154{,}22\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{31}}}{(1+X)^{1/12}-1}\frac{1}{\left[(1+X)^{1/12}\right]^{17}}\right]$$

or:

$$5\,940 = \left[151{,}91\frac{1}{(1+X)^{1/12}} + 151{,}91\frac{1}{(1+X)^{2/12}} + \ldots + 151{,}91\frac{1}{(1+X)^{17/12}}\right] +$$

$$\left\{\left[154{,}22\frac{1}{(1+X)^{1/12}} + 154{,}22\frac{1}{(1+X)^{2/12}} + \ldots + 154{,}22\frac{1}{(1+X)^{31/12}}\right]\frac{1}{\left[(1+X)^{1/12}\right]^{17}}\right\}$$

giving X = 11,542740 %, i.e. an APR of 11,5 %.

Example 15

Credit agreement of the 'leasing' type for a car with a value of EUR 15 000. The agreement stipulates 48 monthly instalments of EUR 350. The first monthly instalment is payable as soon as the car is placed at the consumer's disposal. At the end of the 48 months the purchase option may be taken up by paying the residual value of EUR 1 250.

The equation becomes:

$$14\,650 = 350\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{47}}}{(1+X)^{1/12}-1} + 1\,250\frac{1}{\left[(1+X)^{1/12}\right]^{48}}$$

or:

$$14\,650 = 350\frac{1}{(1+X)^{1/12}} + 350\frac{1}{(1+X)^{2/12}} + \ldots + 350\frac{1}{(1+X)^{47/12}} + 1\,250\frac{1}{(1+X)^{48/12}}$$

giving X = 9,541856 %, i.e. an APR of 9,5 %.

Example 16

Credit agreement of the 'financing', 'vendor credit' or 'hire purchase' type for goods with a value of EUR 2 500. The credit agreement provides for a down-payment of EUR 500 plus 24 monthly instalments of EUR 100, the first of which must be paid within 20 days of the goods being placed at the consumer's disposal.

In such cases the down-payment is never part of the financing operation.

The equation becomes:

$$(2\,500 - 500)\frac{1}{\left[(1 + X)^{1/365}\right]^{\left[\frac{365}{12} - 20\right]}} = 100\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{24}}}{(1 + X)^{1/12} - 1}$$

or:

$$2\,000\frac{1}{(1 + X)^{\frac{10,4316}{365}}} = 100\frac{1}{(1 + X)^{1/12}} + 100\frac{1}{(1 + X)^{2/12}} + \ldots + 100\frac{1}{(1 + X)^{24/12}}$$

giving X = 20,395287, i.e. an APR of 20,4 %.

Example 17

Credit agreement for a credit line of EUR 2 500 for a period of six months. The credit agreement provides for payment of the total cost of the credit every month and repayment of the total amount of the credit at the end of the agreement. The annual borrowing rate (effective rate) is 8 %, and the charges amount to 0,25 % per month. The assumption that the amount of credit is drawn down immediately and in full applies here.

The monthly borrowing interest payment is calculated on the basis of an equivalent monthly rate, using the equation:

$$a = 2\,500\left\{\left[(1{,}08)^{1/12} - 1\right] + 0{,}25\right\}$$

or:

$$a = 2\,500\ (0{,}006434 + 0{,}0025) = 22{,}34$$

This becomes:

$$2\,500 = 22{,}34\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{6}}}{(1 + X)^{1/12} - 1} + 2\,500\frac{1}{(1 + X)^{6/12}}$$

This becomes:

$$2\,500 = 22{,}34\frac{1}{(1 + X)^{1/12}} + 22{,}34\frac{1}{(1 + X)^{2/12}} + \ldots + 22{,}34\frac{1}{(1 + X)^{6/12}} + 2\,500\frac{1}{(1 + X)^{6/12}}$$

giving X = 11,263633, i.e. an APR of 11,3 %.

Example 18

Credit agreement for an open-end credit line of EUR 2 500. The agreement provides for a minimum half-yearly payment of 25 % of the outstanding balance (capital and interest), with a minimum of EUR 25. The annual borrowing rate (effective rate) is 12 %, and the administrative charge payable on conclusion of the agreement is EUR 50.

(The equivalent monthly rate is obtained by the equation:

$$i = (1 + 0{,}12)^{6/12} - 1 = 0{,}00583$$

or 5,83 %).

The 19 half-yearly repayments (D_l) can be obtained from an amortisation table, giving $D_1 = 661{,}44$; $D_2 = 525$; $D_3 = 416{,}71$; $D_4 = 330{,}75$; $D_5 = 262{,}52$; $D_6 = 208{,}37$; $D_7 = 165{,}39$; $D_8 = 208{,}37$; $D_9 = 104{,}20$; $D_{10} = 82{,}70$; $D_{11} = 65{,}64$; $D_{12} = 52{,}1$; $D_{13} = 41{,}36$; $D_{14} = 32{,}82$; $D_{15} = 25$; $D_{16} = 25$; $D_{17} = 25$; $D_{18} = 25$; $D_{19} = 15{,}28$.

The equation becomes:

$$2\,500 - 50 = 661{,}44\frac{1}{(1 + X)^{6/12}} + 525\frac{1}{(1 + X)^{12/12}} + \ldots + 25\frac{1}{(1 + X)^{108/12}} + 15{,}28\frac{1}{(1 + X)^{114/12}}$$

giving X = 13,151744 %, i.e. an APR of 13,2 %.

Example 19

Credit agreement for an open-end credit line involving the use of a card for drawdowns. Total amount of the credit: EUR 700. The agreement provides for a minimum monthly payment of 5 % of the outstanding balance (capital and interest), and the scheduled instalment (a) may not be less than EUR 25. The annual cost of the card is EUR 20. The annual borrowing rate (effective rate) is 0 % for the first instalment and 12 % for the subsequent instalments.

The 31 monthly repayment amounts (D_l) can be obtained from an amortisation table, giving $D_1 = 55{,}00$; $D_2 = 33{,}57$; $D_3 = 32{,}19$; $D_4 = 30{,}87$; $D_5 = 29{,}61$; $D_6 = 28{,}39$; $D_7 = 27{,}23$; $D_8 = 26{,}11$; $D_9 = 25{,}04$; D_{10} à $D_{12} = 25{,}00$; $D_{13} = 45$; D_{14} à $D_{24} = 25{,}00$; $D_{25} = 45$; D_{26} à $D_{30} = 25{,}00$; $D_{31} = 2{,}25$.

The equation becomes:

$$700 = 55\frac{1}{(1 + X)^{1/12}} + 33{,}57\frac{1}{(1 + X)^{2/12}} + \ldots + 25\frac{1}{(1 + X)^{30/12}} + 2{,}25\frac{1}{(1 + X)^{31/12}}$$

giving X = 18,470574, i.e. an APR of 18,5 %.

Example 20

Open-end credit line in the form of an advance on a current account. Total amount of credit: EUR 2 500. The credit agreement does not impose any requirements in terms of repayment of capital, but provides for monthly payment of the total cost of the credit. The annual borrowing rate is 8 % (effective rate). The monthly charges amount to EUR 2,50.

It is assumed that the full amount of credit will be drawn down, with repayment in theory after one year.

First of all, the theoretical scheduled payment of interest and charges (a) is calculated

$$a = 2\,500\left[(1{,}08)^{1/12} - 1\right] + 2{,}50$$

then:

$$2\,500 = 18{,}59\frac{1 - \dfrac{1}{\left[(1 + X)^{1/12}\right]^{12}}}{(1 + X)^{1/12} - 1} + 2\,500\frac{1}{(1 + X^{1/12})^{12}}$$

i.e.:

$$2\,500 = 18{,}59\frac{1}{(1 + X)^{1/12}} + 18{,}59\frac{1}{(1 + X)^{2/12}} + \ldots + 18{,}59\frac{1}{(1 + X)^{12/12}} + 2\,500\frac{1}{(1 + X)^{12/12}}$$

giving X = 9,295804, i.e. an APR of 9,3 %.

ANNEX III

CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE FOR A CONTRACT REQUIRING ADVANCE OR ACCOMPANYING SAVINGS AND FOR WHICH THE BORROWING RATE IS SET TO REFLECT THE LEVEL OF SAVINGS

Symbols used:

— C = Capital

— N = duration in years

— T = annual borrowing rate

— A = annuity

— F = periodicity

— n = duration in periods

— t = periodic borrowing rate

— a = periodic repayment

— M = saving period

1. MIXED CREDIT AGREEMENT WITH (COMPULSORY) SAVINGS IN ADVANCE

First example

The granting of a credit C totalling EUR 6 000 over N = two years is subject to the saving in advance over M = two years of half of the said amount, i.e. EUR 3 000 in all, of which the final amount saved is EUR 125 and is deposited one month prior to the drawdown of the credit. The savings in question attract no interest but the borrowing rate for the credit agreement will amount to no more than T = 6 % at a time when market conditions are setting a rate of 9 % instead.

The amount saved each month is e = EUR 125,00, the monthly repayment a = EUR 140,91, the APR, excluding savings, is 6,17 % or 6,2 %.

To find the annual percentage rate applicable to the transaction as a whole the formula is as follows:

$$6\,000 + 3\,000 = \left[125\,\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{24}}}{(1+X)^{1/12}-1}\left[(1+X)^{1/12}\right]^{25}\right] + \left[140{,}91\,\frac{1-\frac{1}{\left[(1+X)^{1/12}\right]^{48}}}{(1+X)^{1/12}-1}\right]$$

or:

$$6\,000 + 3\,000 = \left\{\left[125\,\frac{1}{(1+X)^{1/12}} + 125\,\frac{1}{(1+X)^{2/12}} + \ldots + 125\,\frac{1}{(1+X)^{24/12}}\right]\left[(1+X)^{1/12}\right]^{25}\right\} + \left[140{,}91\,\frac{1}{(1+X)^{1/12}} + 140{,}91\,\frac{1}{(1+X)^{2/12}} + \ldots + 140{,}91\,\frac{1}{(1+X)^{48/12}}\right]$$

To solve the equation using a recursive method, let $X_1 = 0{,}062$, and the value of the first member calculated as 170,5.

then $X_2 = 0{,}063$ and the value of the first member is calculated as 163,3.

and so forth

then $X_{26} = 0{,}087$ and the value of the first member is calculated at 6,0.

then $X_{27} = 0{,}088$ and the value of the first member is calculated at 0,1.

then X_{28} = and the value of the first member is calculated at – 5,7.

The correct solution is X = 8,802245 %, or 8.8 % and this is the APR to be given to the consumer as the APR for the credit agreement involving an amount to be saved in advance.

Second example

The granting of a credit C totalling EUR 6 000 over N = two years is subject to the saving in advance over M = two years of half of the said amount, i.e. EUR 3 000 in all, of which the final amount saved is EUR 125 and is deposited one month prior to the drawdown of the credit. These savings attract a lending rate of S = 3 % and the borrowing rate is only T = 6 % at a time when market conditions set rates at 9 %.

The amount saved each month is e = EUR 125,00, the monthly repayment a = EUR 140,91, the APR, excluding savings is 6,17 % or 6.2 %.

The updated future value of M will be M' calculated according to the following formula:

$$M' = 125\frac{(1 + i)^n - 1}{i}$$

where $i = (1 + S)^{1/12} - 1$ and n = 24 months.

or:

$$M'(t_{-1}) = 125\frac{(1{,}03)^{24/12} - 1}{(1{,}03)^{1/12} - 1} = 3\,086,65$$

and

$$M'(t_0) = 3\,086,65(1{,}03)^{1/12} = 3\,094{,}26$$

where t_0 = time of credit drawdown.

To find the APR for the transaction as a whole:

$$3\,094{,}26 + 6\,000 = \left[125\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{24}}}{(1 + X)^{1/12} - 1}\left[(1 + X)^{1/12}\right]^{25}\right] + \left[140{,}91\frac{1 - \frac{1}{\left[(1 + X)^{1/12}\right]^{48}}}{(1 + X)^{1/12} - 1}\right]$$

or:

$$3\,094{,}26 + 6\,000 = \left\{\left[125\frac{1}{(1 + X)^{1/12}} + 125\frac{1}{(1 + X)^{2/12}} + \ldots + 125\frac{1}{(1 + X)^{24/12}}\right]\left[(1 + X)^{1/12}\right]^{25}\right\} +$$

$$\left[140{,}91\frac{1}{(1 + X)^{1/12}} + 140{,}91\frac{1}{(1 + X)^{2/12}} + \ldots + 140{,}91\frac{1}{(1 + X)^{48/12}}\right]$$

To solve the equation a recursive method can again be used with X = 7,484710, or an APR of 7,5 %.

2. MIXED AGREEMENT WITH ACCOMPANYING SAVINGS

2.1. **Mixed credit agreement with optional savings (advances to current account)**

See Annex II, example 20. Savings do not form part of the APR calculation.

2.2. **Credit agreement with mixed life assurance**

These are endowment-type mortgages such as those referred to in Article 20 of this directive, where saving forms part of the agreement.

Let the total amount of credit be EUR 6 000 to be repaid in four annuities at a borrowing rate of 9 % but structured as repayments *in fine*. Suppose that the manager of the fund has paid at the end of each of the three first years an amount of 1 200 and that this amount saved has attracted 4 %. The balance of this account, before the final repayment is due, will be EUR 3 895,76. It will then be necessary for him to add an additional EUR 2 104,24. His timetable will be for three annuities at EUR 1 740,00 and one at EUR 2 644,24 for a capital of EUR 6 000.

The formula:

$$6\,000 = 1\,740\,\frac{1-\frac{1}{(1+X)^3}}{X} + 2\,644{,}24\,\frac{1}{(1+X)^4}$$

or:

$$6\,000 = 1\,740\frac{1}{(1+X)^1} + 1\,740\frac{1}{(1+X)^2} + 1\,740\frac{1}{(1+X)^3} + 2\,644{,}24\frac{1}{(1+X)^4}$$

and X = 10,955466, or an APR of 10,96 %.

Proposal for a Directive of the European Parliament and of the Council concerning the alignment of measures with regard to security of supply for petroleum products

(2002/C 331 E/40)

(Text with EEA relevance)

COM(2002) 488 final — 2002/0219(COD)

(Submitted by the Commission on 11 September 2002)

EXPLANATORY MEMORANDUM

1. Completion of the internal market in energy

1.1. *Internal market in petroleum products*

The market in petroleum products in the Community is more competitive than the market in other energy products. Nonetheless, a major effort still needs to be made to achieve a market in petroleum products which is genuinely open and integrated at EU level. The European Community therefore has to take the measures needed for this sector to participate effectively, together with other energy sources and more especially natural gas, in a genuine internal market in energy.

In its Communication of 4 October 2000 on oil supply and the Green Paper Towards a European strategy for the security of energy supply adopted in November 2000 ([1]), the Commission noted that the consumer prices of petroleum products before duties and taxes vary considerably from one Member State to another. It suggested the lack of competition in the downstream oil sector ([2]) in some Member States was one of the main factors which could explain such price differences. The Commission therefore indicated that it was essential to encourage a more open and competitive downstream oil structure. It noted that for this purpose it was necessary to ensure the development of a genuine internal market for refined products (in the wholesale market) to make for ready, competitive supplies to all distributors, including from refineries in other Member States.

Greater opening up of the distribution sector for petroleum products, in particular to include new operators, and the existence of a genuine internal market in refined products should help to guarantee the conditions for healthy competition. This would enable the various kinds of consumers to be supplied on the most economic terms, even if the market remained exposed to risks due to the EU's high level of external dependence.

The European Union is making steady progress towards the completion of the internal market for gas and electricity and is in the process of creating the largest integrated and most open regional market in the world. The construction of the internal market in energy cannot however be conceived without integration between all energy sources. In particular, oil and gas are two products which are part of the same market: these products can be substituted for each other and compete with each other for some uses. Gas prices are also largely indexed to oil prices. These two energy sources are closely interlinked, in particular through non-essential gas supply contracts.

1.2. *The EU's external energy dependence and its consequences*

As stated in the Green Paper on security of energy supply, dependence on external supplies of oil, currently 75 %, is likely to exceed 85 % by 2020. The risks related to EU energy supply are increased by the fact that oil production is geographically concentrated in the Persian Gulf region, and that this concentration is likely to increase significantly over the next few decades ([3]).

([1]) COM(2000) 769.

([2]) The refining and distribution of petroleum products.

([3]) Currently 30 %, the share of world oil production from countries in the Persian Gulf region could rise to 40 % by 2020. 65 % of proven world reserves are situated in this region and 30 % of the oil currently consumed in the Community comes from there (while the USA is only 14 % dependent on the Gulf states).

The oil market is also highly inflexible in the short term, as regards both supply ([1]) and demand ([2]). This structural character of the oil market explains the high volatility of oil prices. The slightest imbalance between supply and demand, or the expectation of such an imbalance, has a very profound impact on prices. This could be seen during the last oil crisis in 1999-2000, when marginal restrictions on supply caused crude oil prices to triple.

Any event which leads to a breakdown in supply, or which simply creates a risk of such a breakdown, is therefore likely to cause serious disruption to the European economy and to society. Even if the importance of oil to the economy has shrunk since the 1970s ([3]), any increase in oil prices always has a marked effect on the EU economy. A rise of USD 10 dollars in the price per barrel increases the EU's oil bill for external supplies by about EUR 40 billion a year. Rises in oil prices affect consumers' purchasing power and add to business costs.

It can be estimated that an increase of USD 10 in the price per barrel leads to a loss of half a percentage point in terms of economic growth. However, this impact cannot be considered to be linear: sudden, unexpected and large-scale price changes are likely to damage the economy far more than this estimation would suggest. This impact also depends on the oil intensity of the economy, which varies from one Member State to another.

More generally, the predominant position of energy products, especially oil, in society means that energy dependence is a question of social equilibrium. The first two oil crises led to a sharp rise in unemployment. Upsetting the balance is therefore likely to produce a social backlash and a reaction from the business world.

1.3. *Insufficient harmonisation of the mechanisms to guarantee security of supply*

Current national laws with regard to the security of oil supplies are insufficiently harmonised and coordinated at EU level and can lead — and indeed have led — to distortions in the internal market in petroleum products.

Measures were introduced a long time ago by the Member States to mitigate the effects of any oil supply difficulties. They are to some extent backed up by Community legislation, which supports the building up of 'security stocks' by the Member States which can be put on the market in the event of a supply crisis. Directive 68/414/EEC ([4]), as amended by Directive 98/93/EC ([5]), requires Member States to keep stocks corresponding to a minimum of 90 days' consumption for three categories of petroleum products ([6]). Moreover, Directive 73/238/EEC ([7]) requires the Member States to take all measures to provide the competent authorities with the powers to adopt crisis measures in the event of supply difficulties, i.e. to draw on security stocks and to restrict consumption.

([1]) The only significant amount of flexibility as regards supply is due to unused production capacity, most of which is situated in the Persian Gulf region.

([2]) Changes in the structure of demand (the continuing growth in the proportion accounted for by transport in oil consumption, the reduction in the proportion of oil used by industry, and the virtual disappearance of oil as a means of generating electricity) and the simultaneous reductions in the scope for substituting another fuel for oil in the short term make oil demand which is already very inelastic even more so.

([3]) The oil intensity in the EU economy, i.e. the ratio between the volume of oil consumption and Gross Domestic Product, has been halved since 1973.

([4]) OJ L 308, 23.12.1968, p. 14.

([5]) OJ L 358, 31.12.1998, p. 100.

([6]) A similar obligation but one calculated on the basis of States' imports exists in the framework of the Treaty establishing the International Energy Agency (minimum stocks of 90 days' imports).

([7]) OJ L 228, 16.8.1973, p. 1.

It nevertheless has to be acknowledged that these directives are no longer suitable for the present internal market in energy. They were put in place at a time when the internal market in energy was in its infancy. The Community provisions in force do not guarantee sufficient harmonisation and coordination of the national measures which they back up, harmonisation and coordination nevertheless being necessary for the internal market to function properly: it is essential that the internal market should be based on sufficiently harmonised and coordinated rules regarding security of supply.

Two specific types of problem arise:

— those posed by the lack of harmonisation in the organisation of security stocks (see Section 2),

— those posed by the lack of harmonisation of the national laws on crisis measures and the lack of coordinated action between the Member States in event of a crisis (see Section 3).

2. **Stockholding systems**

2.1. ***Fragmentation of the EU security stocks system***

The Member States currently have maximum freedom as regards the organisation of their security stock system. As a result, the EU security stocks system is divided into fifteen different national systems which differ considerably:

— Some Member States have set up ad hoc bodies responsible for holding all or part of the security stocks; other have not. In Member States which do not have such a body, the stockholding arrangements are entrusted entirely to industry in the framework of State-imposed obligations: industrial operators in that case keep the security stocks together with their own operational stocks ([1]).

— The rules regarding the possibility for operators to fulfil their stockholding obligations by holding stocks in another Member State differ, with some Member States prohibiting this completely.

Against this background, the national provisions for the organisation of security stocks may in some cases have the effect of partitioning the markets in refined products at the national level and disadvantaging operators who are not national refiners ([2]). It must be borne in mind that the independent distributors or importers of refined products need only limited operational stocks, whereas the refining companies would, in any event, hold significant stocks for operational purposes, even where there is no requirement to hold security stocks.

The fact that the national provisions on the organisation of security stocks may in some cases lead to national partitioning of the markets in refined products was demonstrated in the judgement of the Court of Justice of 25 October 2001 (Case C-398/98), which condemned the Greek security stocks system. According to the Court, the way in which the stockholding obligations were organised in Greece limited the ability of Greek distributors of petroleum products to obtain supplies from refineries situated in another Member State, which the Court found to be contrary to the principle of the free movement of goods.

This proposal for a Directive is not aimed at total harmonisation of the organisation of security stocks systems, but rather at aligning them by defining certain minimum requirements which must be complied with in view of the objectives of opening up the distribution sector for petroleum products and creating a genuine internal market in petroleum products.

([1]) In a system based partially or fully on stocks held by industry, there is always confusion between operational stocks and security stocks: it is not possible to determine what level of stocks a particular operator would hold if there were no stockholding obligation.

([2]) 'National refiner' means an operator with a refinery in the State concerned.

To this end, the proposal for a Directive contains two reforms:

— an obligation on the Member States to set up a national stockholding agency,

— reform of the provisions governing the holding of security stocks in another Member State.

2.2. *Creation by all Member States of a national stockholding agency*

For non-refiners, the stockholding obligation is a particularly burdensome constraint and, in some cases, a barrier to entry. In many cases, the only economic solution at their disposal is to join forces with national refiners through the system of stocks 'held at disposal' (the system whereby refiners accept responsibility for the stockholding obligations of other operators). The creation of a central body for strategic stockholding purposes, associated with the right for non-refiners to fulfil their stockholding obligation via this body by making a fair payment, would therefore provide a way of improving the competitive functioning of the markets in refined products by making non-refiners less dependent on arrangements with national refiners.

It should also be noted that the European security stocks are also severely lacking in visibility, this being particularly striking compared with the USA's Strategic Petroleum Reserve ([1]). It can even be said that the EU's security stocks are lacking in credibility in as much as stocks which are held in addition to operational stocks for specific security of supply purposes are very hard to identify and therefore cannot be measured. Moreover, some of the Member States have large-scale oil industry activities directed towards meeting non-national demand which could lead to the presence of particularly high operational stocks compared with domestic consumption. In this situation, the obligation to keep a volume of oil and petroleum products corresponding to 90 days' national consumption is not so relevant.

Consequently, the proposal for a Directive provides that, in each of the Member States, the ad hoc stockholding body will be responsible for covering at least one third of the security stock obligation. These bodies should themselves own the stocks and should not use systems which would allow them to resort to the industry's operational stocks. Their effective availability would then not be in any doubt and they would benefit from optimum credibility and visibility.

2.3. *Holding of stocks in another Member State*

Current EU legislation recognises the right of Member States to prevent security stocks from being held in other Member States. Under current EU legislation, it is also necessary for there to be intergovernmental agreements for stocks to be able to be built up in the territory of a Member State on behalf of businesses, organisations or agencies established in another Member State. In view of this, the absence of an intergovernmental agreement may constitute a *de facto* prohibition for an operator to hold stock outside the national territory. Given that there is normally a large concentration of stocks at the refinery in any petroleum products supply chain, these restrictions may disadvantage a cross-border downstream supply chain as compared with a purely national chain.

In order to guarantee the proper functioning of the internal market, the new provisions must expressly provide that the Member States must take care to ensure that the measures they put into place with regard to security of stocks do not have the effect of disadvantaging supply from refineries situated in the other Member States as compared with supply from refineries in their own territory. In practical terms, the proposal for a Directive provides that the Member States must authorise operators to fulfil their stockholding obligations using stocks held in the Member States which are their sources of supply of refined products.

([1]) The USA does not impose any stockholding obligation on its industry, but has separately set up state-owned stocks known as the 'Strategic Petroleum Reserve' (SPR). This currently consists of 545 million barrels which are kept in underground repositories (salt caverns) and which may be sold by decision of the US President. The volume of stocks held by the SPR is to be increased to 700 million barrels by 2004.

Furthermore, the conclusion of intergovernmental agreements as a prerequisite to stockholding for the purposes of security of supply in another Member State is no longer acceptable in the new internal market in energy. This mechanism must be replaced by a system of surveillance in order to ensure the identification, registration and monitoring of the stocks held in the territory of a Member State on behalf of companies, organisations or agencies established in another Member State.

3. **Harmonisation and coordination of crisis measure arrangements**

Current EU legislation does not guarantee unified, consolidated and coherent action between the Member States of the European Union in the event of a crisis in the oil markets. Such unity and coherence of action is however necessary to make sure that the internal market continues to operate properly in this type of situation.

Specifically, two types of problem arise:

— the existence in some Member States of legal obstacles to releasing stocks because their laws lay down excessively strict preconditions for triggering such action (point 3.1),

— the lack of an EU decision-making mechanism for deciding on unified, coherent and coordinated action at EU level (point 3.2).

3.1. ***Criteria for the use of security stocks***

Initially, security stocks were intended to enable Member States to cope for a certain period during an oil shortage due to disruptions to supply from producer countries. They were therefore a means of last resort. The use of security stocks was also supposed to be in addition to proactive, relatively drastic reductions in consumption (e.g. 'car-free Sundays').

In some Member States, the national legislation on security stocks lays down very strict conditions which must be met for the use of security stocks and which still reflect the original thinking about the use of stocks (as a means of last resort to deal with a physical shortage).

However, in view of the changes which have taken place in the oil markets [1], it may be relevant to release security stocks in other circumstances. The perception by operators that there is a risk of a future possible physical disruption of supply, without it actually needing to happen, may lead to sudden price rises on the spot markets which are extremely harmful to the economy. This type of incident was seen during the Gulf War, during which, although there was no production shortage as compared with consumption [2], prices shot up on the spot markets in view of the threat to production in Saudi Arabia. The release of oil stocks in this kind of situation would help to offset panic buying, re-establish smoother operation of the market and hence limit price volatility and its disastrous effects on the economy.

The unity and coherence of EU action in such circumstances are absolutely essential to keep the internal market functioning properly. It is therefore necessary to ensure that, in a situation in which there is no physical shortage but sharp price rises are being generated by the expectation of a risk of a physical disruption, all the Member States are able gradually to release their security stocks. This is not the case at the moment since some national arrangements are designed to operate only if there is a physical shortage and therefore lay down restrictive conditions for the release of stocks. EU legislation must therefore ensure that national arrangements are designed in such a way that stocks can be released if there is a general perception of a risk of a physical disruption which is causing a large degree of volatility. This is an essential precondition to allow for the unity and coherence of EU action and thus to keep the internal market operating smoothly.

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[1] In particular, the central role of the spot markets in price formation: on these markets, the price of oil varies from hour to hour depending on operators' perceptions and expectations.

[2] The loss of volumes from Iraq and Kuwait was made up for by using production capacity not used before, mainly in Saudi Arabia.

Oil stocks will be released in two different ways if there is a perception of a risk of disruption depending on whether they are held by ad hoc stockholding bodies or by downstream oil operators in the framework of stockholding obligations.

— Releasing stocks held by an ad hoc stockholding body would mean making them available to downstream oil operators, at the market price and at a specific rate (x million barrels per day);

— Releasing stocks held by downstream oil operators as part of stockholding obligations would involve gradually reducing stockholding obligations.

The effect of releasing stocks will be similar in both cases. Downstream oil operators will be able to meet their need for 'discretionary stocks', i.e. stocks which are freely available to them (the need for such discretionary stocks would be generated by the perception that there is a risk of physical disruption to supply). They will be able either to buy stocks held by the agency or keep their own security stocks which until then were 'frozen' under the stockholding obligation but will then have been 'released'. The tendency for operators to buy oil on the spot markets at any price will be curbed, and speculation about the risk of disruption to supply will be dampen. The release of stocks in anticipation of the possibility of physical disruption makes sense given that the oil market operates on the basis of expectations.

Releasing stocks obviously only makes sense if it does not alter the production policy of the producer countries in a way which would detract from the benefit of using the stocks. This is why security of stocks can never be regarded as a way of standing up to the producer countries. On the contrary, stocks should be used in a coordinated manner with the producer countries. The European Community must therefore develop, institutionalise and give substance to the energy dialogue between producer and consumer countries.

This concept for the use of stocks takes account of the changes which have taken place in the oil markets during the last 30 years. To this end, the proposal for a Directive provides that the Member States must have powers to use security stocks in two types of situation:

— a physical disruption of oil supply: this is the intervention criterion behind the original idea for the use of security stocks;

— a general perception of a risk of physical disruption. This concerns situations where operators' perception of the risk of a potential future disruption is causing unacceptable price volatility on the spot markets.

Aligning the national provisions on the basis of these principles will, in the event of a crisis, help to ensure the solidarity and unity of action needed for the proper functioning of the internal market by making sure that some Member States are not prevented from releasing stocks because of a legislative and administrative system which does not allow for it.

In this situation, with stocks being required to play a fundamental part in guaranteeing a regular oil supply at reasonable prices, the present minimum level of security stocks corresponding to 90 days' internal consumption should be gradually increased to 120 days' internal consumption. The average level of Community stocks is currently about 114 days' internal consumption. It varies from country to country between the Community minimum of 90 days' consumption and 214 days' consumption.

In this respect, account will have to be taken of the situation in the candidate countries for EU membership. Under the accession negotiations, transitional periods have already been agreed with most of these countries until 31 December 2009, to enable them to gradually build up security stocks equivalent to 90 days' consumption. The Commission expects the new Member States to adhere to the principle of building up security stocks of a volume equivalent to 120 days' consumption. It nevertheless recognises that, in duly justified cases, it will be necessary to allow the gradual introduction of new provisions aimed at boosting oil stocks beyond the transitional periods already agreed upon.

3.2. ***A Community intervention mechanism***

No mechanism exists at the moment to enable the European Community to decide how to use the security stocks held by the Member States and to coordinate their use. Current Community legislation, which provides only for a simple procedure of mutual consultation between experts from the Member States, under the direction of the Commission, therefore does not guarantee the unity of action and solidarity between the Member States necessary for the proper functioning of the internal market in oil. Measures taken individually by each of the Member States are likely to upset the internal market.

3.2.1. *Inadequacy of the International Energy Agency framework*

Since the oil market operates worldwide, the European Union will always have to ensure that it works together with the other major consumer countries. The International Energy Agency (IEA), to which all Member States of the European Union and the other major consumer countries (in particular the USA, Japan, and Korea) belong, could serve as a framework for this necessary coordination. However, the existence of the IEA does not in any way obviate the need for an EU decision-making process: the specific character of the European Union and the development of the internal market make it essential to put an EU decision-making process into place.

The existing framework of the IEA also has a number of major weaknesses. Since the early 1980s, the IEA has taken the view that the crisis mechanism provided for in its 1974 founding Treaty was not properly suited to take account of changes in the oil market. The IEA Governing Board introduced another crisis mechanism, CERM (Coordinated Emergency Response Measures), to enable security stocks to be used more easily. However, unanimity of the Governing Board, made up of representatives of the 26 participating States, is needed for a CERM to be triggered, so the lack of any clear criterion for this mechanism to be deployed and the different approaches of the participating States to intervention mean there are obvious risks of blockages occurring. Furthermore, even if a CERM is triggered, the broad discretion left to the States as to how they can make a contribution to the measure means there is a flagrant lack of unity of action.

In view of the political nature of any oil crisis, it is important to point out that the IEA is a technical organisation and has only limited authority. The adoption of an EU decision is clearly an act whose political and legal implications go far beyond those of an IEA decision.

Nevertheless, in the event of a crisis or threat of a crisis likely to influence economic growth, priority should be given to common action involving the greatest possible number of consumer countries, including in the framework of the IEA. This will help to maximise the positive effects of Community action.

While Community action needs to be coordinated with that of the other major consumer countries, a Community decision-making process is therefore necessary to guarantee unified, coordinated and coherent action throughout the whole of the European Union so that it acts in a unified and credible manner. Both the use of security stocks and measures to reduce consumption require a Community decision-making mechanism to coordinate them. These measures cannot, in an internal market, be taken by each Member State acting independently of each other.

3.2.2. *The Community mechanism proposed*

The proposal for a Directive sets up a genuine decision-making mechanism under which the European Union will be able to define the action, in particular as regard the use of stocks, which it plans to take in the event of a crisis. Specifically, if the need urgently arises due to changes in the oil market, the European Commission will therefore have powers to take the emergency measures required, taking account of the general aims of the mechanisms for the use of security stocks. It will be assisted by a Committee made up of representatives of the Member States and chaired by a Commission representative.

The mechanism will be of the 'regulatory procedure' type, as laid down in Article 5 of Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. The Commission representative will submit to the Committee a draft of the measures to be taken. The Committee will express its opinion on the draft within a period laid down by the Chairman according to the urgency of the particular situation. If the measures proposed do not reflect the Committee's opinion, or if the Committee has not expressed an opinion, the Commission will immediately submit a proposal on the measures to be taken to the Council.

This mechanism for coordinated action will contribute to the smooth operation of the internal market in oil and will also help to make the crisis measures more effective.

3.2.3. *Potential activation threshold for the mechanism*

The Commission will be able to adopt the appropriate measures in the event of a general perception that supply is likely to be disrupted or if there is an actual disruption to supply.

The proposal for a Directive provides for a potential activation threshold in the event of physical disruption. Measures may be taken to draw on stocks or restrict consumption.

In the event of a general perception of a risk of disruption of supply, notably as a result of an external shock, in view of the aim of protecting economic growth, employment and the most vulnerable social and professional groups from high levels of fluctuation in oil prices, the 'price' factor will be essential for defining an alert threshold which, if exceeded, will entail Community action.

This alert threshold is attained when the price of crude oil reached on the spot markets is such that, if the price stayed at that level for a period of twelve months, the European Union's external oil bill during the next twelve months would rise by the equivalent of more than half a percentage point of EU GDP for the preceding year. The reference point for calculating the scale of the increase is the average external oil bill over the last five years. By way of example, in the present situation (2002), the price of a barrel of Brent would have to exceed USD 30 ([1]) for the threshold to be attained.

Exceeding this alert threshold is therefore a prerequisite for releasing stocks, but it is not sufficient in itself for taking that decision, in the event of a general perception of a risk of disruption of supply exceeding the threshold initiates a phase in which the Commission examines all the factors contributing to the crisis. Any decision about the advisability of, or need for, action will have to be taken in the light of all these factors.

