Official Journal

of the European Communities

Volume 16 No L 228

16 August 1973

English Edition

Legislation

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Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 24 July 1973

on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products

(73/238/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 103 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the establishment of a common energy policy is one of the objectives the Communities have set themselves;

Whereas crude oil and petroleum products are of increasing importance in providing the Community with supplies of energy; whereas any difficulty, even temporary, having the effect of considerably reducing supplies of such products could cause serious disturbances in the economic activity of the Community; whereas the Community must, therefore, be in a position to offset or at least to diminish any harmful effects in such a case;

Whereas procedures and appropriate instruments should be provided in advance to ensure the speedy implementation of measures to mitigate the effects of difficulties in the supply of petroleum and petroleum products;

Whereas all Member States should, therefore, possess the necessary powers to take appropriate action, should the need arise, without delay and in accordance with the Treaty, and in particular Article 103 thereof;

Whereas it is necessary for these powers to be harmonized to a certain extent in order to facilitate the coordination of national measures within the framework of consultations at Community level;

Whereas it is also desirable that a consultative body be set up immediately to facilitate the coordination of practical measures taken or proposed by the Member States in this field;

Whereas it is necessary that each Member State draw up a plan which may be used in the event of difficulties arising in the supply of crude oil and petroleum products;

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall take all necessary measures to provide the competent authorities with the necessary powers in the event of difficulties arising in the supply of crude oil and petroleum products which might appreciably reduce the supply of these products and cause severe disruption. Those powers should enable the authorities:

— to draw on emergency stocks in accordance with the Council Directive of 20 December 1968 [1]

[1] OJ No L 308, 23. 12. 1968, p. 14.

imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products and distribute these stocks to users,

— to impose specific or broad restrictions on consumption, depending on the estimated shortages, and to give priority to supplies of petroleum products to certain groups of users,

— to regulate prices in order to prevent abnormal price rises.

Article 2

1. The Member States shall appoint the bodies to be responsible for implementing the measures to be taken in execution of the powers provided for in Article 1.

2. The Member States shall draw up intervention plans for use in the event of difficulties arising with regard to the supply of crude oil and petroleum products.

Article 3

1. If difficulties arise with regard to the supply of crude oil and petroleum products in the Community or one of the Member States, the Commission shall convene as soon as possible, at the request of one of the Member States or on its own initiative, a group of delegates from the Member States whose names shall be made known beforehand, under the chairmanship of the Commission.

2. This group shall carry out the necessary consultations in order to ensure coordination of the measures taken or proposed under the powers provided for in Article 1 above.

Article 4

1. The Member States shall inform the Commission of the provisions which meet the obligations arising from the application of Article 1 of this Directive.

2. The Member States shall notify the Commission of the composition and the mandate of the national bodies set up in accordance with Article 2 (1) in order to implement the measures to be taken.

Article 5

The Member States shall bring into force not later than 30 June 1974 the provisions laid down by law, regulation or administrative action necessary to comply with this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

FIRST COUNCIL DIRECTIVE

of 24 July 1973

on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance

(73/239/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof;

Having regard to the General Programme (1) for the abolition of restrictions on freedom of establishment, and in particular Title IV C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (2);

Having regard to the Opinion of the Economic and Social Committee (3);

Whereas by virtue of the General Programme the removal of restrictions on the establishment of agencies and branches is, in the case of the direct insurance business, dependent on the coordination of the conditions for the taking-up and pursuit of this business; whereas such coodination should be effected in the first place in respect of direct insurance other than life assurance;

Whereas in order to facilitate the taking-up and pursuit of the business of insurance, it is essential to eliminate certain divergencies which exist between national supervisory legislation; whereas in order to achieve this objective, and at the same time ensure adequate protection for insured and third parties in all the Member States, it is desirable to coordinate, in particular, the provisions relating to the financial guarantees required of insurance undertakings;

Whereas a classification of risks in the different classes of insurance is necessary in order to determine, in particular, the activities subject to a compulsory authorization and the amount of the minimum guarantee fund fixed for the class of insurance concerned;

Whereas it is desirable to exclude from the application of this Directive mutual associations which, by virtue of their legal status, fulfil appropriate conditions as to security and financial guarantees; whereas it is further desirable to exclude certain institutions in several Member States whose business covers a very limited sector only and is restricted by law to a specified territory or to specified persons;

Whereas the various laws contain different rules as to the simultaneous undertaking of health insurance, credit and suretyship insurance and insurance in respect of recourse against third parties and legal defence, whether with one another or with other classes of insurance; whereas continuance of this divergence after the abolition of restrictions on the right of establishment in classes other than life assurance would mean that obstacles to establishment would continue to exist; whereas a solution to this problem must be provided in subsequent coordination to be effected within a relatively short period of time;

Whereas it is necessary to extend supervision in each Member State to all the classes of insurance to which this Directive applies; whereas such supervision is not possible unless the undertaking of such classes of insurance is subject to an official authorization; whereas it is therefore necessary to define the conditions for the granting or withdrawal of such authorization; whereas provision must be made for a right to apply to the courts should an authorization be refused or withdrawn;

Whereas it is desirable to bring the classes of insurance known as transport classes bearing Nos 4, 5, 6, 7 and 12 in Paragraph A of the Annex, and the credit insurance classes bearing Nos 14 and 15 in paragraph A of the Annex, under more flexible rules in view of the continual fluctuations in conditions affecting goods and credit;

Whereas the search for a common method of calculating technical reserves is at present the subject of studies at Community level; whereas it therefore appears to be desirable to reserve the attainment of coordination in this matter, as well as questions relating to the determination of categories of investments and the valuation of assets, for subsequent Directives;

(1) OJ No 2, 15. 1. 1962, p. 36/62.
(2) OJ No C 27, 28. 3. 1968, p. 15.
(3) OJ No 158, 18. 7. 1967, p. 1.

Whereas it is necessary that insurance undertakings should possess, over and above technical reserves of sufficient amount to meet their underwriting liabilities, a supplementary reserve, to be known as the solvency margin, and represented by free assets, in order to provide against business fluctuations; whereas in order to ensure that the requirements imposed for such purposes are determined according to objective criteria, whereby undertakings of the same size are placed on an equal footing as regards competition, it is desirable to provide that such margin shall be related to the overall volume of business of the undertaking and be determined by reference to two indices of security, one based on premiums and the other on claims;

Whereas it is desirable to require a minimum guarantee fund related to the size of the risk in the classes undertaken, in order to ensure that undertakings possess adequate resources when they are set up and that in the subsequent course of business the solvency margin shall in no event fall below a minimum of security;

Whereas it is necessary to make provision for the case where the financial condition of the undertaking becomes such that it is difficult for it to meet its underwriting liabilities;

Whereas the coordinated rules concerning the taking-up and pursuit of the business or direct insurance within the Community should, in principle, apply to all undertakings entering the market and, consequently, also to agencies and branches where the head office of the undertaking is situated outside the Community; whereas it is, nevertheless, desirable as regards the methods of supervision to make special provision with respect to such agencies or branches in view of the fact that the assets of the undertakings to which they belong are situated outside the Community;

Whereas it is, however, desirable to permit the relaxation of such special conditions, while observing the principle that such agencies and branches should not obtain more favourable treatment than undertakings within the Community;

Whereas certain transitional provisions are required in order, in particular, to permit small and medium-sized undertakings already in existence to adapt themselves to the requirements which must be imposed by the Member States in pursuance of this Directive, subject to the application of Article 53 of the Treaty;

Whereas it is important to guarantee the uniform application of coordinated rules and to provide, in this respect, for close collaboration between the Commission and the Member States in this field;

HAS ADOPTED THIS DIRECTIVE:

Title I — General provisions

Article 1

This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance carried on by insurance undertakings which are established in a Member State or which wish to become established there in the classes of insurance defined in the Annex to this Directive.

Article 2

This Directive does not apply to:

1. The following kinds of insurance:

   (a) Life assurance, that is to say, the branch of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or an earlier death, life assurance with return of premiums, tontines, marriage assurance, and birth assurance;

   (b) Annuities;

   (c) Supplementary insurance carried on by life-assurance undertakings, that is to say, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident, and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;

   (d) Insurance forming part of a statutory system of social security;

   (e) The type of insurance existing in Ireland and the United Kingdom known as 'permanent health insurance not subject to cancellation'.

2. The following operations:

   (a) Capital redemption operations, as defined by the law in each Member State;

   (b) Operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

   (c) Operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

(d) Pending further coordination, which shall be implemented within four years of notification of this Directive, export credit insurance operations for the account of or with the support of the State.

Article 3

1. This Directive does not apply to mutual associations in so far as they fulfil all the following conditions:

— the articles of association must contain provisions for calling up additional contributions or reducing their benefits,

— their business does not cover liability risks — unless the latter constitute ancillary cover within the meaning of subparagraph (c) of the Annex — or credit and suretyship risks,

— the annual contribution income for the activities covered by this Directive must not exceed one million units of account,

and

— at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.

2. This Directive shall not, moreover, apply to mutual associations which have concluded with other associations of this nature an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the concessionary undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

In such a case the concessionary undertaking shall be subject to the rules of this Directive.

Article 4

This Directive shall not apply to the following institutions unless their statutes or the law are amended as regards capacity:

(a) *In Germany*

The following institutions under public law enjoying a monopoly (Monopolanstalten):

1. Badische Gebäudeversicherungsanstalt, Karlsruhe,
2. Bayerische Landesbrandversicherungsanstalt, Munich,
3. Bayerische Landestierversicherungsanstalt, Schlachtviehversicherung, Munich,
4. Braunschweigische Landesbrandversicherungsanstalt, Brunswick,
5. Hamburger Feuerkasse, Hamburg,
6. Hessische Brandversicherungsanstalt (Hessische Brandversicherungskammer), Darmstadt,
7. Hessische Brandversicherungsanstalt, Kassel,
8. Hohenzollernsche Feuerversicherungsanstalt, Sigmaringen,
9. Lippische Landesbrandversicherungsanstalt, Detmold,
10. Nassauische Brandversicherungsanstalt, Wiesbaden,
11. Oldenburgische Landesbrandkasse, Oldenburg,
12. Ostfriesische Landschaftliche Brandkasse, Aurich,
13. Feuersozietät Berlin, Berlin,
14. Württembergische Gebäudebrandversicherungsanstalt, Stuttgart.

However, territorial capacity shall not be regarded as modified in the case of a merger between such institutions which has the effect of maintaining for the benefit of the new institution the territorial capacity of the institutions which have merged, nor shall capacity as to the classes of insurance be regarded as modified if one of these institutions takes over in respect of the same territory one or more of the classes of another such institution.

The following semi-public institutions:

1. Postbeamtenkrankenkasse,
2. Krankenversorgung der Bundesbahnbeamten;

(b) *In France*

The following institutions:

1. Caisse départementale des incendiés des Ardennes,
2. Caisse départementale des incendiés de la Côte-d'Or,
3. Caisse départementale des incendiés de la Marne,
4. Caisse départementale des incendiés de la Meuse,

5. Caisse départementale des incendiés de la Somme,

6. Caisse départementale grêle du Gers,

7. Caisse départementale grêle de l'Hérault;

(c) *In Ireland*

Voluntary Health Insurance Board;

(d) *In Italy*

The Cassa di Previdenza per l'assicurazione degli sportivi (Sportass);

(e) *In the United Kingdom*

The Crown Agents.

Article 5

For the purposes of this Directive:

(a) 'Unit of account' means that unit which is defined in Article 4 of the Statute of the European Investment Bank;

(b) 'Matching assets' means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realizable in the same currency;

(c) 'Localization of assets' means the existence of assets, whether movable of immovable, within a Member State but shall not be construed as involving a requirement that movable property be deposited or that immovable property be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are to be liquidated.

Title II — Rules applicable to undertakings whose head offices are situated within the Community

Section A: Conditions of admission

Article 6

1. Each Member State shall make the taking-up of the business of direct insurance in its territory subject to an official authorization.

2. Such authorization shall be sought from the competent authority of the Member State in question by:

(a) Any undertaking which establishes its head office in the territory of such state;

(b) Any undertaking whose head office is situated in another Member State and which opens a branch or agency in the territory of the Member State in question;

(c) Any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;

(d) Any undertaking which, having obtained in accordance with Article 7 (1) an authorization for a part of the national territory, extends its business beyond such part.