4. **Technical expertise for implementation of the measures**

The creation of the internal energy market is a gradual and very complex process as it involves very technical rules. It is therefore important to ensure that the new legislative framework is applied effectively, efficiently and uniformly by all market players under conditions which will guarantee competitiveness.

The various phases of the development of the internal market for gas and electricity were therefore accompanied by measures which enabled national regulatory authorities, Member States, market operators and the Commission to be called together in the context of technical working groups. These working meetings consider what are the most appropriate measures to take to open up the gas and electricity markets and regularly submit very technical recommendations to the Commission.

Similarly, the new EU arrangements to be put in place to harmonise the measures to safeguard oil supplies, in the context of the internal market in energy, will involve complex, technical tasks. These will in particular concern monitoring the development of international markets and assessing their impact on the safety and security of supplies. There will have to be continuous assessment of the effectiveness of the measures taken. In this context, it will be necessary to monitor the level of oil stocks held by the Member States. For these tasks to be carried out, objective, reliable and comparable data will have to be available.

Should an energy crisis occur and the European Commission takes and coordinates measures to release oil stocks, the effects of this action on the energy market and the economy as a whole will have to be considered.

([1]) Corresponding to an OPEC basket price of between USD 28 and USD 29 a barrel.

It is therefore essential to create, within the Commission, a European observation system for oil and gas supply which will gather the necessary expertise in order to respond to the highly technical issues involved in these tasks. Under the Commission's direction, it will provide technical and scientific assistance and a high level of expertise to assist in the proper application of EU legislation in the field of oil and gas supply.

This European observation system will be managed by the Commission, which should invite representatives of the Member States to the meetings as well as representatives of the sectors concerned.

5. **Conclusion**

The aim of this proposal for a Directive is to encourage greater harmonisation and coordination of national measures regarding security of oil supplies, thereby helping to ensure that the internal market functions properly. It aims to provide the European Union with the means to act in a unified, credible manner when oil supply difficulties are disrupting, or threaten to disrupt, the functioning of the economy and society.

These measures will, in the event of a crisis, provide the solidarity and the joint Community action necessary in order to respond effectively to uncertainties in the energy market and to promote in this context the proper functioning of the internal market. They are necessary to ensure the opening up of the market in petroleum products to non-refiners, to avoid cross-border downstream supply chains from being disadvantaged as compared with purely national chains, and thus to create a genuine internal market in refined products. Article 95 of the Treaty therefore represents the appropriate legal basis for the proposal for a Directive.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

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

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 completion of the internal energy market must be accompanied by the necessary coordination of measures to guarantee the security of the Community's external oil supplies. The internal market is based on the need for solidarity between the Member States, which can be seen more particularly in the essential energy supply sectors of oil and gas.

(2) Crude oil and petroleum products occupy a central position in the Community's supply of energy products and play an essential part in the functioning of the economy and society, in particular in view of their role in the field of transport. Oil prices are also used as a reference for the establishment of natural gas prices.

(3) Current national laws with regard to the security of oil supplies are insufficiently harmonised and coordinated at Community level can lead — and indeed have led — to distortions in the internal market in petroleum products. Greater harmonisation and coordination of the national measures relating to the security of oil supplies are therefore necessary to ensure the proper functioning of the internal market.

(4) In order to ensure supply on the most economic terms for consumers, it is necessary to promote a more open and competitive structure in the petroleum product markets. This involves developing a genuine internal market in petroleum products which enables all distributors to be supplied on a straightforward and competitive basis, including those which are not national refiners.

(5) The security stocks systems differ considerably from one Member State to another. The national provisions may have the effect of partitioning the petroleum products markets nationally and disadvantaging operators which are not national refiners. It is therefore necessary to take measures to align, at least partially, the stocks systems and to ensure that the organisation of these stocks does not adversely affect the proper functioning of the internal market.

(6) For non-refiners, a stockholding obligation is a particularly burdensome constraint and, in some cases, a barrier to entry. It is therefore necessary, to ensure the opening up of the markets in petroleum products, to guarantee these operators the possibility of complying with their obligations otherwise than by themselves holding the security stocks or concluding agreements with the national refiners.

(7) To this end also, it is appropriate to harmonise the national provisions relating to the management of stocks by setting up a public body, as exists in certain Member States, responsible for managing at least one-third of the stockholding obligations in accordance with the principles relating to the opening-up of the national market.

(8) Since restricting provisions concerning the holding of security stocks outside of the national territory may disadvantage a cross-border petroleum products supply chain as compared with a purely national chain, it is necessary, to ensure the proper functioning of the internal market, to allow and provide a basis for stocks to be built up outside of the national territory.

(9) As stated in the Green Paper Towards a European strategy for security of energy supply ([1]), the Community's external oil dependence and the geographical concentration of production capacities are substantial and are likely to increase. This situation creates major risks for the security of oil supplies.

(10) Any difficulty which substantially reduces supplies of petroleum products or substantially increases their price is likely to cause serious damage to the Community economy. It is therefore essential to be able to make good, or at least mitigate, the damage caused by any such difficulties. To this end, it is necessary to build up security stocks which can be used in a coordinated manner in such circumstances at Community level.

(11) Apart from the release onto the market of security stocks built up to deal with a crisis situation, the measures intended to mitigate the effects of difficulties related to the supply of crude oil and petroleum products also include measures to curb consumption. It is essential to provide for appropriate procedures and instruments to ensure the rapid, coordinated and unified implementation of these two types of measures.

(12) To this end, all the Member States must have the necessary powers to take the relevant measures, where appropriate and without delay, including in situations in which there is not an actual physical shortage, but sharp price rises have come about as a result of the expectation of the risk of a physical disruption.

(13) In the event of difficulties relating to oil supply, it is necessary, in order to ensure the proper functioning of the internal market, to make sure that there is solidarity and uniformity of action in the Community, taking account of the need to coordinate such action with that of other major consumer countries.

(14) A European observation system for oil and gas supplies should be set up within the Commission in order to assist in designing and properly applying Community legislation regarding oil supplies, monitoring the application of this legislation and helping to evaluate the effectiveness of the measures in force, as well as monitoring more closely the changes with regard to the security of oil supplies in the framework of the internal market.

(15) The measures required for the implementation of this Directive need to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission ([2]).

(16) In accordance with the principles of subsidiarity and proportionality, as referred to in Article 5 of the Treaty, the aims of the proposed action, namely the creation of a fully operational internal market in petroleum products based on free competition and security of supply for petroleum products, cannot be achieved by the Member States acting independently of each other and therefore can best be achieved at the Community level. This Directive does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The aim of this Directive is to ensure the proper functioning of the internal market in petroleum products. For this purpose, it provides for the alignment of the provisions of the Member States with regard to oil stocks and crisis measures and coordinated action between the Member States in the event of a supply crisis.

Article 2

1. Member States shall take all necessary measures to maintain at all times, subject to the provisions of Article 6, a level of stocks of petroleum products equivalent, for each of the categories of petroleum products, to at least 90 days' average daily internal consumption in the preceding calendar year.

([1]) COM(2000) 769.

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

2. The level of minimum stocks referred to in paragraph 1 shall be increased to 120 days as soon as possible following the publication of this Directive and no later than 1 January 2007.

3. Member States shall ensure the availability and accessibility of the stocks held in accordance with paragraphs 1 and 2, in order to be able to take, without delay, appropriate measures for their use in accordance with Article 6.

4. Member States shall send the Commission, no later than one year following the entry into force of this Directive and then every six months until the level of stocks defined in paragraph 2 has been achieved, a detailed report on the measures taken or to be taken to achieve this level of stocks.

5. The stocks referred to in paragraphs 1 and 2 shall be built up and maintained by Member States within their territory or in the territory of another Member State

Article 3

1. The Member States shall set up a public oil stockholding body. They shall take all necessary measures to ensure that, as soon as possible following the entry into force of this Directive and no later than 1 January 2007, the stockholding body owns, for each of the categories of product, stocks representing at least one third of the obligations set out in Article 2(1) and (2).

2. Where a Member State imposes stockholding obligations on operators in the market, the public stockholding body shall assume the stockholding obligations of non-refiners which so wish, subject to a payment with shall not exceed the costs of the services rendered.

3. Two or more Member States may decide to use the same stockholding body or agency. In such a case, they are jointly responsible for complying with the requirements of this Directive.

Article 4

1. Member States shall ensure that fair and non-discriminatory conditions apply in their stockholding arrangements.

2. Member States shall ensure that their arrangements do not disadvantage supplies from refineries located in other Member States as compared with supplies from refineries located in their own territory. They shall in particular authorise any undertaking which has a stockholding obligation and which obtains its supplies of refined products from one or more other Member States to fulfil this obligation through stocks held in the Member States concerned.

Article 5

1. In the event of stocks being built up, for the purposes of the application of this Directive, in the territory of a Member State on behalf of undertakings, organisations or agencies established in another Member State, the Member State in the territory of which such stocks are stored may not in any circumstances object to their being transferred to the other Member States on behalf of which the stocks are held.

2. Member States shall put in place a system of verification to ensure the identification, registration and monitoring of the stocks held in their territory on behalf of undertakings, organisations or agencies established in another Member State.

Article 6

1. Member States shall provide their competent authorities with powers to enable them to use the stocks maintained under the obligation referred to in Article 2(1) and (2) in the event of difficulties relating to the functioning of the internal market in petroleum products due to supply problems, in accordance with Articles 7 and 8.

2. Apart from the cases referred to in Articles 7 and 8, Member States shall refrain from drawing on stocks where this would have the effect of reducing them to below the minimum compulsory level, except in cases of local supply difficulties, after having informed the Commission, or to comply with their international obligations.

Article 7

1. In the event of a disruption of oil supply which may seriously disrupt the functioning of the economy and the internal market in petroleum products, the Commission may, by taking a decision in accordance with the procedure provided for in Article 9(2), require the Member States to:

(a) make the security stocks referred to in Article 2(1) and (2) gradually available,

(b) restrict consumption in a specific or overall manner.

The measures to be taken by the Member States must restrict competition as little as possible. The Commission shall ensure that this principle is complied with throughout the period of application of the measures.

2. The Commission may take measures of the type referred to in paragraph 1 when there is a 7 % disruption of the normal level of crude oil supply at world level.

3. The Commission decision may lay down specific arrangements and conditions for the implementation of the measures to be taken by the Member States.

Article 8

1. In the event of a general perception of a risk of disruption of oil supply, notably in the context of an external shock, giving rise to a high level of volatility in the oil markets which may seriously disrupt the functioning of the economy and the internal market in petroleum products, the Commission may, by taking a decision in accordance with the procedure provided for in Article 9(2), require the Member States to make the security stocks referred to in Article 2(1) and (2) gradually available taking into account international agreements concluded by the Member States and decisions taken in the context of such agreements.

The measures to be taken by the Member States must restrict competition as little as possible. The Commission shall ensure that this principle is complied with throughout the period of application of the measures.

2. The Commission may examine the need for measures of the type referred to in paragraph 1 when the price of crude oil on the spot markets is such that, were the price maintained at that level for 12 months, the Community's external oil bill during the next 12 months would be increased by the equivalent of more than 0,5 % of the European Union's gross domestic product as compared with the average external oil bill during the previous five years.

3. In the context of the examination provided for in paragraph 2, the Commission shall take account of all the elements necessary for an evaluation of the Member States' supply conditions. It shall take into consideration in particular the nature, duration and scale of the elements giving rise to the situation referred to in paragraph 1.

4. The Commission decision may lay down specific arrangements and conditions for the implementation of the measures to be taken by the Member States.

Article 9

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

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

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

3. The Committee shall adopt its internal rules of procedure.

Article 10

1. Member States shall adopt all the provisions and put in place all the mechanisms necessary to ensure the identification and supervision of stocks.

They shall determine a system of penalties applicable in case of infringements of the national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure the implementation of those provisions. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall have intervention plans which can be applied in the event of a disruption of oil supply or the general perception of a risk of disruption of oil supply which is giving rise to a high level of volatility in the oil markets. They shall designate the bodies responsible for implementing the measures to be taken pursuant to this Directive.

Article 11

1. The Commission shall take all the measures necessary for the application of this Directive. It shall in particular lay down:

(a) a definition of the categories of products referred to in Articles 2 and 3,

(b) the arrangements for calculating internal consumption and the stockholding obligations referred to in Article 2, including taking indigenous oil production in the Member States into account in these calculations,

(c) the arrangements for the transmission to the Commission of statistical summaries for surveillance of the Member States' implementation of the obligations under this Directive.

2. The Commission shall adopt the measures referred to in paragraph 1 in accordance with the procedure laid down in Article 9(2).

Article 12

1. Not later than 1 January 2004, the Commission shall adopt the necessary measures for setting up a European observation system for oil and gas supply to assist in preparing and ensuring the proper implementation of Community legislation in the field of oil supply, to monitor its application and to assist in evaluating the effectiveness of the measures in force and their effects on the functioning of the internal market in petroleum products. The Commission shall ensure that adequate resources are made available to permit effective monitoring of the arrangements provided for in this Directive.

2. The European observation system for oil and gas supply shall be managed by the Commission, which will invite representatives of the Member States and the sectors concerned to meetings. It shall provide the Commission with the technical assistance necessary for the formulation and evaluation of measures taken pursuant to this Directive, and shall contribute to a better understanding of the development of the internal market and the international oil markets and the factors driving these markets.

3. The European observation system for oil and gas supply shall carry out the following tasks with regard to oil:

(a) Monitor the functioning of the internal market and the international oil markets;

(b) Contribute to the setting up of a system for the physical monitoring of the infrastructures inside and outside of the Community which contribute to the security of oil supply;

(c) Monitor the security of oil supply and the procedures intended to guarantee security of oil supplies in crisis situations;

(d) Study the development of effective security measures in the oil sector;

(e) Monitor the level of security stocks of oil and petroleum products and the procedures for their use, and the implementation of measures to reduce consumption;

(f) Create objective, reliable and comparable databases to fulfil its tasks.

Article 13

Member States shall adopt the laws, regulations and administrative provisions necessary to conform with this Directive no later than 1 January 2004 and, as regards Article 2(2) and Article 3, no later than 1 January 2007. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 14

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

Article 15

This Directive is addressed to the Member Sates.

Proposal for a Directive of the European Parliament and the Council concerning measures to safeguard security of natural gas supply

(2002/C 331 E/41)

(Text with EEA relevance)

COM(2002) 488 final — 2002/0220(COD)

(Submitted by the Commission on 11 September 2002)

EXPLANATORY MEMORANDUM

1. **Background**

1.1. *Completion of the internal market for energy*

The European Union is making steady progress towards the completion of the internal market for gas and electricity. In fact, the EU is in the process of creating the largest, integrated and most open regional electricity and gas market in the world. As demonstrated by the Green Paper 'Towards a European strategy for security of energy supply' (COM(2000) 769), this market integration will contribute to security of supply, provided, however, that markets are truly integrated. The European Council at Barcelona on 15-16 March 2002 therefore stressed the importance of powerful and integrated energy networks as the backbone of the internal market and an important precondition for connecting the European economies.

However, market opening and sufficient physical interconnection of markets are not in itself a guarantee of a liquid market based on secure gas supplies from both indigenous and external sources. It is therefore important that the current profound changes in the market and the transition towards a fully open internal energy market are supplemented by transparent and unambiguous new policies defining the overall framework as well as clear roles and responsibilities of the different market players with regard to security of supply within the new market context.

In order to ensure the continued well-functioning of the internal market for gas, it is equally important to ensure that appropriate measures are implemented to deal with extraordinary supply situation.

1.2. *Increasing importance of gas and expected rising import dependence*

Natural gas is becoming an increasingly important source of energy in the EU's fuel mix. In 2000, natural gas accounted for approximately 24 % of total EU primary energy supply compared to 16 % in 1985 and less than 2 % in 1960. The steady growth trend continues, even in times of low economic growth. In 2001, Western European gas consumption increased by 2.5 % notably as a result of significant increase in the number of household customers and in gas consumption in power generation.

Natural gas has sustained its position as the fuel of choice in EU power generation. Since 1995, gas-fired power generation has every year represented 50-60 % of new investments in EU power generation. The most remarkable development over the last decade has been the increasing share of combined-cycle gas turbines (CCGTs) due to a combination of a change in the EC stance on gas-fired power generation at the start of the 1990s, technological progress, relatively competitive gas and environmental considerations.

EU demand for gas and electricity is expected to increase considerably over the coming twenty years. Both EU gas and electricity demand is expected to increase by more than 40 % before 2020 and a market share of gas in EU energy supply of up to around 30 % is realistic. The key driver in gas demand growth is power generation. Two-thirds of the increase in gas demand is forecast to come from gas-fired power generation and co-generation. The increasing dependence on gas in power generation raises a number of issues with regard to the increasing interdependence between the two sectors notably with regard to security of supply.

Europe, however, is in a relatively favourable gas supply situation with significant own gas reserves and 70-80 % of global gas reserves within economic reach of the European market. When implementing the EU Gas Directive later this year, Norway will become a fully integrated part of the internal gas market. Combined EU/EEA gas production is expected to increase over the coming decade based on proven and additional discovered gas reserve potential. By 2010, the internal EU/EEA gas market is expected to depend on imports for up to 25-30 %. An enlarged internal market including the 10 Central and Eastern European candidate countries is expected to depend on imports for 35-40 % by 2010.

Further EU/EEA gas reserves may well be mobilised before 2010, which could help further sustain EU/EEA gas production levels and hence delay a significant increase in EU/EEA gas import dependency. However, as a function of the expected rapid increase in gas demand combined with an expected gradual levelling off and decline in domestic EU/EEA gas production at some point in time, the EU/EEA is expected in the longer-term to become increasingly dependent on imported gas. Based on the current demand forecast by Eurogas and the Commission and production forecast by the International Association of Oil and Gas Producers (OGP) for EU and Norway, the level of import dependency of EU15/EEA could reach nearly 60 % by 2020. For EU25/EEA, the level could reach 65 % by 2020. According to recent analysis made by the OGP, these levels could, however, be lower if allowance is made for developing possible upside resource potential including 'undiscovered potential' and given the right economic conditions.

On the other hand, however, the import dependency of the EU as such (i.e. without Norway) would be significantly higher and possibly as high as three-quarters by 2020 for EU15.

Import dependency varies significantly between Member States. A number of EU Member States are already completely dependent on imports while others will see their dependence rise close to 100 %.

On this background, security of supply and Europe's continued ability to attract sufficient gas supply naturally becomes a priority. Security and continuity of supply is particularly crucial in the power-generating sector. Cost of failing security of supply can be very substantial to modern society as the California electricity supply crisis has borne evidence to. The cost to society of the rolling black-outs in California in January 2001 has been estimated at 42 billion USD or some 3.4 % of California's GDP.

Continuity of gas supply is also essential to other consumer categories notably small customers without switching capabilities to alternative fuel such as many large industrial customer have notably with the possibility to interrupt gas supply and switch to back-up oil supply.

The Green Paper 'Towards a European strategy for the security of energy supply' (COM(2000) 769) therefore suggested that in order to widen and renew policy of fuel stocks, the European Union 'could consider extending the [oil] stocks mechanism to natural gas . . . The Union needs to guard itself against excessive vulnerability, resulting from too great a degree of dependence'.

In its Communication on 'Security of EU Gas Supply' (COM(1999) 571 final), the Commission announced that it would report on a regular basis to the Council and the European Parliament on EU gas security issues and if and when appropriate, the Commission would 'make proposals to strengthen security of EU gas supply and further develop the common framework for security of gas supply'.

1.3. *The internal market for natural gas of the EU and security of supply*

The completion of the internal market for natural gas in the European Union and ensuring security of supply are compatible objectives. It is obvious that a well functioning single market for gas relies on a sufficient level of secure gas supplies from a diversified range of supply sources. For this reason, an integral part of the creation of the EU internal gas market are measures ensuring security of gas supplies in the new market environment.

Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas [1] has made very important contributions towards the creation of the internal market for gas. The directive already acknowledged the importance of security of supply for the internal market. Consequently, it allows Member States the possibility of imposing public service obligations on natural gas undertakings in relation to security of supply.

The creation and development of an internal market for natural gas inevitably renders Member States increasingly interdependent regarding security of supply issues. As a result, failure to adopt adequate measures in one Member State can have serious consequences regarding the operation of the internal market throughout the European Union. It is therefore essential, in order to ensure the proper functioning of the internal market, to provide for a minimum level of harmonisation regarding security of gas supply policies in each Member State, in order to avoid market distortions and ensure the well functioning of the internal market for gas on a level playing field.

Liquidity forms an indispensable ingredient of a proper functioning EU internal gas market. Measures aimed at enhancing liquidity, such as spot markets, incentives for new gas supplies from internal and external sources and non-discriminatory authorisation procedures for building storage and LNG facilities, should, among other things, be fully taken into account by security of supply policies in a competitive market environment.

2. **The European gas market in transition — clear security of supply rules are important as an integral part of the internal market.**

The European gas industry has managed security of supply in a steadily growing European gas market over the last four decades very successfully. However, the European gas market is undergoing rapid change these years and the role of traditional market actors is also changing.

Hitherto, the task of planning and developing the gas network to fulfil gas security targets (as often defined by the gas industry itself) was relatively straightforward as the dominant suppliers controlled all the infrastructure requirements, gas supply and demand side portfolio, information and other necessary instruments to conduct this planning. In addition, direct state involvement was less necessary as the national gas companies responsible for security of supply in many cases were partly or fully publicly owned. Until now, few Member States have therefore been directly involved in setting security of supply policies for natural gas.

In the new liberalised gas market, however, no single player will necessarily maintain the overall responsibility for short- and longer-term security of gas supply at national level as industry restructures, national markets integrate, new entrants emerge and competition develops. While security of gas supply forms an integral part of the internal market for gas, security of supply policies and procedures need to be reviewed and formalised in this new context, which represents different circumstances. In a competitive market, it is not evident that strategic priority will be given by gas suppliers to security of supply. The primary objective and role of gas companies is changing towards being competitive. Organising security of supply can therefore not be left to industry alone and Member States have an obligation to ensure that all market players take minimum measures with regard to security of supply. Moreover, security measures can be costly and it is perfectly feasible that certain operators could neglect these measures to reduce costs if no agreed minimum standards apply.

The adoption by Member States of measures requiring industry to meet minimum standards is therefore an important integral part of market opening. The creation of an internal market is not simply freeing customers to choice, but also ensuring that the market provides high levels of public service, foremost amongst which is security of supply. The existing Gas Directive (98/30/EC) therefore acknowledges the right of Member States to consider security of supply as a public service obligation. Security provisions are not a consequence of the creation of the internal market, but a central part of it. Without a common framework establishing harmonised minimum standards with respect to security of supply obligations, a real risk of market distortion exists.

[1] OJ L 204, 21.7.1998, p. 1.

Security of supply and competition are compatible objectives and gas security can be enhanced in the single EU gas market when properly planned for by companies in liaison with the responsible authorities. A sufficient and appropriate level of security of supply will contribute to a proper functioning of the internal market. The transition to the new market regime is obviously particularly important with regard to clearly defining the new rules and ensuring in operational terms a continued high level of security of gas supply.

Article 24 of Directive 98/30/EC concerning common rules for the internal market in natural gas allows Member States to take necessary safeguard measures in the event of a sudden crisis in the energy market. Such measures shall, however, cause the least possible disturbance to the functioning of the internal market and shall be least restrictive to competition. Measures taken shall be notified to other Member States and the Commission, which may decide that the Member State concerned must amend or abolish such measures if they distort competition or trade in a manner which is not in the common interest. It is necessary to complement these measures by establishing minimum levels of action by each Member State, which need to be compatible with the requirements of the internal market.

A clear need exists therefore to have such emergency measures defined and agreed in advance rather than Member States developing these if and when a sudden crisis arises.

The European gas industry including both GTE (the European association of transmission system operators) and Eurogas have stressed the need for the definition of clear roles and responsibilities of the individual market players with regard to security of supply [1]. In a rapidly changing market, it is extremely important that any uncertainty with regard to security of supply responsibilities is avoided. Lack of clarity with regard to security of supply will in itself increase the risk of a supply crisis.

The primary responsibility for an overall definition of such clear roles and responsibilities within the new legislative, regulatory and market framework of the internal market lies with Member States.

While the operational responsibility must remain with the gas industry, Member State governments as well as the Community have therefore an important coordinating and supporting role to play in this respect. The role of government will be to ensure that the market is working efficiently and giving true signals to guide the participants in interpreting and managing change while maintaining the appropriate level of security of supply. The role of the Community will be to monitor implementation of the new security of supply policies and ensure their compatibility with the requirements of a well functioning internal market.

The fifth meeting held in February 2002 of the European Gas Regulatory Forum, which brings together the Commission, national regulatory authorities, Member States and all relevant gas market stakeholders agreed on a set of recommendations on 'Guidelines for Good Practice' in relation to third party access services. The guidelines include some initial elements aimed at clarifying the roles and responsibilities of the main parties in gas transportation notably the transmission system operators (TSOs) and network users. In addition, the Forum agreed that [2]:

'Within the new regulatory and market environment of the internal market for gas characterised by a multitude of market players and unbundling of integrated gas companies, security of supply can no longer be assumed to be the responsibility of one single party.

A new chain of responsibilities with regard to security of supply and infrastructure planning between public authorities and the different market players including shippers and TSOs therefore needs to be enshrined in order to ensure certainty in this respect. Obligations must be allocated clearly to different players and appropriate to their role.

In this respect Member States will have a role in defining security of supply output standards within a public policy framework. Within this framework it may be left to the market and industry to develop the most efficient solutions to meet the agreed outputs.'

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[1] GTE i.a. in 'GTE Position Paper', 15 June 2001. Eurogas i.a. in 'Response of Eurogas to the DG TREN Strategy Paper', 19 March 2001.

[2] 'Conclusions of the 5th meeting of the European Gas Regulatory Forum, Madrid, 7-8 February 2002'.

However, security of gas supply is not merely a question of balancing demand and supply in a competitive market every day. It also has a long-term strategic aspect.

In view of the above and in view of the transition towards a fully operational and integrated single gas market, Member States should therefore, in function of their gas market features and structures, monitor and ensure that security of gas supply policies are adapted to the new market environment and properly translated into clear roles, operational responsibilities, security criteria and emergency procedures for all participants involved in the gas business within the new legislative framework. This is also important in order to avoid that different approaches to security of supply become a barrier to entry and cross-border trade and so impede the completion and well functioning of the internal gas market. It is equally important, however, to ensure that the new framework and procedures are implemented in a way which does not create significant difficulties for companies with small market shares or new market entrants.

3. **The importance of storage**

Gas production and long-distance transportation is capital-intensive. Due to much lower energy density for gas than, for example, for oil, the cost of gas transportation per unit of energy is much higher for gas than for oil and represents a very significant part of the total end-consumer price for gas. In practice therefore, most production from far away fields and long-distance gas transportation pipelines are operated at high utilisation rates with a relatively constant flow. As, however, demand for gas fluctuates considerably during the year, a significant difference exists between supply and demand profiles.

For optimum results, gas storage facilities (either in underground depleted fields, aquifers or salt cavities or in above-ground LNG peak shaving installations) are therefore used, preferably close to demand centres, to help balance the inevitable mismatch between supply and demand thereby reducing unit costs of gas supply. If there were no gas storage at all, both production and transportation capacity would have had to be designed to meet the peak day demand and therefore most of the time have significant over-capacity.

Underground gas storage therefore plays a key role in EU gas supply both under normal operational circumstances as well as in case of supply emergencies and there are economic and strategic reasons why gas storage should be located close to the market. Gas companies therefore seek, as far as geology and economy allows, to spread storage facilities as well as possible and to locate them as near to large demand centres as possible i.e. preferably not too far from large cities.

Underground storage therefore serves several functions including:

— strategic reserve for security of supply in case of disruption (particularly used in Member States with high dependence on non-EU gas imports);

— seasonal load balancing to match peak demand (gas is pumped into the storage during the spring and summer and typically withdrawn from October/November to February/March);

— achieving daily balance;

— arbitrage of gas prices i.e. commercial optimisation of variations in gas prices e.g. around periods of recalculation of gas prices (e.g. beginning of quarters) and more generally as a commercial tool in liberalised markets (notably in the UK). As gas prices in a competitive gas market is expected to increasingly reflect demand and supply for gas, new patterns of price variations and volatility may be expected. Under such circumstances, it should be expected that gas from storage would be released in case of high prices hence limiting volatility.

— overall system optimisation including facilitating swaps;

— transmission support such as mitigating localised capacity constraints or critical pressure thresholds.

While there may be short-term adjustments with regard to requirements for storage and the wish of market players to carry the costs of gas storage, it is generally expected that availability of storage facilities will become increasingly important over time due to growing EU gas demand and import dependency and thus the need for additional storage for security of supply reasons. Furthermore, additional need for storage will exist for load balancing and due to increasing import dependency and relative declining flexibility from domestic production.

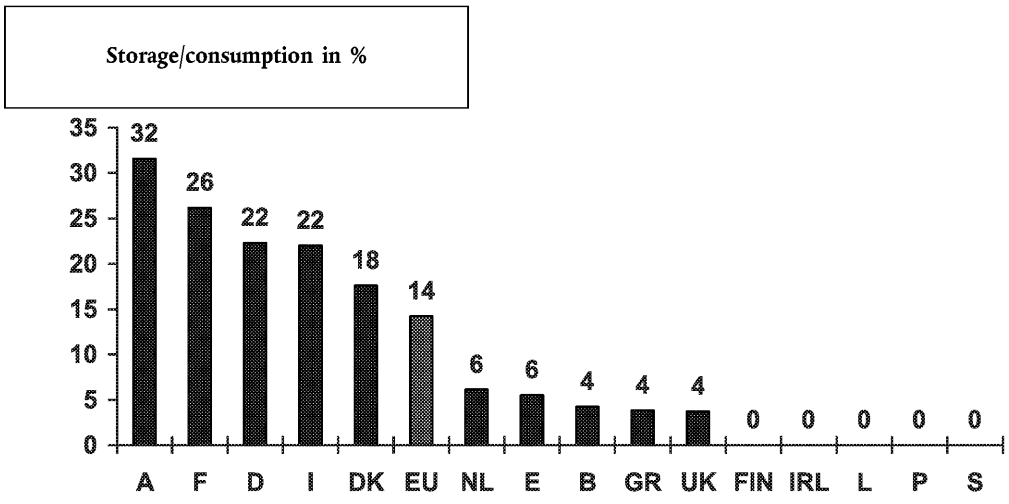
The availability of storage and equivalent alternative flexibility mechanisms as an integrated part of the overall gas supply system is crucial for an efficient operation of the gas system. Providing for non-discriminatory third party access to storage is therefore essential both for the functioning of the internal market and for security of supply reasons. In addition, based on experience from other regions of the world, it may be expected that the development of the internal market will offer new commercial opportunities to owners of storage facilities. It is therefore important that the European Union is prepared to meet the challenges, which this represents in terms of ensuring sufficient development and availability of storage.

The Community should therefore also give high priority to support the development of gas storage as appropriate under the TEN-Energy programme.

The development of a fully operational and liquid internal market for gas with spot markets gradually developing will contribute to security of supply. Security schemes and gas stock requirements at national level should be compatible with and not hamper but support the development of a competitive internal market for gas. In this respect, non-discriminatory access to storage is particularly important.

Mixed picture regarding storage requirements at Member State level

The graph below shows the storage volume in percentage of annual gas consumption.



The graph clearly illustrates the different relative importance of underground gas storage in the different Member States and the absence in some Member States of storage. On average, EU gas storage capacity is equivalent to approximately 50 days of gas consumption (or 14 % of total consumption). Austria holds storage equivalent to 115 days of average gas demand, France for 95 days, Germany and Italy for around 80 days and Denmark for around 65 days. The UK, Greece, Belgium, Spain and The Netherlands have storage equivalent to in the order of 10-20 days of average gas consumption while the remaining Member States have no storage capacity. In some Member States, the geological sites available for construction of new underground gas storage facilities are limited or non-existent. Some Member States therefore rely on storage or back-up services from other Member States. Normally it would not be optimal — but it can be necessary — to cover a storage need in a specific area through remote storage facilities. With a view to both strengthen the internal EU solidarity and co-operation with external suppliers, there may be certain projects of common interest with regard to storage development in Europe which merit further analysis.

4. **The importance of long-term contracts and liquid gas markets**

Long-term Take-or-Pay contracts have played a very important role for the build-up and development of the European gas market. In particular, in the past, investment in the gas supply industry has usually been underpinned by the conclusion of long-term contracts by European gas companies. Long-term contracts provide an important element of stability for external suppliers and enhance their ability to continue the development of large-scale capital-intensive gas supply projects. Long-term contracts may also facilitate the diversification in the medium term of EU's gas supply and help bring new sources of gas to the market hence enhance supply-side competition.

The Commission considers that the conditions established by the internal energy market will ensure that such contracts will continue to exist, and will continue to underpin security of supply in the internal gas market in an appropriate manner. Indeed, it is clear that EU gas undertakings, as part of their overall contract portfolio, will continue to meet gas needs through such contracts for supply in a competitive market.

Nonetheless, given the importance of long-term contracts for the security of supply of the EU gas market — such contracts are likely to remain necessary to underpin the financing of major new gas supply projects such as the Stockman field — it is appropriate to provide for a safety net, in the unlikely and unforeseeable event that insufficient long-term contracts develop. It is equally important, however, that the existence of long-term contracts does not frustrate competition either via the explicit inclusion of restrictive conditions, or by significantly foreclosing markets. Furthermore, it is important that long-term Take-or-Pay contracts evolve and adapt to the new gas market environment.

On the other hand, it is important to ensure that sufficient liquid gas supplies develop to enable the internal gas market to function properly and competitively, and also to provide the necessary conditions for gas companies to adopt a balanced contract portfolio.

This implies not only the development of gas spot markets throughout the EU — which can provide certainty that producers, suppliers or customers having sold or bought gas on a long-term basis can sell the gas, at the prevailing spot price, if they are unable to find direct outlet for the gas in the market — but equally concerns the adoption, where necessary, of gas release programmes by Member States.

Considerable progress on the development of liquid gas supplies has been made in recent years, notably in the UK and North-Western Europe where trading hubs are operating or emerging. In certain countries, gas release programmes have been implemented and have contributed to new market entry. Furthermore, action taken by the Commission under competition law in the gas sector, such as the GFU case, have further contributed to increased liquidity. The Commission is convinced that this process will, and indeed needs to, continue. Nonetheless, again a safety net needs to be provided in the event that such development do not take place.

5. **Existing security of supply policies at Member State level**

It is important to notice that the gas supply situation varies considerably between Member States as natural resource, geological and market circumstances differ. The supply situations of Member States vary significantly both in terms of availability of domestic gas production, the importance of gas in the overall energy balance, dependence on external gas supplies, availability of underground storage, the level of interconnection etc.

Member States and their gas industries therefore also deal with security of supply in different ways depending on their individual circumstances, market characteristics and technical options available and their relative costs.

Given these different situations, the European gas industry employs different combinations of supply-side and demand-side tools and procedures to respond to short-term security of supply difficulties. These include system and supply-side flexibility; storage and interruptible customers. The range of facilities available to gas companies allow them to ensure that gas demand and supply are matched at any given time i.e. seasonally and within-day, and that emergency situations can be dealt with.

In order to meet customer demand, the gas supply system necessarily needs to be designed to meet the combined, aggregated peak demand. Gas supply systems are often designed to meet the peak demand of the coldest day, which statistically occurs, for example, once every 20 year and the coldest winter, which statistically occurs once every 50 year.

A number of Member States and large gas companies have in some way specified conditions which need to be fulfilled in relation to security of supply or availability of storage for existing and new entrants into the market:

— In Italy, for example, new entrants importing non-EU gas into the Italian market are required to hold gas stocks equivalent to 10 % of the annual supply.

— In Spain, overall gas supply dependency upon any single external supply source must not exceed 60 % and there is an obligation on gas suppliers to keep gas reserves for at least 35 days of supply.

— In the UK, security of supply standards are defined to meet '1 in 20 years' peak day demand and '1 in 50 years' winter duration. Similar standards are applied in The Netherlands and France and other Member States.

— The French gas system has also been designed in order to be able to withstand (notably through strategic gas stocks) disruption of the largest source of supply for up to one year.

— In Denmark, the integrated gas company, has designed its back-up and storage capacity to be able to continue gas supplies to the non-interruptible market with no alternative fuel switching capacity in case of a disruption of one of the two offshore gas pipelines supplying gas to Denmark.

6. **Effective mechanisms essential for dealing with extraordinary supply situations**

While it appears that a number of Member States base their security of gas supply on a combination of extreme weather conditions and an 'n-1' availability of gas supply sources i.e. that one of the range of supply sources available is disrupted, there appears to be a lack of transparency in the security of supply policies applied at national level which in many cases appear not to be sufficiently well-defined and formalised and not reflecting the market changes taking place. Improving coordination at both national and EU level and improving transparency in this respect must therefore be a first priority.

Despite the diversity in the supply situations in Member States and due to the structure of the gas supply to the EU, the main supply risks of individual Member States is often a common risk shared with other countries. The risk of disruption in gas supplies to Europe from any of the principle suppliers, for example, would have serious implications in a number of Member States. In such a situation, only coordinated efforts to remedy a disruption will be sufficient. This gives a common EU dimension to measures aimed at preventing or managing a major gas supply crisis and it requires solidarity at EU level to minimise any negative impact.

In view of the increased market integration within the internal gas market and the European inter-dependence (the 'weakest link' in security terms could have an impact on security elsewhere in the internal gas market) and in order to ensure a balanced, transparent and coherent system of risk sharing, it is necessary to ensure that adequate and effective European mechanisms for safeguarding security of supply and coordination and intervention at EU level in case of extraordinary supply situations are adopted with a view to ensuring proper functioning of the internal market.

It is important that in pursuing this, proper account is taken of the diversity of supply situations in Member States and that the European gas industry maintains the operational responsibility for implementing the necessary measures.

With regard to gas, the proposed new Community framework pursues the same aims regarding security of supply as the proposal regarding oil stocks. Thus, it introduces strict and quantitative requirements with regard to security of supply standards, and defines the manner in which these standards must be met. In particular, it requires Member States to define and publish the manner in which they guarantee that non-interruptible customers, i.e. customers who cannot immediately switch to alternative back up fuels, are ensured continued supplies during sixty days in the event of a disruption of the largest supply source to the market in question. Similar provisions exist regarding extreme weather conditions and thus extra-ordinarily high demand, which require supplies to such customers to be guaranteed throughout the entire period of exceptional demand in question.

Given the considerable differences between the gas and oil markets, these measures are de facto equivalent to the obligation to maintain minimum oil stocks. However, the new framework does not envisage at this stage, as for oil stocks, the definition of minimum gas stock levels that Member States should hold in order to guarantee security of supply. This is because not all Member States have equal geological conditions for underground storage and indeed in some countries no suitable storage sites exist. Thus, each country needs to rely on a different mix of instruments to achieve the 60 day obligations and the high demand coverage requirements, based on storage (within or outside the country in question), production flexibility arrangements, linepack and other available measures.

Furthermore, whilst the different geological conditions and the significant advantages of having storage close to demand (and thus avoiding the additional costs of relying on distant storage) mean that a legally binding minimum storage requirement on a Member-State by Member-State basis would not at this stage be appropriate, storage will and must play an important role in Member States' security policies. The proposal therefore requires all Member States to publish indicative quantitative targets for the future contribution of storage in meeting their security of supply standards.

Finally, it is important to underline that, in view of the different degree of availability of storage in Member States and hence the importance of ensuring Community solidarity and co-operation across borders, non-discriminatory access to available underground storage capacity, as emphasised in the Commissions proposal of March 2001 for a Directive amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal markets in electricity and natural gas, is essential.

More generally, it is absolutely indispensable that the security of supply policies to be defined and implemented by Member States are compatible with and contribute to the completion of a fully operational internal market for gas. It is particularly important that the security of supply policies are implemented in a non-discriminatory manner and in no way hamper the entrance of new market participants.

7. **Technical expertise supporting the implementation of the measures**

The creation of the internal market for energy is gradual and very complex in particular in relation to the implementation of technical rules. It is therefore important to ensure that the new legislative framework is applied in an effective, efficient, non-discriminatory and homogeneous manner by all market participants under conditions, which will guarantee the competitiveness of the companies.

The various phases of the development of the internal market for gas and electricity should therefore be accompanied by measures which would allow notably to convene national regulatory authorities, Member States, market operators and the Commission in the context of technical working groups. These working group meetings should examine the most appropriate measures to be taken in order to implement the opening of the gas and electricity markets, and should regularly make technical recommendations to the Commission.

Similarly, the new Community framework, which will be created in order to enhance security of gas supply, within the context of the internal energy market, will require complex and technical tasks to be undertaken and accomplished. These will notably relate to monitoring the development of international markets and assessing their impact on safety and security of supply. The effectiveness of the measures in place will have to be continuously evaluated. In this respect, the measures aimed at guaranteeing security of gas supply including the level of gas stocks held by Member States will have to be monitored. In order to be able to carry out these tasks, objective, reliable and comparable data will be necessary.

In the event of an energy crisis, the European Commission may issue recommendations on appropriate measures to be taken by Member States or may, by decision, require Member States to take specified measures. The effects of these measures will need to be evaluated.

It therefore appears essential to create, within the Services of the Commission, a European Observation System for supply of hydrocarbons, which will gather the necessary expertise in order to respond to the highly technical issues involved in these tasks. It will provide, under the aegis of the Commission, the technical and scientific assistance and a high level of expertise to assist in the correct application of Community legislation in the field of gas supply.

The European Observation System shall be run by the Commission, which should invite to the meetings representatives of the Member States as well as representatives of the sectors concerned.

8. **Conclusions**

On the basis of the foregoing, it may be concluded that security of gas supply will not diminish in strategic importance to the European Union. On the contrary. In view of the demand and supply outlook for gas for the EU and in view of the rapid ongoing change with the completion of the internal market for gas, there is a need to undertake co-ordinated action to ensure that security of gas supply is safeguarded and by this will complement other actions taken to achieve the completion of the EU internal energy market. Security of supply policies in a competitive market have to be based on clearly defined and non-discriminatory policies and operational responsibilities. Appropriate monitoring and safeguard mechanism as well as adequate emergency response measures will have to be implemented and kept under review at national and Community level.

The Commission therefore presents the following proposal for a Directive concerning measures to safeguard security of EU gas supply. These measures will ensure the proper functioning of the EU internal gas market by safeguarding security of gas supplies in a competitive market framework. In the event of a crisis, they will ensure the solidarity and the joint Community action necessary in order to respond effectively to uncertainties in the energy market and to promote in this context the proper functioning of the internal market. Article 95 of the Treaty therefore represents the appropriate legal basis for the proposal for a Directive.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

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

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) Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas [1] has made very important contributions towards the creation of internal market for gas. Directive 98/30/EC allows Member States the possibility of imposing public service obligations on natural gas undertakings, inter alia, in relation to security of supply;

(2) The European Council at Barcelona agreed on a rapid adoption of the pending proposals for a completion of the internal market for gas and electricity. The completion of the internal market for gas will significantly change the market framework and must be supplemented with common rules with respect to the security of supply context and the appropriate policies required in this respect;

(3) The guarantee of a high level of security of supply is therefore a key condition for the successful operation of the internal gas market. With a view to complete the internal market for gas and thereby ensuring a level playing field, a minimum common approach to supply security is necessary throughout the Community in order to avoid market distortions;

(4) Gas is becoming an increasingly important component in EU energy supply. In function of the increased importance of gas, ensuring the proper functioning of the single EU natural gas market by safeguarding security of gas supply also becomes of higher strategic importance;

(5) A competitive single EU gas market necessitates transparent and non-discriminatory security of supply policies compatible with the requirements of such a market. Definition of clear roles and responsibilities of all market actors is therefore crucial in safeguarding the well-functioning of the internal market and security of gas supply while at the same time avoiding creating obstacles to new entry or significant difficulties for companies with small market shares;

(6) As indicated by the Green Paper 'Towards a European strategy for the security of energy supply', the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply;

(7) In order to meet growing demand for gas and diversify gas supplies as a condition for a competitive internal market for gas, the EU will need to mobilise significant additional volumes of gas over the coming decades much of which will have to come from distant sources and transported over long distances;

(8) The European Union has a strong common interest with gas supplying and transit countries in ensuring continued investments in gas supply infrastructure;

(9) Long-term contracts have played a very important role in securing gas supplies for Europe and will continue to do so. Whilst the current level of long term contracts is more than satisfactory on the Community level, it is believed that such contracts will continue to make a significant contribution to overall gas supplies as companies continue to include such contracts in their overall supply portfolio and it is appropriate to provide a safety net in this respect;

(10) The development of liquid gas supplies in the internal market plays an important role in enabling the internal gas market to function properly and competitively. Considerable progress has been made in developing liquid trading platforms and through gas release programmes at national level. This trend is expected to continue. Nonetheless, it is appropriate to provide for a safety net in this respect;

(11) It is important that Member States lay down an unambiguous framework which will facilitate security of supply and is conducive to investments in gas supply infrastructure. It is important to monitor that appropriate measures are taken to ensure regulatory and fiscal frameworks for exploration and production, storage and transport of natural gas which provide appropriate incentives for investment;

[1] OJ L 204, 21.7.1998, p. 1.

(12) Domestic gas resources and measures designed to extend their availability, in a non-discriminatory manner that is compatible with the requirements of a competitive single market for natural gas and competition rules, contribute to enhancing the level of security of supply in the internal gas market;

(13) In the interest of a well functioning internal market for gas to which secure gas supplies are crucial, the supply/demand balance in individual Member States should be monitored and appropriate action taken if security of supply is compromised on a Community level;

(14) For the well functioning of the internal market for gas and the security of supply, solidarity between Member States in emergency supply situations is essential;

(15) It is inherent to the creation and development of an internal market that Member States become increasingly interdependent regarding security of supply issues. Failure to adopt adequate measures in one Member State can have serious consequences regarding the operation of the internal market throughout the Community. It is therefore essential, in order to ensure the proper functioning of the internal market, to provide for a minimum level of harmonisation regarding security of gas supply policies in each Member State;

(16) In the event of extraordinary gas supply situations, the Commission shall take appropriate action proportionate to the severity of the supply situation to ensure that the necessary measures to provide specific assistance to those Member States particularly affected by the gas supply disruption are implemented in order to safeguard, as far as possible, the continued functioning of the internal market for gas;

(17) With a view to assist in preparing and implementing Community legislation in the field of safety and security of gas supply, to monitor its application and assist in evaluating the effectiveness of the measures in force as well as to better monitor the development of security of gas supply, a European Observation System of hydrocarbons should be established within the services of the Commission;

(18) The necessary measures should be adopted for the implementation of this Directive in conformity with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission [1];

(19) 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 creation of a fully operational internal gas market, based on fair competition and secure natural gas supplies, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. 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.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive establishes measures aimed at ensuring the proper functioning of the EU internal market for gas by safeguarding security of gas supply. It establishes a common framework within which Member States shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive single EU market for gas; clarify the general roles and responsibilities of the different market actors and implement specific non-discriminatory procedures to safeguard security of gas supply.

Article 2

For the purpose of this Directive:

1. 'source of gas supply' shall mean gas supply originating from one single gas supply country;

2. 'long-term gas supply contract' shall mean a gas supply contract with a duration of more than one year;

3. 'new market entrants' shall mean undertakings that are not yet active in the Member State in gas supply, or have only entered the market within 5 years following the entry into force of this Directive and which have a small market share;

4. 'small market share' shall mean a market share of less than 10 % of the national gas market.

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

Article 3

1. Member States shall take the necessary measures to define the general policies for security of supply which are necessary and integral part of competitive internal natural gas market. This may include clarifying the general roles and responsibilities of the different market actors in fulfilling the security of supply standards.

2. The measures and standards to ensure security of supply in the context of the internal gas market shall be developed in accordance with paragraph 3 of this article and with article 4. The implementation of these measures and standards shall complement the completion of the internal gas market, shall be implemented in a non-discriminatory and transparent way and shall be published.

3. In developing the measures and standards referred to in paragraph 1, Member States shall take the utmost account of:

a) the importance of ensuring continuity of gas supplies under severe conditions notably to household customers without alternative fuel options;

b) the need to ensure adequate levels of gas storage or alternative back-up fuels;

c) the need to diversify supplies and ensure a reasonable balance between different gas supply sources;

d) the need to create incentives for new gas supplies from internal and external sources to the single European gas market;

e) the risk of the most serious system failure or of disruption of the largest single supply source and the cost related to mitigate such supply disruption;

f) the internal market and the possibilities for cross-border cooperation in relation to security of gas supply.

4. In developing the measures and standards referred to in paragraph 1, Member States shall also take account of the need for setting high security of supply standards for gas supplies for power generation in particular with regard to the level of interruptible demand and alternative fuel back-up capacities in this sector.

5. The security of supply policies shall be compatible with and contribute to the completion of a fully operational internal market for gas. The security of supply policies shall be implemented in a non-discriminatory manner and shall in no way hamper the entrance of new market participants.

6. In order to ensure that security of supply criteria established by Member States would not lead to a significant restriction of competition or barriers to market entry, Member States shall exempt companies with small market shares and new entrants from obligations imposed pursuant to articles 3 and 4 of this Directive.

Where Member States consider that the imposition of obligations adopted pursuant to articles 3 and 4 of this Directive would not result in a significant restriction of competition or barriers to market entry, they may apply to the Commission for authorisation to lift this exemption. The Commission shall decide on the request in conformity with article 9, paragraph 2 of this Directive.

Article 4

1. In order to fulfil the security of supply policies and achieve the standards referred to in article 3, Member States shall take the necessary measures to ensure that security of supply can be maintained to non-interruptible customers without fuel switching capabilities in case of disruption of the single largest source of gas supply during sixty days given average weather conditions.

2. Member States shall take the necessary measures to ensure that security of supply can be maintained to non-interruptible customers without fuel switching capabilities in case of extremely cold temperatures during a period of three days statistically occurring every twenty years.

3. Member States shall take the necessary measures to ensure that security of supply can be maintained to non-interruptible customers without fuel switching capabilities in case of a cold winter statistically occurring every fifty years.

4. In order to achieve these security of supply standards, Member States may use a combination of at least the following instruments:

a) interruptible customers

b) gas storage

c) supply flexibility

d) spot markets

5. Member States shall take the necessary measures to ensure that gas storage, either located within or outside the territory of the Member State, contributes to a necessary minimum degree to achieving the security of supply standards referred to in this article in function of the geological and economical feasibility of storage within each Member State.

In this respect, Member States shall, initially not later than one year after the entry into force of this Directive and every two years thereafter, adopt and publish a report setting national indicative targets for future contribution of storage, either located within or outside the territory of the Member State, to security of supply in terms of gas storage working volume and withdrawal capacities and the percentage of gas storage capacity of gas consumption for the next ten years. The targets for future contribution of storage shall be established in accordance with the form set out in the annex to this Directive.

6. The security of supply criteria set out in this article shall be established by Member States in a manner compatible with the objectives of the internal gas market including the harmonisation of the measures implementing these criteria where economically and technically possible and appropriate. In particular, minimum storage objectives imposed on undertakings shall take account of the availability of non-discriminatory access to storage and the terms and conditions on which such access is granted by those companies that operate storage facilities.

7. When implementing security of supply standards and imposing obligations on a market participant established and registered in another Member State, Member States shall take proper account of measures already taken by the market participant in fulfilling security of supply criteria in that Member State.

Article 5

1. In the Report published by Member States pursuant to article [4a] of Directive .../.../EC [proposed new Directive amending Directives 96/92/EC and 98/30/EC concerning rules for the internal markets in electricity and natural gas], Member States shall, in particular, cover the following:

a) the competitive impact of the measures taken pursuant to articles 3 and 4 of this Directive on companies with small market shares or new market entrants and in particular the effectiveness of measures taken by Member States pursuant to article 3 paragraph 6 to redress any restriction of competition or barrier to entry to such companies resulting from these measures;

b) the supply/demand balance on their territory;

c) the level of expected future demand and available supplies;

d) envisaged additional capacity under planning or construction;

e) the emergency and contingency instruments in place to cater for a sudden crisis in the market;

f) the levels of stocks and the measures taken and to be taken in order to achieve the indicative storage targets and

g) the extent of long-term contracts concluded by companies established and registered on their territory.

In addition, Member States shall monitor that appropriate measures are taken to ensure regulatory and fiscal frameworks for exploration and production, storage, LNG and transport of natural gas which provide appropriate incentives for new investment.

2. In the Report issued by the Commission pursuant to article [28] of Directive .../.../EC [proposed new Directive amending Directives 96/92/EC and 98/30/EC concerning rules for the internal markets in electricity and natural gas], the Commission shall examine

a) issues relating to security of supply in the Community, and in particular the existing and projected balance between demand and supply including the appropriateness of incentives given to investment in new gas supply infrastructure;

b) the scope for harmonisation of security of supply measures aiming at better functioning of the single European gas market;

c) the situation with regard to stock levels in relation to the indicative storage targets;

d) the level of long-term contracts for gas, and the consequences in practice of this level for ensuring adequate levels of new gas supplies for the European Union in the future.

Where appropriate, this report shall include recommendations.

Article 6

1. With a view to ensure continued long-term security of gas supply for the Community and the gradual development of a more liquid internal market for gas, the Commission shall closely monitor the degree of new gas supply import contracts from non-EU countries concluded on a long-term basis as well as the existence of adequate liquid gas supplies and transparent gas price references within the Community to underpin stable long-term gas supplies. The Commission may issue Recommendations on appropriate measures to be taken by Member States in this respect. The Recommendations may only address an insufficient degree of such contracts on a Community level. Member States shall inform the Commission of the manner in which the Recommendations are implemented. In making such Recommendations, the Commission shall pay particular attention to the possible effect such measures may have on companies with small market shares and new entrants.

2. Where the measures taken by Member States in relation to the Recommendations referred to in paragraph 1 are inadequate with regard to the long-term security of gas supply, the Commission may, by Decision, in conformity with the procedure laid down in article 9, paragraph 3 require the Member States concerned to take specified measures to ensure that an appropriate minimum share of new gas supply from non-EU countries over the five years following the entry into force of this Directive is based on long-term contracts and that adequate liquid gas supplies are developing and transparent gas price references are available within the Community to underpin stable long-term gas supplies. When taking such Decisions, the Commission shall pay particular attention to the possible effect such measures may have on companies with small market shares and new entrants.

3. The Commission shall, within five years of the entry into force of this Directive, submit a review report to the European Parliament and the Council on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

Article 7

With a view to enhancing liquidity of natural gas, Member States shall take appropriate measures to ensure non-discriminatory authorisation procedures for building storage and LNG facilities and remove any obstacles for building such facilities. These procedures shall apply equally to EU natural gas undertakings as to non-EU gas suppliers.

Article 8

1. The Commission may, in conformity with the procedure laid down in article 9, paragraph 2, in the event of extraordinary gas supply situations including a major interruption of gas supplies from one of the European Union's principal gas suppliers, issue Recommendations to Member States to take the necessary measures to provide specific assistance to those Member States particularly effected by the gas supply disruption. Such measures may include, but are not limited to, the following:

a) release of gas stocks;

b) provision of pipeline capacity enabling diversion of gas supplies to affected areas;

c) interruption of interruptible demand to allow reallocation of gas and system flexibility.

2. Member States shall inform the Commission of their implementation of the Recommendations.

3. Where the measures taken by Member States are inadequate in the light of market developments, and/or where the economic consequences of the extraordinary gas supply situation become extremely severe, the Commission may, by Decision, in conformity with the procedure laid down in article 9, paragraph 3, require Member States to take specified measures to provide necessary assistance to those Member States particularly affected by the gas supply disruption. Such measures may include, but are not limited to, those mentioned in paragraph 1 points a), b) and c).

4. The recommendations and decisions to be taken in accordance with this article shall restrict competition as little as possible. The Commission shall ensure that this principle is complied with throughout the entire period of application of the measures.

Article 9

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

2. Where reference is made to this paragraph, articles 3 and 7 of Council Decision 1999/468/EC shall apply in respect of the provisions of article 8 of that Council Decision.

3. Where reference is made to this paragraph, articles 5 and 7 of Council Decision 1999/468/EC shall apply in respect of the provisions of article 8 of that Council Decision.

The period foreseen in article 5, paragraph 6 of Council Decision 1999/468/EC shall be one week.

4. The Committee shall establish its internal rules.

Article 10

1. Not later than 1 January 2004, the Commission shall make the necessary arrangements to set up a European Observation System for supply of hydrocarbons to assist in preparing and implement Community legislation in the field of gas supply, to monitor its application and assist in evaluating the effectiveness of the measures in force and their effects on the functioning of the internal natural gas market. The Commission shall ensure that adequate resources are made available to enable the effective monitoring of measures provided for in the present Directive.

2. The European Observation System for supply of hydrocarbons shall be run by the Commission, which should invite to meetings representatives of Member States as well as representatives of sectors concerned. It shall provide the Commission with the technical assistance necessary for the formulation and evaluation of measures taken in relation to the application of the present Directive and shall contribute to a better understanding of the evolution of the internal market and the international gas market and the factors driving these markets.

3. The European Observation System for supply of hydrocarbons shall carry out, in the field of natural gas, following technical tasks:

a) Monitor the functioning of the internal market and the international market for gas;

b) Contribute to the implementation of a physical monitoring system of the internal EU and external gas infrastructures to the European Union which contribute to the security of gas supply;

c) Monitor gas supply and the procedures aimed at guaranteeing security of gas supply in cases of emergency;

d) Monitor the level of strategic gas stocks and the procedures for their use as well as the procedures applied with regard to access to storage including aspects of market dominance in relation to access to storage;

e) Create a basis of objective, reliable and comparable data as a basis for fulfilling its tasks.

Article 11

The Commission shall closely monitor the manner in which Member States implement this Directive, and in particular the compatibility of the measures taken with regard to article 4 and their effect on the internal gas market and the development of competition within the European Union. The Commission shall closely monitor the availability of third party access to storage on non-discriminatory terms and conditions. In the light of the results of this monitoring, the Commission shall, if necessary, no later than 1 January 2004 present proposals regarding further measures to ensure effective access to storage.

Where appropriate, the Commission shall issue recommendations or make appropriate proposals.

Article 12

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2004. 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 13

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

Article 14

This Directive is addressed to the Member States.

ANNEX

EU storage capacity — national indicative targets

The table below illustrates gas storage capacities in absolute as well as relative terms in relation to consumption.

Storage capacities at 1 January 2001

	Working Volume (BCM)	In % of 2000 Demand	Withdrawal capacity (million m^3/day)	2010 Target BCM Storage	2010 Target %	2010 Target Withdrawal capacity
Austria	2.295	31.6	24			
Belgium	0.675	4.2	19			
Denmark	0.810	17.6	25			
France	11.1	26.2	180			
Finland	0.0	0.0	0			
Germany	18.556	22.3	425			
Greece	0.075	3.8	5			
Ireland	0.0	0.0	0			
Italy	15.1	22.0	265			
Luxembourg	0.0	0.0	0			
Netherlands	2.5	6.1	145			
Portugal	0.0	0.0	0			
Spain	1.0	5.5	8			
Sweden	0.0	0.0	0			
UK	3.577	3.7	137			
EU-15	**55.688**	**14.2**	**1 233**			

Proposal for a Council Directive repealing Council Directives 68/414/EEC and 98/93/EC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products, and Council Directive 73/238/EEC on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products

(2002/C 331 E/42)

(Text with EEA relevance)

COM(2002) 488 final — 2002/0221(CNS)

(Submitted by the Commission on 11 September 2002)

EXPLANATORY MEMORANDUM

The Commission has put forward a proposal for a new Directive of the European Parliament and of the Council concerning the alignment of measures with regard to security of supply for petroleum products. More specifically, this proposal for a Directive provides for Member States' provisions on oil stocks and crisis measures to be more closely aligned with each other, and for coordinated action between the Member States in the event of a supply crisis.

The abovementioned proposal for a Directive is in two parts:

— The first part defines the stockholding obligations and the criteria with which the security stock systems must comply.

— The second part covers aspects relating to the adoption of measures in a crisis situation, more especially the institutional mechanism for ensuring a coordinated response from the Member States in the event of a crisis.

In this situation, existing legislation on this subject is no longer relevant. The aim of this proposal for a Directive is therefore to repeal some of the texts concerned.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) Directive . . ./. . ./EC provides for the alignment of measures with regard to security of supply for petroleum products.

(2) More specifically, in order to ensure the proper functioning of the internal market, Directive . . ./. . ./EC brings the provisions of the Member States with regard to petroleum stocks and crisis measures closer into line with each other and provides for coordinated action between Member States in the event of a supply crisis.

(3) It also incorporates, in a new and coherent text, all the relevant aspects which were dealt with in particular in Council Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products [1], and in Council Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products [2].

(4) Those legislative texts are therefore now obsolete,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 68/414/EEC and Council Directive 98/93/EC amending Directive 68/414/EEC are hereby repealed.

Article 2

Council Directive 73/238/EEC is hereby repealed.

Article 3

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

Article 4

This Directive is addressed to the Member States.

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[1] OJ L 308, 23.12.1968, p. 14. Directive amended by Council Directive 98/93/EC of 14 December 1998; OJ L 358, 31.12.1998, p. 100.

[2] OJ L 228, 16.8.1973, p. 1.

Proposal for a Council Decision repealing Council Decision 68/416/EEC on the conclusion and implementation of individual agreements between governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products and Council Decision 77/706/EEC on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products

(2002/C 331 E/43)

(Text with EEA relevance)

COM(2002) 488 final

(Submitted by the Commission on 11 September 2002)

EXPLANATORY MEMORANDUM

The Commission has put forward a proposal for a new Directive of the European Parliament and of the Council concerning the alignment of measures with regard to security of supply for petroleum products. More specifically, this proposal for a Directive provides for Member States' provisions on oil stocks and crisis measures to be more closely aligned with each other, and for coordinated action between the Member States in the event of a supply crisis.

The abovementioned proposal for a Directive consists of two parts:

— The first part defines the stockholding obligations and the criteria with which the security stock systems must comply.

— The second part covers aspects relating to the adoption of measures in a crisis situation, more especially the institutional mechanism for obtaining a coordinated response from the Member States in the event of a crisis.

In this situation, existing legislation on this subject is no longer relevant. The aim of this proposal for a Decision is therefore to repeal some of the texts concerned.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) Directive . . ./. . ./EC provides for the alignment of measures with regard to security of supply for petroleum products.

(2) More specifically, in order to ensure the proper functioning of the internal market, Directive . . ./. . ./EC brings the provisions of the Member States with regard to petroleum stocks and crisis measures closer into line with each other and provides for coordinated action between Member States in the event of a supply crisis.

(3) It also incorporates, in a new and coherent text, all the relevant aspects which were dealt with in particular in the Council Decision of 20 December 1968 on the conclusion and implementation of individual agreements between governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products [1], and the Council Decision 77/706/EEC of 7 November 1977 on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products [2].

(4) Those legislative texts are therefore now obsolete,

HAS ADOPTED THIS DECISION:

Article 1

Council Decision 68/416/EEC is hereby repealed.

Article 2

Council Decision 77/706/EEC is hereby repealed.

Article 3

This Decision is addressed to the Member States.

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[1] OJ L 308, 23.12.1968, p. 19.

[2] OJ L 292, 16.11.1977, p. 9.

Proposal for a Council Decision on the signature and conclusion of the Agreement between the European Community and Turkey on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

(2002/C 331 E/44)

COM(2002) 500 final — 2002/0223(ACC)

(Submitted by the Commission on 12 September 2002)

EXPLANATORY MEMORANDUM

By its decision of 5 April 2001, the Council authorised the Commission to negotiate with Turkey an Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and adopted the necessary negotiating directives.

There have been several meetings with the Turkish authorities, in Ankara and in Brussels. Following the negotiations, the text of the Agreement was accepted on 20 May 2002.

The Agreement is now being presented to the Council to be signed and concluded.

The Commission considers that the text is in accordance with the negotiating directives adopted by the Council on 5 April 2001.

In order to enable the Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances to be signed, the Commission proposes that the Council approve the attached proposal for a decision on the signing and conclusion of the Agreement.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) On 5 April 2001, the Council authorised the Commission to negotiate with Turkey an Agreement on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.

(2) The Community must strengthen controls on shipments of precursors to Turkey, given that they are re-entering the Community in the form of heroin or other psychotropic or narcotic substances.

(3) It is necessary to approve the Agreement between the European Community and Turkey on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Turkey on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the European Community on the Joint Follow-up Group set up under Article 9 of the Agreement.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement.

Article 4

The President of the Council shall effect the notification provided for in Article 12 of the Agreement on behalf of the European Community [1].

Article 5

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

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[1] The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

AGREEMENT

on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community', on the one part, and

THE TURKISH REPUBLIC

hereinafter referred to as 'Turkey', on the other part,

hereinafter referred to as the 'Contracting Parties',

WITHIN THE FRAMEWORK of the United Nations Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed on 20 December 1988 in Vienna, hereinafter referred to as 'the 1988 Convention'

DETERMINED to prevent and combat the illicit manufacture of narcotic drugs and psychotropic substances by preventing the diversion of precursors and chemical substances frequently used for such purposes;

ACKNOWLEDGING Article 12 of the 1988 Convention;

ACKNOWLEDGING the final Report of the Chemical Action Task Force (CATF), approved by the London G-7 Economic Summit on 15 July 1991, and agreeing with the recommendation to strengthen international cooperation by the conclusion of bilateral agreements between regions and countries involved in export, import and transit of these substances;

CONVINCED that international trade may be used for the diversion of the products in question, and that it is necessary to conclude and implement agreements between the regions concerned, establishing wide cooperation and, in particular linking export and import controls;

AFFIRMING their common commitment to setting up assistance and cooperation mechanisms between Turkey and the Community, particularly in view of the Helsinki decision recognising Turkey as a candidate country, in order to prevent the diversion of controlled substances to illicit purposes, in harmony with the orientations and actions decided at international level;

RECOGNIZING that these chemical substances are also mainly and widely used for legitimate purposes and that international trade must not be hindered by excessive monitoring procedures;

HAVE DECIDED to conclude an Agreement on the prevention of diversion of precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, and, to this end, have designated as their plenipotentiaries:

THE EUROPEAN COMMUNITY:

....

THE TURKISH REPUBLIC:

....

WHO, having exchanged credentials of their powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the Agreement

1. This Agreement sets out measures to strengthen administrative cooperation between the Contracting Parties to prevent the diversion of substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, without prejudice to the due recognition of the legitimate interests of trade and industry.

2. For this purpose, the Contracting Parties shall assist each other, as set out in this Agreement, in particular by:

— monitoring the trade between them in the substances referred to in paragraph 3, with the aim of preventing their diversion to illicit purposes,

— providing administrative assistance ensuring that their respective substance trade control legislation is correctly applied.

3. Without prejudice to possible amendments which might be adopted within the competence of the Joint Follow-up Group provided for in Article 9, this Agreement applies to the chemical substances listed in the Annex to the 1988 Convention as amended, hereinafter referred to as 'controlled substances'.

Article 2

Trade monitoring

1. The Contracting Parties shall consult and inform each other on their own initiative whenever they have reasonable grounds to believe that controlled substances may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, in particular when a shipment occurs in unusual quantities or under unusual circumstances.

2. With regard to the controlled substances listed in Annex A to this Agreement, the competent authority of the exporting Contracting Party shall, at the same time as the export authorisation is issued but prior to the departure of the consignment, forward a copy of the export authorisation to the competent authority of the importing Contracting Party. Specific information shall be provided where the operator benefits, in the exporting country, from an open individual authorisation covering multiple export operations.

3. With regard to the controlled substances listed in Annex B to this Agreement, the competent authority of the exporting Contracting Party shall forward a copy of the export authorisation to the competent authority of the importing Contracting Party and the export shall be authorised only when the importing Contracting Party has given its consent.

4. The Contracting Parties undertake to provide each other, as soon as possible, with due feedback on any information provided or measure requested under this Article.

5. When implementing the above-mentioned trade control measures, the legitimate interests of trade shall be duly respected. In particular, in cases covered by paragraph 3, the reply by the importing Contracting Party shall be provided within 15 working days after the receipt of the message from the exporting Contracting Party. The absence of a reply within this period shall be considered equivalent to granting an import authorisation. The refusal to grant an import authorisation shall be notified in writing to the exporting Contracting Party within this period, giving the reasons for refusal.

Article 3

Suspension of shipment

1. Without prejudice to any possible implementation of technical enforcement measures, shipments shall be suspended if, in the opinion of either Contracting Party, there are reasonable grounds to believe that controlled substances may be diverted to the illicit manufacture of narcotic drugs or psychotropic substances, or where, in the cases described in Article 2(3), the importing Contracting Party requests the suspension.

2. The Contracting Parties shall cooperate in supplying each other with any information relating to suspected diversion operations.

Article 4

Mutual administrative assistance

1. The Contracting Parties shall provide each other, either on their own initiative or on request, with any information to prevent the diversion of controlled substances to the illicit manufacture of narcotic drugs or psychotropic substances and shall investigate cases of suspected diversion. Where necessary they shall adopt appropriate precautionary measures to prevent diversion.

2. Any request for information or precautionary measures shall be complied with as promptly as possible.

3. Requests for administrative assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.

4. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party and subject to the conditions laid down by the latter, be present at the inquiries carried out in the territory of the other Contracting Party.

5. The Contracting Parties shall assist each other to facilitate the provision of evidence.

6. Administrative assistance provided under this Article shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it apply to information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

7. Information may be requested in respect of chemical substances which are frequently used in the illicit manufacture of narcotic drugs or psychotropic substances but which are not included in the scope of this Agreement.

Article 5

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant legal or regulatory provisions of the Contracting Party that received it and the corresponding provisions applying to the Community authorities.

2. Personal data, which means all information relating to an identified or identifiable individual, may be exchanged only where the Contracting Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply it. To this end, Contracting Parties communicate each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community.

3. The use, in judicial or administrative proceedings instituted for failure to comply with legislation on controlled substances referred to in Article 3, of information obtained under this Agreement, is considered to be for the purposes of this Agreement. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 6

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Contracting Party is of the opinion that assistance under this Agreement would:

(a) be likely to prejudice the sovereignty of Turkey or that of a Member State of the Community which has been requested to provide assistance under this Agreement; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 5 (2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

Article 7

Technical and scientific co-operation

The Contracting Parties shall co-operate in the identification of new diversion methods as well as appropriate countermeasures, including technical co-operation to strengthen administrative and enforcement structures in this field and to promote co-operation with trade and industry. Such technical co-operation may concern, in particular, training and exchange programmes for the officials concerned.

Article 8

Implementation measures

1. Each Contracting Party shall appoint a competent authority or competent authorities to co-ordinate the implementation of this Agreement. These authorities shall communicate directly with one another for the purposes of this Agreement.