3. Member States shall not make an authorization subject to the lodging of a deposit or the provision of security.

Article 7

1. An authorization shall be valid for the entire national territory unless, and in so far as the national legislation permits, the applicant seeks permission to carry out his business only in a part of the national territory.

2. An authorization shall be given for a particular class of insurance. It shall cover the entire class, unless the applicant desires to cover only part of the risks pertaining to such class, as listed in point A of the Annex.

However:

(a) It shall be open to any Member State to grant an authorization for any group of classes indicated in point B of the Annex, provided that it attaches to such authorization the appropriate denomination specified therein;

(b) An authorization given for one class or a group of classes shall also be valid for the purpose of covering ancillary risks included in another class if the conditions specified in point C of the Annex are fulfilled;

(c) Pending further coordination, which must be implemented within four years of notification of this Directive, the Federal Republic of Germany may maintain the provision prohibiting the simultaneous undertaking in its territory of health insurance, credit and suretyship insurance or insurance in respect of recourse against third parties and legal defence, either with one another or with other classes.

Article 8

1. Each Member State shall require that any undertaking set up in its territory for which an authorization is sought shall:

(a) Adopt one of the following forms:

— in the case of the Kingdom of Belgium:

'société anonyme/naamloze vennootschap', 'société en commandite par actions/vennootschap bij wijze van geldschieting op aandelen', 'association d'assurance mutuelle/onderlinge verzekeringsmaatschappij', 'société coopérative/cooperative vennootschap',

— in the case of Denmark:

'Aktieselskaber' (joint stock companies), 'gensidige selskaber' (mutuals),

— in the case of the Federal Republic of Germany:

'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlich-rechtliches Wettbewerbs-Versicherungsunternehmen',

— in the case of the French Republic:

'société anonyme', 'société à forme mutuelle', 'mutuelle', 'union de mutuelles',

— in the case of the Republic of Ireland:

'incorporated companies limited by shares or by guarantee or unlimited',

— in the case of the Italian Republic:

'società per azioni', 'società cooperativa', 'mutua di assicurazione',

— in the case of the Grand Duchy of Luxembourg:

'société anonyme', 'société en commandite par actions', 'association d'assurances mutuelles', 'société coopérative',

— in the case of the Kingdom of the Netherlands:

'naamloze vennootschap', 'onderlinge waarborgmaatschappij', 'coöperative vereniging',

— in the case of the United Kingdom:

'incorporated companies limited by shares or by guarantee or unlimited', 'societies registered under the Industrial and Provident Societies Acts', 'societies registered under the Friendly Societies Act' Lloyd's underwriters.

Furthermore, Member States may set up, where appropriate, undertakings under any form of known public law provided that such institutions have as their object insurance operations in conditions equivalent to those undertakings under private law;

(b) Limit its business activities to the business of insurance and operations directly arising therefrom to the exclusion of all other commercial business;

(c) Submit a scheme of operations in accordance with the provisions of Article 9;

(d) Possess the minimum guarantee fund provided for in Article 17 (2).

2. An undertaking seeking an authorization to extend its business to other classes or, in the case referred to in Article 6 (2) (d), to another part of the territory, shall be required to submit a scheme of operations in accordance with the provisions of Article 9 as regards such other classes or other part of the territory.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 16 and, if, with regard to such other classes, the provisions of Article 17 (2) require a higher minimum guarantee fund than previously, that it possesses such minimum.

3. These coordinating measures do not prevent Member States from applying provisions requiring directors and managers to have technical qualifications or from requiring the memorandum or articles of association, general and special policy conditions, tariffs and any other documents necessary for the normal exercise of supervision to be approved.

4. The abovementioned provisions may not require that any application for an authorization shall be dealt with in the light of the economic requirements of the market.

Article 9

The scheme of operations referred to in Article 8 (1) (c) shall contain the following particulars or proof concerning:

(a) The nature of the risks which the undertaking proposes to cover; the general and special policy conditions which it proposes to use;

(b) The tariffs which it is proposed to apply for each category of business;

(c) The guiding principles as to reinsurance;

(d) The items constituting the minimum guarantee fund;

(e) Estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them;

and in addition, for the first three financial years:

(f) Estimates relating to expenses of management other than costs of installation, and in particular current general expenses and commissions;

(g) Estimates relating to premiums or contributions and to claims;

(h) A forecast balance sheet;

(i) Estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

However, the particulars referred to in (a) and (b) above shall not be required with regard to the risks classified under Nos 4, 5, 6, 7 and 12 of point A of the Annex, nor shall those referred to in (b) above be required with regard to risks classified under Nos 14 and 15 of point A of the Annex. The particulars referred to in (a) and (b) need not be required in the case of risks classified under No 11 of the same point.

Article 10

1. Each Member State shall require that an undertaking having its head office in the territory of another Member State and seeking an authorization to open an agency or branch shall:

(a) Submit its statutes and a list of its directors and managers;

(b) Produce a certificate issued by the competent authorities of the head office country, attesting the classes of insurance which the undertaking is entitled to carry on and that it possesses the minimum guarantee fund or, if higher, the minimum solvency margin calculated in accordance with Article 16 (3), and stating the risks which it actually covers and the financial resources referred to in Article 11 (1) (e);

(c) Submit a scheme of operations in accordance with Article 11;

(d) Designate an authorized agent having his permanent residence and abode in the host country, and possessing sufficient powers to bind the undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host country; if the agent has a legal personality, it must have its head office in the host country and it must in its turn designate an individual to represent it who complies with the above conditions. The designated agent shall not be refused by the Member State except on grounds relating to repute or technical qualifications such as apply to directors of undertakings whose head offices are situated in the territory of the State in question.

With regard to Lloyd's, in the event of any litigation in the host country resulting from underwritten commitments, assured persons must not be more unfavourably treated than if the litigation had been brought against businesses of a more conventional type. The authorized agent must, therefore, possess sufficient powers to enable proceedings to be instituted against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

2. Each Member State shall require that for the purpose of extending the business of the agency or branch, either to other classes or to other parts of the national territory in the case provided for in Article 6 (2) (d), the applicant for the authorization shall submit a scheme of operations in accordance with Article 11 and comply with the conditions contained in (1) (b) above.

3. These coordinating measures do not prevent Member States from enforcing provisions requiring, for all insurance undertakings, approval of the general and special policy conditions, tariffs and any other document necessary for the normal exercise of supervision.

4. The abovementioned provisions may not require that any application for an authorization shall be examined in the light of the economic requirements of the market.

Article 11

1. The scheme of operations of the agency or branch referred to in Article 10 (1) (c) shall contain the following particulars or proofs concerning:

(a) The nature of the risks which the undertaking proposes to cover in the host country; the general and special policy conditions which it proposes to use;

(b) The tariffs which the undertaking proposes to apply for each category of business;

(c) The guiding principles as to reinsurance;

(d) The state of the solvency margin of the undertaking, referred to in Articles 16 and 17;

(e) Estimates relating to the expenses of installing the administrative services and the organization for securing business; the financial resources intended to cover them;

and in addition, for the first three financial years:

(f) Estimates relating to expenses of management;

(g) Estimates relating to premiums or contributions and to claims in respect of the new business;

(h) A forecast balance sheet for the agency or branch.

However, the particulars referred to in (a) and (b) above shall not be required with regard to the risks classified under Nos 4, 5, 6, 7 and 12 of point A of the Annex, nor shall those referred to in (b) above be required with regard to the risks classified under Nos 14 and 15 of point A of the Annex. The particulars referred to in (a) and (b) need not be required in the case of risks classified under No 11 of the same point.

2. The scheme of operations shall be accompanied by the balance sheet and profit and loss account of the undertaking for each of the past three financial years. If, however, it has not yet been in business for three financial years it shall be required to furnish them only for the financial years completed.

With regard to Lloyd's, the publication of the balance sheet and the profit and loss account shall be replaced by the compulsory presentation of annual trading accounts covering the insurance operations, and accompanied by an affidavit certifying that auditors' certificates have been supplied in respect of each insurer and showing that the responsibilities incurred as a result of these operations are wholly covered by the assets. These documents must allow authorities to form a view of the state of solvency of the Association.

3. The scheme of operations, together with the observations of the authorities competent to issue authorizations, shall be forwarded to the competent authorities of the head office country. The latter authorities shall communicate their Opinion to the former within three months from the receipt of the documents; if their Opinion has not been communicated upon the expiry of this time, it shall be deemed to be favourable.

Article 12

Any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts should there be any refusal.

Such provision shall also be made with regard to cases where to competent authorities have not dealt with an application for an authorization upon the expiry of a period of six months from the date of its receipt.

Section B: Conditions for exercise of business

Article 13

Member States shall collaborate closely with one another in supervising the financial position of authorized undertakings.

Article 14

The supervisory authority of the Member State in whose territory the head office of the undertaking is situated must verify the state of solvency of the undertaking with respect to its entire business. The supervisory authorities of the other Member States shall provide the former with all the information necessary to enable such verification to be effected.

Article 15

1. Each Member State in whose territory business is carried on shall require the undertaking to establish sufficient technical reserves.

The amount of such reserves shall be determined according to the rules fixed by the State, or, in the absence of such rules, according to the established practices in such State.

2. Technical reserves shall be required to be covered by equivalent and matching assets localized in each country where business is carried on. Member States may, however, permit relaxations in the rules as to matching assets and the localization of assets.

Having regard to its special position, the Grand Duchy of Luxembourg may, pending coordination of legislation on the winding-up of undertakings, retain the system of guarantees for technical reserves existing at the time of entry into force of this Directive.

The regulations of the country where the business is is carried on shall determine the nature of such assets and, where appropriate, the extent to which they may be used for the purpose of covering the technical reserves and shall also determine the rules for valuing such assets.

3. If a Member State allows any technical reserves to be covered by claims against reinsurers, it shall fix the percentage so allowed. In such case, it may not require the assets representing such claims to be localized in its territory, notwithstanding the provisions of paragraph 2.

4. The supervisory authority of the Member State in whose territory the head office of an undertaking is situated shall verify that its balance sheet shows in respect of the technical reserves assets equivalent to the underwriting liabilities assumed in all the countries where it undertakes business.

Article 16

1. Each Member State shall require every undertaking whose head office is situated in its territory to establish an adequate solvency margin in respect of its entire business.

The solvency margin shall correspond to the assets of the undertaking, free of all foreseeable liabilities, less any intangible items. In particular the following shall be considered:

— the paid up share capital or, in the case of a mutual concern, the effective initial fund,

— one-half of the share capital or the initial fund which is not yet paid up, once the paid-up part reaches 25 % of this capital or fund,

— reserves (statutory reserves and free reserves) not corresponding to underwriting liabilities,

— any carry-forward of profits,

— in the case of a mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one-half of the difference between the maximum contributions and the contributions actually called in, and subject to an over-riding limit of 50 % of the margin,

— at the request of, and upon proof being shown by the undertaking, and with the agreement of the supervisory authorities of each other Member State where it carries on its business, any hidden reserves resulting from under-estimation of assets or over-estimation of liabilities in the balance sheet, in so far as such hidden reserves are not of an exceptional nature.

Over-estimation of technical reserves shall be determined in relation to their amount calculated by the undertaking in conformity to national regulations; however, pending further coordination of technical reserves, an amount equivalent to 75 % of the difference between the amount of the reserve for outstanding risks calculated at a flat rate by the undertaking by application of a minimum percentage in relation to premiums and the amount that would have been obtained by calculating the reserve contract by contract where the national law gives an option between the two methods, can be taken into account in the solvency margin up to 20 %.

2. The solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years. In the case, however, of undertakings which essentially underwrite only one or more of the risks of storm, hail, frost, the last seven years shall be taken as the period of reference for the average burden of claims.