2. The Contracting Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Agreement.

Article 9

Joint Follow-Up Group

1. A Joint Follow-up Group on the control of precursors and chemical substances is hereby established, hereinafter referred to as 'the Joint Follow-up Group', in which each Contracting Party to this Agreement shall be represented.

2. The Joint Follow-up Group shall act by mutual agreement. It shall adopt its own rules of procedure.

3. The Joint Follow-up Group shall normally meet once a year, with the date, place and programme being fixed by mutual agreement.

Extraordinary meetings of the Joint Follow-up Group may be convened by mutual agreement of the Contracting Parties.

Article 10

Role of the Joint Follow-Up Group

1. The Joint Follow-up Group shall administer this Agreement and ensure its proper implementation. For this purpose:

— it shall study and develop the necessary means to ensure the correct functioning of this Agreement,

— it shall be regularly informed by the Contracting Parties of their experience in applying this Agreement,

— in the cases provided for in paragraph 2, it shall take decisions,

— in the cases provided for in paragraph 3, it shall make recommendations,

— it shall study and develop the technical co-operation measures referred to in Article 7,

— it shall study and develop other possible forms of co-operation in matters relating to precursors and chemical substances.

2. The Joint Follow-up Group shall adopt by mutual consent decisions to amend Annexes A and B.

Such decisions shall be implemented by the Contracting Parties in accordance with their own legislation.

If, in the Joint Follow-up Group, a representative of a Contracting Party has accepted a decision subject to the completion of the procedures necessary for that purpose, the decision shall enter into force, if no date is contained therein, on the first day of the second month after such a completion is notified.

3. The Joint Follow-up Group shall recommend to the Contracting Parties:

(a) amendments to this Agreement;

(b) any other measure required for the application of this Agreement.

Article 11

Obligations imposed under other agreements

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Agreement shall:

— not affect the obligations of the Contracting Parties under any other international agreement or convention;

— be deemed complementary with agreements covering the issue of controlled substances which have been or may be concluded between individual Member States and Turkey;

— not affect the Community provisions governing the communication between the competent services of the Commission of the European Communities and the relevant services of the Member States of any information obtained under this Agreement which could be of interest to the Community.

2. Notwithstanding the provisions of Paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on controlled substances which have been or may be concluded between individual Member States and Turkey insofar as the provisions of the latter are incompatible with those of this Agreement.

3. In respect of questions relating to the applicability of this Agreement, the Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Follow-up Group set up under Article 9.

4. The Contracting Parties shall also notify each other of any measures on controlled substances taken with other countries.

Article 12

Entry into force

This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have exchanged their respective instruments of ratification, acceptance or approval, according to the rules applicable for each Contracting Party.

Article 13

Duration and denunciation

1. This Agreement shall be concluded for five years and, unless otherwise disposed, it will be tacitly renewable for successive periods of the same duration. It shall cease to have effect upon the accession of Turkey to the European Union.

2. This Agreement may be amended by mutual consent of the Contracting Parties.

3. Either Contracting Party may withdraw from this Agreement provided it gives 12 months' prior notice in writing to the other Contracting Party.

Article 14

Authentic texts

This Agreement, which is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Turkish languages, all texts being equally authentic, shall be deposited in the Archives of the Secretariat General of the Council of the European Union, which shall provide the Contracting Parties with an authenticated copy.

ANNEX A

Substances subject to the measures referred to in Article 2(2)

Acetone
Anthranilic Acid
Ethyl Ether
Hydrochloric Acid
Methyl Ethyl Ketone
Phenylacetic Acid
Piperidine
Sulphuric Acid
Toluene

ANNEX B

Substances subject to the measures referred to in Article 2(3)

N-Acetylanthranilic Acid
Acetic Anhydride
Ephedrine
Ergometrine
Ergotamine
Isosafrole
Lysergic Acid
3,4-Methylenedioxyphenyl-2-propanone
Norephedrine
1-Phenyl-2-propanone
Piperonal
Potassium Permanganate
Pseudoephedrine
Safrole

Note: The list of substances must always include a reference to their salts, where appropriate.

Proposal for a Council Directive amending directive 91/68/EEC as regards reinforcement of controls on movements of ovine and caprine animals

(2002/C 331 E/45)

(Text with EEA relevance)

COM(2002) 504 final — 2002/0218(CNS)

(Submitted by the Commission on 12 September 2002)

EXPLANATORY MEMORANDUM

The animal health conditions for trade in ovine and caprine animals are laid down in Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-community trade in ovine and caprine animals

Since 1991, the animal health conditions governing intra-Community trade in other livestock such as bovine animals and swine have been modified in order to take account of the evolution of the livestock sector in the Community and trade in livestock under the conditions of the single market. In particular, Council Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine.

Ovine and caprine animals, as well as bovine animals and swine, are susceptible to a common range of diseases and are frequently kept under similar conditions. It is therefore appropriate to apply similar animal health standards to ovine and caprine animals as for bovines and swine.

During the 2001 foot-and-mouth disease epidemic in certain parts of the Community sheep primarily contributed to the spread of disease due to lack of clear clinical signs in combination with frequent movements. The Commission therefore adopted specific protective measures in order to reinforce the control on movement of and trade in sheep and goats. These measures are at present laid down in Decision 2001/327/EC.

An International Conference on the Prevention and Control of foot-and-mouth disease was organised jointly by the Belgian Presidency of the Council and the Commission in December 2001 after the closing of the foot-and-mouth disease crisis, in order to draw the first conclusions from the 2001 outbreak. The Conference called on the Commission to submit suitable proposals for legislative activities to prevent such outbreaks in future and, if they would occur, to minimise the adverse effects. Amongst others it was requested that the movement of susceptible animals should be controlled more efficiently with regard to the health guarantees offered.

The purpose of the present proposal is to reinforce the controls on intra-Community trade in sheep and goats so as to align these requirements to those approved for animal species susceptible to the same diseases and managed in a similar system of animal husbandry.

This proposal is part of a package of legislative activities of the Commission to prevent the spread of major infectious diseases, if they would occur in the Community.

This proposal has no financial implications for the budget of the European Community.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) Council Directive 91/68/EEC [1] lays down animal health conditions governing intra-community trade in ovine and caprine animals.

(2) Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine [2] was subsequently amended and updated by Directive 97/12/EC [3] in order to take account of the developments in the livestock sector in the Community.

(3) Sheep and goats share with bovine animals and swine, not only similar husbandry systems, but also susceptibility to a common range of diseases.

(4) Sheep largely contributed to the spread of foot-and-mouth disease in certain parts of the Community during the epidemic in 2001. The animal health conditions for intra-Community trade in sheep and goats have therefore been reinforced by Commission Decision 2001/327/EC of 24 April 2001 concerning restrictions to the movement of animals of susceptible species with regard to foot-and-mouth disease and repealing Decision 2001/263/EC [4].

(5) When the foot-and-mouth disease crisis of 2001 came to an end, an International Conference on the Prevention and Control of Foot-and-Mouth Disease was organised jointly by the Belgian Presidency of the Council and the Commission in December 2001 in order to draw the first conclusions from the 2001 outbreak. The Conference called upon the Commission to submit suitable proposals for Community legislation to prevent such outbreaks in the future, and in the event of their occurrence, to minimise the adverse economic effects. Amongst other things, it was requested that the movement of susceptible animals be controlled more efficiently with regard to the health guarantees offered.

(6) Therefore, this Directive aims to reinforce the controls on movement of sheep and goats in order to strengthen the health guarantees offered by Member States for intra-Community trade in animals of these species in line with Directive 64/432/EEC.

(7) It is necessary to provide a legal basis for the changes to be made to the health certificates in accordance with the procedure of the Standing Committee on the Food Chain and Animal Health and Directive 91/68/EEC needs to be amended accordingly.

(8) The measures provided for in this Directive must be read in conjunction with the following:

— Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals [5];

— Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC [6];

— Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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 [7].

(9) The provisions of Directive 91/68/EEC concerning the Committee procedure should be amended to take account of the replacement of the Standing Veterinary Committee by the Standing Committee on the Food Chain and Animal Health.

(10) Directive 91/68/EEC should therefore be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/68/EEC is amended as follows:

1. Point 9 of Article 2 is replaced by the following:

'9. approved assembly centre means premises as defined in point (o) of Article 2 (2), and meeting the requirements referred to in Article 11, of Directive 64/432/EEC;'

(1) OJ L 46, 19.2.1991, p. 19. Directive as last amended by Commission Decision 2002/261/EC (OJ L 91, 6.4.2002, p. 31).

(2) OJ 121, 29.7.1964, p. 1977/64. Directive as last amended by Commission Regulation (EC) No 535/2002 (OJ L 80, 23.3.2002, p. 28).

(3) OJ L 109, 25.4.1997, p. 1.

(4) OJ L 115, 25.4.2001, p. 12. Decision as last amended by Commission Decision 2002/242/EC (OJ L 82, 26.3.2002, p. 18).

(5) OJ L 355, 5.12.1992, p. 32. Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

(6) OJ L 174, 2.7.1997, p. 1.

(7) OJ L 31, 1.2.2002, p. 1.

2. Article 4 is replaced by the following:

'*Article 4*

1. Member States shall ensure that ovine and caprine animals:

(a) are identified and registered in accordance with Directive 92/102/EEC;

(b) are inspected by an official veterinarian during the 48 hours preceding the loading of the animals, and show no clinical sign of disease;

(c) do not come from a holding, or have been in contact with animals from a holding which is the subject of a prohibition on animal health grounds; the period of such prohibition shall last after the slaughter of the last animal suffering from or susceptible to one of the diseases referred to in points (i), (ii), or (iii), for at least:

(i) 42 days in the case of brucellosis;

(ii) 30 days in the case of rabies;

(iii) 15 days in the case of anthrax;

(d) do not come from a holding or have been in contact with animals from a holding situated in an area which for health reasons is subject to a prohibition or restriction affecting the species involved in accordance with Community and /or national legislation.

2. Member States shall ensure that the following are not the subject of trade:

(a) ovine and caprine animals which may have to be slaughtered under a national programme for the eradication of diseases not referred to in Annex C to Directive 90/425/EEC or in Chapter I of Annex B to this Directive;

(b) ovine and caprine animals which cannot be marketed on their own territory for health or animal health reasons justified by Article 30 of the Treaty.

3. Member States shall ensure that ovine and caprine animals shall:

(a) either have been born and reared since birth in the Community; or

(b) have been imported from a third country in accordance with Community legislation.'

3. The following Articles are inserted:

'*Article 4a*

1. Member States shall ensure that the conditions set out in paragraphs 2 and 3 are applied to intra-Community trade in all ovine and caprine animals.

2. The animals shall not be outside their holding of origin for more than six days before arriving in the certified holding of destination in another Member State.

In the case of transport by sea, the time limit of six days shall be prolonged by the time of the sea journey.

In the case of transit through a staging point in accordance with the provisions of Regulation (EC) No 1255/97, the time limit of six days shall be prolonged by the resting time spent in the staging point.

3. The animals may transit through only one approved assembly centre which shall be in the Member State of origin.

However, animals for slaughter may in addition transit through one single approved assembly centre in a Member State of transit before being consigned to the Member State of destination.

Article 4b

1. Member States shall ensure that the conditions set out in paragraphs 2 and 3 are applied to intra-Community trade in ovine and caprine animals for breeding and fattening.

2. The animals shall have remained on a single holding of origin for a period of at least 30 days prior to loading, or since birth in the holding of origin where the animals are less than 30 days old.

3. No animal of the ovine or caprine species shall have been introduced into the holding of origin during the last 21 days of the period prior to loading and no biungulate animal imported from a third country shall have been introduced into the holding of origin during the 30 days prior to dispatch from the holding of origin, unless the introduced animal has been completely isolated from all other animals on the holding.'

4. Article 8(a) is deleted.

5. Article 13 is deleted.

6. Article 14 is replaced by the following:

'*Article 14*

1. The Annexes shall be amended in accordance with the procedure referred to in Article 15.

2. Detailed rules necessary for the implementation of this Directive shall be adopted in accordance with the procedure referred to in Article 15.'

7. Article 15(1) is replaced by the following:

'1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health established by Article 58 of Regulation (EC) No 178/2002.'

8. Article 16 is deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 2002. 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 reference shall be laid down by the Member States.

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

Article 3

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

This Directive is addressed to the Member States.

Amended proposal for a Directive of the European Parliament and of the Council on the promotion of the use of biofuels for transport [1]

(2002/C 331 E/46)

(Text with EEA relevance)

COM(2002) 508 final — 2001/0265(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 September 2002)

(Amendements are indicated by underlining/strikeout in the text)

EXPLANATORY MEMORANDUM

A. PRINCIPLES

1. In November 2001, the Commission submitted a Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of biofuels for transport (COM(2001) 547 final — 2001/0265(COD)) for adoption by the codecision procedure laid down in Article 251 of the Treaty establishing the European Community.

2. On 4 July 2002, the European Parliament adopted a series of amendments at its first reading. The Commission gave its position on each of these amendments at that time, indicating those amendments it could accept as they are, those that could be accepted in principle and/or with redrafting, those that could be accepted in part and those that could not be accepted.

3. In the light of this, the Commission has drafted this amended proposal.

4. The Commission made three types of amendments with the following justifications.

   Firstly, a number of new provisions have been accepted from the first reading by the European Parliament as they are. These amendments serve to improve definitions or to add clarity and elaborate and illustrate points in the proposal.

   Secondly, the Commission has accepted some amendments in principle, although with minor redrafting, e.g. to improve consistency with other parts of the proposal or to define more clearly certain conditions, limits or exceptions.

   Thirdly, the Commission has taken parts of amendments from the first reading when and where these specific parts were deemed consistent with the purpose of the proposal and provided added value while for the amendment in its entirety, this was not the case.

   Moreover, the Commission has introduced some editorial changes in accordance with the guidelines of the Interinstitutional Agreement.

B. COMMENTS AS REGARDS THE ACCEPTED AMENDMENTS

Recitals

Recital 3

This new recital emphasizes the use of secondary biomass and the parallel production of vegetable proteins.

Recital 4

This amendment recalls the enlargement.

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[1] OJ C 103 E, 30.4.2002, p. 205.

Recital 5

This new recital mentions the White Paper on transport and emphasizes the importance of using alternative fuels such as biofuels.

Recital 7

This amendment is in line with the Communication on alternative fuels.

Recital 8

This new recital touches the biofuels blends and recalls the normal integration of biofuels into the fuel market.

Recital 9

This new recital welcomes an orientation of research on biofuels.

Recital 10

This new recital provides useful information to the customer.

Recital 11

This new recital talks about the development in the future of — more specifically — the hydrogen option, and is in line with the Communication on alternative fuels.

Recital 12

This new recital reminds that a Research policy contributes to the compatibility of biofuels and hydrogen.

Recital 13

This new recital — of which the wording was adapted — concerns the standards for biofuels and constitutes a good mixture of quality exigencies and a reasonable level of flexibility for a new market.

Recital 14

This new recital welcomes harmonised standards, more specifically for bioethanol and biodiesel.

Recital 15

This amendment — which is partially accepted — concerns the contribution of biofuels to the multifunctionality of agriculture.

Recital 17

This new recital concerns objectives set in the Commission's Green Paper on Security of Supply and is also in line with the Communication on alternative fuels.

Recital 18

This new recital clarifies that alternative fuels will have to become more widespread in order to achieve market penetration.

Recital 19

This amendment completes the text of the Parliament Resolution.

Recital 20

This amendment suggests a possible enlargement of actors.

Recital 22

This new recital recalls the normal integration of biofuels.

Recital 24

This new recital — of which the wording was adapted — promotes research on the sustainability of biofuels.

Recital 25

This new recital clarifies and supports Article 4.3 of the Proposal.

Recital 26

This — partially accepted — amendment talks about different biofuels and other, alternative fuels. These types of oils were already included in the general biomass definition.

Recital 27

This new recital contributes to the development of biofuels as it sets provisions for the development of appropriate quality standards.

Recital 28

This new recital reinforces coherent national policies.

Recital 29

This new recital promotes clear information to the customers.

Recital 30

This new recital recalls the creation of a new, agricultural market.

Articles

Article 2

Point 2

Editiorial change in order to stay coherent with the change in the Annex — Part A.

Article 3

Point 2

This amendment introduces a reporting system on the environmental impact and on the costs by Member States to the Commission and is in line with the agreement at the Energy Council.

Point 3

This new — slightly reworded — text allows for the promotion of the technical development of biofuels and stresses the importance of a coherent national policy.

Point 4(a)

This amendment is a recall on existing biofuels with high blends.

Point 6

This new point puts priority on the promotion of biofuels in public transport and is in line with the Commission's policy in transport.

Point 7

This new point gives priority to the promotion of biofuels with a good environmental balance and is in line with the Commission's policy on the promotion of biofuels and on the integration of environmental concerns.

Article 4

Point 1

This amendment specifies more as well as clarifies the reporting system by the Member States to the Commission. It also introduces a date for the introduction of the first report.

Point 2

This new point promotes the possibilities of biofuels to the public and gives information to consumers.

Point 3

This amendment specifies aspects about the Commission's evaluation report to be published every two years and stimulates environmentally-friendly concerns. This is in line with the promotion of biofuels and the integration of environmental concerns.

Point 4

This new point introduces compliance with standard prEN 14214 of biodiesel end products for fuels and is in line with the existing European standards.

Article 5

Paragraph 3

This new paragraph stresses the importance of environmental criteria.

Paragraphs 4 and 5

These new paragraphs introduce a transitional period (under specific conditions) of maximum 2 years for Member States with special difficulties.

Annexes

Part A — title

This amendment clarifies that Annex A is not a closed list.

Part A – 'biodiesel' definition

This amendment details part of the biodiesel definition and it clarifies the standards.

Part A — 'biohydrogen' definition

This new definition is introduced, as Annex A is not a closed list. The inclusion of this definition follows the view of the Commission's Communication on alternative fuels.

Part B — table

The last column of the table on the blending percentage has been taken and Article 3 has been adapted accordingly.

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 laid down in Article 251 of the Treaty,

Whereas:

(1) The European Council meeting at Gothenburg on 15 and 16 June 2001 adopted a Community strategy for sustainable development consisting in a set of measures, which include the development of biofuels.

(2) Natural resources, and their prudent and rational utilisation as referred to in Article 174(1) of the Treaty, include oil, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions.

(3) However, there is a wide range of renewable biomass that could be used to produce biofuels, deriving from agricultural and forestry products, as well as residues and waste from forestry and the forestry and agri-foodstuffs industry. In addition, it is also possible to obtain by-products which are rich in vegetable protein for animal fodder.

(~~3~~4) The transport sector accounts for more than 30 % of final energy consumption in the Community and is expanding — a trend which is bound to increase, along with carbon dioxide emissions. That expansion will be greater in percentage terms in the candidate countries following their accession to the European Union.

(5) According to the Commission's White Paper 'European transport policy for 2010: time to decide' [1], CO_2 emissions from transport are expected to rise by 50 % between 1990 and 2010, to around 1 113 million tonnes, the main source being road transport, which accounts for 84 % of transport-related CO_2 emissions. From an ecological point of view, the White Paper therefore calls for dependence on oil (currently 98 %) in the transport sector to be reduced by using alternative fuels such as biofuels.

(~~4~~6) Greater use of biofuels for transport forms a part of the package of measures needed to comply with the Kyoto Protocol, and of any policy package to meet further commitments.

(~~5~~7) Increased use of biofuels for transport, without ruling out other possible alternatives to fossil fuels, including automotive LPG (Liquefied Petroleum Gas), is one of the tools with which the Community can reduce its energy dependence and influence the global fuel market for transport and hence the security of energy supply in the medium and long term.

(8) Biofuel production technology is highly advanced with the result that the engines of vehicles currently in circulation in the Community can use a 5 % biofuel blend without any problem. The most recent technological develoments make it possible to use higher percentages of biofuel in the blend. Some countries are already using biofuel blends of 10 % and higher.

(9) The research policy pursued by the Member States on increased use of biofuels should include, wherever technically possible and safe, the use of biofuels blended with kerosene, especially for air transport.

[1] COM(2001) 370.

(10) Captive fleets offer vast potential for research and the gradual introduction of biofuels. They offer the possibility of using a high concentration of biofuels. In some cities, captive fleets are already operating on pure biofuels which help to improve air quality in urban areas. When fuels containing more that 5 % biofuel are put on sale, they should be clearly labelled.

(11) Promoting the use of biofuels in transport is just one step towards the more efficient use of biomass which will enable biofuels, and, in particular, the hydrogen option, to be more extensively developed in the future.

(12) The research policy pursued by the Member States relating to increased use of biofuels should incorporate the hydrogen sector to a significant degree and promote it as part of the Sixth Framework Programme of Research and Development.

(13) New types of fuel must conform to recognised technical standards if they are to gain greater acceptance by customers and vehicle manufacturers and hence penetrate the market. Technical standards also form the basis for requirements concerning emissions and the monitoring of emissions. New types of fuel may find it difficult to meet current technical standards which have largely been developed for conventional fossil fuels. The Commission and standardisation bodies should monitor developments and actively adapt and develop standards so that new types of fuel can be introduced, whilst environmental performance requirements are maintained.

(14) Bioethanol and biodiesel, when used for vehicles in pure form or as a blend, should comply with the quality standards laid down to ensure optimum engine performance. Accordingly, the European Committee for Standardisation (CEN) should lay down standards for the Community as a whole.

(~~6~~15) Promoting the use of biofuels in keeping with ~~good~~ sustainable farming and forestry practices laid down in the rules governing the Common Agricultural Policy will create new opportunities for sustainable rural development in a ~~more market-orientated~~ Common Agriculture Policy geared more to the Community market and to respect for rural life and multifunctional agriculture. Cultivation of plants for use in the production of biofuels should be integrated into current cultivation programmes, in accordance with the principle of crop rotation, and should not lead to the creation of single-crop systems. The multifunctional role of agriculture will come into play and create jobs in rural areas. In order to ensure sustainable farming practices, a set of clear environmental criteria for the production of liquid biofuels must be established.

(~~7~~16) In its resolutions of 8 June1998 ([1]) and of 5 December 2000 the Council endorsed the Commission's Strategy and Action Plan for Renewable Energy Sources and requested specific measures in the biofuels sector.

(17) The Commission Green Paper 'Towards a European Strategy for the Security of Energy Supply' ([2]) sets the objective of 20 % substitution of conventional fuels by alternative fuels in the road transport sector by the year 2020.

(18) Alternative fuels will only be able to achieve market penetration if they are widely available and competitive.

(~~8~~19) In its resolution of 18 June 1998 ([3]) the European Parliament called for an increase in the market share of biofuels to 2 % over five years through a package of measures, including tax exemption, financial assistance for the processing industry and the establishment of a compulsory rate of biofuels for oil companies.

(~~9~~20) The optimum method for increasing the share of biofuels in the national and Community markets depends on the availability of resources and raw materials, on national and Community policies to promote biofuels and on tax arrangements. ~~, and should therefore be left as far as possible to the policies of the oil companies and other parties concerned~~.

(~~10~~21) National policies to promote the use of biofuels should not lead to prohibition of the free movement of fuels that meet the harmonised environmental specifications as laid down in Community legislation.

~~(11) However, it will be difficult to increase the proportion of biofuel sold above a certain level without measures to blend it in fossil fuel. Therefore, Member States should aim at a minimum blending of 1 % of biofuel into the mineral oil marketed in the Community. This percentage will be adapted on the basis of the shares obtained by biofuels among the various fuels marketed in the Member States and based on further detailed studies.~~

([1]) OJ C 198, 24.6.1998, p. 1.

([2]) COM(2000) 769 final.

([3]) OJ C 210, 6.7.1998, p. 215.

(22) Promotion of the production and use of biofuels will contribute to a reduction in energy dependency and in emissions of greenhouse gases. In addition, biofuels may be used in existing motor vehicles and be sold through the existing motor vehicle fuel distribution system. Accordingly, no expensive investment in infrastructure or engine redesign will be necessary.

(~~12~~23) Since the objective of the proposed action, namely the introduction of general principles providing for a minimum percentage of biofuels to be marketed and distributed, cannot be sufficiently achieved by the Member States by reason of the scale of the action, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(24) Research and technological development in the field of the sustainability of biofuels should be promoted.

(25) An increase in the use of biofuels should be accompanied by a detailed analysis of the environmental, economic and social impact, in order to decide whether it is advisable to increase the proportion of biofuels in relation to conventional fuels.

(~~13~~26) Provision should be made for the possibility of rapidly adapting the list of biofuels, the percentage of renewable contents, and the schedule for introducing biofuels in the transport fuel market, to technical progress and to the results of an environmental impact assessment of the first stage of introduction. In this connection, consideration should also be given to different biofuels like pure, cold-pressed vegetable oil, such as rapeseed oil, which can be produced in an environmentally friendly way, and whose by-products also contain protein and can be used as animal feed. Other alternative fuels could also be taken into account, such as automotive LPG (Liquefied Petroleum Gas), LNG (Liquefied Natural Gas), DME (Dimithylether) and CNG (Compressed Natural Gas), which are already used in the transport fuel market.

(27) Provision should be made for rapidly developing the quality standards for biofuels to be used in the automotive sector, both as pure biofuels and as a blending component in conventional fuels.

Although the biodegradable fraction of waste is a useful source of biofuels, the quality standard should take account of the possible presence of contaminants in the waste to preclude the risk of specific components damaging the vehicle and/or causing higher levels of emissions.

(28) Encouragement of the promotion of biofuels should be consistent with security of supply and environmental objectives and other related policy objectives, as well as with any measures taken within each Member State.

(29) Since the use of biofuels above a certain concentration requires special adaptation of vehicles to avoid technical and safety problems, pure biofuels or blended fuels with a concentration of biofuels exceeding the maximum limit which can be tolerated by existing vehicles should be clearly and visibly labelled at the point of delivery.

(30) The demand for biofuels in the Community and thus in other countries could open up a new market for innovative agricultural products.

(~~14~~31) 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive sets a minimum percentage of biofuels to replace diesel or gasoline for transport purposes in each Member State.

Article 2

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

(a) 'biofuels' means liquid or gaseous fuel for transport produced from biomass;

(b) 'biomass' means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

(c) 'energy content' means the lower caloric value of a fuel.

2. ~~The products listed in Part A of the Annex shall be considered biofuels.~~ Shall be considered biofuels in particular the products listed in Part A of the Annex.

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

Article 3

1. Member States shall ensure that the minimum proportion of biofuels sold on their markets is 2 %, calculated on the basis of energy content, of all gasoline and diesel sold for transport purposes on their markets by 31 December 2005 and that this share increases~~, aiming towards a minimum level of blending~~, in accordance with the schedule set out in Part B of the Annex.

2. The Member States shall submit to the Commission a detailed report on the environmental impact of the planned measures and a breakdown of the costs. The report shall cover at least the following:

(a) land use,

(b) degree of intensity of cultivation

(c) use of pesticides,

(d) protection of watercourses,

(e) energy efficiency,

(f) potential emission of greenhouse gases,

(g) combustion behaviour.

The report shall be made available to the public.

3. Member States may promote the technological development of biofuel production and of the companies involved in its production using financial instruments for research, the environment and regional development.

~~2~~4. Biofuels may be made available in any of the following forms:

(a) as pure biofuels or at high concentration in mineral oil derivatives, in accordance with specific quality standards for transport applications;

(b) as biofuels blended in mineral oil derivatives taking into account the appropriate European norms describing the technical specifications for transport fuels (EN 228 and EN 590);

(c) as liquids derived from biofuels, such as ETBE (ethyl-tertio-butyl-ether), where the percentage of biofuel is specified in the Part A of the Annex.

~~3~~5. Member States shall monitor the effect of the use of biofuels in diesel blends above 5 % by non-adapted vehicles and shall, where appropriate, take measures to ensure compliance with the relevant Community legislation on emission standards.

6. Member States shall give priority to promoting the use of biofuels in public and collective transport.

7. In the measures that they take, Member States shall consider the overall environmental balance of the various types of biofuels and give priority to the promotion of those biofuels with a very good environmental balance.

Article 4

1. Member States shall report to the Commission, before 1 July each year, on the measures adopted to ensure compliance with the targets laid down in Article 3 and in Part B of the Annex, on the total sales of transport fuel and the share of biofuels in such sales for the preceding year. The first report shall be submitted by 30 June 2004.

2. Member States shall inform consumers through public bodies about the possibilities of using biofuels.

~~2~~3. By 31 December 2006 at the latest, and every two years thereafter, taking into account the reports referred to in Article 3(2), the Commission shall draw up an evaluation report ~~to~~ for the European Parliament and ~~to~~ for the Council on the progress made in the use of biofuels in the Member States, on the economical aspects and on the environmental impact of the current situation and of further ~~increasing~~ increases in the share of biofuels.

To this end, the Commission shall devise a specific environmental impact assessment incorporating a comprehensive life-cycle analysis of the use of biofuels. In that report, the Commission shall pay particular attention to environmental aspects, in particular variations in water quality, soil erosion, use of inputs and pesticides, the preservation of natural habitats, flora and fauna and to the consequences of the changes caused by the biofuels connected with the production of biomass.

The report may also consider the possibility of introducing a selective tax on the various biodiesels, on the basis of environmental criteria. On the basis of th~~is~~e report, the Commission will shall propose, to the European Parliament and the Council, where appropriate, ~~an adaptation of the system of~~ new targets for biofuels as laid down in Article 3 and in Part B of the Annex, possibly by introducing a minimum blending percentage.

4. Biodiesel end products intended for fuel and produced through esterification or fatty acids shall comply with standards prEN 14214 of the European Committee for Standardisation on fatty acid methyl esters (FAME) for diesel engines.

Article 5

The Annex may be adapted to technical progress in accordance with the procedure referred to in Article 6(2).

The schedule ~~of~~in Part B of the Annex may be adapted in accordance with the procedure referred to in Article 6(2), on the basis of technical development of biofuel technologies, market penetration and applications in means of transport.

When the Annex is adapted pursuant to the first and second paragraph, environmental criteria shall be set for the use of biofuels.

On the basis of the information provided by the Member States pursuant to Article 4(1), the Commission may exempt from the targets laid down in Article 3 and in Part B of the Annex, those Member States which have particular difficulties in meeting them and which so request. Such exemptions may not exceed two years.

As a condition of obtaining such an exemption, Member States shall provide the Commission with an action plan demonstrating how they will meet scheduled targets as they will apply at the time of the expiry of the exemption. A Member State may be granted an exemption only once.

Article 6

1. The Commission shall be assisted by the committee instituted by Article 4(2) of Council Decision 1999/21/EC Euratom [1].

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.

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

Article 7

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 those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 8

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

Article 9

This Directive is addressed to the Member States.

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

ANNEX

A. ~~**LIST**~~ **EXAMPLES OF POSSIBLE BIOFUELS AND PERCENTAGE OF RENEWABLE CONTENTS**

'Bioethanol': ethanol produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel;

'Biodiesel': a diesel quality liquid fuel produced from biomass, including animal fats and tallow from rendering plants or used fried oils in compliance with the prEN 14214 standard for FAME (Fatty Acid Methyl Ester) to be used as biofuel;

'Biogas': a fuel gas produced by the anaerobic fermentation of biomass and/or the biodegradable fraction of waste that can be purified to natural gas quality, to be used as biofuel;

'Biomethanol': methanol produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel;

'Biodimethylether': dimethylether produced from biomass and/or the biodegradable fraction of waste, to be used as biofuel;

~~'Biooil': a pyrolysis oil fuel produced from biomass, to be used as biofuel.~~

'Biohydrogen': hydrogen produced from biomass and/or the biodegradable fraction of waste, to be used as a biofuel.

'BioETBE (ethyl-tertio-butyl-ether)': ETBE produced on the basis of bioethanol.

The percentage of volume bioETBE that is calculated as biofuel is 45 %.

B. **MINIMUM AMOUNT OF SOLD BIOFUEL AS A PERCENTAGE OF SOLD GASOLINE AND DIESEL**

Year	%	~~Of which as a minimum in the form of blending (%)~~
2005	2	—
2006	2,75	—
2007	3,5	—
2008	4,25	—
2009	5	~~1~~
2010	5,75	~~1,75~~

Proposal for a Council Decision on the conclusion of an Agreement in the form of an Exchange of Letters concerning amendments of the Annexes to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products

(2002/C 331 E/47)

COM(2002) 503 final — 2002/0224(ACC)

(Submitted by the Commission on 13 September 2002)

EXPLANATORY MEMORANDUM

On 17 December 1996, the Council adopted Decision 97/132/EC approving the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (hereinafter referred to as the Veterinary Agreement). The Council adopted also on 17 December 1996 Decision 97/131/EC, approving an Agreement in the form of an Exchange of Letters between these Parties concerning the provisional application of the Veterinary Agreement. In this latter Agreement it was confirmed that the veterinary certification for live animals and animal products applicable at 31 December 1996 would continue to apply until the Veterinary Agreement comes into force.

On 15 November 1999, the Council adopted Decision 1999/837/EC amending Council Decision 97/132/EC to provide for a procedure for amending the Annexes to the Veterinary Agreement. This procedure may be used once the Veterinary Agreement is in force. This same Decision approved an Agreement in the form of an Exchange of Letters concerning certain amendments to the Annexes to the Veterinary Agreement. With these amendments equivalence for several more commodities has been recognised.

Article 9.3 of the Veterinary Agreement requires the introduction of 'simplified' certification for trade between the Community and New Zealand in live animals and animal products for which equivalence concerning all public and animal health measures (full equivalence) has been recognised. However, due to a difference between the Parties in certification systems, the Parties could not agree on the 'simplified' certification requirements. Because of this situation and in accordance with Article 18 of the Veterinary Agreement, the Veterinary Agreement could not enter into force and consequently has lead to an unexpected and undesired prolonged 'standstill' in the certification requirements as referred to in Council Decision 97/131/EC.

Therefore it is necessary for the Parties to agree that full equivalence referred to in Article 9.3 of the Veterinary Agreement also includes equivalence of certification systems. Recognition of this equivalence for certain commodities must be recognised before a Commission Decision laying down the new simplified certificates for these products may be proposed. The proposed amendments to Annexes V and VII to the Veterinary Agreement provide for this.

The two Parties have confirmed their agreement in principle to the form of an Exchange of Letters concerning these amendments to the Annexes to the Veterinary Agreement.

After adoption by the Council of this proposal and the formal physical exchange of letters between the Parties, the Commission may adopt a Commission Decision establishing 'simplified' certificates for import from New Zealand of products fully recognised equivalent. Following its adoption and after the Parties have notified each other in writing that the necessary administrative procedures have been completed, the Veterinary Agreement enters into force in accordance with Article 18 of the Veterinary Agreement.

From the date the Veterinary Agreement enters into force, the 'standstill' on certification conditions referred to in Council Decision 97/131/EC will end.

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 Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products has been approved by Council Decision 97/132/EC [1], as amended by Council Decision 1999/837/EC [2].

(2) Due to a difference in certification systems between the two Parties, the Parties have not notified each other of the completion of their respective procedures for ratification of the Agreement, as provided for in the second subparagraph of Article 18 (1) thereof.

(3) Therefore, the Agreement has not entered into force and until it does the Agreement is provisionally applied as agreed by the Agreement in the form of an Exchange of Letters, attached to Council Decision 97/131/EC [3].

(4) Certain amendments to the Annexes to the Agreement concerning certification and recognition of equivalence of certification systems for certain commodities are necessary before the two Parties can complete their respective procedures and notify each other of their completion and the Agreement can enter into force.

(5) The two Parties have confirmed their agreement in principle to the form of an Exchange of Letters and the determination of the sanitary measures applicable to trade in live animal and animal products; the Exchange of Letters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning amendments to the Annexes V and VII to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters, including the amendments to the Annexes to the Agreement, is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the European Community.

Article 3

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

This Decision shall take effect on the date of publication.

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[1] OJ L 57, 26.2.1997, p. 4.

[2] OJ L 33, 23.12.1999, p. 1.

[3] OJ L 57, 26.2.1997, p. 1.

EXCHANGE OF LETTERS

concerning the amendment to the Annexes to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products

A. *Letter from the competent authority of the European Community*

Dear Sir,

With reference to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products, I have the honour to propose to you to amend the Annexes to this Agreement as follows:

Replace the texts of Annex V, Horizontal Issues 42A and 42B, and Annex VII with the texts of Annexes A and B as agreed by our respective services and attached hereto.

I should be obliged if you would confirm the agreement of New Zealand to such amendment of the Annexes to the Agreement.

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

On behalf of the European Community

B. *Letter from the competent authority of New Zealand*

Dear Sir,

I have the honour to refer to your letter containing details of proposed amendments to Annex V, Horizontal Issues 42A and 42B, and Annex VII, of the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products.

In this regard I have the honour to confirm the acceptability to New Zealand of the proposed amendments as set out in your letter referred to above, a copy of which is attached hereto.

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

For the competent Authority of New Zealand

c*ANNEX A*

ANNEX V

RECOGNITION OF SANITARY MEASURES

Commodity	EC Exports to New Zealand					New Zealand Exports to EC				
	Trade conditions		Equiv	Special conditions	Action	Trade conditions		Equiv	Special conditions	Action
	EC Stds	New Zealand Stds				New Zealand Stds	EC Stds			
42A **Horizontal Issues**										
Definitions									For 'serious infectious disease' and 'epizootic'	EC to confirm
Water	80/778/EEC	Meat Act 1981 Health Act 1956	Yes (1)			Meat Act 1981	80/778/EEC	Yes (1)		EC to evaluate new New Zealand proposal for water system
Residues *Residue monitoring* — Red meat species	96/22/EC 96/23/EC	Meat Act 1981 Food Act 1981	Yes (1)			Meat Act 1981	96/22/EC 96/23/EC	Yes (1)		
— Other species			NE	Not evaluated	Still to be addressed			NE	Not evaluated	Still to be addressed
— Standards			NE	Not evaluated (currently outside the scope of the Agreement)	Still to be addressed			NE	Not evaluated (currently outside the scope of the Agreement)	Still to be addressed

Commodity	EC Exports to New Zealand					New Zealand Exports to EC				
	Trade conditions		Equiv	Special conditions	Action	Trade conditions		Equiv	Special conditions	Action
	EC Stds	New Zealand Stds				New Zealand Stds	EC Stds			
Certification Systems	96/93/EC	Animal Products Act 1999	Yes (1)	Equivalency status applies to all animals and animal product commodities accorded both animal and public health equivalence (Yes 1) as appropriate		Animal Products Act 1999	72/462/EEC 91/495/EEC 92/5/EEC 92/45/EEC 94/65/EC 96/93/EC	Yes (1)	Equivalency status applies to animals and animal product commodities under the scope of Directives 72/462/EEC, 91/495/EEC, 92/5/EEC, 92/45/EEC, 94/65/EC, accorded both animal and public health equivalence (Yes 1) as appropriate When the official health certificate is issued after the departure of the consignment, it shall include reference to the appropriate Eligibilty Number (ED), date of issuance of the eligibility document that supports the official health certificate, the date of departure of the consignment and the date of signing of the official health certificate. New Zealand shall inform the border inspection post of arrival of any certification problem after departure from New Zealand	For commodities other than those accorded certification systems equivalence the EC to evaluate equivalence

Annex V (a) Not evaluated, Still evaluating, Yes (3), Yes (2) and No = existing trade conditions apply in the interim.

(b) For the EC: Animal and animal products must be eligible for intra-Community trade, unless otherwise indicated in the text of Annex V.

(c) For definitions of abbreviations refer to Glossary at the beginning of this Annex.

42B **Horizontal issues**	**Issue**	**Action**
Premises listings	Competent authority to recommend listing	Still to be addressed
	Still require lists currently	Still to be addressed
Certification	Consistency of required information	Still to be addressed
	Modification to existing certificates	NZ has requested.
	Principles of health marking	EC to consider
		Still to be addressed
Compliance	Resolution/transparency	Still to be addressed
	Linkage to audit process	Still to be addressed
Premises supervision	Veterinary supervision	EC to clarify internal/external requirements

Annex V (a) Not evaluated, Still evaluating, Yes (3), Yes (2) and No = existing trade conditions apply in the interim.
(b) For the EC: Animal and animal products must be eligible for intra-Community trade, unless otherwise indicated in the text of Annex V.
(c) For definitions of abbreviations refer to Glossary at the beginning of this Annex.

ANNEX B

ANNEX VII

CERTIFICATION

Official health certificates will cover consignments of live animals and/or animal products being traded between the Parties.

Health attestations:

(a) (i) full equivalence agreed — Model health attestation to be used (equivalence for animal and/or public health as appropriate and for certification systems). Refer Yes (1) Annex V;

'The (insert live animal or animal product) herein described, comply with the relevant (European Community/New Zealand (*)) (animal health/public health (*)) standards and requirements which have been recognized as equivalent to the (New Zealand/European Community (*)) standards and requirements as prescribed in (European Community/New Zealand Veterinary Agreement (Council Decision 97/132/EC)). Specifically, in accordance with (insert . . . exporting Party's legislation)

_____

(*) Delete as appropriate.'

(ii) equivalence agreed for animal and/or public health as appropriate, Refer Yes (1) Annex V, but not for certification systems — existing certification;

(b) equivalence agreed in principle — minor issues to be resolved. Refer Yes (2), Annex V — existing certification;

(c) equivalence in form of compliance with importing country's requirements — health attestation to be used in accordance with Annex V. Refer Yes (3), Annex V;

(d) not equivalent — existing certification.

For exports from New Zealand: the official health certificate will be issued in English as well as in one of the languages of the Member State in which the border inspection post is situated where the consignment is presented.

For exports from the European Community: the official health certificate will be issued in the language of the Member State of origin as well as in English.

The controlling authority shall ensure that official certifying officers are aware of the importing party's health conditions as prescribed in this Agreement and are obliged to certify to these requirements where appropriate.

For consignments of commodities for which the model health attestation as referred to in paragraph (a) i., is prescribed, the official health certificate may be issued after departure of the consignment provided that:

— the certificate shall be available at arrival in the border inspection posts;

— the statement provided for in paragraph (a).i. shall be completed by the following statement: 'The undersigned officer certifies this consignment on the basis of eligibility document(s) (specify reference to the appropriate Eligibility Document(s) (ED)) issued on (insert date), which were ascertained by him and were issued prior to the departure of the consignment'.

Amended proposal for a Regulation 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 [1]

(2002/C 331 E/48)

COM(2002) 515 final — 2001/0180(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 13 September 2002)

1. **Background**

Transmission of the Proposal to the Council and the European Parliament (COM(2001) 182 final — 2001/0180(COD)) in accordance with Article 95(1) of the Treaty	20 August 2001
Opinion of the Economic and Social Committee	21 March 2002
Opinion of the Committee of the Regions	16 May 2002
Opinion of the European Parliament — first reading	3 July 2002

2. **Objective of the Commission Proposal**

The Proposal lays down a Community framework for traceability and labelling of GMOs, as well as traceability of food and feed products produced from GMOs, at all stages of their placing on the market.

3. **Commission opinion on the amendments adopted by the Parliament**

3.1. *Amendments accepted by the Commission*

Amendments 11 and 13 concern the definitions for 'food' and 'pre-packaged' and provide helpful clarification.

3.2. *Amendments accepted in part or principle by the Commission*

Amendment 9 refers to Article 3(1) of the Proposal and exempts certain organisms from the definition of 'GMO' as per the exemption under Article 3(1) Directive 2001/18/EC. This is achieved via inclusion of 'with the exemption of certain organisms yielded by the techniques of genetic modification listed in Annex 1B of Directive 2001/18/EC'. This is a helpful clarification and acceptable in principle provided the precise wording of the Directive is used 'excluding organisms obtained through the techniques of genetic modification listed in Annex IB of Directive 2001/18/EC'.

Amendment 10 refers to the definition of 'operator' under Article 3(5) of the Proposal and clarifies that a person handling products placed on the market in the Community could be 'either from a Member State of the EU or from a third country'. The Commission considers that this additional wording is implicit in the original text but can accept the amendment in principle. Whilst the wording 'either from a Member State of the EU or from a third country' can be included in the definition, it should be noted that Community requirements cannot be extended beyond the borders of the EU.

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[1] OJ C 304 E, 30.10.2001, p. 327.

Amendment 12 refers to the definition of 'placing on the market' under Article 3(13) of the Proposal and in part, ensures further consistency with Directive 2001/18/EC. The amendment can be accepted provided that the full wording, rather than only a part, of the definition under the Directive is included. On this basis, the definition should read 'placing on the market' means placing on the market as defined under Article 2(4) of Directive 2001/18/EC. This removes the need for the full text of the definition.

Amendment 14, in terms of labelling under Article 4(1) of the Proposal, retains the wording provision of Directive 2001/18/EC for products containing GMOs but provides for an alternative in that the name of the crop or GMO can be included on the label. This does not detract in substance from the requirement of Directive 2001/18/EC but consistency should be ensured with other Community legislation, including the Proposal on GM food and feed. The Commission can accept this amendment in principle on the basis that it is without prejudice to other specific requirements in Community legislation. To increase clarity in the context of accepting this amendment, the wording of Article 4(5) is re-worded as follows. Paragraphs 1 to 4 are without prejudice to other specific labelling and traceability requirements in Community legislation.

Amendment 24 provides that operators who receive pre-packaged products have to retain the information specified in Articles 4(2) and (3) and 5(1). However, the obligation to retain this information is already provided for in Article 4(2) and (3) and 5(1) and is therefore already accepted by the Commission. The Commission can accept to clarify the exemption proposed in Article 6(1), which aims to ease the administrative burdens of operators by adding the following wording. 'This paragraph does not apply to the first stage of the placing on the market of a product or to primary manufacture or repackaging of a product.' This takes into account the first part of amendment 24.

Amendment 29 adds additional wording to the standard wording for inspection and control measures under Article 9(1) of the Proposal. This is acceptable, in part, provided that the wording of the amendment 'and risk assessment on the basis of sample checks and testing (quantitative and qualitative)' is replaced by 'including sample checks and testing'. Inspection and control constitute risk management measure, which should not be confused with risk assessment.

Amendment 30 refers to Article 9(2) of the Proposal and the involvement of Member States in the development of guidance. This is acceptable in part provided that the wording of the amendment 'in accordance with the procedure laid down in Article 10' is replaced by 'in close co-operation with Member States'.

Amendment 31 introduces a new paragraph in Article 9 concerning further measures (registers) to be developed for the purpose of inspection and control. The establishment of registers to contain sequence information and reference material for GMOs is already provided for under Article 31(2) of Directive 2001/18/EC and Article 30 of the GM food and feed Proposal. It is not, therefore, necessary to include an Article to establish such a register(s) in this Proposal. This amendment can, however, be accepted in principle provided that its contents are transferred to recital 7 and are subject to the following re-wording. 'Account should be taken of the register(s) containing information on genetic modifications in GMOs to be established by the Commission in accordance with Article 31(2) of Directive 2001/18/EC.'

Amendment 35 refers to the need to ensure that consumers receive reliable information and in this context, introduces a new recital 1a. The content of the amendment is acceptable, in principle, given that the availability of information to the public is in line with one of the objectives of this Proposal and can include part of the text in Recital 4 as follows; Traceability requirements for food and feed produced from GMOs should be established to facilitate accurate labelling of such products, in accordance with the requirements of Regulation (EC) No . . ./2002 [on genetically modified food and feed], so as to ensure that accurate information is available to operators and consumers to enable them to exercise their freedom of choice in an effective manner as well as control and verification of labelling claims. Requirements for food and feed produced from GMOs should be similar in order to avoid discontinuity of information in cases of change in end use.

Amendment 47 introduces a new paragraph in Article 9(2)(a) of the Proposal and refers to consultation of relevant bodies during the development of technical guidance. This is acceptable in part on the proviso that the wording 'take account' is not construed as legally binding and that it is not precluded that the Commission takes account of work in other relevant groups. This would, as a matter of course, include Member States and discussions with their national competent authorities. The following wording is, therefore acceptable. 'In developing the above technical guidance, the Commission shall take account of the work of national competent authorities, the committee referred to in Article 58(1) of Regulation (EC) No 178/2002 and the Community Reference Laboratory laid down pursuant to Regulation (EC) No . . ./2002 [on genetically modified food and feed].'

3.3. *Amendments not accepted by the Commission*

Amendments 2 and 6 make reference to the precautionary principle in the context of this Proposal, which cannot be accepted. The precautionary principle relates to the risk analysis of products and is accounted for as part of the approval process under the authorising legislation (Directive 2001/18/EC and Regulation (EC) No 178/2002). Any safety measures to protect human health and the environment arise directly from this authorising legislation. Traceability is not a 'safety measure' per se but can be used to 'facilitate' the application of other measures, such as product withdrawals and monitoring, as a means to ensure safety. The precautionary principle cannot, therefore, be taken into account when implementing traceability requirements.

Amendment 16 is not acceptable as it removes the derogation concerning traceability requirements for products intended for direct use as food, feed or processing. The derogation allows operators to state that these products are intended for direct use as food, feed or processing and provide the unique codes of the GMOs that the product 'may contain'. The Commission believes that this derogation is essential for an operational traceability system for such products. Imposing further requirements for these products would be very difficult and burdensome for operators to implement. Whilst the identity (unique codes) of specific GMOs to be released into the environment for cultivation is essential given that they are capable of establishing and reproducing, this is not the case for GMOs intended for food, feed or processing, where any potential environmental risk is extremely limited. The Biosafety Protocol, similarly, does not include a requirement for full listing of GMOs intended for food, feed, or processing in bulk consignments for trans-boundary movement.

Amendments 17 and 22 extend the period for retention of information by operators from 5 to 10 years and cannot be accepted. Even if traceability were possible after 5 years, the benefits of this information would be minimal with no practical value. Extension of the time limit would also place an unnecessary burden both on operators and inspection authorities.

Amendment 20 includes additional labelling requirements for pre-packaged products produced from GMOs under a new Article 5(1)(a) and cannot be accepted. Article 5(1) already requires that this information is transmitted to the next operator in the chain and it is not necessary to impose labelling with the same information to meet the objectives of the Proposal.

Amendment 21 requires that the GMOs from which food and feed products are derived have to be precisely identified with provision of their unique codes and this cannot be accepted. The main objective of the Proposal as regards products produced from GMOs is to ensure accurate labelling (recital No 4). It is not necessary to establish the detailed history and origin of individual GMOs, through a traceability system including the unique codes to provide for comprehensive labelling. For the purpose of providing appropriate information to the purchaser or consumer it is sufficient that the label documents that the product is produced from GMOs.

Amendment 27 refers to measures for co-existence and segregation, which cannot be accepted given that the objective of this Regulation is to trace products and not to avoid adventitious or technically unavoidable presence of GM material in food. The Commission has put forward an action concerning the issue of co-existence between different types of crops, including GM crops in the Communication on life sciences and biotechnology adopted in January 2002.

The Commission cannot accept amendment 28, which requires that the traceability provisions under Article 4(6) of Directive 2001/18/EC would remain in place rather than repealed when the Proposal enters into force. This would mean that national measures for traceability could proceed alongside the Community system for traceability under this Proposal, creating possible disruption of the internal market. Recital 2 specifically refers to the fact that a harmonised Community framework for traceability and labelling of GMOs should contribute to the effective functioning of the internal market and that Directive 2001/18/EC should be amended accordingly. The Commission cannot accept amendment 51 removing the wording 'and amending Directive 2001/18/EC' from the title in order to maintain the legal consistency of the Proposal.

Amendments 32 and 33 mean that no new products could be authorised prior to the entry into force of the system to assign unique codes under the Proposal and are not acceptable. The authorising legislation for new products provides for a comprehensive pre-market risk assessment. Products are only granted authorisation on the basis that they will not present a risk to human health or the environment. The requirement to assign unique codes to GMOs under this Proposal does not impinge on the approval procedure under the authorising legislation. The Commission is firmly against extending the conditions of authorisation to include formal adoption of the provisions of this Proposal.

Amendment 39, which removes part of the wording for the definition of 'produced from GMOs' is not acceptable. The Commission considers that the definition of 'produced from GMOs' needs to be the same in the GM food and feed proposal and in this proposal. Furthermore, the wording 'but not containing GMOs' is already enshrined in the Novel Foods Regulation (EC) No 258/97, which has been in force for more than 5 years.

Amendment 48, which shifts assistance for the development of unique codes from the committee under Directive 2001/18/EC to that under Regulation (EC) No 178/2002, cannot be accepted. The Proposal requires that unique codes shall be assigned to all GMOs, including seeds for cultivation, and not merely those intended for food, feed and processing. The Commission considers that the committee under the 'horizontal' Directive 2001/18/EC, which contains the foundations for environmental risk assessment, is most appropriate for this purpose.

Amendment 50 introduces the word 'standardised' with regard to procedures for transmitting and retaining information to ensure traceability and is not acceptable. The Proposal specifically does not require standardised procedures to be used as a means to accommodate use of existing systems, where appropriate. Operators must be in a position to identify to whom and from whom products have been made available. The Commission considers that this does not hinge on use of standardised procedures.

Amendments 26, 52 and 55 either remove or restrict the possibility to establish thresholds to address the issue of adventitious presence and are not acceptable.

More than 50 million hectares of GM crops are grown in the world and adventitious or technically unavoidable presence of traces GMOs or GM materials in conventional products is inevitable and largely unavoidable. The Commission therefore agrees with the Parliament that a threshold should apply to traces of authorised GMOs and GM materials below which such products do not have to be labelled or traced. The possibility of establishing labelling thresholds for such traces of GMOs is already provided for in Directive 2001/18/EC and under the Novel Foods Regulation. It is, therefore, logical and consistent to provide for such traces of GMOs and GM material to be exempted from the labelling and traceability requirements of this Proposal.

However, the Commission also considers it necessary to provide thresholds for GMOs that have been scientifically assessed as without risk to human health or the environment but are pending approval under Community legislation. This is necessary because these GMOs have been approved in third countries and traces of such GMOs in imported commodities will be largely unavoidable. This issue will have to be addressed in order to avoid trade grinding to a halt. However, we need to acknowledge the fact that authorisation processes can take some time. On this basis, the Commission has suggested that a tolerance level should be introduced for such materials BUT only under certain stringent conditions that do not compromise safety. These thresholds would be limited to adventitious or technically unavoidable traces of GMOs or GM material that have been positively assessed by a Community scientific committee as without risk to human health or the environment and which is pending administrative approval under Community legislation.

The intention of the Commission proposal is to provide that products containing or consisting of traces of such GMOs and GM material below a threshold do not have to be traced. This possibility has been deleted by the above amendments. This will not only undermine the feasibility and practicability of the traceability and labelling requirements under the Proposal but also have major implications and restrictions for trade.

3.4. *Amended Proposal*

Having regard to Article 250, paragraph 2 of the EC Treaty, the Commission modifies its Proposal as indicated above.

Proposal for a Council Decision on the conclusion of an agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

(2002/C 331 E/49)

COM(2002) 506 final

(Submitted by the Commission on 17 September 2002)

EXPLANATORY MEMORANDUM

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases [1] harmonises certain aspects of the copyright protection provided for databases and creates an exclusive *sui generis* right for the makers of databases. The object of this *sui generis* right is to ensure protection of substantial investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right. The Directive provides that the *sui generis* right applies to databases whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community. Protection is also to be available to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community. Agreements extending the *sui generis* right to databases not covered by the Directive shall be concluded by the Council acting on a proposal from the Commission on the basis of reciprocity. This would be the first reciprocity agreement on database protection.

The Isle of Man is a dependent territory of the UK, with a special relationship with the UK which protects its internal self-government. In return, the Manx government undertakes to act consistently with UK interests. Generally speaking, Community legislation does not apply to the Isle of Man. However, since 1968 the Isle of Man has been part of the Union's customs territory, so that the Union's rules on the free movement of goods are applied to the Isle [2].

The UK on behalf of the Isle of Man has asked that steps be taken to extend the *sui generis* protection to the Isle of Man. The Isle of Man has adopted its Copyright (Amendment) Act 1999, which amends the Isle of Man's existing copyright law in line with the provisions in the Directive 96/9/EEC, and creates a new *sui generis* right against the unauthorised extraction and re-utilisation of the contents of a database for the period of 15 years. The database provisions of this Act were brought into force on 1 April 2000 by the Copyright (Amendment) Act 1999 (Appointed Day) Order 2000, (S.D. 103/00). According to Article 11(1) of the Act, the new database right is granted to British citizens, residents within the Island and certain legal persons established under the law of the Isle only. However, Article 11(4) of the Manx Copyright Act provides for the possibility to extend the protection to third country nationals and enterprises by order of the Governor in Council. The Council adopted the negotiating directives and the negotiating mandate on 22 July 2002.

[1] OJ L 77, 27.3.1996, p. 20.

[2] Council Regulation (EEC) No 802/68 of 27 June 1968 (OJ L 148, 28.6.1968, p. 1).

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases [1], and in particular Article 11(3) thereof,

Having regard to the proposal from the Commission,

[1] OJ L 77, 27.3.1996, p. 20.

Whereas:

(1) The right provided for in Article 7 of Directive 96/9/EC applies to databases whose makers or rightholders qualify for protection under Article 11(1) and (2) of that Directive.

(2) The Isle of Man legislation on the protection of databases is in conformity with the provisions of Directive 96/9/EC and offers protection equivalent to that provided for in Chapter III thereof. The Isle of Man intends to extend the application of that legislation to nationals of the Member States of the European Community and the Member Countries of the European Economic Area.

(3) The Isle of Man legislation therefore qualifies for an extension of the protection provided for in Chapter III of Directive 96/9/EC. The term of any protection thus extended should, however, not exceed that available pursuant to Article 10 of Directive 96/9/EC.

(4) The Agreement, in the form of an Exchange of Letters, extending to the Isle of Man the protection provided for in Chapter III of Directive 96/9/EC should be approved accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters between the European Community and the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is set out in the Annex.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the agreement and the letter to the Isle of Man in order to express the consent of the Community to be bound.

Exchange of Letters between the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man and the European Community on the reciprocal extension of the protection of sui generis rights in databases

A. *Letter from the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man*

London, [1]

Sir,

I have the honour to propose that the following Agreement be concluded with a view to extending the sui generis protection of databases to the Isle of Man.

Agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

THE EUROPEAN COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON BEHALF OF THE ISLE OF MAN

Desiring to enhance and stimulate trade in databases and their production and distribution,

Recognising that both the European Community and the Isle of Man provide for the sui generis protection of databases where it is shown that the obtaining, verification or presentation thereof has entailed substantial investment,

Recognising that the protection under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases to databases is limited to database makers and rightholders who are nationals of a Member State of the European Community or who have their habitual residence in the territory of the Community and to companies and firms formed in accordance with the law of a Member State and complying with the conditions of Article 11(2) of the said Directive, but that such protection may be extended to third country rightholders,

HAVE AGREED AS FOLLOWS:

Article 1

Each Contracting Party shall provide for a sui generis protection of databases as provided for in Chapter III of Directive 96/9/EC and shall extend that sui generis protection to databases whose makers or rightholders are

(a) natural persons who have their habitual residence in the territory of the other Contracting Party;

(b) companies or firms formed in accordance with the law of the Isle of Man or the law of one of the Member States of the European Community and having their registered office, central administration or principal place of business within the territory of a Contracting Party.

Where a company or firm as referred to in point (b) of the first paragraph has only its registered office in the territory of a Contracting Party, its operations must be genuinely linked on an ongoing basis with the economy of a Contracting Party.

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[1] [This date should be the day of the Council Decision.]

Article 2

The duration of protection for databases shall be in accordance with Article 10 of Directive 96/9/EC.

Article 3

This Agreement shall take effect on [1]

I would be grateful if you would confirm the agreement of the European Community to the Agreement set out above and I propose that this letter and your letter in reply constitute an Agreement between our two authorities.

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

For the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man

[1] [This date should be the first day of the third month following the date of publication in the Official Journal.]

B. *Letter from the European Community*

Brussels, (1)

Sir,

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

'I have the honour to propose that the following Agreement be concluded with a view to extending the sui generis protection of databases to the Isle of Man.

Agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

THE EUROPEAN COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON BEHALF OF THE ISLE OF MAN

Desiring to enhance and stimulate trade in databases and their production and distribution,

Recognising that both the European Community and the Isle of Man provide for the sui generis protection of databases where it is shown that the obtaining, verification or presentation thereof has entailed substantial investment,

Recognising that the protection under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases to databases is limited to database makers and rightholders who are nationals of a Member State of the European Community or who have their habitual residence in the territory of the Community and to companies and firms formed in accordance with the law of a Member State and complying with the conditions of Article 11(2) of the said Directive, but that such protection may be extended to third country rightholders,

HAVE AGREED AS FOLLOWS:

Article 1

Each Contracting Party shall provide for a sui generis protection of databases as provided for in Chapter III of Directive 96/9/EC and shall extend that sui generis protection to databases whose makers or rightholders are

(a) natural persons who have their habitual residence in the territory of the other Contracting Party;

(b) companies or firms formed in accordance with the law of the Isle of Man or the law of one of the Member States of the European Community and having their registered office, central administration or principal place of business within the territory of a Contracting Party.

Where a company or firm as referred to in point (b) of the first paragraph has only its registered office in the territory of a Contracting Party, its operations must be genuinely linked on an ongoing basis with the economy of a Contracting Party.

(1) [This date should be the day of the Council Decision.]

Article 2

The duration of protection for databases shall be in accordance with Article 10 of Directive 96/9/EC.

Article 3

This Agreement shall take effect on [1]

I would be grateful if you would confirm the agreement of the European Community to the Agreement set out above and I propose that this letter and your letter in reply constitute an Agreement between our two authorities.

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

For the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man'

I have the honour to confirm that the above is acceptable to the Council of the European Community and that your letter and this letter constitute an Agreement in accordance with your proposal.

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

On behalf of the Council of the European Community

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[1] [This date should be the first day of the third month following the date of publication in the Official Journal.]

Proposal for a Council Decision on the Community position to be adopted on certain proposals submitted to the 12th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Santiago, Chile, 3-15 November 2002

(2002/C 331 E/50)

COM(2002) 516 final — 2002/0225(ACC)

(Submitted by the Commission on 17 September 2002)

EXPLANATORY MEMORANDUM

1. The 12th meeting of the Conference of the Parties to CITES will be held in Santiago, Chile, from 3-15 November 2002.

2. The text of the Convention was amended in 1983 to allow Regional Economic Integration Organisations such as the EC to become a Party (the so-called Gaborone amendment). However, an insufficient number of Parties have ratified this amendment in order for it to come into effect.

3. In view of the effects of decisions taken by the Conference of the Parties on the implementation of the Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [1], it is necessary to adopt a Community position on proposals submitted to the Conference.

4. Draft Resolutions on interpretation and implementation of the Convention and proposals to amend the appendices prepared by Member States or by the Commission were discussed by the Committee of Member States constituted under Council Regulation (EC) No 338/97 at a meeting on 17 May 2002. All proposals and working documents that were approved were subsequently submitted to the CITES Secretariat by the relevant Member State or the Presidency on behalf of all the Member States.

5. One of these working documents submitted by the Presidency seeks the repeal of two earlier Conference Resolutions on implementation of CITES by the Community. It is submitted that, in the light of the enactment of Council Regulation (EC) No 338/97 and the fact that all 15 Member States are now Parties in their own right (following ratification by Ireland earlier this year), these Resolutions are out of date and should be repealed. The Presidency also submitted a draft Decision calling upon all Parties who have not yet done so to ratify the Gaborone amendment by CoP13 (in 2005).

6. On 30 July the Commission services held an informal meeting with experts from the Member States to discuss the issues to be debated at the Conference of the Parties.

7. In the case of agenda items 2-7, 15, 18, 20-24, 26, 28, 32-34, 36, 39, 42, 43, 46, 52, 53-55, 59, 60 and 64 some documents for the Conference were not available in sufficient time for the Commission to propose a Community position at the present time. The Commission therefore proposes that the position on these issues be established during the meeting on the basis of further proposals from the Commission.

8. The business of the Conference falls into three parts: strategic and administrative matters, interpretation and implementation of the Convention and proposals to amend the appendices. As the Community is not a Party to the Convention the first does not generally impact on Council Regulation (EC) No 338/97. The second part represents the evolution of the Convention and is of considerable technical importance but is not likely to have a very high public profile. By contrast the amendments to the appendices (levels of protection afforded to different species) are certain to prove controversial.

[1] OJ L 61, 3.3.1997, p. 1.

9. The following are the most critical issues with regard to amendment of the appendices:

   — whales,

   — elephants,

   — Asian freshwater turtles and tortoises,

   — commercial fish species, including sharks and toothfish,

   — timber.

10. There are two annexes to the proposed Council Decision. Annex I outlines the Community position on the critical issues listed above. Annex II contains proposed Community positions on Conference agenda items for which documents were available by 31 July 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 Convention on International Trade in Endangered Species of Wild Fauna and Flora is implemented in the Community by Council Regulation (EC) No 338/97 of 9 December 1996 [1].

(2) Proposals for Resolutions of the Conference of the Parties and amendments to the Appendices of the Convention will, in most cases, affect the Community legislation concerned.

(3) In such circumstances where Community rules have been established for the attainment of the objectives of the Treaty, the Member States cannot outside the framework of the Community institutions assume obligations which might affect those rules or alter their scope.

(4) The Community has not yet been able to become a contracting party to the Convention.

(5) In such circumstances the Community position should be represented by the Member States acting jointly in the Community interest and within the framework of a common position decided by the Council,

HAS DECIDED AS FOLLOWS:

Article 1

The position of the Community, to be represented by the Member States, acting jointly in the Community interest, at the 12th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, shall be in accordance with the positions contained in the Annexes to this Decision.

Article 2

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the meeting of the Conference of the Parties or where proposals are made in matters not yet the subject of a Community position, a position shall be established on the proposal concerned before the Conference of the Parties is called to vote on it.

[1] OJ L 61, 3.3.1997, p. 1.

ANNEX I

To Council Decision of ... 2002 concerning the Community Position to be adopted on key issues to be discussed at the 12th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Santiago, Chile 3-15 November 2002

1. Concerning commercial whaling, no decision should be taken that undermines the primacy of the International Whaling Commission on this matter. Consequently, there should be no return to commercial whaling until the IWC deems that the appropriate management controls are in place.

2. Concerning elephants, the Community is unwilling to agree to resumption in commercial ivory trade unless it is satisfied, following consultation with range States, that there will be no resulting increase in illegal killing of elephants. The Community will continue to support the co-operation of range States to this effect.

3. Concerning Asian freshwater turtles and tortoises the Community should support the proposals to list a number of the most threatened species on Appendix II of CITES, following a workshop on the group in China earlier this year.

4. Concerning commercial fish species, the Community can support listing of these on CITES appendices if they meet the requisite criteria and as a complement to action by the competent fisheries management bodies, such as FAO and Regional Fisheries Organisations. With this in mind, the Community should support the proposals for tighter regulation of international trade in whale shark and basking shark, the capture and conservation of which are very poorly regulated at international level. With regard to toothfish, the Community favours reliance on the existing regulatory mechanisms put in place by the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR). Regulation of these species by CITES can only be supported if it does not undermine the use of CCAMLR's Catch Documentation Scheme or the efforts led by CCAMLR to encourage countries and entities that are not parties to CCAMLR to adopt and implement the scheme.

5. Concerning big-leaf mahogany, the Community supports Appendix II listing of this species.

ANNEX II

To Council Decision of ... 2002 on the Community position to be adopted on certain proposals submitted to the 12th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Santiago, Chile, 3-15 November 2002

STRATEGIC AND ADMINISTRATIVE MATTERS

1. **RULES OF PROCEDURE**

1.1. **Rules of Procedure — CoP12 Doc. 1.1**

1.2. **Revision of the Rules of Procedure (Chile) — CoP12 Doc. 1.2**

Summary: The documents tabled here are the Secretariat's draft rules and suggested revisions from the host country. The latter includes a proposal that voting should be by secret ballot only if $^1/_3$ of the parties so vote in a preliminary ballot.

Comment: The proposal by Chile regarding secret ballots is welcome, although abolition of secret ballots or, failing that, a requirement that they only take place when a simple majority vote in favour in a preliminary open ballot, would be preferable.

Conclusion: The Community should support measures aimed at avoiding secret ballots.

2. **ELECTION OF CHAIRMAN AND VICE-CHAIRMEN OF THE MEETING AND OF CHAIRMEN OF COMMITTEES I AND II (NO DOCUMENT)**

3. **ADOPTION OF THE AGENDA — CoP12 Doc. 3**

4. **ADOPTION OF THE WORKING PROGRAMME — CoP12 Doc. 4**

5. **ESTABLISHMENT OF THE CREDENTIALS COMMITTEE — CoP12 Doc. 5**

6. **REPORT OF THE CREDENTIALS COMMITTEE — CoP12 Doc. 6**

7. **ADMISSION OF OBSERVERS — CoP12 Doc. 7**

8. **MATTERS RELATED TO THE STANDING COMMITTEE**

8.1. **Report of the Chairman — CoP12 Doc. 8**

8.2. **Election of new regional and alternate regional members (no document)**

Summary: No document available as of 31st July 2002.

Comments: The current representation for the European Region is as follows:

(i) Italy — term of office expires at the close of CoP12 (alternate Czech Republic)

(ii) Norway — term of office expires at the close of CoP13 (alternate Turkey)

(iii) France — term of office expires at the close of CoP13 (alternate Portugal)

Already declared candidates for the vacant posts are:

Member: Germany,

Alternate: UK.

Conclusion: The Community should support the candidature of Member States and endeavour to avoid a situation in which Member States are competing between each other for places on the Standing Committee.

9. **FINANCING AND BUDGETING OF THE SECRETARIAT AND OF MEETINGS OF THE CONFERENCE OF THE PARTIES**

9.1. **Budget for 2003-2005 — CoP12 Doc. 9.1**

Summary: The Secretariat is seeking a 10 % increase in contributions over the next triennium.

Comment: The Secretariat had been forced to rely on the trust fund to fund ongoing work in the last number of years but this is now exhausted.

Conclusion: The issue of a possible increase in contributions should be left open until the Conference.

9.2. **Procedure for approval of externally funded projects — CoP12 Doc. 9.2**

Summary: This document arises from a decision of the Standing Committee to delegate approval of new donors of external funds and new externally-funded projects to the Secretariat.

Comment: The Standing Committee found the existing system of approval of donors and projects to be cumbersome and inefficient.

Conclusion: The Community should approve the draft revised Resolution.

10. **COMMITTEE REPORTS AND RECOMMENDATIONS**

10.1. **Animals Committee**

10.1.1. *Report of the Chairman — CoP12 Doc. 10.1*

10.1.2. *Election of new regional and alternate regional members (no document)*

Summary: No document available as of 31st July 2002.