3. Subject to the provisions of Article 17, the amount of the solvency margin shall be equal to the higher of the following two results:

first result (premium basis):

— the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of all direct business in the last financial year for all financial years, shall be aggregated,

— to this aggregate there shall be added the amount of premiums accepted for all reinsurance in the last financial year,

— from this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to 10 million units of account, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The first result shall be obtained by multiplying the sum so calculated by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the undertaking after deduction of transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

Second result (claims basis):

— the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in (2) shall be aggregated,

— to this aggregate there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods,

— to this sum there shall be added the amount of provisions or reserves for outstanding claims established at the end of the last financial year both for direct business and for reinsurance acceptances,

— from this sum there shall be deducted the amount of claims paid during the periods specified in (2),

— from the sum then remaining, there shall be deducted the amount of provisions or reserves for outstanding claims established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in (2), shall be divided into two portions, the first extending up to seven million units of account and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The second result shall be obtained by multiplying the sum so obtained by the ratio existing in respect of the last financial year between the amount of claims remaining to be borne by the business after transfers for reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

4. The fractions applicable to the portions referred to in (3) shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

— the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance,

— a reserve is set up for increasing age,

— an additional premium is collected in order to set up a safety margin of an appropriate amount,

— the insurer may only cancel the contract before the end of the third year of insurance at the latest,

— the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

5. In the case of Lloyd's, the calculation of the first result in respect of premiums, referred to in paragraph 3, shall be made on the basis of net premiums, which shall be multiplied by a flat-rate percentage fixed annually by the internal auditor. This flat-rate percentage must be calculated on the basis of the most recent statistical data on commissions paid.

The details, together with the relevant calculations shall be sent to the authorities of the countries where Lloyd's is established.

Article 17

1. One-third of the solvency margin shall constitute the guarantee fund.

2. (a) The guarantee fund may not, however, be less than:

— 400 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 10, 11, 12, 13, 14 and 15 are covered,

— 300 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 1, 2, 3, 4, 5, 6, 7, 8, and 16 are covered,

— 200 000 units of account in the case where all or some of the risks included in one of the classes listed in point A of the Annex under Nos 9 and 17 are covered;

(b) If the business carried on by the undertaking covers several classes or several risks, only that class or risk for which the highest amount is required shall be taken into account;

(c) Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations.

Article 18

1. Member States shall not prescribe any rules as to the choice of the assets in excess of those representing the technical reserves referred to in Article 15.

2. Subject to the provisions of Article 15 (2), Article 20 (1) and (3) and Article 22 (1) last subparagraph, Member States shall not restrain the free disposal of the assets, whether movable or immovable property, forming part of the assets of authorized businesses.

The Federal Republic of Germany may, however, pending further coordination of the conditions for the taking up and pursuit of the business of life assurance maintain, with respect to health insurance within the meaning of Article 16 (4), the restrictions imposed on the free disposal of assets in so far as the free disposal of assets which cover mathematical reserves is subject to the agreement of a 'Treuhänder'.

Until further measures of coordination have been taken, the Kingdom of Denmark may however retain in force its legislation restricting the free disposal of assets built up by insurance undertakings to cover pensions payable under compulsory insurance against industrial accidents.

3. These provisions shall not preclude any measures which Member States, while observing the rules prevailing in the country where the business is carried on, as required under Article 15 (2), and while safeguarding the interests of the insured, are entitled to take as owners or members or associates of the undertakings in question.

Article 19

1. Each Member State shall require every undertaking whose head office is situated in its territory to produce an annual account covering all types of operation, of its financial situation and solvency.

2. Member States shall require undertakings operating in their territory to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent supervisory authorities shall furnish each other with the documents and information necessary for exercising supervision.

Article 20

1. If an undertaking does not comply with the provisions of Article 15, the supervisory authority of the country where it carries on its business may prohibit the free disposal of assets in that country after having informed the supervisory authorities of the country where the head office is situated of its intention.

2. For the purposes of restoring the financial situation of an undertaking whose solvency margin has fallen below the minimum required under Article 16 (3), the supervisory authority of the head-office country shall require a plan for the restoration of a sound financial position to be submitted for its approval.

3. If the solvency margin falls below the guarantee fund as defined in Article 17, the supervisory authority of the head-office country shall require the undertaking to submit a short-term finance scheme for its approval.

It may also restrict or prohibit the free disposal of the assets of the undertaking. It shall inform the authorities of other Member States in whose territories the undertaking is authorized of any measures and the latter shall, at the request of the former, take the same measures.

4. The competent supervisory authorities may further take all measures necessary to safeguard the interests of the insured in the cases provided for in (1) and (3).

5. The supervisory authorities of other Member States in whose territory the undertaking in question has also been authorized shall collaborate for the purpose of implementing the provisions referred to in (1) to (4).

Article 21

1. Each Member State shall make it possible for an undertaking to assign all or part of its portfolio of policies if the assignees possess the necessary solvency margin, due account being taken of the assignment.

The supervisory authorities concerned shall consult each other before approving such assignment.

2. Once approved by the competent supervisory authority, such assignment shall affect directly the policy-holders or insured concerned.

Section C: Withdrawal of authorization

Article 22

1. The authorization granted by the competent authority of the Member State in whose territory the head office is situated may be withdrawn by such authority if the undertaking:

(a) No longer fulfils the conditions of admission;

(b) Has been unable, within the time allowed, to take the measures contained in the restoration plan or finance scheme referred to in Article 20;

(c) Fails seriously in its obligations under the national regulations.

In the event of the withdrawal of the authorization, the supervisory authority of the head-office country shall notify such withdrawal to the supervisory authorities of other Member States which have issued an authorization to the undertaking; they shall, thereupon, also withdraw their authorizations. The supervisory authority of the head-office country shall, in conjunction with such other authorities, take all necessary measures to safeguard the interests of the insured and, in particular, shall restrict the free disposal of the assets of the undertaking if such restriction has not been already imposed in accordance with the provisions of Article 20 (1) and (3), subparagraph 2.

2. An authorization granted to an agency or branch of an undertaking whose head office is situated in another Member State may be withdrawn if the agency or branch:

(a) No longer fulfils the conditions for admission;

(b) Fails seriously in its obligations under the regulations of the country where it carries on its business, with respect in particular to the establishment of technical reserves as defined in Article 15.

Before withdrawing the authorization the supervisory authorities of the country where business is carried on shall consult the supervisory authority of the country where the head office is situated. If they deem it necessary to suspend the business of such agency or branch before consultation is concluded, they shall immediately advise the supervisory authority of the country where the head office is situated.

3. Any decision to withdraw an authorization or suspend business shall be supported by precise reasons and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts against such a decision.

Title III — Rules applicable to agencies or branches established within the Community and belonging to undertakings whose head offices are outside the Community

Article 23

1. Each Member State shall make access to the business referred to in Article 1 by any undertaking whose head office is outside the Community subject to an official authorization.

2. A Member State may grant an authorization if the undertaking fulfils at least the following conditions:

(a) It is entitled to undertake insurance business under its national law;

(b) It establishes an agency or branch in the territory of such Member State;

(c) It undertakes to establish at the place of management of the agency or branch accounts specific to the business which it undertakes there, and to keep there all the records relating to the business transacted;

(d) It designates an authorized agent, to be approved by the competent authorities;

(e) It possesses in the country where it carries on its business assets of an amount equal to at least one-half of the minimum amount prescribed in Article 17 (2), in respect of the guarantee fund, and deposits one-fourth of the minimum amount as security;

(f) It undertakes to keep a margin of solvency in accordance with the requirements referred to in Article 25;

(g) It submits a scheme of operations in accordance with the provisions of Article 11 (1) and (2).

Article 24

Member States shall require undertakings to establish adequate technical reserves to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such technical reserves by means of assets which are equivalent to such reserves and are, to the extent fixed by the State in question, matching assets.

The law of the Member States shall be applicable to the calculation of technical reserves, the determination of categories of investments, and the valuation of assets.

The Member State in question shall require that the assets representing the technical reserves shall be localized in its territory. Article 15 (3) shall, however, be applicable.

Article 25

1. Each Member State shall require for agencies or branches established in its territory a solvency margin consisting of assets free of all foreseeable liabilities, less any intangible items. The solvency margin shall be calculated in accordance with the provisions of Article 16 (3). However, for the purpose of calculating this margin, account shall be taken only

of the premiums or contributions and claims pertaining to the business effected by the agency or branch concerned.

2. One-third of the solvency margin shall constitute the guarantee fund. The guarantee fund may not be less than one-half of the minimum required under Article 17 (2). The initial deposit lodged in accordance with Article 23 (2) (e) shall be counted towards such guarantee fund.

3. The assets representing the solvency margin must be kept within the country where the business is carried on up to the amount of the guarantee fund and the excess, within the Community.

Article 26

1. Any undertaking which, having obtained an authorization from one Member State, obtains an authorization from one or more other Member States to establish other agencies or branches therein may apply for one or more of the following advantages:

(a) That the solvency margin referred to in Article 25 be calculated in relation to the entire business which it undertakes within the Community; in such case, account shall be taken of the premiums or contributions and claims pertaining to the business effected by all the agencies or branches established within the Community;

(b) That it be dispensed from lodging the deposit required under Article 23 (2) (e), in such States also;

(c) That the assets representing the guarantee fund be kept in any one of the Member States in which it carries out business.

2. Should at least two of the Member States in question approve the application in whole or in part, the competent authority of the Member State in whose territory the oldest establishment of the applicant is situated shall verify the state of solvency of the undertaking with respect to the entire business carried on by it within the Member States which approve the application. However, at the request of the undertaking and with the unanimous approval of the Member States concerned, such verification may be carried out by the competent authority of another Member State. The authority carrying out the verification shall obtain from the other Member States the necessary information regarding the agencies or branches established in their territories.

3. The advantages conferred by this Article may be withdrawn upon the initiative of one or more of the Member States concerned.

Article 27

The provisions of Articles 19 and 20 shall also apply in relation to agencies and branches of undertakings to which this Title applies.

As regards the application of Article 20, the supervisory authority of the oldest establishment or the one that carries out in its place the verification of the overall solvency of branches or agencies shall be assimilated to the authority of the State in which the head office of a Community undertaking is situated.

Article 28

In the case of a withdrawal of authorization by the authority referred to in Article 26 (2), this authority shall notify the authorities of the other Member States where the undertaking operates and the latter supervisory authorities shall take the appropriate measures. If the reason for the withdrawal of the authorization is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 26, the Member States which gave their approval shall also withdraw their authorizations.

Article 29

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different to those provided for in this Title, for the purpose of ensuring, under conditions of reciprocity, adequate protection for insured persons in the Member States.

Title IV — Transitional and other provisions

Article 30

1. Member States shall allow undertakings referred to in Title II which at the entry into force of the implementing measures to this Directive provide insurance in their territories in one or more of the classes referred to in Article 1 a period of five years, commencing with the date of notification of this Directive, in order to comply with the requirements of Articles 16 and 17.

2. Furthermore, Member States may:

(a) allow any undertakings referred to in (1), which upon the expiry of the five-year period have not fully established the margin of solvency, a further period not exceeding two years in which to do so

provided that such undertakings have, in accordance with Article 20, submitted for the approval of the supervisory authority the measures which they propose to take for such purpose;

(b) exempt undertakings referred to in (1) whose annual premium or contribution income upon the expiry of the period of five years falls short of six times the amount of the minimum guarantee fund required under Article 17 (2) from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund. After considering the results of the examination provided for under Article 33, the Council shall unanimously decide, on a proposal from the Commission, when this exemption is to be abolished by Member States.

3. Undertakings desiring to extend their operations within the meaning of Article 8 (2) or Article 10 may not do so unless they comply immediately with the rules of this Directive. However, the undertakings referred to in paragraph (2) (b) which within the national territory extend their business to other classes of insurance or to other parts of such territory may be exempted for a period of ten years from the date of notification of the Directive from the requirement to constitute the minimum guarantee fund referred to in Article 17 (2).

4. An undertaking having a structure different from any of those listed in Article 8 may continue, for a period of three years from the notification of the Directive, to carry on their present business in the legal form in which they are constituted at the time of such notification. Undertakings set up in the United Kingdom 'by Royal Charter' or 'by private Act' or 'by special public Act' may continue to carry on their business in their present form for an unlimited period.

Undertakings in Belgium which, in accordance with their objects, carry on the business of intervention mortgage loans or savings operations in accordance with No 4 of Article 15 of the provisions relating to the supervision of private savings banks, coordinated by the 'arrête royal' of 23 June 1967, may continue to undertake such business for a period of three years from the date of notification of this Directive.

The Member States in question shall draw up a list of such undertakings and communicate it to the other Member States and the Commission.

5. At the request of undertakings which comply with the requirements of Articles 15, 16 and 17, Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities established under present regulations.