Comments: The current representation for the European Region is as follows:

(i) Dr Marinus Hoogmoed (NL) — term of office expires at the close of CoP12 (alternate Dr Vincent Fleming (UK))

(ii) Dr Katalin Rodics (HU) — term of office expires at the close of CoP12 (alternate Dr Thomas Althaus (CH))

Already declared candidates are:

Members: Dr Vincent Fleming (UK),

Alternates: Dr Carlos Ibero (ES).

Conclusion: The Community should support the candidature of experts from Member States and endeavour to avoid a situation in which individuals from Member States are competing between each other for places on the Animals Committee.

10.2. **Plants Committee**

10.2.1. *Report of the Chairman — CoP12 Doc. 10.2*

10.2.2. *Election of new regional and alternate regional members (no document)*

Summary: No document available as of 31st July 2002.

Comments: The current representation for the European Region is as follows:

(i) Dr Margarita Clemente (ES) (alternate Mr Dieter Supthut (CH))

(ii) Dr Jan de Koning (NL) — term of office expires at the close of CoP12 (alternate Mrs Hanna Werblan-Jakubiec (PL))

Already declared candidates are:

Members: Prof. Giuseppe Frenguelli (IT),

Alternates: None yet declared.

Conclusion: The Community should support the candidature of experts from Member States and endeavour to avoid a situation in which individuals from Member States are competing between each other for places on the Plants Committee.

10.3. **Nomenclature Committee report — CoP12 Doc. 10.3**

11. **IDENTIFICATION MANUAL — CoP12 Doc. 11**

Summary: This report outlines progress with preparation of identification sheets for CITES species.

Comment: —

Conclusion: The Community should note progress with this work and, in particular, the contribution made by several Member States.

12. **REVISION OF THE ACTION PLAN OF THE CONVENTION — CoP12 Doc. 12**

Summary: This consists of a report by the Standing Committee Working Group on the Action Plan.

Comment: The report recommends a number of drafting changes to the plan. Most of these are minor clarifications. However, there are a number of changes to improve efficiency of contract allocation etc.

Conclusion: The Community should note the report and endeavour to contribute to any further amendment of the Action Plan.

13. **ESTABLISHMENT OF COMMITTEES**

13.1. **Revision of Resolution Conf. 11.1 on establishment of committees (Chile) — CoP12 Doc. 13.1**

13.2. **Enhancing implementation of the Convention (United States of America) — CoP12 Doc. 13.2**

13.3. **Review of the committee structure — CoP12 Doc. 13.3**

Summary: Document 13.1 is a draft Resolution from Chile which aims to bring the numbers and representation on the Animals and Plants Committees into line with that on the Standing Committee, thus increasing the representation in several regions. Document 13.2 from the US proposes various options for dealing with 'implementation' issues, which, it is argued, are not being dealt with adequately by the existing Committee structure. Document 13.3 from the Secretariat involves effectively merging the Animals and Plants Committees (and the Nomenclature Committee) into a single Scientific Committee with the same representation rules as the Standing Committee, including the provision that the nomination attach to a country rather than an individual.

Comment: No convincing case is made to increase the size of the Animals and Plants Committees. The Secretariat's proposal to merge the scientific Committees is also inappropriate. It is not accepted that most of the issues dealt with by the Animals and Plants Committees are common to both. The present situation, whereby members of the Animals and Plants Committees are appointed by name, rather than by country, correctly reflects the expert nature of those Committees. Implementation issues are best dealt with in the Standing Committee — if necessary by a sub-group of that Committee.

Conclusion: The Community should favour the status quo.

14. **TITLE OF THE CONVENTION — CoP12 Doc. 14**

Summary: This document from the Secretariat proposes that the title should be amended to the 'CITES — The Convention on Trade in Wild Fauna and Flora'.

Comment: Although the concerns that have led to this proposal are valid, merely changing the title might not be enough to address them. The current title is well known, the new title and the acronym do not coincide, and the amendment could present legal difficulties. Instead, a draft Resolution could be prepared indicating the types of wildlife trade covered by CITES.

Conclusion: The Community should not support amendment of the title of the Convention.

15. **OUTCOME OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT AND THE DISCUSSION ON INTERNATIONAL ENVIRONMENTAL GOVERNANCE: CONSEQUENCES FOR CITES — CoP12 Doc. 15**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

16. **COOPERATION WITH OTHER ORGANIZATIONS**

16.1. **Cooperation between CITES and the Commission for the Conservation of Antarctic Marine Living Resources (CCRVMA/CCAMLR) regarding the trade in toothfish (Chile) — CoP12 Doc. 16.1**

Summary: This draft Resolution seeks voluntary cooperation between CITES and CCAMLR and urges CITES parties who have not done so to adopt the CCAMLR Catch Documentation Scheme (CDS).

Comment: Irrespective of the outcome of Item 44 and the listing proposal, the measures proposed in this document are worthwhile but could be strengthened.

Conclusion: The Community could support this draft Resolution, subject to amendments.

16.2. **CITES and FAO**

16.2.1. *Synergy and cooperation between CITES and FAO (Japan) — CoP12 Doc. 16.2.1*

16.2.2. *FAO collaboration with CITES through a Memorandum of Understanding (United States of America) — CoP12 Doc. 16.2.2*

Summary: Both of these draft Resolutions advocate further co-operation between CITES and FAO.

Comment: Of the two, the second is preferable as it advocates more concrete measures and a firmer time frame. The first proposal plays down the role of CITES and could be used as a pretext for indefinite postponement of dealing with commercial fish issues in CITES.

Conclusion: The Community should support the second of these two draft Resolutions.

16.3. **Cooperation and synergy with the Inter-American Convention for the Protection and Conservation of Sea Turtles (Ecuador) — CoP12 Doc. 16.3**

Summary: This draft Resolution seeks to establish cooperation between CITES and the above-mentioned Convention.

Comment: —

Conclusion: The Community should support this draft Resolution.

16.4. **CITES and the International Whaling Commission**

16.4.1. *Cooperation between CITES and the International Whaling Commission (Mexico) — CoP12 Doc. 16.4.1*

Summary: This draft Resolution reaffirms in stronger terms the current position as reflected in Resolution Conf. 11.4.

Comments: This needs to be considered in conjunction with Agenda Item 38, a draft Resolution which seeks the repeal of Resolution Conf. 11.4. Disputes over the efficacy or otherwise of the IWC should not be resolved in the CITES forum. There have been no substantial changes in circumstances since the adoption of Resolution Conf. 11.4. It is questionable whether or not there is a need for a further Resolution at this stage.

Conclusion: The Community should seek the withdrawal of this draft Resolution and of that under Agenda Item 38.

16.4.2. *Matters relating to the International Whaling Commission (United States of America) — CoP12 Doc. 16.4.2*

Summary: No document available as of 31st July 2002.

Comment: —

Conclusion: —

16.5. **Statements from representatives of other conventions and agreements (no document)**

Summary: No document available as of 31st July 2002.

Comment: The Community should make a statement on the relationship between the CBD and CITES addressing, in particular, the question of clauses in CITES permits concerning the use of genetic resources.

Conclusion: —

17. **SUSTAINABLE USE AND TRADE IN CITES SPECIES (NORWAY) — CoP12 Doc. 17**

Summary: This draft text reaffirms the principles of sustainable use and includes references to the role of FAO in the sustainable use of commercial fish species.

Comment: The text is vague and could be quoted to advantage to support opposing arguments in the conservation debate. As such, it does not contribute anything to the work of CITES.

Conclusion: The Community should not support the draft Resolution.

18. **ECONOMIC INSTRUMENTS AND TRADE POLICY — CoP12 Doc. 18**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

19. **FINANCING OF THE CONSERVATION OF SPECIES OF WILD FAUNA AND FLORA — CoP12 Doc. 19**

Summary: This is a report of work done by the Standing Committee following Decisions at CoP11. It incorporates a draft Decision that Parties should inform the Secretariat of best-practice methods in this area and that the Secretariat should analyse these for CoP13.

Comment: —

Conclusion: The Community should support the draft Decision.

20. **REPORTS OF DIALOGUE MEETINGS**

20.1. **Results of the African elephant dialogue meeting — CoP12 Doc. 20.1**

20.2. **Results of the hawksbill turtle dialogue meeting — CoP12 Doc. 20.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

INTERPRETATION AND IMPLEMENTATION OF THE CONVENTION

Review of Resolutions and Decisions

21. **REVISION OF RESOLUTIONS AND DECISIONS**

21.1. **Review of Resolutions**

21.1.1. *Resolutions to be repealed — CoP12 Doc. 21.1.1*

21.1.2. *Resolutions to be revised — CoP12 Doc. 21.1.2*

21.2. **Review of Decisions — CoP12 Doc. 21.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

Regular and special reports

22. **REPORT ON NATIONAL REPORTS REQUIRED UNDER ARTICLE VIII, PARAGRAPH 7, OF THE CONVENTION**

22.1. **Annual reports — CoP12 Doc. 22.1**

22.2. **Biennial reports — CoP12 Doc. 22.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

23. **APPENDIX I SPECIES SUBJECT TO EXPORT QUOTAS**

23.1. **Leopard**

23.1.1. *Report on implementation of Resolution Conf. 10.14 on quotas for leopard hunting trophies and skins for personal use — CoP12 Doc. 23.1.1*

Summary: This is a Report by the Secretariat on the implementation of this Resolution, which sets out additional marking and reporting requirements for Range States.

Comment: The Secretariat's view — that the additional requirements are unnecessary and burdensome in the context of the total volume of exports — has some validity. However, leopard parts and derivatives are being used as a substitute for tiger in traditional Chinese medicines and, therefore, total repeal of the Resolution would be inappropriate.

Conclusion: The Community should favour an amendment of the Resolution to alleviate some reporting obligations.

23.1.2. *Amendment to the quota of the United Republic of Tanzania — CoP12 Doc. 23.1.2*

Summary: This seeks a doubling of the quota for hunting trophies and skins for personal use from 250 to 500.

Comment: Current evidence indicates that the leopard is not endangered in most parts of sub-Saharan Africa and the species is retained on Appendix I largely because Parties do not wish to re-open commercial trade. The current quota goes back to CoP5.

Conclusion: The Community should support this proposal.

23.2. **Markhor — CoP12 Doc. 23.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

24. **EXPORTS OF VICUÑA WOOL AND CLOTH — CoP12 Doc. 24**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

25. **TRANSPORT OF LIVE ANIMALS — CoP12 Doc. 25**

Summary: This is a report of the Secretariat on work done to date by the Transport Working Group of the Animals Committee. It incorporates a draft Decision that the Animals Committee should carry out further work to supplement IATA guidelines and report to CoP13.

Comment: —

Conclusion: The Community should support the draft Decision.

General compliance issues

26. **COMPLIANCE WITH THE CONVENTION — CoP12 Doc. 26**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

27. **ENFORCEMENT MATTERS — CoP12 Doc. 27**

Summary: This is a report by the Secretariat on enforcement issues. It includes a draft Decision convening a special meeting of enforcement experts to report to CoP13.

Comment: —

Conclusion: The Community should note this report and support the draft Decision in principle.

28. **NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION — CoP12 Doc. 28**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

29. **VERIFICATION OF THE AUTHENTICITY AND VERACITY OF CITES PERMITS AND CERTIFICATES (CHILE) — CoP12 Doc. 29**

Summary: This proposal seeks to use the Internet for verification of permits and certificates.

Comment: The intention is to reduce the fraud associated with paper documentation but the risks associated with the proposal and its feasibility in developing countries need to be explored.

Conclusion: The Community should support the draft Resolution if it is re-worded to favour a more gradual approach — i.e. that the Standing Committee take the matter forward.

30. **IMPLEMENTATION OF CITES IN THE EUROPEAN COMMUNITY (DENMARK) — CoP12 Doc. 30**

Summary: This is a proposal submitted by the Presidency on behalf of the Community seeking the repeal of Resolutions Conf. 6.5 (Rev.) and 8.2 (Rev.) regarding implementation of CITES in the European Community. It takes account of the fact that, since these Resolutions were adopted, the Community has enacted comprehensive Regulation implementing CITES and all Member States have ratified the Convention. It includes a draft Decision urging all Parties who have not yet done so to ratify the Gaborone Amendment before CoP13.

Comments: —

Conclusion: The Community should support the proposal.

Species trade and conservation issues

31. **TRADE IN BEAR SPECIMENS — CoP12 Doc. 31**

Summary: This is a report on Decisions agreed at CoP11 with regard to the trade in bear specimens.

Comment: Most of the issues raised are not unique to bears and reflect what should be proper conservation practice at a broader level.

Conclusion: The Community should note this report and agree to the deletion of the relevant decisions.

32. **CONSERVATION OF LEOPARD, SNOW LEOPARD AND CLOUDED LEOPARD (INDIA) — CoP12 Doc. 32**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

33. **CONSERVATION OF AND TRADE IN TIGERS — CoP12 Doc. 33**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

34. **CONSERVATION OF AND TRADE IN ELEPHANTS**

34.1. **Illegal trade in ivory and other elephant specimens — CoP12 Doc. 34.1**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

34.2. **Illegal hunting of elephants — CoP12 Doc. 34.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

34.3. **Revision of Resolution Conf. 10.10 (Rev.) on trade in elephant specimens (India, Kenya) — CoP12 Doc. 34.3**

Summary: This draft revision requires that information systems be put in place to make tourists aware of their legal obligations regarding purchase of ivory in range States. It also requires the Standing Committee to be updated on progress regarding ETIS at every meeting.

Comment: —

Conclusion: The Community can support this proposed revision.

35. **CONSERVATION OF AND TRADE IN RHINOCEROSES — CoP12 Doc. 35**

Summary: This is a report on the ongoing implementation of Resolution Conf. 9.14 (Rev) on this subject.

Comment: The level of reporting by range States is poor and many of the measures demanded are merely sound conservation practice. The utility of the Resolution is questioned by the Secretariat.

Conclusion: The Community should note this report and support the repeal of this Resolution subject to clarification that this poses no conservation risks.

36. **CONSERVATION OF AND TRADE IN MUSK DEER — CoP12 Doc. 36**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

37. **CONSERVATION OF AND TRADE IN TIBETAN ANTELOPE — CoP12 Doc. 37**

Summary: This is a report on the implementation of Resolution Conf. 11.8 on this subject.

Comment: There has been good progress on this issue. However, the Secretariat recommends minor revisions to the Resolution to exclude what are general CITES obligations and to confine the content to issues specific to this species.

Conclusion: The Community should note the report and support the amendments.

38. **CONTROLLED TRADE IN SPECIMENS OF ABUNDANT CETACEAN STOCKS (JAPAN) — CoP12 Doc. 38**

Summary: This draft Resolution seeks the repeal of Resolution Conf. 11.4.

Comment: This agenda item needs to be considered in the context of Item 16(d)(i). Disputes over the efficacy or otherwise of the IWC should not be resolved in the CITES forum. There has been no significant change in circumstances since the adoption of Resolution Conf. 11.4.

Conclusion: The Community should seek the withdrawal of this draft Resolution and that under Item 16(d)(i).

39. **CONSERVATION OF AND TRADE IN FRESHWATER TURTLES AND TORTOISES — CoP12 Doc. 39**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

40. **CONSERVATION OF AND TRADE IN PANCAKE TORTOISE *MALACOCHERSUS TORNIERI* (KENYA) — CoP12 Doc. 40**

Summary: This draft Resolution lays down stricter rules concerning the ranching of this species.

Comment: A Conference Resolution on this subject is unnecessary and the draft tabled is based on old data.

Conclusion: The Community should favour other means of pursuing this issue, such as the Significant Trade Process.

41. **CONSERVATION OF SHARKS**

41.1. **Conservation and management of sharks (Australia) — CoP12 Doc. 41.1**

41.2. **Conservation of and trade in sharks (Ecuador) — CoP12 Doc. 41.2**

Summary: Both these draft Resolutions deal with the lack of progress in implementing FAO IPOA-Sharks.

Comment: The Australian document is the more detailed but it contains some phrases that could be seen as provocative. The Ecuador document is more balanced in its presentation of the issue.

Conclusion: The Community should support the Ecuador document, with amendments if necessary.

42. **CONSERVATION OF STURGEONS AND LABELLING OF CAVIAR**

42.1. **Implementation of Resolution Conf. 10.12 (Rev.) on conservation of sturgeons — CoP12 Doc. 42.1**

42.2. **Consolidation of Resolutions relating to sturgeons and trade in caviar — CoP12 Doc. 42.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

43. **CONSERVATION OF SEAHORSES AND OTHER MEMBERS OF THE FAMILY *SYNGNATHIDAE* — CoP12 Doc. 43**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

44. **CONSERVATION OF AND TRADE IN *DISSOSTICHUS* SPECIES (AUSTRALIA) — CoP12 Doc. 44**

Summary: This draft Resolution is intended to complement the listing proposal for these species by ensuring that CCAMLR documentation can be regarded as meeting the legal requirements consequential to a listing of the species and by urging Parties to consult with the CCAMLR Secretariat before issuing a Certificate of Introduction from the Sea.

Comment: This draft Resolution needs to be addressed in the light of the Community's view of the listing proposal. A CITES listing can only be effective if it can be linked (e.g. via annotation or accompanying Resolution) to the condition that CITES parties trading in *Dissostichus* must implement the Catch Documentation Scheme of CCAMLR in order to make the non-detriment finding required under CITES. Otherwise, the draft Resolution contained in Document 16.1 — with amendments if necessary — remains the preferred option.

Conclusion: The Community cannot support this draft Resolution and the listing proposal unless they are amended so that the above condition is met.

45. **TRADE IN SEA CUCUMBERS IN THE FAMILIES *HOLOTHURIDAE* AND *STICHOPODIDAE* (UNITED STATES OF AMERICA) — CoP12 Doc. 45**

Summary: This paper explores the issues associated with conservation and sustainable management of these groups.

Comment: —

Conclusion: The Community should note this paper.

46. **BIOLOGICAL AND TRADE STATUS OF *HARPAGOPHYTUM* — CoP12 Doc. 46**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

47. **CONSERVATION OF *SWIETENIA MACROPHYLLA*: REPORT OF THE MAHOGANY WORKING GROUP — CoP12 Doc. 47**

Summary: This report presents a number of recommendations directed mainly at range States.

Comment: The recommendations have some minor enforcement implications for importing countries. However, the problems with the mahogany trade are best dealt with via Appendix II listing.

Conclusion: The Community should note this report, support the recommendations and press for Appendix II listing.

48. **IMPLEMENTATION OF RESOLUTION CONF. 8.9 (REV.) ON TRADE IN SPECIMENS OF APPENDIX II SPECIES TAKEN FROM THE WILD**

48.1. **Revision of Resolution Conf. 8.9 (Rev.) — CoP12 Doc. 48.1**

Summary: Although the document for this agenda item was not available by 31 July, it is expected to consist of a new draft resolution designed to make the Significant Trade Process more simple flexible, and transparent.

Comment: —

Conclusion: The Community should support measures aimed at improving the transparency and efficiency of the Significant Trade Process.

48.2. ***Saiga tatarica*: Summary of the CITES-sponsored workshop in Kalmykia in May 2002 and presentation of the draft conservation action plan (United States of America) — CoP12 Doc. 48.2**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

49. **NATIONALLY ESTABLISHED EXPORT QUOTAS FOR APPENDIX II SPECIES: THE SCIENTIFIC BASIS FOR QUOTA ESTABLISHMENT AND IMPLEMENTATION (UNITED STATES OF AMERICA) — CoP12 Doc. 49**

Summary: This is a discussion paper on the difficulties encountered with the quota system.

Comment: —

Conclusion: The Community should welcome this paper and offer additional comments.

Trade control and marking issues

50. **MANAGEMENT OF EXPORT QUOTAS**

50.1. **Improving the management of annual export quotas and amendment of Resolution Conf. 10.2 (Rev.) Annex 1 on permits and certificates (Germany) — CoP12 Doc. 50.1**

Summary: This draft Resolution submitted by Germany on behalf of the European Community is intended to improve the transparency of the export quota provisions.

Comments: A number of problems with the existing provisions, such as late notification of quotas, carry-over of unused portions of quotas from the previous year etc. are dealt with in this draft Resolution.

Conclusion: The Community should support this draft Resolution.

50.2. **Implementation and monitoring of nationally established export quotas for species listed in Appendix II of the Convention (United States of America) — CoP12 Doc. 50.2**

Summary: This draft decision seeks to establish an inter-sessional working group on this issue.

Comment: The draft Resolution included in Document 50.1 addresses this problem and removes the need for a working group.

Conclusion: The Community should encourage withdrawal of this draft decision.

51. **TRADE IN TIME-SENSITIVE BIOLOGICAL SAMPLES — CoP12 Doc. 51**

Summary: The document for this item is not yet available. However, it is understood to include proposals for fast-tracking such samples in cases where there are no conservation concerns.

Comment: The Member States had worked on this issue in their preparation for the CoP but it was agreed to await the Secretariat's proposals.

Conclusion: The Community should support measures aimed at reducing the administrative burden relating to such samples.

52. **MOVEMENTS OF COLLECTIONS OF SAMPLES**

52.1. **Movement of sample reptile skins and other related products — CoP12 Doc. 52.1**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

52.2. **Use of certificates for movements of sample collections, covered by an ATA or TIR carnet and made of parts or derivatives of species included in Appendices II and III (Italy, Switzerland) — CoP12 Doc. 52.2**

Summary: This draft Resolution, submitted by Italy on behalf of the Community and by Switzerland, deals with specimens that are part of travelling exhibitions.

Comments: Use of ATA or TIR can simplify the procedures involved for such specimens and reduce the risk of fraud. However, the provisions of the relevant Conventions will have to be amended.

Conclusion: The Community should support the draft Resolution.

53. **TRADE REGIMES FOR TIMBER SPECIES — CoP12 Doc. 53**

Summary: This is a report on a Decision at CoP11 that the Secretariat investigate the utility of various silvicultural techniques with regard to CITES provisions on ranching, artificial propagation and quotas for timber species.

Comment: Arising from the Secretariat's work, the Plant's Committee is currently reviewing the use of Source codes for timber species.

Conclusion: The Community should note the report and agree to deletion of the Decision.

Exemptions and special trade provisions

54. **PERSONAL EFFECTS**

54.1. **Trade in personal effects — CoP12 Doc. 54.1**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

54.2. **Personal effects made of crocodilian leather (Venezuela) — CoP12 Doc. 54.2**

Summary: This draft Resolution provides for an exemption as personal effects of up to 8 crocodile leather goods from Appendix II or captive-bred Appendix I species.

Comment: Possible loopholes need to be checked but there is no objection in principle. Similar proposals for other species groups in the future should be examined on their own merits.

Conclusion: The Community could support an amended draft.

55. **OPERATIONS THAT BREED APPENDIX-I SPECIES IN CAPTIVITY FOR COMMERCIAL PURPOSES**

55.1. **Revision of Resolutions Conf. 8.15 and Conf. 11.14 on guidelines for a procedure to register and monitor operations that breed Appendix I animal species for commercial purposes — CoP12 Doc. 55.1**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

55.2. **Applications to register operations that breed Appendix I animals species for commercial purposes — CoP12 Doc. 55.2**

Summary: No document available as of 31 July 2002.

Comments: —

Conclusion: —

56. **NON-COMMERCIAL LOAN, DONATION OR EXCHANGE OF MUSEUM AND HERBARIUM SPECIMENS (UNITED STATES OF AMERICA) — CoP12 Doc. 56**

Summary: This is a discussion paper on the difficulties encountered with smooth operation of this exemption provision.

Comment: Many scientific institutions in the Community benefit from this exemption but other Parties have encountered problems due to non-uniform implementation.

Conclusion: The Community should note the content of this paper and exchange information with other Parties on problems encountered.

57. **TRAVELLING LIVE-ANIMAL EXHIBITIONS (RUSSIAN FEDERATION) — CoP12 Doc. 57**

Summary: This draft Resolution seeks to extend the current provisions (in Conf. Res. 8.16) to any live animals in travelling exhibitions, rather than just pre-Convention or captive-bred specimens as at present.

Comment: The core issue is the use of first-generation captive-born specimens of Appendix I species (Indian elephants in particular) for commercial purposes. The draft fails to provide a mechanism that avoids undermining the provisions regarding captive breeding and commercial transactions involving such species.

Conclusion: The Community should not support this draft Resolution.

Amendment of the Appendices

58. **CRITERIA FOR AMENDMENT OF APPENDICES I AND II — CoP12 Doc. 58**

Summary: It is understood that Parties will be asked whether or not to agree to a text prepared by a majority of the working group or to go along with the view of the Chair of the Plants Committee that the matter needs further discussion.

Comments: Although the draft text produced by the working group represents a considerable achievement, this is a sensitive issue and merits further work if a broader support base can thus be achieved.

Conclusion: The Community should support a Conference Decision extending and clarifying the mandate of the working group, and carrying the work forward in the light of the existing draft.

59. **AMENDMENT OF THE APPENDICES WITH REGARD TO POPULATIONS — CoP12 Doc. 59**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

60. **ANNOTATIONS FOR MEDICINAL PLANTS IN THE APPENDICES — CoP12 Doc. 60**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

Other themes and issues

61. **ESTABLISHMENT OF A WORKING GROUP TO ANALYSE RELEVANT ASPECTS OF THE APPLICATION OF CITES TO MARINE SPECIES (CHILE) — CoP12 Doc. 61**

Summary: This draft Resolution seeks the establishment of a working group on marine species issues.

Comment: There is considerable overlap between what is proposed here and the mandate of the Criteria Working Group.

Conclusion: The Community should favour asking the Criteria Working Group to deal with these issues.

62. **BUSHMEAT — CoP12 Doc. 62**

Summary: This is a report of the activities of the Bushmeat working group.

Comment: The report concludes that the group has been instrumental in improving communication and co-ordination between the countries affected by the trade and recommends that it should continue to CoP 13 with external funding.

Conclusion: The Community should note this report and support an extension of the group's mandate, but ensuring that it works in close collaboration with the CBD Liaison Group on this issue.

63. **THE RESCUE OF DEPENDENT APES FROM WAR ZONES (KENYA) — CoP12 Doc. 63**

Summary: This draft Resolution seeks to waive permit requirements under certain circumstances.

Comment: The issues raised here are not unique to apes and the plight of other dependant animals should be considered.

Conclusion: The Community is sympathetic to the objective of this draft Resolution but considers that the underlying principles need to be clarified.

64. **TRADE IN TRADITIONAL MEDICINES — CoP12 Doc. 64**

Summary: No document available as of 31 July 2002.

Comment: —

Conclusion: —

65. **PUBLICITY MATERIALS — CoP12 Doc. 65**

Summary: This is report on the implementation of Decision 11.131 on this subject by the Secretariat.

Comment: —

Conclusion: The Community should note this report.

CONSIDERATION OF PROPOSALS FOR AMENDMENT OF APPENDICES I AND II

66. **PROPOSALS TO AMEND APPENDICES I AND II — CoP12 Doc. 66**

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.1	All relevant fauna Amendment of Annotation No 607 to read: The following are not subject to the provisions of the Convention: (a) synthetically derived DNA that does not contain any part of the original; (b) urine and faeces; (c) synthetically produced medicines and other pharmaceutical products such as vaccines that do not contain any part of the original genetic material from which they are derived; and (d) fossils		CH	Proposal will reduce administrative burden with no apparent conservation impact Paragraph (c) should be replaced with the following: 'medicines and other pharmaceutical products, including vaccines, produced from synthetically maintained cells'	+	

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.2	*Agapornis* spp., *Platycerus* spp., *Barnardius* spp., *Cyanorhampus auriceps, C. novaezelandiae, Psittacula eupatria, P. krameri* and *Padda oryzivora* Annotate with the following text: Colour morphs produced by captive breeding are considered as being of a domesticated form and therefore not subject to the provisions of the Convention		CH	Support in principle but annotation should only take effect when identification guides are available	+	
12.3	*Tursiops truncatus ponticus*	II — I	GE	CITES listing favoured by ACCOBAMS. Proposal as tabled lacks sufficient data to substantiate case but uplisting could be considered further in the light of additional data		
12.4	*Balaenoptera acutorostrata* (Northern Hemisphere stock, except Yellow Sea, East China Sea and Sea of Japan) Annex 4 with the following annotation: For the exclusive purpose to allow trade between Parties that are also signatories to the International Convention for the Regulation of Whaling and which have an effective DNA register system to monitor catches, introductions from the sea and imports from other States. To ensure that trade does not result in removals in excess of catch limits, the following additional measures shall be implemented: 1. notwithstanding the provisions of CITES Article XIV, paragraphs 4 and 5, any trade shall be subject to the provisions of Article IV; 2. calculation of a safe catch levels using the IWC's Revised Management Procedure (RMP); 3. establishment of export quotas that shall ensure that trade does not result in removals in excess of catch limits; 4. Indication on the trade documents of the number of animals involved when shipment of products are only parts of animals, and tracking of this number through DNA monitoring of imports; 5. implementation of domestic legislation to ensure imports are from animals taken legally; and 6. DNA registers to monitor catches, introductions from the sea and imports and a requirement that all imports be accompanied by certified DNA profiles	I — II	JP	Some of the data in the proposal are questionable. It also conflicts with Resolution Conf. 11.4		–

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.5	*Balaenoptera edeni* (Western North Pacific stock) Annex 4 with the following annotation: For the exclusive purpose to allow trade between Parties that are also signatories to the International Convention for the Regulation of Whaling and which have an effective DNA register system to monitor catches, introductions from the sea and imports from other States. To ensure that trade does not result in removals in excess of catch limits, the following additional measures shall be implemented: (a) notwithstanding the provisions of CITES Article XIV, paragraphs 4 and 5, any trade shall be subject to the provisions of Article IV; and (b) calculation of a safe level of catch using the IWC's Revised Management Procedure (RMP)	I — II	JP	Some of the data in the proposal are questionable. It also conflicts with Resolution Conf. 11.4		–
12.6	*Loxodonta africana* (BW pop) Maintenance of the BW population in Appendix II with an amendment to annotation No 604 regarding the BW population to read: For the exclusive purpose of allowing in the case of the population of BW: (a) trade in hunting trophies for non-commercial purposes; (b) trade in live animals for commercial purposes to appropriate and acceptable destinations (and as determined by the national legislation of the country of import); (c) trade in registered stocks of raw ivory (whole tusks and pieces) of BW origin owned by the Government of BW for commercial purposes only to CITES approved trading partners who will not re-export ivory. No international trade in ivory to be permitted until 18 months after the adoption of the proposal (May 2004). Thereafter an initial amount of not more that 20 000 kg of ivory may be traded, followed by annual export quotas of not more than 4 000 kg from the year 2005 onward; (d) trade in hides; (e) trade in leather goods for non-commercial purposes; and (f) trade in ivory carvings for non-commercial purposes	II — II	BW	Net change from existing circumstances: — initial sale of 20 t raw ivory on or after May 2004 — annual export of 4 t of raw ivory to CITES-approved Parties who will not re-export — commercial trade in hides allowed — re-export of exported live animals allowed for non-commercial purposes — re-export of hunting trophies allowed for non-commercial purposes — (re-) export of leather goods and ivory carvings allowed for non-commercial purposes. Although there may not be a conservation impact in BW, the wider effects of a sale, and the current state of MIKE and other safeguards must be taken into account. The Community's position will depend on clarification as to the risk of illegal killing arising from any ivory sale		

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.7	*Loxodonta africana* (NA pop) Maintenance of the NA population in Appendix II with an amendment to annotation No 604 regarding the NA population to read: For the exclusive purpose of allowing in the case of the population of NA: (a) trade in hunting trophies for non-commercial purposes; (b) trade in live animals for non-commercial purposes to appropriate and acceptable destinations (as determined by the national legislation of the country of import); (c) trade in hides; (d) trade in leather goods and ivory carvings for non-commercial purposes; and (e) trade in registered stocks of raw ivory (whole tusks and pieces) of NA origin owned by the Government of the Republic of Namibia to trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from NA will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 (Rev.) concerning domestic manufacturing and trade. No international trade in ivory to be permitted until 18 months after the adoption of the proposal (May 2004). Thereafter, an initial amount of not more than 10 000 kg of ivory may be traded, followed by annual export quotas of not more than 2 000 kg of ivory, from the year 2005 onwards	II — II	NA	Net change from existing circumstances: — initial sale of 10 t raw ivory on or after May 2004 — annual export of 2 t of raw ivory to CITES-approved Parties who will not re-export — commercial trade in hides allowed — re-export of exported live animals allowed for non-commercial purposes — re-export of hunting trophies allowed for non-commercial purposes — (re-) export of leather goods, and ivory carvings, allowed for non-commercial purposes. Although there may not be a conservation impact in NA, the wider effects of a sale, and the current state of MIKE and other safeguards must be taken into account. The Community's position will depend on clarification as to the risk of illegal killing arising from any ivory sale		

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.8	*Loxodonta africana* (ZA pop) Maintenance of the ZA population in Appendix II with an amendment to annotation No 604 regarding the ZA African population to read: For the exclusive purpose of allowing in the case of the population of ZA: (a) trade in hunting trophies for non-commercial purposes; (b) trade in live animals for re-introduction purposes into protected areas formally proclaimed in terms of the legislation of the importing country; (c) trade in hides and leather goods; (d) trade in raw ivory of whole tusks of any size, and cut pieces of ivory that are both 20 cm or more in length and one kilogram or more in weight of Government-owned stocks originating from the Kruger National Park. An initial stockpile of 30 000 kg is proposed and a subsequent annual quota of 2 000 kg accumulated each year through annual mortalities and management practices All other specimens shall be deemed to be specimens of species included in Appendix l and the trade in them shall be regulated accordingly	II — II	ZA	Net change from existing circumstances: — initial sale of 30 t raw ivory — annual export of 4 t of raw ivory to any Party. Although there may not be a conservation impact in ZA, the wider effects of a sale, and the current state of MIKE and other safeguards must be taken into account. The Community's position will depend on clarification as to the risk of illegal killing arising from any ivory sale		
12.9	*Loxodonta africana* (ZM pop) Transfer of the Zambian population from Appendix I to Appendix II for the purpose of allowing: (a) trade in raw ivory under a quota of 17 000 kg of whole tusks owned by Zambia Wildlife Authority (ZAWA) obtained from management operations; and (b) live sales under special circumstances	I — II	ZM	ZM is seeking downlisting and a sale of ivory for the first time. Annotation is unclear as to whether sale is once-off or annual. The wider effects of a sale, and the current state of MIKE and the other safeguards must be taken into account. There is scope for consideration of the downlisting but the proposals regarding the ivory sale are too vaguely formulated. The Community should, therefore, oppose any sale unless it can be clarified beyond doubt that it will not increase the risk of illegal killing		–

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.10	*Loxodonta africana* (ZW pop) Maintenance of the ZW population in Appendix II with an amendment to annotation No 604 regarding the population of ZW to read: For the exclusive purpose of allowing in the case of the population of ZW: (a) trade for commercial purposes in registered stocks of raw ivory (whole tusks and pieces) of ZW origin owned by the Government of the Republic of ZW, to trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from ZW will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 (Rev.) concerning domestic manufacturing and trade. No international trade in ivory to be permitted until 18 months after the adoption of the proposal (May 2004). Thereafter, an initial one-off quota of not more than 10 000 kg of ivory may be traded, and a subsequent annual quota of not more than 5 000 kg of ivory; (b) trade in hunting trophies for non-commercial purposes; (c) trade in live animals for non-commercial purposes to appropriate and acceptable destinations; (d) trade in hides and leather goods; and (e) trade in ivory carvings for non-commercial purposes	II — II	ZW	Net change from existing circumstances: — initial sale of 10 t raw ivory on or after May 2004 — annual export of 5 t of raw ivory to CITES-approved Parties who will not re-export — commercial trade in hides and leather goods allowed — re-export of exported live animals allowed for non-commercial purposes — re-export of hunting trophies allowed for non-commercial purposes — (re-) export of ivory carvings, allowed for non-commercial purposes. The current situation in ZW, the wider effects of a sale, and the current state of MIKE and other safeguards must be taken into account. The Community should, therefore, oppose any sale unless it can be clarified beyond doubt that it will not increase the risk of illegal killing		–
12.11	*Loxodonta africana* (App. II pops)	II — I	IN/KE	Appendix I listing of southern African elephant populations is not supported by the scientific evidence. The case that Appendix II listing has 'probably already led to increased illegal trade' is not proven		–
12.12	*Vicugna vicugna* (AR pop) Transfer from Appendix I to Appendix II of the population of the province of Catamarca, for the exclusive purpose of allowing international trade in products made from wool sheared from live animals, in cloth, derived manufactured products and other handicraft artefacts bearing the label 'VICUÑA — ARGENTINA'	I — II	AR	Extension of present downlisting — no apparent conservation impact	+	

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.13	*Vicugna vicugna* Transfer to Appendix II of the populations of Bolivia that are in Appendix I, in accordance with Article II, paragraph 2 (a), of the Convention, with the exclusive purpose of allowing international trade in products made from wool sheared from live animals and bearing the label 'VICUÑA — BOLIVIA'	I — II	BO	Extension of present downlisting — no apparent conservation impact	+	
12.14	*Vicugna vicugna* Transfer from Appendix I to Appendix II of the population of the Primera Región of Chile through a modification of annotations — 106 and + 211	I — II	CL	Extension of present downlisting — no apparent conservation impact	+	
12.15	*Rhea pennata pennata* (CL pop)	I — II	CL	Proposal follows that by AR at CoP11, which Community supported. However, it purports to relate primarily to captive-bred populations for which Appendix II listing not strictly necessary. CL could pursue registration of captive breeding operations although this is difficult for small breeders. Split-listing — and resultant risk of laundering of parts and derivatives from other sub-species — must be considered		
12.16	*Amazona auropalliata*	II — I	CR	Habitat destruction is probably a greater cause of decline than international trade, which is only a small fraction of internal trade. There are gaps in population data as presented. There are also taxonomic and identification difficulties. Views of other Range States need to be considered. Could support if all or most of them do so		
12.17	*Amazona oratrix*	II — I	MX	Similar concerns to *Amazona auropalliata* but in this case most of population is in Mexico. Views of other Range States need to be considered	+	
12.18	*Ara couloni*	II — I	DE (EU)	DE urged to elaborate proposal before CoP	+	
12.19	*Poicephalus robustus* (ZA pop)	II — I	ZA	Habitat destruction is main threat and will not be solved by Appendix I listing — enforcement problems could arise		–
12.20	*Platysternum megacephalum*	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.21	*Annamemys annamensis*	0 — II	CN/DE (EU)	Supported by Turtle Workshop in Kunming — support	+	

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.22	*Heosemys* spp.	0 — II	CN/DE (EU)	Supported by Turtle Workshop in Kunming — support, subject to clarification of taxonomy of *Heosemys sylvatica* — may be necessary to amend to list individual species	+	
12.23	*Hieremys annandalii*	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.24	*Kachuga* spp. (except *K. tecta*)	0 — II	IN/US	Arises from Turtle Workshop in Kunming — support, subject to taxonomic clarification regarding species already listed on Appendix II	+	
12.25	*Leucocephalon yuwonoi*	0 — II	CN/DE (EU)	Supported by Turtle Workshop in Kunming — support	+	
12.26	*Mauremys mutica*	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.27	*Orlita borneensis*	0 — II	CN/DE (EU)	Supported by Turtle Workshop in Kunming — support	+	
12.28	*Pyxidea mouhotii*	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.29	*Siebenrockiella crassicollis*	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.30	*Eretmochelys imbricata* (N. American pop) (Zero quota W) For the exclusive purpose of allowing the Government of Cuba to export its stockpile of shell plates (7 800 kg), accumulated legally from its national conservation and management programme between 1993 and 2002, annotated as follows: (a) the export will not take place until the CITES Secretariat has verified, within 12 months of the decision, that the importing country has adequate internal trade controls and will not re-export and the CITES Standing Committee accepts this verification; and (b) the wild population in Cuban waters will continue to be managed as an Appendix-I species. In accordance with Article I(a) of the Convention, the population for which a transfer is requested is defined as that segment of the regional Caribbean population bounded by the geographic limits of Cuban waters, which is under the jurisdiction of the Republic of Cuba, and is the exclusive area from which the shell was derived	I — II	CU	Proposal withdrawn 19.8.2002		

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.31	*Chitra s.I.* spp. (*Chitra* spp.)	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support. However, position regarding presently undescribed *Chitra* species needs to be clarified	+	
12.32	*Pelochelys s.I.* spp. (*P. bibroni* and *cantorii*)	0 — II	CN/US	Arises from Turtle Workshop in Kunming — support	+	
12.33	*Hoplodactylus* spp. and *Naultinus* spp.	0 — II	NZ	Proposal requires more information to substantiate case for Appendix II listing. Appendix III listing would be an alternative but Appendix II listing facilitates enforcement		
12.34	*Cnemidophorus hyperythrus*	II — 0	US	Derives from periodic review of Appendices — support	+	
12.35	*Rhincodon typus*	0 — II	IN/PH	The proposal is still largely based on anecdotal catch-per-unit-effort declines in certain localities and the lack of understanding of the biology and status of this species remains a problem. However, on balance the Resolution Conf. 9.24 Criteria appear to be met. Extent of trade compared to basking shark debatable but meat trade appears significant. Identification of products — especially meat — in trade needs to be addressed. Consultation with RFOs and testing with reference to FAO criteria would have been useful	+	
12.36	*Cetorhinus maximus*	0 — II	GB (EU)	Resolution Conf. 9.24 Annex 2a B and FAO criteria are met. The species is sought after and is easily identified in international trade. Proposal contains adequate biological information and incorporates consultation with RFOs, and testing with reference to FAO criteria	+	
12.37	*Hippocampus* spp.	0 — II	US	Cébu workshop on this group supported listing of genus. Taxonomy, differing status of various species and implementation difficulties need to be considered	+	
12.38	*Cheilinus undulatus*	0 — II	US	Proposal relies heavily on anecdotal evidence but the species is certainly in demand and there is qualified support among range states	+	
12.39	*Dissostichus* spp.	0 — II	AU	Res. Conf. 9.24 criteria appear to be met and considerable effort is made to address CCAMLR concerns. However, CITES listing only effective if it can be linked (e.g. via annotation or accompanying Resolution) with condition that CITES parties trading in *Dissostichus* must implement CCAMLR/CDS in order to make non-detriment finding		

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.40	*Atrophaneura* spp.	0 — II	DE (EU)	Res. Conf. 9.24 met — support	+	
12.41	*Papilio* spp.	0 — II	DE (EU)	Res. Conf. 9.24 met — support	+	
12.42	*Araucaria araucana* (All populations)	II — I	AR	Proposal is designed to control illegal trade in seeds. However, resultant administrative burden for non-native populations needs to be considered. Follows Community position agreed for postal vote	+	
12.43	*Cactaceae* (All taxa listed in Appendix II) Amend Annotation No 608 that refers to artificially propagated specimens of *Gymnocalycium mihanovichii* (cultivars) forms lacking chlorophyll, to read as follows: *Cactaceae* spp. colour mutants lacking chlorophyll, grafted on the following stocks: *Harrisia* 'Jusbertii', *Hylocereus trigonus* or *Hylocereus undulatus*	II — 0	CH	Removes certain purely artificial cultivars from scope of CITES and reduces administrative burden — support	+	
12.44	*Opuntioideae* spp.	II — 0	CH	Removes CITES protection from what can be invasive aliens. However, some taxa are rare and there is significant opposition from Range States		
12.45	*Pereskioideae* spp.	II — 0	CH	Easily distinguished from other *Cactaceae* and many species are common. Only one species heavily traded and that is via artificial propagation. Views of Range States need to be considered	+	
12.46	*Sclerocactus nyensis*	II — I	US	Taxon is dubious and proposal contains very little supporting data. Trade aspects of Res. Conf. 9.24 not demonstrably met		–
12.47	*Sclerocactus spinosior* spp. *blainei*	II — I	US	Taxon is dubious and proposal contains very little supporting data. Trade aspects of Res. Conf. 9.24 not demonstrably met		–
12.48	*Dudleya traskiae*	I — II	US	US is sole range State and artificially propagated specimens are widely available	+	
12.49	*Aloe thorncroftii*	I — II	ZA	Species is of low conservation concern and ZA is sole range State	+	
12.50	*Swietenia macrophylla*	III — II	GT, NI	Appendix III listing has failed to protect this species adequately. Proposal is well-documented and merits support to ensure sustainable use	+	

Prop. No	Taxon/Detail	Proposal	Proponent	Comments	Position +	Position –
12.51	*Orchidaceae* spp. Annotation of *Orchidaceae* in Appendix II The annotation to specifically read as follows: Artificially propagated specimens of hybrids within the genera *Cattleya*, *Cymbidium*, *Dendrobium* (*phalaenopsis* and *nobile* types only), *Oncidium*, *Phalaenopsis* and *Vanda*, including their intergeneric hybrids, are not subject to the provisions of the Convention when: (a) specimens are traded in shipments consisting of individual containers (i.e. cartons, boxes, or crates) containing 100 or more plants each; (b) all plants within a container are of the same hybrid, with no mixing of different hybrids within a container; (c) plants within a container can be readily recognized as artificially propagated specimens by exhibiting a high degree of uniformity in size and stage of growth, cleanliness, intact root systems, and general absence of damage or injury that could be attributable to plants originating in the wild; (d) plants do not exhibit characteristics of wild origin, such as damage by insects or other animals, fungi or algae adhering to leaves, or mechanical damage to roots, leaves, or other parts resulting from collection; and (e) shipments are accompanied by documentation, such as an invoice, which clearly states the number of plants and which of the six exempt genera are included in the shipment, and is signed by the shipper. Plants not clearly qualifying for the exemption must be accompanied by appropriate CITES documents	II — 0	US	Treats artificially propagated orchid hybrids as 'supermarket plants' — i. e. uniform bulk shipments are exempt from CITES controls. Could reduce administrative burden but risk of fraud should be considered. Conditions (a)-(e) are probably unenforceable. Could support amended proposal without these conditions and, if necessary, excluding genera that contain Appendix I species. Views of important orchid range States should be confirmed		
12.52	*Cistanche deserticola* To delete current annotation	II — II	CN	Removes error in present annotation referring to roots. However reference to processed products in annotation should be retained		
12.53	*Lewisia maguirei*	II — 0	US	Grows only on Government land in US and trade is negligible	+	
12.54	*Guaiacum* spp. The annotation to specifically read as follows: Designate all parts and derivatives, including wood, bark and extract	0 — II	DE (EU)	*Guaiacum sanctum* is already listed in CITES but timber is difficult to distinguish from other *Guaiacum* species. Proposal supported by Plants Committee	+	

CONCLUSION OF THE MEETING

67. **DETERMINATION OF THE TIME AND VENUE OF THE NEXT REGULAR MEETING OF THE CONFERENCE OF THE PARTIES (NO DOCUMENT)**

Summary: No document available as of 31 July 2002.

Comments: —

Conclusion: The Community shall support the candidature of any Member States proposing to host the next Conference and endeavour to avoid the situation where two or more Member States compete for this task.

68. **CLOSING REMARKS (NO DOCUMENT)**

Proposal for a Council Regulation establishing the European Union Solidarity Fund

(2002/C 331 E/51)

COM(2002) 514 final — 2002/0228(CNS)

(Submitted by the Commission on 18 September 2002)

EXPLANATORY MEMORANDUM

Need for a new emergency instrument

The recent flooding in central Europe has been on an almost unprecedented scale in recent history. The extent and cost of the damage is very extensive – dozens of people have lost their lives, the socio-economic infrastructure of entire regions has been disrupted and the natural and cultural heritage has been damaged.

Other disasters of dramatic proportions — of a similar or different nature — have occurred in the past; unfortunately they cannot be excluded for the future. While Community instruments are in place to assist in the event of a disaster elsewhere in the world no comparable instruments exist within the Member States themselves.

We are a community of peoples on the path to closer union. At the same time the Union is preparing for enlargement in the very near future. In the event of a major disaster it is only right and natural that the citizens, Member States and countries with which accession negotiations are under way, as well as the Community Institutions, feel a spontaneous urge to show their sympathy for the victims through practical gestures of financial solidarity in particular.

With this proposal for a Council Regulation the Commission therefore proposes to create a new European Union Solidarity Fund to assist affected regions in Member States and other countries involved in accession negotiations in the event of major natural, technological and environmental disasters.

Wide support

The European Parliament too has voiced its concern and has promised to process proposals which require the approval of the Budgetary Authority with maximum urgency. At its plenary sitting on 3 September 2002 in Strasbourg it expressed its full support for the creation of a special Community instrument to intervene in the case of disasters in Member States or candidate countries.

The Council also shares this sense of solidarity with the victims of the flooding and of the urgency of Community action. At the special meeting of Member States' representatives on 29 August 2002 convened by the Danish Presidency to discuss what measures the Union could take they unanimously supported the idea of creating a specific Community instrument to respond to the consequences of major disasters by rapidly mobilising new resources.

The European Union Solidarity Fund

The Solidarity Fund should be essentially different from the Structural Funds and other existing Community instruments. It should be focused on giving immediate financial assistance to help the people, regions and countries concerned return to living conditions that are as normal as possible. Its scope should therefore be limited to the most urgent needs. The longer-term reconstruction of infra-structure and businesses must be left to other instruments.

EU aid should be complementary to the efforts of the countries concerned and be used to cover a share of the public expenditure caused by the disaster. The Fund should provide emergency relief for any area affected by a major disaster, independently of its status under the Structural Funds. The amount of support would be related to the size of the disaster but could also take into account other potential sources of finance.

The principle of subsidiarity also applies in the event of disasters. Action by the European Union appears only necessary and justified in cases of major dimension. This reasoning is reinforced by the scarcity of supplementary budget resources.

Money from the relief fund would be given in response to a request from the affected country as a single grant on the basis of an agreement between the European Commission and the country and — where appropriate — the affected region(s) or localities.

The existence of a major disaster justifying action at EU level and the amount of the aid would be proposed by the Commission to the budgetary authority (this can be done quickly). The implementation of the aid, in particular the selection of individual projects to be assisted, would be carried out under the responsibility of the country and the regions concerned. The Fund would be subject to the normal Community rules on financial aid, including issues of control.

Making funding available

Setting up a new Fund in the EC budget requires two steps: creating an instrument to make the money available and defining new operational budget lines to which the money can be transferred for implementation. The latter requires the adoption of a legal basis.

— A new flexibility instrument

On 11 September 2002 the Commission adopted the proposal for a new flexibility instrument for disasters which would make it possible to address unforeseen and exceptional circumstances and which determines the rules for its mobilisation. The corresponding expenditure shall be entered in the budget over and above the relevant headings in the financial perspectives.

— Creating a legal basis

The Council and the Parliament will need to adopt, on a Commission proposal, a legal act establishing the operational modalities and the criteria for the implementation of the facility. This is the objective of the present proposal for a Council Regulation.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 159 and Article 308 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) In the event of major natural, technological or environmental disasters, the Community must show its solidarity with people in the regions concerned by providing financial assistance to contribute to a rapid return to normal living conditions in the disaster-stricken regions.

(2) Existing economic and social cohesion instruments are able to finance risk-prevention measures and the repair of damaged infrastructure. However, provision should also be made for an instrument which enables the Community to act swiftly and efficiently to help, as quickly as possible, in mobilising emergency services to meet people's immediate needs and contribute to the short-term restoration of damaged key infrastructure so that economic activity can resume in regions hit by a major disaster.

(3) The European Union should also show solidarity with the countries currently negotiating their accession. Extending this Regulation to cover those countries entails recourse to Article 308 of the Treaty.

(4) Community aid should be complementary to the efforts of the countries concerned and be used to cover a share of the public expenditure committed to dealing with the damage caused by a major disaster.

(5) In line with the principle of subsidiarity, assistance under this instrument should be confined to major natural, technological and environmental disasters with serious repercussions on living conditions, the natural environment or the economy.

(6) A major disaster within the meaning of this Regulation shall mean any disaster, in at least one of the states concerned, resulting in important damage expressed in financial terms or as a percentage of the GDP. In order to permit interventions in the case of disasters that, while important do not reach the minimum scale required, and under very exceptional circumstances, assistance can also be granted whenever a substantial part of the population of the region or the state concerned is affected by a disaster.

(7) Community action should not relieve third parties of responsibility or discourage preventive measures.

(8) This instrument should allow a rapid decision to be taken to commit specific financial resources and mobilise them as quickly as possible.

(9) It may be desirable, in conformity with the specific constitutional, institutional, legal or financial context of the beneficiary state and of the Community, to associate the regional or local authorities with the formal agreement on implementation arrangements, the beneficiary state remaining in all cases responsible for the implementation of the assistance and for the management and control of the operations supported by Community financing.

(10) The detailed rules for applying this instrument should be adapted to the urgency of the situation.

(11) An operation funded by this instrument should not benefit for the same purpose from assistance under Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund [1], Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [2], Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [3], Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic [4], Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession [5], Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period [6], Commission Regulation (EC) No 2760/98 of 18 December 1998 concerning the implementation of a programme for cross-border cooperation in the framework of the PHARE programme [7] or Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 [8].

(12) Maximum transparency is required in implementing the Community's financial assistance as well as proper monitoring of the use of resources.

(13) Prudent financial management is required to ensure that the Community can be in a position to respond if several major disasters occur in the same year.

(14) Depending on the availability of funds, provision should be made for possible supplementary grants to guarantee appropriate financial assistance from this instrument for disaster-stricken sections of the population.

(15) A deadline should be laid down for the use of the financial assistance awarded and provision should be made for the beneficiary states to justify the use made of the assistance they receive.

(16) In view of the exceptional circumstances, countries hit by disasters from summer 2002 onwards should qualify for assistance under this instrument,

HAS ADOPTED THIS REGULATION:

Article 1

A European Union Solidarity Fund, hereinafter referred to as the Fund, is hereby established to enable the Community to respond in a rapid, efficient and flexible manner to emergency situations on the terms of this Regulation.

[1] OJ L 130, 25.5.1994, p. 1. As last amended by Regulation (EC) No 1265/1999 (OJ L 161, 26.6.1999, p. 62).

[2] OJ L 161, 26.6.1999, p. 80. As last amended by Regulation (EC) No 1447/2001 (OJ L 198, 21.7.2001, p. 1).

[3] OJ L 160, 26.6.1999, p. 80.

[4] OJ L 375, 23.12.1989, p. 11. As last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

[5] OJ L 161, 26.6.1999, p. 68.

[6] OJ L 161, 26.6.1999, p. 8. As last amended by Regulation (EC) No 2500/2001 (OJ L 342, 27.12.2001, p. 1).

[7] OJ L 345, 19.12.1998, p. 49.

[8] OJ L 161, 26.6.1999, p. 68.

Article 2

1. At the request of a Member State or country involved in accession negotiations with the European Union, hereinafter referred to as beneficiary state, assistance from the Fund may be mobilised when a major natural, technological or environmental disaster with serious repercussions on living conditions, the natural environment or the economy in one or more regions or one or more countries occurs on the territory of that state.

2. A major disaster within the meaning of this Regulation shall mean any disaster resulting, in at least one of the states concerned, in damage estimated at over EUR 1 billion, in 2002 prices, or more than 0,5 % of its GDP.

Under very exceptional circumstances, can be included any disaster affecting a substantial part of the population of the region or state concerned.

Article 3

1. Assistance from the Fund shall take the form of a grant. For each recognised disaster a single grant shall be awarded to a beneficiary state.

2. Assistance shall also cover neighbouring countries affected by the same disaster. This case could give rise to grants in favour of the different states concerned.

3. The aim of the Fund is to help the beneficiary state to carry out the following essential measures, depending on the type of disaster:

— immediate restoration to working order of infrastructure and plant in the fields of energy, water and waste water, telecommunications, transport, health and education;

— providing temporary accommodation and funding rescue services to meet the immediate needs of the people concerned;

— immediate securing of preventive infrastructures and measures of immediate protection of the cultural heritage;

— cleaning up of disaster-stricken natural zones.

Article 4

1. As soon as possible and no later than two months after the first damage caused by the disaster, a state may submit an application for assistance from the Fund to the Commission taking account of, among other factors:

(a) the scale of the disaster;

(b) the estimated cost of the operations referred to in Article 3;

(c) any other sources of Community and national funding, including private funding, which might contribute to the costs of repairing the damage.

2. On the basis of this information, and any clarifications to be provided by the state concerned, the Commission shall determine the amount of any possible grant as quickly as possible within the limits of the financial resources available. However, this grant must leave available 25 % of the annual amount allocated to the Fund up to 1 October each year.

The Commission ensures an equitable treatment of requests presented by the states.

3. The Commission shall submit to the budgetary authority the proposals needed to mobilise the corresponding appropriations. Once the appropriations are available, the Commission shall adopt a grant decision and shall pay that grant immediately and in a single instalment to the beneficiary state upon signature of the agreement referred to in Article 5.

4. The eligibility of expenditure shall begin on the date referred to in paragraph 1.

Article 5

In conformity with the specific constitutional, institutional, legal or financial provisions of the beneficiary state and of the Community, the Commission and the beneficiary state, and, where appropriate, the regional or local authorities, shall conclude an agreement to implement the decision to grant financial assistance. That agreement shall describe in particular the type and location of operations to be financed by the Fund.

The Commission shall ensure that the same commitments as entered into by the Member States under this Regulation are also entered into by countries negotiating their accession to the European Union within the framework of the relevant agreements and instruments.

Responsibility for selecting individual operations and implementing the grant under the agreement shall lie with the beneficiary state, in compliance with the terms of this Regulation, the grant decision and the agreement. The beneficiary state shall exercise this responsibility without prejudice to the Commission's responsibility for the implementation of the general budget of the European Union and in accordance with the provisions of the Financial Regulation applicable to shared or decentralised management.

Article 6

1. The beneficiary state shall be responsible for coordinating the contribution of the Fund to the operations referred to in Article 3, on the one hand, with assistance from the EIB and other Community financing instruments on the other.

2. Operations assisted under this Regulation shall not benefit from assistance from the Funds and instruments governed by Regulations (EC) Nos 1164/94, 1260/1999, 1257/1999, 1267/1999 and 1268/1999, and Regulations (EEC) No 3906/89 and (EC) No 2760/98, and shall comply with Regulation (EC) No 1266/1999. The beneficiary state shall ensure compliance with this provision.

Article 7

Operations financed by the Fund shall be compatible with the provisions of the Treaty and instruments adopted under it, with Community policies and measures and with pre-accession assistance instruments.

Article 8

A grant shall be used within two years of the date on which the grant decision is notified. Any part of a grant remaining unused by that deadline, in compliance with the terms of this Regulation, shall be recovered by Commission from the beneficiary state.

No later than six months after the expiry of the two-year period from the date of notification of the grant decision the beneficiary state shall present a report on the financial execution of the grant with a statement justifying the expenditure, indicating any other source of funding received for the measures concerned, including insurance settlements and compensation from third parties. The report shall detail the preventive measures introduced or proposed by the beneficiary state in order to limit damages and to avoid, to the extent possible, a reoccurrence of similar disasters.

At the end of this procedure, the Commission shall wind up the assistance from the Fund.

Where the cost of repairing the damage is subsequently met by a third party, the Commission shall require the beneficiary state to reimburse a corresponding amount of the grant.

Article 9

Applications for assistance and the decisions to grant assistance from the Fund, as well as the financial agreement, reports and any other related documents shall express all amounts in euro.

Article 10

In exceptional circumstances, having regard to the specific nature or intensity of a disaster and the financial resources available, notwithstanding Article 3(1) the Commission may, within one year of the grant decision, provide a supplementary grant at the request of the beneficiary state. This request is supported by new elements, notably a significantly higher valuation of the damages incurred. The supplementary grant shall be awarded on the same terms as the initial grant.

Article 11

The financing decisions and all agreements and contracts resulting therefrom shall provide for checks by the Commission, through the Anti-Fraud Office (OLAF), and for on-the-spot checks to be carried out by the Commission and the Court of Auditors, in accordance with the appropriate procedures.

Article 12

Each year the Commission shall present to the European Parliament and to the Council a report on the assistance granted from the Fund. This report shall contain information on the assistance granted in the previous year and on the assistance granted in preceding financial years for which the individual operations have been closed.

Article 13

Notwithstanding the deadline provided for in Article 4(1) of this Regulation, the Member States and countries negotiating their accession to the European Union which have been hit by disasters from 1 August 2002 onwards may request assistance from the Fund within two months of the date of entry into force of this Regulation.

Article 14

This Regulation does not prejudice the application of Community or international instruments relating to the compensation of specific damages.

Article 15

The Council shall review this Regulation on the basis of a proposal from the Commission by 31 December 2006 at the latest.

Article 16

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.

Proposal for a Council Decision on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola

(2002/C 331 E/52)

COM(2002) 492 final

(Submitted by the Commission on 2 October 2002)

EXPLANATORY MEMORANDUM

The protocol annexed to the fisheries agreement between the EC and the Republic of Angola expired on 2.5.2002, but was prolonged until 2.8.2002 while the negotiations to renew the protocol were continuing. These negotiations resulted in the initialling of a new protocol in Luanda on 30 June 2002.

The new Protocol will be the ninth since the entry into force of the fisheries agreement between the EC and Angola in 1987. In terms of fishing opportunities for Community vessels it is the second most important agreement after Mauritania. It should also be noted that for tuna, the Agreement with Angola is an integral part of the network of agreements on tuna covering the Atlantic zone, which allows the Community fleet to follow straddling stocks.

The new protocol covers the period from 3 August 2002 to 2 August 2004. It grants fishing opportunities for 33 tuna vessels, 22 shrimp vessels and 4 200 GRT per month of demersal trawlers, compared with opportunities for 43 tuna vessels, 22 shrimp vessels and 3 750 GRT per month of demersal trawlers under the previous protocol. These levels were fixed on the basis of the conclusions of a group of Angolan and Community scientists, which met in Luanda to review the scientific information on the state of the resources at the same time as the third and final round of negotiations were being conducted.

The financial contribution has been increased to EUR 15 500 000 per year compared with EUR 13 975 000 per year in the previous protocol. The increase is justified by the increase in demersal opportunities and by the establishment of a partnership with Angola to encourage responsible and sustainable fisheries. Under this partnership, 36 % of the financial contribution is earmarked to finance the development of scientific research, surveillance, artisanal fisheries and local fishing communities, training and aquaculture, and will ensure greater coherence between the fisheries and development policies at Community level.

In order to ensure that the level of fishing under the terms of the protocol remains consistent with the responsible management of the resources, a scientific meeting will be held once per year to monitor the state of the stocks. Based on the results of these meetings, the fishing opportunities under the protocol will, if necessary, be revised.

The Angolan authorities decided to reduce the number of Community tuna vessels having access to Angolan waters from 43 vessels to 33 vessels. This is probably because other partners have offered to finance the construction of onshore tuna processing facilities in return for access to the tuna resources in Angolan waters. This reduction does not however call for a reduction of the financial compensation, since this is calculated only on the basis of the shrimp and demersal opportunities. There is no additional charge to the Community for the access of the tuna vessels, but instead the shipowners pay per tonne of the actual catches

In view of the above, the new protocol is considered to be good value for money. Moreover, the establishment of a partnership with Angola and the annual scientific reviews of the state of the stocks will encourage the responsible and sustainable exploitation of the resources to the mutual benefit of the Community and Angola.

The Commission proposes, on this basis, that the Council adopt by decision the draft Agreement in the form of an Exchange of Letters concerning the provisional application of the new Protocol pending its definitive entry into force.

A proposal for a Council regulation on the conclusion of the new Protocol is the subject of a separate procedure.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) In accordance with the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola [1], the two parties held negotiations to determine any amendments or additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto.

(2) As a result of these negotiations, a new Protocol was initialled on 30 June 2002.

(3) The Protocol provides Community fishermen with fishing opportunities in waters under the sovereignty or jurisdiction of Angola from 3 August 2002 to 2 August 2004.

(4) In order to ensure uninterrupted fishing activities by Community vessels, it is essential that the new Protocol be approved as quickly as possible. To this end, the two parties initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Protocol from 3 August 2002.

(5) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an Exchange of Letters and of the Protocol are attached to this Decision.

Article 2

The fishing opportunities fixed in the Protocol shall be allocated among the Member States as follows:

— shrimp vessels:

  — Spain: 6 550 GRT per month, averaged over the year, 22 vessels

— demersal fishing vessels:

  — Spain: 1 850 GRT per month, averaged over the year

  — Portugal: 1 100 GRT per month, averaged over the year

  — Italy: 750 GRT per month, averaged over the year

  — Greece: 500 GRT per month, averaged over the year

— freezer tuna seiners:

  — France: 6 vessels

  — Spain: 9 vessels

— surface longliners:

  — Portugal: 4 vessels

  — Spain: 14 vessels

— pelagic fishing vessels:

  — Netherlands and/or Ireland: 2 vessels

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

[1] OJ L 341, 3.12.1987, p. 2.

AGREEMENT

in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola

A. *Letter from the Government of the Republic of Angola*

Sir,

With reference to the Protocol initialled on 30 June 2002 setting out the fishing opportunities and financial contribution for the period 3 August 2002 to 2 August 2004, I have the honour to inform you that the Government of the Republic of Angola is prepared to apply the Protocol on a provisional basis with effect from 3 August 2002, pending its entry into force, provided that the European Community is prepared to do the same.

Should this be the case the first payment of the financial compensation provided for in Article 3 of the Protocol is to be made before 30 November 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

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

For the Government of the Republic of Angola

B. *Letter from the European Community*

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

> 'With reference to the Protocol initialled on 30 June 2002 setting out the fishing opportunities and financial contribution for the period 3 August 2002 to 2 August 2004, I have the honour to inform you that the Government of the Republic of Angola is prepared to apply the Protocol on a provisional basis with effect from 3 August 2002, pending its entry into force, provided that the European Community is prepared to do the same.
>
> Should this be the case the first payment of the financial compensation provided for in Article 3 of the Protocol is to be made before 30 November 2002.
>
> I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I have the honour to confirm the European Community's agreement to such provisional application.

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

On behalf of the European Community

PROTOCOL

Setting out, for the period from 3 August 2002 to 2 August 2004, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Republic of Angola on fishing off Angola

Article 1

From 3 August 2002, for a period of two years, the limits referred to in Article 2 of the Agreement shall be as follows:

1. Shrimp vessels: 6 550 GRT per month, as an annual average (maximum 22 vessels)

   Catches by Community vessels may not exceed 5 000 tonnes of shrimps and prawns, including 30 % of prawns and 70 % of shrimps.

2. Demersal vessels (trawlers, bottom longliners and fixed gillnets): 4 200 GRT per month, as an annual average.

   Fishing for *Centrophorus granulosus* is prohibited.

3. Fishing for pelagic species: 2 vessels

   This type of fishing shall, because of its nature, be subject to a trial period of six months.

4. Freezer tuna seiners: 15 vessels

5. Surface longliners: 18 vessels

These limits on fishing opportunities may be raised if Community shipowners are prepared to contribute to the improvement of Angola's fisheries industry, in which case the two parties, meeting as a Joint Committee, will decide jointly on the additional fishing opportunities and the financial compensation.

Article 2

After the trial period of fishing for pelagic species and on the basis of the results achieved and the scientific opinions available, the two parties will, within the framework of the Joint Committee and following a meeting of the Joint Scientific Group referred to in Article 6, decide on the fishing opportunities for pelagic species for the remaining years of this Protocol and the financial compensation payable in return for those opportunities.

Article 3

1. The financial compensation provided for in Article 7 of the Agreement for the period referred to in Article 1 of this Protocol is hereby set at EUR 15 500 000 per year (EUR 9 975 000 per year of financial compensation proper and EUR 5 525 000 for the measures referred to in Article 3 of the Protocol) in return for the fishing opportunities set out in Article 1.

The financial compensation shall be paid into an account designated by the Ministry of Finance via the Fisheries and Environment Ministry.

The financial compensation shall be paid not later than 30 November of the first year of the Protocol and not later than the anniversary date of the Protocol the following year.

2. If vessels withdraw from the Agreement and the Angolan authorities do not agree to their replacement by other vessels, the resulting reduction in fishing opportunities for the Community shall entail a proportional adjustment of the financial compensation provided for in paragraph 1.

3. Angola shall have full discretion regarding the use to which the financial compensation is put.

Article 4

With a view to ensuring the development of sustainable and responsible fishing the two parties will, in their mutual interest, set up a partnership for the purpose in particular of encouraging: better knowledge of fishery and biological resources; quality control; marketing and obtaining the best return from fishery products; fisheries control; the development of non-industrial fishing; fishing communities; and training.

The breakdown of the EUR 5 525 000 earmarked for the measures provided for in Article 3(1) each year shall be as follows:

1. Scientific and technical programmes intended to improve knowledge of fishery and biological resources in Angola's fishing zone: EUR 750 000

2. Quality control programme: EUR 350 000

3. Support programme for marketing and obtaining the best return from fisheries products: EUR 250 000

4. Support programme for fisheries surveillance: EUR 775 000

5. Programme for the development of non-industrial fishing and the support of fishing communities: EUR 1 150 000

6. Programme of institutional support for the Fisheries and Environment Ministry: EUR 500 000

7. Programme to finance fisheries schools, study grants, practical training in the various scientific, technical and economic disciplines related to fisheries and participation in international organisations, seminars, symposia and workshops: EUR 1 500 000

8. Programme to encourage the development of aquaculture: EUR 250 000

The Fisheries and Environment Ministry shall decide on the measures and the annual amounts allocated thereto and shall keep the Commission of the European Communities informed.

The annual amounts shall be made available to the bodies concerned in an account designated by the Ministry of Finance via the Fisheries and Environment Ministry, not later than 30 November for the first year and, thereafter, on the anniversary date of the Protocol.

The Fisheries and Environment Ministry shall, three months after the anniversary date of the Protocol, provide the Commission of the European Communities with written information on the implementation of the Protocol and the results achieved. The European Community may, in the light of the actual implementation of the measures and after consulting the Angolan authorities, review the payments concerned.

Article 5

In the event of a significant change in the conditions of exploitation of fisheries resources in Angola's EEZ which prevents the exercise of fishing activities, the payment of the financial contribution by the European Community may be interrupted subject to the prior agreement of both parties.

Article 6

A joint scientific meeting shall be held annually to look into questions relating to the sustainable management of fishery resources.

Article 7

The implementation of the Agreement may be suspended if the Community fails to make the payments provided for in Articles 2, 3 and 4 within the time limits laid down.

Article 8

All activities of vessels operating under this Protocol and the annexes thereto, in particular transhipment and the consumption of ship's supplies (food and fuel), shall be governed by the laws applicable in the Republic of Angola.

Fishery products caught by Community vessels operating under the terms of the Agreement shall, for the purposes of this Protocol, be regarded as being of Community origin.

Article 9

This Protocol shall enter into force after both parties have given notification of the conclusion of their respective approval procedures.