Article 31

Member States shall allow agencies or branches referred to in Title III which, at the entry into force of the implementing measures to this Directive, are undertaking one or more classes referred to in Article 1 and do not extend their business within the meaning of Article 10 (2) a maximum period of five years, from the date of notification of this Directive, in order to comply with the conditions of Article 25.

Article 32

During a period which terminates at the time of the entry into force of an agreement concluded with a third country pursuant to Article 29 and at the latest upon the expiry of a period of four years after the notification of the Directive, each Member State may retain in favour of undertakings of that country established in its territory the rules applied to them on 1 January 1973 in respect of matching assets and the localization of technical reserves, provided that notification is given to the other Member States and the Commission and that the limits of relaxations granted pursuant to Article 15 (2) in favour of the undertakings of Member States established in its territory are not exceeded.

Title V — Final provisions

Article 33

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which may arise in the application of this Directive.

Article 34

1. The Commission shall submit to the Council, within six years from the date of notification of this Directive, a report on the effects of the financial requirements imposed by this Directive on the situation on the insurance markets of the Member States.

2. The Commission shall, as and when necessary, submit interim reports to the Council before the end of the transitional period provided for in Article 30 (1).

Article 35

Member States shall amend their national provisions to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

The provisions thus amended shall, subject to Articles 30, 31 and 32, be applied within 30 months from the date of notification.

Article 36

Upon notification of this Directive, Member States shall ensure that the texts of the main provisions of a legislative, regulatory or administrative nature which they adopt in the field covered by this Directive are communicated to the Commission.

Article 37

The Annex shall form an integral part of this Directive.

Article 38

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

ANNEX

A. **Classification of risks according to classes of insurance**

1. *Accident* (including industrial injury and occupational diseases)
   - — fixed pecuniary benefits
   - — benefits in the nature of indemnity
   - — combinations of the two
   - — injury to passengers

2. *Sickness*
   - — fixed pecuniary benefits
   - — benefits in the nature of indemnity
   - — combinations of the two

3. *Land vehicles* (other than railway rolling stock)

   All damage to or loss of
   - — land motor vehicles
   - — land vehicles other than motor vehicles

4. *Railway rolling stock*

   All damage to or loss of railway rolling stock

5. *Aircraft*

   All damage to or loss of aircraft

6. *Ships (sea, lake and river and canal vessels)*

   All damage to or loss of
   - — river and canal vessels
   - — lake vessels
   - — sea vessels

7. *Goods in transit* (including merchandise, baggage, and all other goods)

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport

8. *Fire and natural forces*

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to
   - — fire
   - — explosion
   - — storm
   - — natural forces other than storm
   - — nuclear energy
   - — land subsidence

9. *Other damage to property*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8

10. *Motor vehicle liability*

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability)

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability)

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)

13. *General liability*

All liability other than those forms mentioned under Nos 10, 11 and 12

14. *Credit*

— insolvency (general)

— export credit

— instalment credit

— mortgages

— agricultural credit

15. *Suretyship*

— suretyship (direct)

— suretyship (indirect)

16. *Miscellaneous financial loss*

— employment risks

— insufficiency of income (general)

— bad weather

— loss of benefits

— continuing general expenses

— unforeseen trading expenses

— loss of market value

— loss of rent or revenue

— indirect trading losses other than those mentioned above

— other financial loss (non-trading)

— other forms of financial loss

17. *Legal expenses*

Legal expenses and costs of litigation

The risks included in a class may not be included in any other class except in the cases referred to in point C.

B. **Description of authorizations granted for more than one class of insurance**

Where the authorization simultaneously covers:

(a) Classes Nos 1 and 2, it shall be named 'Accident and Health Insurance';

(b) Classes Nos 1 (fourth indent), 3, 7 and 10, it shall be named 'Motor Insurance';

(c) Classes Nos 1 (fourth indent), 4, 6, 7 and 12, it shall be named 'Marine and Transport Insurance';

(d) Classes Nos 1 (fourth indent), 5, 7 and 11, it shall be named 'Aviation Insurance';

(e) Classes Nos 8 and 9, it shall be named 'Insurance against Fire and other Damage to Property';

(f) Classes Nos 10, 11, 12 and 13, it shall be named 'Liability Insurance';

(g) Classes Nos 14 and 15, it shall be named 'Credit and Suretyship Insurance';

(h) All classes, it shall be named at the choice of the Member State in question, which shall notifiy the other Member States and the Commission of its choice.

C. **Ancillary risks**

An undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may also insure risks included in another class without an authorization being necessary for them if they:

— are connected with the principal risk,

— concern the object which is covered against the principal risk, and

— are covered by the contract insuring the principal risk.

However, the risks included in classes 14 and 15 in point A of this Annex may not be regarded as risks ancillary to other classes.

COUNCIL DIRECTIVE

of 24 July 1973

abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance

(73/240/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (2) and (3) thereof;

Having regard to the General Programme [1] for the abolition of restrictions on freedom of establishment, and in particular Title IV C thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament [2];

Having regard to the Opinion of the Economic and Social Committee [3];

Whereas the General Programme referred to above provides for the abolition of all discriminatory treatment of the nationals of the other Member States as regards establishment in the business of direct insurance other than life assurance;

Whereas, in accordance with this General Programme, the lifting of restrictions on the setting-up of agencies and branches is, as regards direct insurance undertakings, dependent upon the coordination of conditions of taking up and pursuit of the business; whereas this coordination has been achieved for direct insurance other than life assurance, by the first Council Directive of 24 July 1973;

Whereas the scope of this Directive is in all respects the same as that defined in item A of the Annex to the first Directive on coordination; whereas it appeared reasonable in the circumstances to exclude, for purposes of coordination, credit-insurance for exports;

Whereas, in accordance with the General Programme referred to above, the restrictions on the right to join professional organizations must be abolished where the professional activities of the persons concerned involve the exercise of this right;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall abolish, in respect of the natural persons and undertakings covered by Title I of the General Programme for the abolition of restrictions on freedom of establishment, hereinafter called 'beneficiaries', the restrictions referred to in Title III of this programme affecting the right to take up and pursue self-employed activities in the classes of insurance specified in Article 1 of the first Coordination Directive.

By 'First Coordination Directive' is meant the first Council Directive of 24 July 1973 on coordination of the laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.

However, as regards credit-insurance for exports, these restrictions shall be maintained until the coordination programme laid down in Article 2 (2) (d), of the first Coordination Directive has been carried out.

Article 2

1. Member States shall in particular abolish the following restrictions:

(a) those which prevent beneficiaries from establishing themselves in the host country under the same conditions and with the same rights as nationals of that country;

(b) those existing by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

2. The restrictions to be abolished shall include in particular those arising out of measures which

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[1] OJ No 2, 15. 1. 1962, p. 36/62.
[2] OJ No C 27, 28. 3. 1968, p. 15.
[3] OJ No 118, 20. 6. 1967, p. 2323/67.

prevent or limit the establishment of beneficiaries by the following means:

(a) In Germany:

the provisions granting the Federal Ministry of Economic Affairs the discretionary right to impose its own conditions of access to this business on foreign nationals and to prevent them from pursuing this business within the Federal Republic (Law of 6 June 1931 (VAG), Article 106 (2), No 1, in conjunction with Article 8 (1), No 3, Article 106 (2), last sentence, and Article 111 (2));

(b) In Belgium:

the obligation to hold a 'carte professionelle' (Article 1 of the Law of 19 February 1965);

(c) In France:

— the need to obtain special consent (Law of 15 February 1917, as amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret' of 19 August 1941, as amended, Articles 1 and 2 — 'décret' of 13 August 1947, as amended, Articles 2 and 10);

— the obligation to provide a surety-bond or special guarantees as a reciprocal requirement (Law of 15 February 1917, amended and supplemented by the 'décret-loi' of 30 October 1935, Article 2 (2) — 'décret-loi' of 14 June 1938, Article 42 — 'décret' of 30 December 1938, as amended, Article 143 — 'décret' of 14 December 1966, Articles 9, 10 and 11);

— the obligation to deposit technical reserves ('décret' of 30 December 1938, amended Article 179 — 'décret' of 13 August 1947, as amended, Articles 8 and 13 — 'décret' of 14 December 1966, Title I).

(d) In Ireland:

the provision that, to be eligible for an insurance licence, a company must be registered under the Irish Companies Acts, two-thirds of its shares must be owned by Irish citizens and the majority of the directors (other than a full-time managing director) must be Irish citizens (Insurance Act, 1936, Section 12; Insurance Act, 1964, Section 7).

3. The laws, regulations or administrative provisions that involve beneficiaries in the obligation to provide a deposit or special surety-bond shall not be abolished, as long as the undertakings do not fulfil the financial conditions under Articles 16 and 17 of the first Coordination Directive in accordance with the provisions of Article 30 (1) and (2) of the same Directive.

Article 3

1. Where a host Member State requires of its own nationals wishing to take up any activity referred to in Article 1 proof of good repute and proof of no previous bankruptcy, or proof of either of these, that State shall accept as sufficient evidence, in respect of nationals of other Member States, the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence the foreign national comes, showing that these requirements have been met.

2. Where the country of origin or the country whence the foreign national comes does not issue such documentary proof of good repute or documentary proof of no previous bankruptcy, such proof may be replaced by a declaration on oath — or in States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority, or where appropriate a notary, in the country of origin or in the country whence that person comes; such authority or notary will issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. A declaration in respect of no previous bankruptcy may also be made before a competent professional or trade body in the said country.

3. Documents issued in accordance with paragraph 1 or with paragraph 2 may not be produced more than three months after their date of issue.

4. Member States shall, within the time limit laid down in Article 6, designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 4

1. Member States shall ensure that beneficiaries have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as their own nationals.

2. The right to join professional or trade organizations shall, in the case of establishment, entail eligibility for election or appointment to high office in such organizations. However, such posts may be reserved for nationals where, in pursuance of any provision laid down by law or regulation, the organization concerned is involved in the exercise of official authority.

3. In the Grand Duchy of Luxembourg, membership of the 'Chambre de commerce' shall not give beneficiaries the right to take part in the election of the administrative organs of that Chamber.

Article 5

No Member State shall grant to any of its nationals who go to another Member State for the purpose of pursuing any activity referred to in Article 1 any aid liable to distort the conditions of establishment.

Article 6

Member States shall amend their national regulations in accordance with this Directive and within 18 months of the notification of the first Coordination Directive and shall forthwith inform the Commission thereof. The regulations thus amended shall be implemented at the same time as the laws, regulations and administrative provisions set up in pursuance of the first Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

COUNCIL DIRECTIVE

of 24 July 1973

on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

(73/241/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 227 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 national laws reserve certain names for various products derived from cocoa and define their composition and manufacturing specifications, and whereas they prescribe the use of these names in the marketing of these products;

Whereas packaging is also subject to mandatory provisions in certain Member States;

Whereas the existing differences between national laws hinder the free movement of different kinds of cocoa and chocolate products and may impose conditions of unfair competition on undertakings, thereby directly affecting the establishment or functioning of the common market;

Whereas, therefore, it is necessary to approximate the provisions relating to these products and to lay down definitions and common rules in respect of the composition, manufacturing specifications, packaging and labelling of these products in order to ensure their free movement;

Whereas, however, it is not possible in this Directive to harmonize all those provisions applying to foodstuffs which may impede trade in cocoa and chocolate products, although obstacles that persist because of this are bound to decrease as national provisions relating to foodstuffs are increasingly harmonized;

Whereas in order to protect consumers in certain Member States, the description 'halbbitter' is applied to chocolate characterized by a high minimum content of certain ingredients; whereas this description is not suitable for use in the Community as a whole; whereas therefore it seems that provision should be made that this description be reserved for a period of three years for chocolate having a particularly high minimum content of dry cocoa solids;

Whereas the use of vegetable fats other than cocoa-butter in chocolate products is permitted in certain Member States, and extensive use is made of this facility; whereas, however, a decision relating to the possibilities and forms of any extension of the use of these fats in the Community as a whole cannot be taken at the present time, as the economic and technical data currently available are not sufficient to enable a final position to be adopted; whereas the situation will consequently have to be re-examined in the light of future developments;

Whereas, although it is already possible to lay down a scale of weights for chocolate products put up for sale in the form of tablets or bars, it is not yet possible to do so for cocoa powder products, as the choice of the various levels for the scale in this case requires closer study which it has not been possible to complete and whereas the choice of these levels will consequently have to be made at a later date;

Whereas the names laid down in this Directive for the various cocoa and chocolate products differ in certain cases from those used in one or more of the Member States; whereas it is therefore desirable to enable consumers to become used to these new names by allowing both the new names and those at present in force to be applied during a specified period;

Whereas establishing the methods of analysis needed to verify that certain products satisfy purity criteria and determining the methods of sampling and analysis needed for checking the composition and manufacturing specifications of cocoa and chocolate products are implementing measures of a technical

nature and whereas, in order to simplify and speed up procedure, the task of adopting them should be entrusted to the Commission;

Whereas it is desirable that for all cases where the Council empowers the Commission to implement rules relating to foodstuffs, provision should be made for a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee for Foodstuffs set up by the Council Decision of 13 November 1969 (1);

Whereas it is possible for undertakings to adjust their production methods and to dispose of stocks within a maximum period of two years after new rules and definitions have been adopted by the Member States; whereas, however, application of the scale of weights laid down for certain kinds of packaging will make it necessary to adapt industrial equipment in the Member States and that therefore the period for implementing this rule should be extended to three years;

Whereas special measures need to be adopted in order to take account of the special situation of the new Member States;

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive cocoa and chocolate products shall mean the products intended for human consumption defined in Annex I.

Article 2

Member States shall take all measures necessary to ensure that the products referred to in Article 1 may be offered for sale only if they conform to the definitions and rules laid down in this Directive and in Annex I thereto.

Article 3

1. The names listed in Annex I (1) shall be applied only to the products defined in that paragraph and must be used in trade to designate them.

Nevertheless,

— the names 'pralina' or 'cioccolatino' may be used in Italy and the name 'a chocolate' may be used in Ireland and the United Kingdom to describe chocolate, plain chocolate, gianduja nut chocolate, milk chocolate, milk chocolate with high milk content, gianduja nut milk chocolate or white chocolate in single-mouthful sizes;

— the same name 'milk chocolate' may be required in Ireland and the United Kingdom to describe the products defined in Annex I paragraph (1) under headings 1.21 and 1.22, on condition that the term is accompanied in both cases by an indication of the amount of milk solids obtained by evaporation, laid down for each of the two products, in the form 'milk solids: . . . % minimum'.

2. The provisions of the aforegoing paragraph shall not, however, affect arrangements whereby these names can be used additionally, in accordance with custom, to indicate other products which cannot be confused with those defined in Annex I.

Article 4

Cocoa beans which are not sound, wholesome and in good market condition, shells, germs or any other residual products from the solvent-extraction of cocoa-butter may not be used in the manufacture of the products defined in Annex I.

Article 5

1. The Council, acting unanimously on a proposal from the Commission, shall determine:

(a) The list of solvents which may be used for extracting cocoa-butter;

(b) Purity criteria for cocoa-butter, for the solvents used in its extraction and, where necessary, for the other products used as additives or for treatment listed in Annex I.

2. Until the entry into force of the implementing measures referred to in paragraph 1 (a), Member States shall permit no solvent to be used in the extraction of cocoa-butter other than petroleum spirit 60/75 known as Essence B, or its pure principal fraction. During this period Member States may, however, continue to implement national provisions

(1) OJ No L 291, 19. 11. 1969, p. 9.

authorizing other solvents in respect of products marketed in their territory.

3. Where the use in the products referred to in Article 1 of one of the substances referred to in paragraphs 1 and 2, or the level of one or more of the ingredients determined by virtue of paragraph 1 (b) contained in such a substance, might endanger human health, a Member State may, for a maximum period of one year, suspend authorization to use that substance or may reduce the maximum authorized level of one or more of the ingredients in question. It shall immediately inform the Commission thereof and the Commission shall consult the Member States.

The Council acting unanimously on a proposal from the Commission shall decide without delay whether measures need to be adopted and, if so, shall adopt by Directive the necessary amendments. The Council acting by a qualified majority on a proposal from the Commission may also, if necessary, extend for a maximum of one year the period set in the aforegoing paragaph.

Article 6

1. Chocolate, plain chocolate, gianduja nut chocolate, milk chocolate, milk chocolate with high milk content, gianduja nut milk chocolate, white chocolate and filled chocolate, in the form of bars or tablets each weighing between 85 g and 500 g, shall be marketed in the following individual weights only: 100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 400 g and 500 g.

2. Within a maximum period of two years from the notification of this Directive the Council, acting on a proposal from the Commission, shall lay down the sole individual weights for marketing the products referred to in Annex I, headings 1.8 to 1.13.

Article 7

1. The only information which is compulsory on the packages, containers or labels of the products defined in Annex 1 and which must be conspicuous, clearly legible and indelible shall be the following:

(a) The name which is reserved for them; in the case of the products defined in Annex I, paragraph 1, heading 1.27, this name shall be accompanied by an indication to the consumer of the filling product used, without prejudice to the provisions which may apply to the latter;

(b) For products specified in Annex I (1) under headings 1.10, 1.11, 1.12, 1.13, 1.16, 1.17, 1.21 and 1.22, an indication of the total dry cocoa content by the declaration 'cocoa solids . . . % minimum';

(c) For filled chocolate and chocolates obtained from chocolate products other than chocolate and couverture chocolate, an additional indication of the type or types of chocolate used. However, in the case of chocolates, for a period of five years from the notification of this Directive, in as much as this is not compulsory under national provisions, the additional indication in question shall be compulsory only in cases where these products are obtained from plain chocolate, milk chocolate with high milk content or white chocolate;

(d) Where appropriate, the declarations required by Annex I (4) to (7);

(e) The net weight, unless the products weigh less than 50 g; this exception shall not apply to products weighing less than 50 g each presented in packages containing 2 or more such products whose net weight inclusive of packaging is not less than 50 g; in the case of hollow moulded products this information may be replaced by the minimum net weight;

(f) The name or trade name and the address or registered office of the manufacturer or packer, or of a seller established within the Community.

2. By way of derogation from paragraph 1, and without prejudice to the provisions to be adopted by the Community with regard to the labelling of foodstuffs, the Member States may retain national provisions which require indication of:

(a) the factory in respect of national production;

(b) the country of origin, although this information may not be required for products manufactured within the Community.

3. Member States shall refrain from stating, apart from what is laid down in paragraph 1, how the information referred to in that paragraph is to be given.

However, Member States may forbid trade on their territory:

— in the products defined in Annex I, if the markings laid down in paragraphs 1 (a), (c) and (d) are not shown on one side of the wrapping or container in the national language or languages;

— in the product defined in Annex I (1) under heading 1.22 if the description 'milk chocolate' appears on the wrapping.

Article 8

The main name 'chocolate' and 'milk chocolate' may be supplemented by declarations or adjectives relating to quality only if:

(a) The chocolate has a total dry cocoa solids content of at least 43 %, including at least 26 % cocoa butter;

(b) The milk chocolate contains not more than 50 % sucrose and at least 30 % total dry cocoa solids, and 18 % milk solids obtained by evaporation, including at least 4·5 % butter fat.

Article 9

1. Notwithstanding Article 7 (1) (a), Member States may, for a period of four years after the notification of this Directive, allow the reserved name to be shown on packages, containers or labels, together with the name previously used in accordance with the usages or regulations of the country concerned at the time of the notification of this Directive.

2. Notwithstanding Article 8, Member States shall, for a period of three years from the notification of this Directive, confine use of the description 'halbbitter' to chocolate having a minimum total dry cocoa solids content of 50 %, including at least 18 % of cocoa butter.

Article 10

1. Member States shall adopt all the measures necessary to ensure that trade in the products referred to in Article 1, which comply with the definitions and rules laid down in this Directive and in Annex I thereof, cannot be impeded by the application of national non-harmonized provisions governing the composition, manufacturing specifications, packaging or labelling of these products in particular or of foodstuffs in general.

2. Paragraph 1 shall not be applicable to non-harmonized provisions justified on grounds of:

— protection of public health,

— repression of frauds unless such provisions are liable to impede the application of the definitions and rules laid down by this Directive,

— protection of industrial and commercial property, indications of source, applications of origin and repression of unfair competition.

Article 11

The following shall be determined in accordance with the procedure laid down in Article 12:

(a) The sampling procedures and methods of analysis needed to verify that the purity criteria referred to in Article 5 (1) (b) are satisfied;

(b) The sampling procedures and methods of analysis needed to verify that the rules relating to the composition and manufacturing specifications of these products laid down in Annex I are fulfilled.

Article 12

1. Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing Committee on Foodstuffs set up by the Council Decision of 13 November 1969 (hereinafter called 'the Committee') by its Chairman, either on his own initiative or at the request of a representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall give its Opinion on that draft within a time limit set by the Chairman having regard to the urgency of the matter. Opinions shall be delivered by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The Chariman shall not vote.

3. (a) Where the measures envisaged are in accordance with the Opinion of the Committee, the Commission shall adopt them.

(b) Where the measures envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay submit to the Council a proposal on the measures to be taken. The Council shall act by a qualified majority.

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

Article 13

The provisions of Article 12 shall apply for eighteen months from the date on which the matter was first referred to the Committee under Article 12 (1).

Article 14

1. This Directive shall also apply to products imported from third countries and intended for consumption within the Community.

2. This Directive shall not affect the provisions of national laws:

(a) At present authorizing or prohibiting the addition of vegetable fats other than cocoa-butter to the chocolate products defined in Annex I. At the end of a period of three years from the notification of this Directive the Council shall decide, on a proposal from the Commission, on the possibilities and the forms of extending the use of these fats to the whole of the Community;

(b) Authorizing or prohibiting the retail sale of the various chocolate products without wrapping;

(c) Prohibiting the marketing of bars of chocolate weighing between 75 g and 85 g. The Council shall decide later on a proposal from the Commission the measures to be applied for this purpose three years after the notification of this Directive;

(d) Laying down less stringent regulations on labelling in the retail sale of fancy products such as figurines, cigarettes, eggs and loose chocolates; in such cases the provisions may only require the placing of a notice near the displayed product;

(e) Applicable to dietary products, until Community provisions concerning these are put into effect;

(f) Authorizing the offering for sale of chocolate products other than those defined in Annex I under the names 'cream chocolate' or 'skimmed-milk chocolate'.

3. This Directive shall not apply to products listed in Annex I (1) intended for export from the Community.

Article 15

Member States shall, if necessary, within a period of one year following notification of this Directive, amend their laws in accordance with the provisions of this Directive and shall forthwith inform the Commission thereof. The laws thus amended shall apply to the products offered for sale in the Member States two years after the notification of this Directive.

For the application of Article 6, however, this latter period shall be extended to three years.

Article 16

This Directive shall apply in the French overseas departments.