ANNEX A

CONDITIONS GOVERNING THE FISHING ACTIVITIES OF COMMUNITY VESSELS IN ANGOLAN WATERS

1. **Applications for licences and formalities for their issuance**

1.1. The Commission of the European Communities shall, via its Delegation in Angola, present to Angola's fisheries authorities one application per vessel for each shipowner wishing to fish under the terms of this Agreement. It shall do so at least 15 days before the date of commencement of the period of validity requested. Applications shall be made on forms provided for the purpose by Angola, specimens of which are set out in Appendix 1 and Appendix 2. On first application the form shall be accompanied by a tonnage certificate for the vessel concerned. Each application shall be accompanied by proof of payment of the fee covering the period of validity of the licence.

1.2. For the purposes of this Protocol fishery products caught by Community vessels fishing under the terms of this Agreement shall be regarded as being of Community origin.

1.3. Each licence shall be issued to a shipowner for a specific vessel. In proven cases of *force majeure*, the licence for a vessel shall, at the request of the Commission of the European Communities, be replaced by another licence, for a Community vessel of a similar type.

1.4. Licences shall be issued by the Angolan authorities to the skipper of the vessel, at the port of Luanda, after the vessel has been inspected by the competent authority.

1.5. The Delegation of the Commission of the European Communities in Angola shall be notified of the licences issued by Angola's fisheries authorities.

1.6. Licence must be kept on board at all times. However, in the case of tuna vessels and surface longliners, the vessel shall be entered on the list of authorised fishing vessels as soon as notification is received that the European Commission has paid the advance to the Angolan authorities and the list shall be communicated to the Angolan authorities responsible for fisheries surveillance. Pending receipt of the actual licence, a copy may be obtained by fax which must be kept on board.

1.7. Licences shall be valid for one year.

1.8. Each vessel shall be represented by an agent who is officially resident in Angola and is approved by the Fisheries and Environment Ministry.

1.9. The Angolan authorities shall, as soon as possible, communicate details of the bank accounts and currencies to be used for payments under this Agreement.

2. **Fees**

2.1. *Provisions applicable to shrimp vessels and demersal fishing vessels*

The licence fee shall be:

— EUR 52/month per GRT for shrimp vessels,

— EUR 220/year per GRT for demersal vessels.

2.2. The fees may be paid quarterly or half-yearly, in which case the amount shall be increased by 5 % and 3 % respectively.

2.3. *Provisions applicable to tuna vessels and surface longliners*

The licence fee shall be EUR 25 per tonne caught within Angola's fishing zone.

Licences shall be issued once Angola has been paid a flat-rate advance of EUR 4 500 a year — equivalent to the fee for a catch of 180 tonnes per year — for each freezer tuna seiner and EUR 2 500 a year — equivalent to the fee for a catch of 100 tonnes per year — for each surface longliner.

The final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities, at the end of the first quarter of the year following that of the catches on the basis of the catches reported for each vessel and confirmed by a specialised scientific body in the region, in particular the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto Português de Investigação Marítima).

This statement shall simultaneously be communicated to the Angolan authorities and the shipowners. Additional payments, if any, by the shipowners shall be made within 30 days of notification of the final statement, into an account opened with a financial institution or to any other body specified by the Angolan authorities.

However, if the amount of the final statement is less than the advance referred to above, shipowners shall not be reimbursed the balance.

3. **Biological rest period**

Shrimp fishing may each year be the subject of a biological rest period in the light of the findings of current scientific surveys. Such periods shall be notified not less than three months in advance to the Commission and the shipowners. Shipowners shall not be required to pay a licence fee during a biological rest period.

4. **By-catches**

By-catches by shrimp vessels shall remain the property of the shipowners. Altogether, shrimp vessels may catch up to 500 tonnes of crab per year.

5. **Landings**

Community surface longliners and tuna boats shall endeavour to supply Angolan tuna canneries, in accordance with their fishing effort in the zone and at a price agreed jointly between the shipowners and the Angolan fisheries authorities on the basis of current world market prices. Payment shall be made in convertible currency.

6. **Control of transhipments and departing vessels**

Transhipments shall be notified eight days in advance to the Angolan fisheries authorities and shall take place, either in the Bay of Luanda or in the Bay of Lobito, in the presence of the Angolan customs authorities.

Transhipment operations shall be subject to stamp duty and service taxes, all payments concerned being made to the customs authorities in accordance with the legislation in force.

A copy of the documentation relating to transhipments shall, 15 days before the end of each month for the preceding month, be transmitted to the Surveillance Directorate of the Fisheries and Environment Ministry.

Any Community fishing vessel wishing to leave Angola's EEZ with its catch or catches must give eight days' notice and submit to a customs check in the Bay of Luanda or the Bay of Lobito.

7. **Food supplies (ship's supplies)**

7.1. European Community fishing vessels taking on supplies of food in Angola shall do so in accordance with the legislation in force, using only specialist ship's chandlers registered with the Ministry of Trade and established in Angola.

7.2. If some or all of the food supplies come from outside Angola a list of the products must be sent to the Customs authorities in respect of each vessel, stating the number of crew members on board, in order to determine whether the quantities concerned are reasonable in relation to on-board consumption requirements. Export duty and other taxes shall be payable on any quantity in excess of what is regarded as reasonable.

7.3. Work relating to the provision of ship's supplies shall be subject to stamp duty and to service taxes.

8. **Fuel supplies (ship's supplies)**

8.1. With the exception of tuna vessels, all vessels operating in Angola's fishing zone under the terms of this Agreement will be provided with facilities for obtaining supplies of fuel and water in Angola.

8.2. In Angola, fuel may be taken on in Luanda or Lobito only.

Any transhipment of fuel supplies from a tanker or merchant vessel in Lobito or Luanda must take place in the presence of the customs authorities and shall be subject to stamp duty and service taxes.

8.3. Where a fishing vessel obtains supplies outside territorial waters and the 24-mile area, the customs authorities shall be notified, stating the quantities concerned, the location of the vessel and the name of the supplier.

9. **Reporting catches**

9.1. Shrimp vessels and demersal vessels

9.1.1. Shrimp vessels and demersal vessels shall, at the end of each fishing campaign, transmit the catch reports set out in Appendices 3 and 4 to the Instituto de Investigação Marinha (Marine Research Institute) via the Delegation of the European Communities.

Moreover, each vessel shall, via the Delegation of the European Community, present to the Planning, Studies and Statistics Office of the Fisheries and Environment Ministry a monthly report listing the catches made during the month and quantities on board on the last day of the month. This report shall be presented no later than the 45th day following the end of the month concerned.

In the event of failure to comply with this provision, Angola reserves the right to apply the penalties provided for in its legislation.

9.1.2. In addition, shrimp vessels and demersal vessels shall report daily their geographical position and the previous day's catches to Luanda radio station. The call sign will be notified to the owner when the fishing licence is issued. Vessels must, if they are unable to contact the above-mentioned radio station, use alternative means of communication.

No fishing or merchant vessel may leave the territorial waters of the Republic of Angola without the prior authorisation of the Direcção Nacional de Fiscalização (National Directorate for Surveillance) of the Fisheries and Environment Ministry and without the catches on board being checked.

9.2. Tuna vessels and surface longliners

Every three days during fishing operations in Angola's fishing zone, vessels shall inform Luanda radio station of their position and their catches. On entering and leaving Angola's fishing zone, the vessels shall inform Luanda radio station of their position and the volume of the catches on board.

Vessels shall, if they are unable to contact the above-mentioned radio station, use alternative means of communication.

Vessels shall keep a fishing logbook in accordance with the model in Appendix 5 for each fishing period spent in Angola's fishing zone. Fishing logbooks must be filled in even where no catch has been taken.

For periods spent outside Angolan waters, 'Outside Angola's EEZ' must be entered in the fishing logbook.

The form must be completed legibly, must be signed by the skipper of the vessel and must be sent to the National Inspection and Surveillance Directorate of the Fisheries and Environment Ministry via the Delegation of the Commission of the European Communities within 45 days of the end of the fishing campaign in Angolan waters; it must also be sent as soon as possible for processing to the scientific institutes referred to at 2.2.

In the event of failure to comply with this provision Angola reserves the right to suspend the licence of the vessel concerned until the necessary formalities have been complied with and to apply the penalties applicable under Angolan legislation. The Delegation of the Commission of the European Communities in Angola will in such cases be informed at once.

10. **Fishing zones**

10.1. The fishing zones accessible to shrimp vessels shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola north of 12°20' prime and beyond the first 12 nautical miles measured from the base lines.

10.2. The fishing zones accessible to vessels engaged in demersal fishing shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola:

— trawlers: beyond the first 12 nautical miles measured from the base lines and restricted northwards by 13°00' prime South, and southwards by a line five miles north of the limit between the EEZs (exclusive economic zones) of Angola and Namibia,

— vessels using other types of gear: beyond the first 12 nautical miles, measured from the base lines and restricted southwards by a line five miles north of the limit between the EEZs of Angola and Namibia.

The fishing zones accessible to freezer tuna seiners and surface longliners shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola beyond the first 12 nautical miles measured from the base lines.

11. **Hiring of crew members**

11.1. Owners of fishing vessels other than freezer tuna seiners and surface longliners to whom fishing licences have been issued under the terms of this Agreement shall contribute to the on-the-job vocational training of at least six Angolan seamen on board each vessel, who shall be freely chosen from a list drawn up by the Fisheries and Environment Ministry.

11.2. Should an observer be taken on board at Angola's request, he shall be regarded as one of the six seamen referred to at 11.1.

11.3. Community shipowners shall endeavour to increase the number of seamen and improve their vocational skills.

11.4. The wages of the seamen and technicians on board shall be borne by the shipowners in accordance with terms mutually agreed by the contracting parties and shall be paid into an account opened with a financial institution designated by the Fisheries and Environment Ministry. This pay shall include life insurance against all risks.

11.5. In addition, a total of 20 trainee seamen will each year be selected for the engine room and deck by the Fisheries and Environment Ministry and be distributed among the above-mentioned vessels. The trainees' wages, which shall be borne by the shipowners, may be worth up to 1/3 of that of seasoned seamen and must include the cost of life insurance against all risks.

11.6. After the traineeship has been satisfactorily completed the skipper shall sign a document to that effect after the trip, such document then being sent, via the owner or his representative, to the Fisheries and Environment Ministry.

12. **Scientific observers**

12.1. Any vessel may be asked to take on board a scientific observer designated and employed by the Fisheries and Environment Ministry.

12.2. Observers shall not normally remain on board for more than one trip.

12.3. The time spent on board by the observer shall be set by the Angolan authorities but, as a general rule, should not exceed the time required to carry out the duties concerned.

12.4. Observers will be treated as ship's officers.

Observers shall:

— observe the fishing activities of the vessels,

— perform biological sampling in the context of scientific programmes,

— take note of the fishing gear used,

— verify the catch data for Angola's zone as recorded in the logbook,

— report fishing data by radio once a week.

12.5. While on board,

observers shall:

— take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,

— respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,

— draft an activity report to be transmitted to the competent Angolan authorities.

The conditions under which observers are taken on board are to be agreed between the shipowner or his agent and the Angolan authorities. The cost of the observers' wages and social insurance contributions shall be charged to the Fisheries and Environment Ministry. Shipowners shall, through their agents, pay the Marine Research Institute EUR 15 for each day spent by an observer on board a vessel. Shipowners who are unable to take observers aboard and put them ashore at an Angolan port agreed by common accord with the Angolan authorities shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed or during the twelve hours following the time agreed, shipowners shall automatically be absolved of their obligation to take the observer on board.

13. **Inspection and monitoring**

Community vessels fishing under the terms of the Agreement shall be monitored by satellite in accordance with the Protocol on VMS and without prejudice to the Angolan legislation applicable.

At the request of the Angolan authorities, Community fishing vessels operating under the terms of the Agreement shall allow on board any Angolan officials responsible for the inspection and monitoring of fishing activities and facilitate the accomplishment of their duties.

These officials shall not remain on board any longer than is necessary for the accomplishment of their duties.

14. **Mesh size**

The minimum size of the mesh used shall be:

— 50 mm for shrimp fishing;

— 110 mm for demersal fishing.

The introduction of new mesh sizes shall apply to Community vessels from the sixth month following notification to the Commission of the European Communities.

15. **Boarding**

15.1. The European Community Delegation in Luanda shall be informed within 48 hours of the boarding, within Angola's fishing zone, of any fishing vessel flying the flag of a Member State of the Community and operating under the terms of this Agreement between the Community and a third country, and shall at the same time receive a summary report of the circumstances and reasons for the boarding of the vessel.

15.2. In the case of vessels authorised to fish in Angolan waters, before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the alleged infringement, a consultation meeting shall be held, within 48 hours of receipt of the above-mentioned information, between the Delegation of the Commission of the European Communities, the Fisheries and Environment Ministry and the inspection authorities, possibly attended by a representative of the Member State concerned.

At the meeting, the parties shall exchange any relevant documentation or information, in particular automatically registered data showing the vessel's positions during the trip up to the time of boarding, which may help to clarify the circumstances of the facts concerned.

The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

15.3. Before any judicial proceedings are brought, an attempt shall be made to resolve the alleged infringement through a compromise procedure. This procedure shall be completed no later than three working days after the boarding.

15.4. If the case cannot be settled by compromise, judicial proceedings shall be brought and bank security payable by the shipowner shall be set by the relevant authority within 48 hours following the conclusion of the compromise procedure pending the judicial decision. The amount of the security may not exceed the maximum penalty applicable under national legislation for the alleged infringement. The bank security shall be returned to the shipowner by the relevant authority once the case is settled by judicial decision without the master of the vessel concerned being incriminated.

15.5. The vessel and its crew shall be released:

— at the end of the concertation meeting, if the established facts permit, or

— as soon as the obligations arising from the compromise have been fulfilled, or

— as soon as bank security has been lodged by the shipowner (judicial proceedings).

16. **Infringements**

Any infringement of Angolan legislation or the provisions of this Protocol by a Community vessel shall be notified to the Delegation of the Commission of the European Communities in Luanda, without prejudice to the sanctions applicable under the legislation concerned.

ANNEX B

CONDITIONS GOVERNING THE FISHING ACTIVITIES OF COMMUNITY VESSELS FISHING FOR PELAGIC SPECIES IN ANGOLAN WATERS

1. **Applications for licences and formalities for their issuance**

1.1. The Commission of the European Communities shall, via its Delegation in Angola, present to Angola's fisheries authorities one application per vessel for each shipowner wishing to fish under the terms of this Agreement. It shall do so at least 15 days before the date of commencement of the period of validity requested. Applications shall be made on forms provided for the purpose by Angola, specimens of which are contained in Appendix 1. On first application the form shall be accompanied by a tonnage certificate for the vessel concerned. Each application shall be accompanied by proof of payment of the fee covering the period of validity of the licence.

When renewing the licence, only proof of payment of the fee for the period in question need be presented to the Angolan authorities, the other documents referred to above being presented only with the first application or if the technical characteristics of the vessel have changed.

1.2. Licences shall, in the case of a first application, be issued to a shipowner for a specific vessel. In proven cases of *force majeure* the licence for a vessel shall, at the request of the Commission of the European Communities, be replaced by another licence, for a Community vessel of a similar type.

1.3. Licences shall be issued by the Angolan authorities to the skipper of the vessel, at the nearest port, after the vessel has been inspected by the competent authority.

1.4. The Delegation of the Commission of the European Communities in Angola shall be notified of the licences by Angola's fisheries authorities.

1.5. Licences must be kept on board at all times. However, the vessel shall be entered on the list of authorised fishing vessels as soon as notification is received that the European Commission has paid the advance to the Angolan authorities and the list shall be communicated to the Angolan authorities responsible for fisheries surveillance. Pending receipt of the actual licence, a copy may be obtained by fax which must be kept on board.

1.6. Licences shall be valid for a minimum of one month and may be renewed.

1.7. Each vessel shall be represented by an agent who is officially resident in Angola and is approved by the Fisheries and Environment Ministry.

1.8. The Angolan authorities shall, before the entry into force of this Protocol, communicate details of the bank accounts and currencies to be used for paying the fees.

1.9. Licences shall cover the fishing of mackerel, sardinella and horse mackerel. A by-catch of up to 10 % is authorised.

2. **Fees**

The fee is set at EUR 3/month per GT.

After the trial period the conditions governing these fishing operations (obligation to take seamen on board and put them ashore) shall be laid down by common agreement between the shipowners and the Angolan authorities in the light of the results of the said period.

3. **Transhipment**

All transhipments shall be notified to the competent Angolan fisheries authorities eight days in advance and shall take place in either the Bay of Luanda or the Bay of Lobito in the presence of the Angolan Customs authorities.

Transhipment operations shall be subject to stamp duty and service taxes, all payments concerned being made to the customs authorities in accordance with the legislation in force.

A copy of the documentation relating to transhipments shall be forwarded to the National Surveillance Directorate of the Fisheries and Environment Ministry 15 days before the end of each month for the preceding month.

Any Community fishing vessel wishing to leave Angola's EEZ with its catch or catches must submit to a customs check in the Bay of Luanda or the Bay of Lobito after giving eight days' notice.

4. **Food supplies (ship's supplies)**

4.1. European Community fishing vessels taking on supplies of food in Angola shall do so in accordance with the legislation in force, using only specialist ship's chandlers registered with the Ministry of Trade and established in Angola.

4.2. If some or all of the food supplies come from outside Angola a separate list of the products must be sent to the Customs in respect of each vessel, stating the number of crew members on board, in order to determine whether the quantities of products concerned may be regarded as reasonable in relation to on-board consumption requirements. Any quantity in excess of what is regarded as reasonable shall be subject to export duty and other taxes.

4.3. Work relating to the provision of ship's supplies shall be subject to stamp duty and service taxes.

5. **Fuel supplies (ship's supplies)**

5.1. With the exception of tuna vessels, all vessels operating in Angola's fishing zone under the terms of this Agreement will be provided with facilities for obtaining their fuel and water supplies in Angola.

5.2. Any fuel taken on board in Angola must be taken on in Luanda or Lobito.

The transhipment of fuel supplies from a tanker or merchant ship in Lobito or Luanda must take place in the presence of the customs authorities and is subject to stamp duty and service taxes.

5.3. Where a fishing vessel obtains its supplies outside territorial waters and the 24-mile area, the customs authorities shall be notified, stating the quantities concerned, the location of the vessel and the name of the supplier.

6. **Reporting catches**

6.1. At the end of each fishing campaign vessels fishing for pelagic species shall transmit to the Fisheries Research Institute in Luanda, via the Delegation of the Commission of the European Communities, daily catch reports in accordance with the specimen shown in Appendix 6.

Moreover, each vessel shall present a monthly report to the Planning, Studies and Statistics Office of the Fisheries and Environment Ministry, listing the catches made during the month and the quantities on board on the last day of the month. This report shall be presented no later than the 45th day following the end of the month concerned.

6.2. No fishing vessel may leave Angola's fishing zone without obtaining the prior authorisation of the Fisheries Surveillance Directorate of the Fisheries and Environment Ministry after the catches on board have been checked.

In the event of failure to comply with this provision, Angola reserves the right to apply the penalties applicable under its legislation.

7. **Fishing zones**

The fishing zones accessible to vessels fishing for pelagic species shall comprise all waters under the sovereignty or jurisdiction of the Republic of Angola beyond the first 12 nautical miles.

8. **Hiring of crew members**

Vessels fishing for pelagic species during the trial period shall not be subject to the requirement to hire Angolan seamen.

9. **Scientific observers**

9.1. Vessels may be asked to take on board a scientific observer designated and employed by the Fisheries and Environment Ministry.

Observers shall not normally remain on board for more than one trip.

9.2. The time spent on board by the observer shall be fixed by the Angolan authorities, but, as a general rule, should not exceed the time required to carry out the duties concerned.

9.3. Observers shall be treated as ship's officers.

Observers shall:

— observe the fishing activities of the vessels,

— perform biological sampling in the context of scientific programmes,

— take note of the fishing gear used,

— verify the catch data for Angola's zone as recorded in the logbook,

— report fishing data by radio once a week.

While on board, observers shall:

— take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,

— respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,

— draft an activity report to be transmitted to the competent Angolan authorities.

The terms under which observers are taken on board are to be agreed between the shipowner or his agent and the Angolan authorities. Their wages and social insurance contributions are to be paid by the Fisheries and Environment Ministry. Shipowners shall, through their agents, pay the Marine Research Institute EUR 30 for each day spent by an observer on board a vessel. Shipowners who are unable to take observers on board and put them ashore at an Angolan port agreed by common accord with the Angolan authorities shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed or during the twelve hours following the time agreed, shipowners shall automatically be absolved of their obligation to take the observer on board.

10. **Inspection and surveillance**

Community vessels fishing under the Agreement shall be monitored by satellite in accordance with the Protocol on VMS and without prejudice to the Angolan legislation applicable.

At the request of the Angolan authorities, Community fishing vessels fishing under the terms of the Agreement shall allow on board any Angolan officials responsible for the inspection and monitoring of fishing activities and shall facilitate the accomplishment of their duties.

These officials shall not remain on board any longer than is necessary for the accomplishment of their duties.

11. **Mesh size**

The minimum size of the mesh used shall be 60 mm.

12. **Boarding**

12.1. The European Community Delegation in Luanda shall be informed within 48 hours of the boarding, within Angola's fishing zone, of any fishing vessel flying the flag of a Member State of the Community within Angola's fishing zone and operating under this Agreement, and shall at the same time receive a summary report of the circumstances and reasons for the boarding of the vessel.

12.2. In the case of vessels authorised to fish in Angolan waters, before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the alleged infringement, a consultation meeting shall be held, within 48 hours of receipt of the above-mentioned information, between the Delegation of the Commission of the European Communities, the Fisheries and Environment Ministry and the inspection authorities, possibly attended by a representative of the Member State concerned.

At the meeting, the parties shall exchange any relevant documentation or information, in particular automatically registered data showing the vessel's positions during the trip up to the time of boarding, which may help to clarify the circumstances of the facts concerned.

The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

12.3. Before any judicial proceedings, an attempt shall be made to resolve the alleged infringement through a compromise procedure. This procedure shall be completed no later than three working days after the boarding.

12.4. If the case cannot be settled by compromise, judicial proceedings shall be brought before a competent judicial body and a bank security payable by the shipowner shall be set by the relevant authority within 48 hours following the conclusion of the compromise procedure pending a judicial decision. The amount of the security may not exceed the maximum penalty applicable under national legislation for the alleged infringement. The bank security shall be returned to the shipowner by the relevant authority once the case is settled by judicial decision without the master of the vessel concerned being incriminated.

12.5. The vessel and its crew shall be released:

— at the end of the concertation meeting, if the established facts permit, or

— as soon as the obligations arising from the compromise have been fulfilled, or

— as soon as bank security has been lodged by the shipowner (judicial proceedings).

Appendix 1

APPLICATION FOR A LICENCE TO FISH FOR SHRIMP AND DEMERSAL SPECIES IN ANGOLAN WATERS

SECTION A

1. Name of shipowner: .....
2. Nationality of shipowner: .....
3. Business address of shipowner: .....

.....

.....

4. Chemical additives which may be used (name and composition): .....

.....

.....

.....

SECTION B

(To be completed for each vessel)

1. Period of validity: .....
2. Name of vessel: .....
3. Year of construction: .....
4. Original flag: .....
5. Current flag: .....
6. Date on which current flag acquired: .....
7. Year acquired: .....
8. Port and registration number: .....
9. Type of fishing: .....
10. Gross tonnage: .....
11. Call sign: .....
12. Length overall (m): .....
13. Bow height (m): .....
14. Depth (m): .....
15. Hull construction material: .....
16. Engine power: .....
17. Speed (knots): .....
18. Capacity of the cold storage chamber: .....
19. Capacity of tanks (m^3): .....
20. Capacity of fish holds (m^3): .....
21. Colour of hull: .....
22. Colour of superstructure: .....

23. On-board communication equipment:

Type	Make	Power (Watts)	Year of construction	Frequencies	
				Reception	Transmission

24. Navigating and sounding equipment:

Type	Make	Model	Range

25. Skipper: .....

26. Nationality of skipper: .....

Include:

— Three colour photographs of vessel (side view),

— an illustration and detailed description of the fishing gear used,

— a document proving that the representative of the shipowner is empowered to sign this application.

....

(Date of application) (Signature of representative of shipowner)

Appendix 2

APPLICATION FOR A LICENCE TO FISH FOR TUNA IN ANGOLAN WATERS

PART A

1. Name of shipowner: .....
2. Nationality of shipowner: .....
3. Business address of shipowner: .....

.....

.....

PART B

(To be completed for each vessel)

1. Period of validity: .....
2. Name of vessel: .....
3. Year of construction: .....
4. Original flag: .....
5. Current flag: .....
6. Date on which current flag was acquired: .....
7. Year acquired: .....
8. Port and registration number: .....
9. Type of fishing: .....
10. Gross register tonnage: .....
11. Call sign: .....
12. Length overall (metres): .....
13. Bow height (metres): .....
14. Depth (metres): .....
15. Hull construction material: .....
16. Engine power (HP): .....
17. Speed (knots): .....
18. Cabins: .....
19. Capacity of fuel tanks (m^3): .....
20. Capacity of fish holds (m^3): .....
21. Freezing capacity in tonnes/24 hours and system used: .....

.....

22. Colour of hull: .....
23. Colour of superstructure: .....

24. On-board communication equipment:

Type	Make	Model	Power (watts)	Year of manufacture	Frequencies	
					Reception	Transmission

25. Navigation and sounding equipment:

Type	Make	Model

26. Auxiliary boats used (for each vessel): .....

26.1. Gross register tonnage: .....

26.2. Length overall (metres): .....

26.3. Bow height (metres): .....

26.4. Depth (metres): .....

26.5. Hull construction material: .....

26.6. Engine power (HP): .....

26.7. Speed (knots): .....

27. Auxiliary aerial equipment used to detect fish (even if not installed on board): .....

.....

28. Home port: .....

29. Name of skipper: .....

30. Nationality of skipper: .....

Include:

— three colour photographs of the vessel (side view), of any additional boats used for fishing and of any aerial equipment used for detecting fish,

— an illustration and detailed description of the fishing gear used,

— a document proving that the representative of the shipowner is empowered to sign this application.

....

(Date of application) (Signature of representative of shipowner)

Appendix 3.1

FISHING LOGBOOK

(for all bottom trawlers)

INSTITUTO DE INVESTIGAÇÃO PESQUEIRA

(Fisheries Research Institute)

Haul	(13)	No	No	No	No	No
Date	(14)					
Latitude	(15)					
Longitude	(16)					
Sounding (metres)	(17)					
Duration (h)	(18)					
Total catch (kg)	(19)					

	1. Horse mackerel					
	2. Sardinella					
	3. Scabbardfish					
	4. Antarctic toothfish					
	5. Large-eye dentex					
	6. Red Pandora					
	7. Sea bream					
	8. Barracuda					
	9. Hake					
	10. Drums					
	11. Meagres					
	12. Splitfins					
	13. Grunts					
	14. Skate and rays					
	15. Shark					
	16. Shrimps					
	17. Cuttlefish					
	18. Squid					

Total quantity of fish processed (kg)

Species	Whole	Fillets	Heads off

Discards

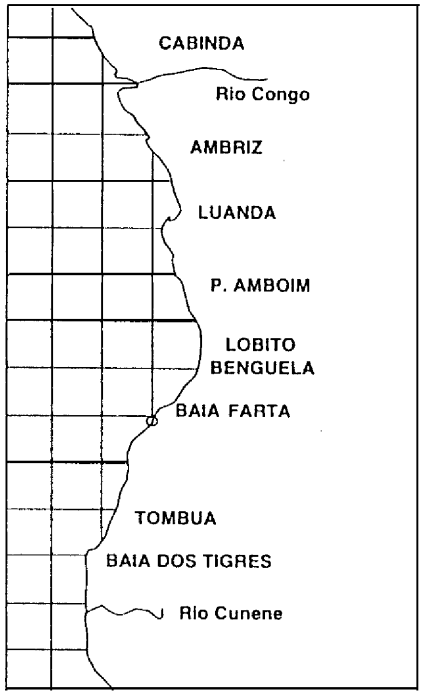
Species	Total (kg)

Appendix 3.2

TRIP

Call sign (1)	
Registration (2)	
Name of vessel (3)	
Nationality (4)	
Shipowner (5)	

	Departure (6)	Arrival (7)
Date		
Port		
Skipper's name and signature (8)		



FISHING GEAR (specify and give measurements) (9)

Gear	Headline (m) (g)	Footrope (m)	Cod end mesh size (mm)
Demersal trawl (a)			
Pelagic trawl (b)			
Shrimp trawl (c)			
	Floatline	Depth (m)	
Seine (d)			
	Length (m)	Number of hooks used	
Longline (e)			
	Length (m)	Depth (m)	
Gillnet/trammel net (f)			
Other (specify)			

MAIN SPECIES FISHED (please state name or serial number) (10)

Please enter the total number of fishing days in each box in the diagram opposite (11)

TOTAL CATCH (kg) (Weight of all fish on board) (12)	

Appendix 4.1

FISHING LOGBOOK
(for all shrimp vessels)

INSTITUTO DE INVESTIGAÇÃO PESQUEIRA
(Fisheries Research Institute)

Haul	(13)	No	No	No	No	No
Date	(14)					
Latitude	(15)					
Longitude	(16)					
Sounding (m)	(17)					
Duration (h)	(18)					
Total catch (kg)	(19)					

	1. Deepwater shrimp					
	2. Deepwater rose shrimp					
	3. Blue-and-red shrimp					
	4. Lobster					
	5. Crab					
	6.					
	7.					
	8.					
	9.					
	10.					
	11.					
	12.					
	13.					

NB: See attached table to confirm the common name of the species in your language.

Total quantity of fish processed (kg)

Species	Heads off	Others

Discards

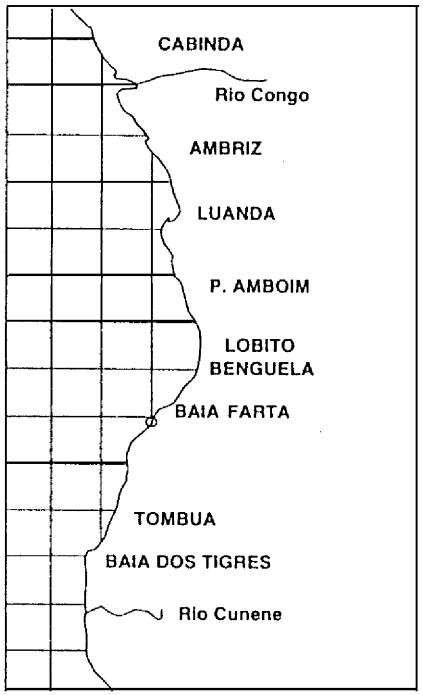
Species	Total (kg)

Appendix 4.2

TRIP

Call sign (1)	
Registration (2)	
Name of vessel (3)	
Nationality (4)	
Shipowner (5)	

	Departure (6)	Arrival (7)
Date		
Port		
Skipper's name and signature (8)		



FISHING GEAR (specify and give measurements) (9)

Gear	Headline (m) (g)	Footrope (m)	Cod end mesh size (mm)
Demersal trawl (a)			
Pelagic trawl (b)			
Shrimp trawl (c)			
	Floatline	Depth (m)	
Seine (d)			
	Length (m)	Number of hooks used	
Longline (e)			
	Length (m)	Depth (m)	
Gillnet/trammel net (f)			
Other (specify)			

MAIN SPECIES FISHED (please state name or serial number) (10)

Please enter the total number of fishing days in each box in the diagram opposite (11)

TOTAL CATCH (kg) (weight of all the fish on board) (12)	

Appendix 5

IIP

MINISTERIO DAS PESCAS — DIARIO DE PESCA PARA ATUNEIRO
(ANGOLAN FISHERIES MINISTRY — TUNA BOAT FISHING LOGBOOK)

Modalidade de pesca (Fishing method)	
	Palangre (Longline)
	Isco vivo (Baitboat)
	Rede de cerco (Purse seine)
	Corrico (Trol) (Trolling)
	Outros (Other)

			Mês (Month)	Dia (Day)	Ano (Year)	Porto (Port)
Nome do navio: (Vessel name)	Tonelagem de arqueação bruta: (Gross Tonnage)	Saída: (Boat Left)				
Nacionalidade: (Flag Country)	Capacidade (TM) tm (Capacity (tonnes))	Chegada: (Boat Returned)				
Número de registro: (Registration No)	Capitão ou Mestre (Captain)					
Armador ou afretador: (Company or owner)	N.º de tripulantes (No of crew)					
Endereço: (Adress)	Data de comunicação: (Reporting date)					
	Comunicado por: (Reported by)					

Número de dias no mar (No of days at sea)		N.º de dias de pesca (No of fishing days)		Número de viagem (Trip Number)	
		N.º de lanços efectuados (No of sets made)			

Datas (Dates)		Area		Temp. água sup. (°C) Surf. Water Temp (°C)	Esforço de pesca (Effort) (n.º de anzóis usados) (No of hooks used)	Capturas (Catches)																				Isco usado na pesca (Bait used)			
Dia/Mês Day/Month	Número de operação (Set No)	Latitude N/S	Longitude E/W			Atum rabilho ou Rabil (Bluefin Tuna) *Thunnus maccoyi*		Albacora (Yellowfin Tuna) *Thunnus albacares*		Patudo (Bigeye Tuna) *Thunnus obesus*		Voador (Albacore) *Thunnus alalunga*		Espadarte (Swordfish) *Xiphias gladius*		Espadim (Strip Marlin) (White Marlin) *Tetraptunus audax*		Espadin negro (Black Marlin) *Makaira indica*		Veleiro (Sailfish) *Istiophorus spp.*		Gaiado (Skipjack) *Katsuwonus pelamis*		Diversos (Miscellaneous Fishes)		Total diário (Daily Total) Apenas em Kg (in kg only)		Agulhão (Saury)	Lula (Squid)	Isco vivo (Livebait)	Outros (Other)
						No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg				
Quantidades descarregadas (kg) LANDING WEIGHT (IN KG)																															

1 — No fim de cada viagem enviar uma copia do Diário de Pesca ao Ministério das Pescas

(At the end of each trip send a copy of the log to Ministry of Fisheries).

2 — ÁREA. Significa a posição da operação, com arredondamento dos minutos e registando graus de latitude e longitude

(Fishing area refers to the position of the set. Round off minutes and record degree of latitude and longitude).

3 — A última linha «Quantidade descarregada» deve ser preenchida só no fim da viagem. Deve ser registrado o peso real na altura da descarga

(The bottom line -landing weight- should not be completed until the end of the trip. Record the actual weight at the time of unloading).

4 — Toda a informação aqui registada será mantida estritamente confidencial

(All information reported herein will be kept strictly confidential).

Appendix 6

STATISTICS ON PELAGIC FISHING ACTIVITIES

FISHERIES MINISTRY

Month: Year:

Name of vessel:	
Nationality (flag):	

Engine rating:	
Gross register tonnage (GRT):	

Fishing method:	
Home port:	

Date	Fishing zone		Number of Sets	Number of hours of Fishing	Species (kg)							
					Mackerel and horse mackerel				Total	Other fish		Total
					Mackerel		Horse mackerel					
	Longitude	Latitude										
(1)												
(2)												
(3)												
(4)												
(5)												
(6)												
(7)												
(8)												
(9)												
(10)												
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(24)												
(25)												
(26)												
(27)												
(28)												
(29)												
(30)												
(31)												
		TOTAL										