Article 17

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

ANNEX I

1. For the purposes of this Directive, the following definitions shall apply:

1.1 *Cocoa beans*

the seeds of the cacao-tree *(Theobroma cacao* L.*)* fermented and dried;

1.2 *Cocoa nib*

cocoa beans, roasted or unroasted, when cleaned, shelled and having undergone germ separation, containing, without prejudice to the provisions of paragraph 2, a maximum residue of 5 % shell or germ and a maximum content of 10 % ash — these percentages to be based on the weight of dry defatted matter;

1.3 *Cocoa dust, cocoa fines*

pieces of cocoa bean in the form of tiny particles, collected separately during winnowing, with a minimum fat content of 20 % based on the weight of the dry matter;

1.4 *Cocoa mass*

cocoa nib reduced to a paste by a mechanical process without losing any of its natural fat content;

1.5 *Cocoa press cake*

cocoa nib or cocoa mass converted into a cake by a mechanical process, containing, without prejudice to the definition of fat-reduced cocoa press cake, at least 20 % of cocoa butter — this percentage to be based on the weight of the dry matter — and a maximum of 9 % of water;

1.6 *Fat-reduced cocoa press cake*

cocoa press cake containing a minimum of 8 % of cocoa butter, based on the weight of the dry matter;

1.7 *Expeller cocoa press cake*

cocoa beans, cocoa dust, with or without cocoa nib or cocoa press cake, converted into cake by the expeller process;

1.8 *Cocoa, cocoa powder*

cocoa press cake obtained by hydraulic pressure, converted into powder by a mechanical process and containing, without prejudice to the definition of fat-reduced cocoa powder, at least 20 % of cocoa butter — this percentage to be based on the weight of the dry matter — and a maximum of 9 % of water;

1.9 *Fat-reduced cocoa, fat-reduced cocoa powder*

cocoa powder containing a minimum of 8 % of cocoa butter based on the weight of the dry matter;

1.10 *Sweetened cocoa, sweetened cocoa powder*

the product obtained by mixing cocoa powder and sucrose so that 100 g of the mixture contains at least 32 g of cocoa powder;

1.11 *Drinking chocolate*

the product obtained by mixing cocoa powder and sucrose so that 100 g of the mixture contains at least 25 g of cocoa powder;

1.12 *Sweetened fat-reduced cocoa, sweetened fat-reduced cocoa powder*

the product obtained by mixing fat-reduced cocoa powder and sucrose so that 100 g of the mixture contains at least 32 g of fat-reduced cocoa powder;

1.13 *Fat-reduced drinking chocolate*

the product obtained by mixing fat-reduced cocoa powder and sucrose so that 100 g of the mixture contains at least 25 g of fat-reduced cocoa powder;

1.14 *Cocoa butter*

the fat obtained from cocoa beans or parts of cocoa beans which complies with the following provisions: cocoa butter shall be presented in one of the following forms and under one of the following names:

— *press cocoa butter or cocoa butter*

cocoa butter obtained by pressure from one or more of the following raw materials:

cocoa nib, cocoa mass, cocoa press cake, fat-reduced cocoa press cake.

It shall have the following characteristics:

— level of unsaponifiable matter determined using petroleum ether	not more than 0·35 %
— acidity	not more than 1·75 % (expressed as oleic acid)

— *expeller cocoa butter*

cocoa butter obtained by torsion (the expeller process) from cocoa beans or from cocoa beans combined with cocoa nib, cocoa mass, cocoa press cake, or fat-reduced cocoa press cake.

It shall have the following characteristics:

— level of unsaponifiable matter determined using petroleum ether	not more than 0·50 %
— acidity	not more than 1·75 % (expressed as oleic acid)

— *refined cocoa butter*

cocoa butter obtained by pressure, by torsion (the expeller process), by extraction using a solvent or by a combination of these processes, from one or more of the following raw materials:

cocoa beans, cocoa nib, cocoa dust, cocoa mass, cocoa press cake, fat-reduced cocoa press cake, expeller press cake, and refined in accordance with the provisions of paragraph 3 (b); where cocoa fat, prepared either by the producer of 'refined cocoa butter' himself or by another producer, is employed as a secondary raw material, it must have been obtained from the raw materials listed above.

It shall have the following characteristics:

— level of unsaponifiable matter determined using petroleum ether	not more than 0·50 %
— acidity	not more than 1·75 % (expressed as oleic acid)

— level of fat obtained from shells and germs — not exceeding in proportion to cocoa butter the level existing naturally in cocoa beans.

1.15 *Cocoa fat*

fat obtained from cocoa beans or from parts of cocoa beans not having the characteristics laid down for the various categories of cocoa butter;

1.16 *Chocolate*

the product obtained from cocoa nib, cocoa mass, cocoa powder or fat-reduced cocoa powder and sucrose with or without added cocoa butter, having, without prejudice to the definition of chocolate vermicelli, gianduja nut chocolate and couverture chocolate, a minimum total dry cocoa solids content of 35 % — at least 14 % of dry non-fat cocoa solids and 18 % of cocoa butter — these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;

1.17 *Plain chocolate*

the product obtained from cocoa nib, cocoa mass, cocoa powder or fat-reduced cocoa powder and sucrose with or without added cocoa butter, having a minimum total dry cocoa solids content of 30 % — at least 12 % of dry non-fat cocoa solids and 18 % of cocoa butter — these percentages to be calculated after the weight of the additions referred to in paragraphs 5 to 8 has been deducted;

1.18 *Vermicelli chocolate, chocolate flakes*

chocolate in the form of granules or flakes having a minimum total dry cocoa solids content of 32 % including 12 % of cocoa butter;

1.19 *Gianduja (or one of the derivatives of the word 'gianduja') nut chocolate*

the product obtained firstly from chocolate having a minimum total dry cocoa solids content of 32 % including a minimum dry non-fat cocoa solids content of 8 %, and secondly from finely ground hazelnuts in such quantities that 100 g of the product contain not less than 20 g and not more than 40 g of nuts. Almonds, hazelnuts and other nut varieties may also be added, either whole or broken, in such quantities that, together with the ground hazelnuts, they do not exceed 60 % of the total weight of the product;

1.20 *Couverture chocolate*

chocolate containing a minimum of 31 % of cocoa butter and 2·5 % of dry non-fat cocoa solids; if couverture chocolate is described as 'dark couverture chocolate' it shall contain a minimum of 31 % of cocoa butter and 16 % of dry non-fat cocoa solids;

1.21 *Milk chocolate*

the product obtained from cocoa nib, cocoa mass, cocoa powder or fat-reduced cocoa powder and sucrose, from milk or milk solids obtained by evaporation, with or without added cocoa butter, and containing, without prejudice to the definitions of milk chocolate vermicelli, gianduja nut milk chocolate and couverture milk chocolate:

— a minimum total dry cocoa solids content of 25 % including at least 2·5 % of dry non-fat cocoa solids;

— at least 14 % of milk solids obtained by evaporation, including at least 3·5 % of butter fat;

— not more than 55 % of sucrose;

— at least 25 % of fat;

these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;

1.22 *Milk chocolate with high milk content*

the product obtained from cocoa nib, cocoa mass, cocoa powder, or fat-reduced cocoa powder and sucrose, from milk or milk solids obtained by evaporation, with or without added cocoa butter, and containing:

— a minimum total dry cocoa solids content of 20 % including at least 2·5 % of dry non-fat cocoa solids;

— at least 20 % of milk solids obtained by evaporation, including at least 5 % of butter fat;

— not more than 55 % of sucrose;

— at least 25 % of fat;

these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;

1.23 *Milk chocolate vermicelli, milk chocolate flakes*

milk chocolate in the form of granules or flakes, having a minimum total dry cocoa solids content of 20 % and a minimum fat content of 12 % including at least 3 % of butter fat, and not more than 66 % of sucrose;

1.24 *Gianduja (or one of the derivatives of the word 'gianduja') nut milk chocolate*

the product obtained firstly from milk chocolate having a minimum content of 10 % of milk solids obtained by evaporation, and secondly from finely-ground hazelnuts in such quantities that 100 g of the product contain not less than 15 g and not more than 40 g of hazelnuts. Almonds, hazelnuts and other nut varieties may also be added, either whole or broken in such quantities that, together with the ground hazelnuts, they do not exceed 60 % of the total weight of the product;

1.25 *Couverture milk chocolate*

milk chocolate having a minimum content of 31 % of fat;

1.26 *White chocolate*

the product free of colouring matters, obtained from cocoa butter, sucrose, milk or milk solids obtained by evaporation, and containing:

— at least 20 % of cocoa butter;

— at least 14 % of milk solids obtained by evaporation, including at least 3·5 % of butter fat;

— not more than 55 % of sucrose;

these percentages to be calculated after the weight of the additions provided for in paragraphs 5 to 8 has been deducted;

1.27 *Filled chocolate*

without prejudice to the provisions applicable to the filling used, the filled product — excepting flour confectionery or biscuit products — the outer part of which consists of chocolate, plain chocolate, gianduja nut chocolate, couverture chocolate, milk chocolate, milk chocolate with high milk content, gianduja nut milk chocolate, couverture milk chocolate or white chocolate and constitutes at least 25 % of the total weight of the product;

1.28 *A chocolate*

The product in single-mouthful size, consisting either:

— of filled chocolate, or

— of a combination of chocolate, plain chocolate, gianduja nut chocolate, couverture chocolate, milk chocolate, milk chocolate with high milk content, gianduja nut milk

chocolate, couverture milk chocolate or white chocolate in conjunction with other edible substances, in so far as the chocolate parts are clearly visible at least partially, and constitute at least 25 % of the total weight of the product or, of a mixture of chocolate, plain chocolate, couverture chocolate, milk chocolate, milk chocolate with high milk content, or couverture milk chocolate and other edible substances, excepting,

— flour or starches

— without prejudice to Article 14 (2) (a), fats other than cocoa butter and milk fats

provided that the chocolate products constitute at least 25 % of the total weight of the product.

2. Cocoa beans, cocoa nib, cocoa dust, cocoa mass, cocoa press cake, fat-reduced cocoa press cake, expeller cocoa press cake, cocoa powder and fat-reduced cocoa powder may be alkalized only by one or more of the following products: alkaline carbonates, alkaline hydroxides, magnesium carbonate, magnesium oxide, ammonia solutions, provided that the amount of alkalizing agent added, expressed as potassium carbonate, does not exceed 5 % of the weight of the dry defatted matter.

A quantity of citric acid or tartaric acid not exceeding 0·5 % of the total weight of the product may be added to the products thus treated.

If the product has been treated as described above, its ash content shall not exceed 14 % of the dry defatted matter.

3. (a) Cocoa butter may be treated by the following processes only:

— filtration, centrifuging and other physical processes commonly employed for the purpose of demucilagination;

— treatment by super-heated steam under vacuum and other physical processes commonly employed for the purpose of deodorization.

(b) For refined cocoa butter the following are also permissible:

— treatment by an alkaline wash or similar substance commonly employed for the purposes of neutralization;

— treatment with one or more of the following substances:

— bentonite,

— active carbons,

— other similar substances commonly employed as a decolorant.

4. The products listed in paragraph 1 may contain instead of sucrose:

— crystallized glucose (dextrose), fructose, lactose or maltose amounting to a total of 5 % of the total weight of the product, without it being necessary for this to be stated;

— crystallized glucose (dextrose) in a proportion of more than 5 % but not over 20 % of the total weight of the product. In this case the name of the product shall be accompanied by the declaration 'with crystallized glucose' or 'with dextrose'.

5. (a) Foodstuffs having a flavouring effect, natural flavouring substances and synthetic or artificial flavouring substances the chemical composition of which is identical to that of the principal elements of natural flavouring substances (with the exception of flavouring preparations suggesting the taste of natural chocolate or milk fat), and ethyl vanillin may be added to cocoa mass, to the various kinds of cocoa powder, chocolate and milk chocolate, to white chocolate and to chocolates.

(b) without prejudice to the provisions of paragraph 7, a declaration of this addition shall accompany the name of:

— cocoa mass, couverture chocolate and couverture milk chocolate;

— the various kinds of cocoa powder, chocolate and milk chocolate apart from couverture chocolate, and white chocolate, when the taste of the foodstuff having a flavouring effect or of the flavouring substance is the predominant one.

This declaration shall be made:

— where a foodstuff having a flavouring effect is employed, by giving its name,

— where flavouring substances other than ethyl vanillin are employed, by adding to the name the statement '. . . taste' or '. . . flavour' with the name of the substance in characters of equal size, any reference to a natural source should be restricted to natural flavouring substances,

— where ethyl vanillin is employed, by the statement 'with ethyl vanillin' or 'ethyl vanillin flavour'.

6. Technically pure vegetable lecithin with a peroxide level (expressed in milliequivalents per kg) not exceeding 10, may be added to the products listed in paragraph 1 except cocoa nib.

The name of the product shall be accompanied by a declaration of this addition and its percentage, except when lecithin is added to the various kinds of chocolate referred to under headings 1.16 to 1.28.

Products listed in paragraph 1 may not contain more than 0·5 % of their total weight of phosphatides; however, this percentage shall be increased to 1 % for the various kinds of cocoa powder, milk chocolate with high milk content and chocolate flakes, and to 5 % for the various kinds of cocoa powder intended for production of instant preparations, in so far as the provisions relating to them allow and provided that this purpose is indicated on the packings and in commercial documents.

7. (a) Without prejudice to Article 14 (2) (a), edible substances, with the exception of flour and starches and of fats and fat preparations not derived exclusively from milk, may be added to chocolate, plain chocolate, couverture chocolate, milk chocolate, milk chocolate with high milk content, couverture milk chocolate and to white chocolate.

The amount of these substances, in relation to the total weight of the finished product, may not be:

(i) less than 5 % or more than a total of 40 % if added in clearly visible and separable pieces;

(ii) more than a total of 30 % if added in a form which is for practical purposes indiscernible;

(iii) without prejudice to (i) above, more than a total of 40 %, if they are added both in clearly-visible and separable pieces and in a form which is for practical purposes indiscernible.

(b) a declaration relating to the edible substances added shall accompany the name of the chocolate products referred to under (a).

Such a declaration shall however, be prohibited in respect of the following:

(i) milk and milk products when the finished product is not milk chocolate, milk chocolate with high milk content or couverture milk chocolate;

(ii) coffee and spirits, when the amount of each of these substances is less than 1 % of the total weight of the finished product;

(iii) other edible substances, incorporated in a form which is for practical purposes indiscernible, when the amount of each of these substances is less than 5 % of the total weight of the finished product.

(c) in the case of filled chocolate and chocolates, the added edible matter referred to in paragraph (a) shall not be included in the chocolate product parts, which, pursuant to headings 1.27 and 1.28, must represent at least 25 % of the total weight.

8. Chocolate, plain chocolate, milk chocolate, milk chocolate with high milk content, white chocolate, filled chocolate and chocolates may be partially coated with edible substances representing a maximum of 10 % of their total weight. In this case:

(a) the upper limits of 40 % and 30 % fixed in paragraph 7 (a) and (b) shall include the coating substances,

(b) the lower limit of 25 % fixed for the content of various kinds of chocolate in filled chocolate and in chocolates shall relate to the total weight of the product, coating included.

ANNEX II

Special measures affecting the new Member States

1. Notwithstanding Article 2 of this Directive, Ireland shall be exempt from applying to products marketed in its territory the provisions laid down in Article 6 during the whole period for which the units of weight legally used in that country at the time of its accession to the European Economic Community remain authorized.

2. (a) Notwithstanding Article 2 of this Directive, the new Member States may, until 31 December 1977, apply to the products marketed in their territory national laws, in force at the time of their accession to the European Economic Community, authorizing the use of

   — phosphoric acid as a neutralizing agent in cocoa products alkalized in accordance with the provisions of Annex I (2);

   — flavouring substances other than those referred to in Annex I (5) (a) in the cocoa and chocolate products referred to in that paragraph;

   — polyglycerol polyricinoleate, sorbitan monostearate, sorbitan tristearate, polyoxyethylene (20) sorbitan monostearate and ammonium salts of phosphatidic acids in the cocoa and chocolate products referred to in the first subparagraph of Annex I (6).

   (b) Pursuant tot he procedure laid down in Article 100 of the Treaty, the Council acting on a proposal from the Commission may, not later than 1 January 1978, add to Annex I the substances referred to under (a).

A Decision to include these substances in Annex I may be adopted only if scientific research has established that they are not harmful to human health and if their use is necessary on economic grounds.

COUNCIL DECISION

of 24 July 1973

giving a discharge to the Commission in respect of the implementation of the transactions of the Development Fund for the Overseas Countries and Territories (1st Fund) for the financial year 1970

(73/242/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to the Implementing Convention on the Association of the Overseas Countries and Territories with the Community, annexed to the Treaty;

Having regard to Council Regulation No 5 [1] laying down detailed provisions relating to the collection and transfer of financial contributions, the budgeting and administration of the resources of the Development Fund for the Overseas Countries and Territories, and in particular Article 16 thereof;

Having regard to provisional Council Regulation No 6 [2] relating to the responsibility of authorizing and accounting officers for the resources of the Development Fund for the Overseas Countries and Territories;

Having regard to the revenue and expenditure accounts, the statement and the summary of transactions of the Development Fund for the Overseas Countries and Territories (1st Fund), adopted on 31 December 1970;

Having regard to the report of the Audit Board on the accounts for the financial year 1970, and in particular the second part thereof devoted to the Development Funds, to which report are annexed the replies of the Commission to the comments of the Audit Board [3];

Having examined the remarks of the European Parliament on the transactions of the Development Funds on the occasion of its Decision of 9 May 1973 on 'the discharge to be given to the Commission in respect of the implementation of the budget of the European Communities for the financial year 1970 and on the report of the Audit Board', hereinafter referred to as the 'Discharge Decision';

Recalling that, in accordance with the provisions applicable to the implementation of the Development Fund for the Overseas Countries and Territories (1st Fund), only the Council, acting by a qualified majority, shall give a discharge to the Commission in respect of the financial administration of the Fund;

Adopting the other remarks of the European Parliament, and in particular those in points 25 — 27 of Section III of its Discharge Decision for the financial year 1970;

Whereas an advance of 57 743 933 units of account has been paid to the European Development Fund (1963) (2nd EDF);

Whereas the overall implementation by the Commission of the transactions of the first Development Fund during the financial year 1970 was such as to entitle it to be given a discharge in respect of the implementation of these transactions;

HAS DECIDED AS FOLLOWS:

Article 1

The views of the Council on Comment No 210 of the Audit Board are as set out in the Annex.

Article 2

The Council closes the expenditure and revenue accounts of the European Development Fund for the Overseas Countries and Territories on 31 December 1970 as follows:

Revenue

at the sum of 582 520 065·62 u.a.

Expenditure (payments)

at the sum of 524 776 133·04 u.a.

Article 3

The Council gives a discharge to the Commission in respect of the implementation of the transactions of the Development Fund for the Overseas Countries and Territories (1st Fund) for the financial year 1970.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

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(1) OJ No 33, 31. 12. 1958, p. 681/58.

(2) OJ No 33, 31. 12. 1958, p. 686/58.

(3) This report is available from the institutions of the Communities.

ANNEX

Comment No 210 of the Audit Board on the development of the commitments of the Development Fund for the Overseas Countries and Territories (1st Fund)

The Council points out that, anxious to ensure the efficient financial administration of the Development Funds, it adopted on 30 May 1972 a 'Decision on the transfer and use of the unexpended balances of the Development Fund for the Overseas Countries and Territories set up under the Implementing Convention annexed to the Treaty establishing the European Economic Community'.

By this Decision the balances of appropriations not spent when implementing the projects of the 1st EDF are transferred to the 2nd EDF and used exclusively for financing economic and social investment projects.

The unexpended balances transferred in this way are used in accordance with the procedures laid down in the Internal Agreement concerning the financing and administration of Community aid, signed at Yaoundé on 20 July 1963.

Finally, the EDF Committee shall be kept informed by the Commission semi-annually of the unexpended balances, their nature and the volume of the transfers made.

COUNCIL DECISION

of 24 July 1973

giving a discharge to the Commission in respect of the implementation of transactions of the European Development Fund (1963) (Second EDF) for the financial year 1970

(73/243/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to the Convention of Association [1] between the European Economic Community and the African and Malagasy States associated with that Community, signed at Yaoundé on 20 July 1963;

Having regard to the Council Decision [2] of 25 February 1964 relating to the Association of Overseas Countries and Territories with the European Economic Community;

Having regard to the Internal Agreement [3] concerning the financing and administration of Communities' aid, signed at Yaoundé on 20 July 1963, hereinafter referred to as the 'Internal Agreement', and in particular Article 17 thereof;

Having regard to the Financial Regulation [4] of the European Development Fund set up under the Internal Agreement, and in particular Articles 7 and 8 thereof;

Having regard to the revenue and expenditure accounts, the statement and the summary of the transactions of the European Development Fund (1963) (2nd EDF), adopted on 31 December 1970;

Having regard to the report of the Audit Board on the accounts for the financial year 1970, to which report are annexed the Commission's replies to comments made by the Audit Board [5];

Having examined the remarks of the European Parliament on the transactions of the Development Funds on the occasion of its Decision of 9 May 1973 on 'the discharge to be given to the Commission in respect of the implementation of the budget of the European Communities for the financial year 1970 and on the report of the Audit Board', hereinafter referred to as the 'Discharge Decision';

Recalling that, in accordance with the provisions applicable to the implementation of the European Development Fund (1963) (2nd EDF), only the Council, acting by a qualified majority, shall give a discharge to the Commission in respect of the financial administration of the Fund;

Adopting the other remarks of the European Parliament, and in particular those in points 25 — 27 of Section III of its Discharge Decision for the financial year 1970;

Whereas revenue for the financial year 1970 consisted mainly of the contributions of the Member States, amounting to 370 million units of account, and of the Fund's own revenue; whereas, moreover, a loan of 57 743 933 units of account was granted from the treasury of the Development Fund for Overseas Countries and Territories (1st Fund);

Whereas the overall implementation by the Commission of the transactions of the European Development Fund during the financial year 1970 was such as to entitle it to be given a discharge in respect of the implementation of these transactions;

HAS DECIDED AS FOLLOWS:

Article 1

The views of the Council on Comments 229 and 233 of the Audit Board are as set out in the Annex.

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(1) OJ No 93, 11. 6. 1964, p. 1431/64.
(2) OJ No 93, 11. 6. 1964, p. 1472/64.
(3) OJ No 93, 11. 6. 1964, p. 1493/64.
(4) OJ No 93, 11. 6. 1964, p. 1498/64.
(5) This report is available from the institutions of the Communities.

Article 2

The Council closes the expenditure and revenue accounts of the European Development Fund (1963) on 31 December 1970 as follows:

Revenue

at the sum of 371 496 409·93 u.a.

Expenditure (payments)

at the sum of 383 124 529·41 u.a.

Article 3

The Council gives a discharge to the Commission in respect of the implementation of the transactions of the European Development Fund (1963) (2nd EDF) for the financial year 1970.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

ANNEX

1. *Comment No 229* by the Audit Board on delays in implementing investment projects and the consequent exceeding of appropriations.

   The Council points out that, at its 237th meeting on 2 and 3 April 1973, it adopted a 'Resolution on the exceeding of appropriations during implementation of projects financed by the European Development Fund'. The Council, concerned not only by the financial but also the political effects of exceeding appropriations, resulting in an appreciable increase in the final cost of these projects, and anxious, moreover, to retain for the European Development Fund the widest possible powers of intervention for the benefit of the Associated States, countries and territories, accordingly approved in the Resolution the Commission's policy in this matter and found, in agreement with the Commission, that the administrative rules currently in force should be supplemented by certain new measures, set forth in the abovementioned Resolution, to provide more effective safeguards against exceeding appropriations.

2. *Comment No 233* by the Audit Board on the programme to train junior and senior management and administrative staff for the Congo Transport Office (OTRACO).

   The Council, noting the Audit Board's intention to comment in detail on the implementation of this training programme after it has checked that the files on this subject are closed, agrees to postpone its discussion on the Audit Board's remarks until the latter has adopted its final position.

COMMISSION

COMMISSION DECISION

of 4 July 1973

declaring that the conditions governing the mobilization of common wheat for a national food aid project are satisfied

(Only the Italian text is authentic)

(73/244/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 120/67/EEC (1) of 13 June 1967 on the common organization of the market in cereals, as last amended by Regulation (EEC) No 1346/73 (2);

Having regard to Council Regulation (EEC) No 290/69 (3) of 17 February 1969 laying down the criteria for mobilizing of cereals intended as food aid, as amended by Regulation (EEC) No 832/69 (4) and renewed by Regulations (EEC) No 2338/69 (5) and (EEC) No 2046/70 (6), and in particular Article 4 (1) thereof;

Having regard to the communication from the Republic of Italy of 13 June 1973 informing the Commission of its intention to supply food aid to the Malta Republic within the framework of a national project under the 1970/71 programme of food aid in the form of grain and to mobilize to this end 5 000 tons of wheat other than durum wheat out of the Stocks of the Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA);

Whereas the Italian intervention agency holds stocks of common wheat;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Cereals;

HAS ADOPTED THIS DECISION:

Article 1

In connection with the national food aid project which the Republic of Italy intends to undertake during the month of August 1973, shipment from the ports of the Adriatic and the Tyrrhenian Sea — the purpose of this project being the supply of 5 000 tons of common wheat to be mobilized out of the stocks held by the Italian intervention agency (AIMA) — it is hereby declared that the conditions laid down in Article 2 (2) of Regulation (EEC) No 290/69 are satisfied.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 4 July 1973.

For the Commission

The President

François-Xavier ORTOLI

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(1) OJ No 117, 19. 6. 1967, p. 2269/67.
(2) OJ No L 141, 28. 5. 1973, p. 8.
(3) OJ No L 41, 18. 2. 1969, p. 2.
(4) OJ No L 107, 6. 5. 1969, p. 3.
(5) OJ No L 298, 25. 11. 1969, p. 8.
(6) OJ No L 288, 15. 10. 1970, p. 1.

COMMISSION DECISION

of 9 July 1973

fixing the amount by which the monetary compensatory amounts for beef and veal are to be reduced

(73/245/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 974/71 (1) of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 1225/73 (2);

Having regard to Commission Regulation (EEC) No 1463/73 (3) of 30 May 1973 as to the detailed rules for applying the monetary compensatory amounts, and in particular Article 5 thereof;

Whereas Commission Regulation (EEC) No 1469/73 (4) of 30 May 1973, as last amended by Regulation (EEC) No 1840/73 (5), fixed the monetary compensatory amounts to be applied from 9 July 1973;

Whereas these compensatory amounts have been fixed without taking account of Article 4a (2) of Regulation (EEC) No 974/71, which provides that in trade among the States and between the States and third countries the compensatory amounts applicable because of a depreciation of the currency concerned cannot exceed the tax on imports from third countries;

Whereas, in order that this rule may be observed, Article 5 of Regulation (EEC) No 1463/73 has stated that for the application of Article 4a (2) of Regulation (EEC) No 974/71 to meat the Commission shall give notice of the amounts by which the monetary compensatory amounts are to be reduced;

Whereas the amounts fixed in accordance with this rule are periodically altered when changes in the tax on imports from third countries make this necessary;

Whereas Council Regulation (EEC) No 1695/73 (6) of 25 June 1973, as amended by Regulation (EEC) No 1824/73 (7), has determined to what extent the monetary compensatory amounts applicable to beef and veal by reason of the depreciation of a currency may be higher than the charge on imports from third countries;

Whereas application of the said criteria results in a fixing of the amounts by which the monetary compensatory amounts are to be adjusted to the level appearing in the Annex hereto;

HAS ADOPTED THIS DECISION:

Article 1

With effect from 9 July 1973 the amounts by which the monetary compensatory amounts appearing in the Annex to Regulation (EEC) No 1469/73, as last amended by Regulation (EEC) No 1840/73, must be reduced in accordance with Article 5 of Regulation (EEC) No 1463/73 are fixed in the Annex hereto.

Article 2

This Decision is addressed to all Member States.

Done at Brussels, 9 July 1973.

For the Commission

The President

François-Xavier ORTOLI

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 125, 11. 5. 1973, p. 49.
(3) OJ No L 146, 4. 6. 1973, p. 1.
(4) OJ No L 147, 4. 6. 1973, p. 17.
(5) OJ No L 186, 9. 7. 1973, p. 5.
(6) OJ No L 173, 28. 6. 1973, p. 1.
(7) OJ No L 185, 7. 7. 1973, p. 1.

ANNEX

Amounts to be deducted from the monetary compensatory amounts

CCT heading No	Italy (Lit/100 kg)	Ireland (£/100 kg)	United Kingdom (£/100 kg)
	— Live weight —		
ex 01.02 A II a) (1)	9 103	0	0
ex 01.02 A II a) (2)	9 103	4·381	4·381
ex 01.02 A II b) (3)	7 925	0	0
ex 01.02 A II b) (4)	7 925	3·635	3·635
	— Net weight —		
02.01 A II a) 1 aa) 11	12 153	6·834	6·834
02.01 A II a) 1 aa) 22	9 349	5·257	5·257
02.01 A II a) 1 aa) 33	14 958	8·412	8·412
02.01 A II a) 1 bb) 11	13 158	6·907	6·907
02.01 A II a) 1 bb) 22	10 526	5·525	5·525
02.01 A II a) 1 bb) 33	15 789	8·288	8·288
02.01 A II a) 1 cc) 11	22 203	12·486	12·486
02.01 A II a) 1 cc) 22	25 397	14·282	14·282
02.01 A II a) 2 aa)	12 659	5·586	5·586
02.01 A II a) 2 bb)	9 495	4·190	4·190
02.01 A II a) 2 cc)	15 824	6·983	6·983
02.01 A II a) 2 dd) 11	18 988	8·379	8·379
02.01 A II a) 2 dd) 22 aaa)	15 824	6·983	6·983
02.01 A II a) 2 dd) 22 bbb)	21 774	9·608	9·608
02.06 C I a) 1	5 486	0·895	4·814
02.06 C I a) 2	6 276	1·657	0

(1) Calves for fattening weighing less than 80 kg.

(2) Calves other than those referred to in (1) above. Entry in this subheading is subject to the conditions to be determined by the competent authorities.

(3) Young male bovine animals for fattening of a minimum weight of 220 kg and a maximum weight of 300 kg.

(4) Young male bovine animals other than those referred to in (3) above. Entry in this subheading is subject to the conditions to be determined by the competent authorities.

COMMISSION DECISION

of 10 July 1973

derogating from Recommendation No 1/64 of the High Authority concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community

(54th derogation)

(73/246/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5, 8, 71 and 74 thereof;

Having regard to High Authority Recommendation No 1/64 of 15 January 1964 [1] to the Governments of the Member States concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community, and in particular Article 3 thereof;

Having regard to the Agreement reached on 25 June 1973 by representatives of the Member States within the Council on tariff measures to be taken for the second six months of 1973;

Whereas, for years past, representatives of the Governments of the Member States meeting within the Council have unanimously agreed on six-monthly derogations from the harmonized Community customs duties for steel; whereas these derogations take the form of either a reduction or temporary suspension of certain customs duties or of the granting of tariff quotas at reduced or suspended rates of duty; whereas the last tariff measures of this kind were taken by the representatives of the Governments of the Member States on 25 June 1973 for the second six months of 1973;

Whereas these measures are justified by the fact that the products in question are not manufactured, or are manufactured in insufficient quantities, in the Community and that their importation on preferential terms is not injurious to iron and steel undertakings in the Community which produce directly competing products;

Whereas these reasons and circumstances, on which the six-monthly tariff measures taken by the Member States are based, also allow, given present conditions on the common market in steel, of their application within the framework of Recommendation No 1/64 of 15 January 1964; whereas neither this suspension of duties nor these tariff quotas are likely to jeopardize the objectives of Recommendation No 1/64 concerning an increase in the protective duty at the external frontiers of the Community and whereas, furthermore, these tariff measures help to maintain existing trade flows between the Member States and third countries;

Whereas these are special cases in the commercial policy field justifying the authorization of derogations pursuant to Article 3 of Recommendation No 1/64;

Whereas there should be a guarantee that quotas granted will be used solely to supply the needs of industries in the importing countries and that re-exportation to other Member States, in the same state as that in which they were imported, of imported iron and steel products will be prevented;

Whereas the Governments of the Member States have been consulted on the tariff quotas set out below;

HAS ADOPTED THIS DECISION:

Article 1

The Governments of the Member States are hereby authorized to derogate from the obligations arising under Article 1 of High Authority Recommendation No 1/64 of 15 January 1964 to the extent necessary to introduce, in respect of imports from third countries of the iron and steel products set out below, suspension of duties or tariff quotas up to the quantities and at the levels indicated in respect of each of these products:

[1] OJ No 8, 22. 1. 1964, p. 99/64.

CCT heading No	Description of goods	Member States	Quota (tons)	Customs (%)
ex 73.15 A V b) 1	Special wire rod for the tyre industry (wire rod of high carbon steel not further worked than hot-rolled, between 4·5 and 6 mm in diameter and of a carbon content of between 0·62 and 0·74 %)	Germany Benelux France Italy	1 900 8 500 4 000 8 000	0 0 0 0
ex 73.15 A V b) 1	Special wire rod for the tyre industry (wire rod of high carbon steel, not further worked than hot-rolled, between 4·5 and 6 mm in diameter and of a carbon content of between 0·62 and 0·85 %)	Benelux	1 500	0
ex 73.15 A V b) 1	Special wire rod for the manufacture of springs and 'piano wire', with the following characteristics: — Of fine carbon steel — Not further worked than hot-rolled — Between 4·5 and 13 mm in diameter — Containing: — 0·60 to 1·05 % of carbon — Not more than 0·05 % of sulphur and phosphorus taken together — 0·10 to 0·25 % of silicon — Not more than 0·10 % of all other elements (with the exception of manganese and chromium) taken together (Germany and Benelux are authorized to import — within their quotas — special wire rod of alloy steels between 4·5 and 13 mm in diameter for valve springs, with the following characteristics: a) Chrome-vanadium products: 0·40-0·65 % C; 0·15-0·30 % Si; 0·60-0·90 % Mn; 0·15-1·10 % Cr; 0·15-0·30 % Va; not more than 0·30 % Mo P and S content of less than 0·035 % each; b) Chrome-silicon products: 0·50-0·60 % C; 1·35-1·60 % Si; 0·60-0·80 % Mn; 0·55-0·80 % Cr; P and S content of less than 0·035 % each)	Germany Benelux France	8 500 1 350 1 200	0 0 0
ex 73.08 A	Iron or steel coils for re-rolling, clad with an alloy steel (not dominating as regards weight) which contains less than 0·6 % carbon and more than 10 % chromium by weight, other alloying elements being disregarded (stainless steel), annealed and pickled, of a width of more than 900 mm and not more than 1 300 mm and of a thickness of not more than 6 mm	Benelux	600	0
ex 73.16 A II b)	Used rails for re-rolling	France	44 000	0

Article 2

1. Member States accorded quotas under Article 1 of this Decision shall be required to ensure, in liaison with the Commission, that the quotas are distributed on a non-discriminatory basis among third countries.

2. They shall be required to take all necessary steps to rule out the possibility of iron and steel products imported under the tariff quotas being re-exported to other Member States in the same state as that in which they were imported.

Article 3

1. This Decision is addressed to all Member States.

2. It shall be valid until 31 December 1973.

Done at Brussels, 10 July 1973.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 11 July 1973

fixing the maximum amount of the refund for the 10th partial invitation to tender for white sugar issued under Regulation (EEC) No 1101/73

(Only the French text is authentic)

(73/247/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 1009/67/EEC (1) of 18 December 1967 on the common organization of the market in sugar, as last amended by Regulation (EEC) No 174/73 (2), and in particular Article 10 (3) thereof;

Whereas, in accordance with Commission Regulation (EEC) No 1101/73 (3) of 26 April 1973, as last amended by Regulation (EEC) No 1477/73 (4) on a standing invitation to tender for the sale for export of white sugar held by the French intervention agency, the said agency is to issue partial invitations to tender for the sale of white sugar which it holds and for determining the export refund on such sugar;

Whereas, in accordance with Article 7 of Commission Regulation (EEC) No 258/72 (5) of 3 February 1972 laying down detailed rules concerning the sale by tender of sugar by intervention agencies, where the terms of the invitation to tender do not specify a maximum amount for the refund, that amount shall be fixed in accordance with the procedure laid down in Article 40 of Regulation No 1009/67/EEC, after examination of the tenders, account being taken of market conditions and potential outlets; whereas, applying these criteria, the maximum amount for the 10th partial invitation to tender should be fixed as provided in Article 1;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Sugar;

HAS ADOPTED THIS DECISION:

Article 1

For the 10th partial invitation to tender issued under Regulation (EEC) No 1101/73, for which the period for submission of tenders expired on 11 July 1973, the maximum amount of the export refund allowed upon the award of tender shall be 4·750 units of account per 100 kilogrammes of white sugar.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 11 July 1973.

For the Commission

P. J. LARDINOIS

Member of the Commission

(1) OJ No 308, 18. 12. 1967, p. 1.
(2) OJ No L 25, 30. 1. 1973, p. 1.
(3) OJ No L 112, 28. 4. 1973, p. 20.
(4) OJ No L 148, 5. 6. 1973, p. 15.
(5) OJ No L 31, 4. 2. 1972, p. 22.

COMMISSION DECISION

of 16 July 1973

fixing the minimum sale price for butter for the 21st individual invitation to tender under the standing invitation to tender provided for by Regulation (EEC) No 1519/72

(73/248/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community;

Having regard to Council Regulation (EEC) No 804/68 (1) of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by the Act (2) on the Conditions of Accession and the Adjustments to the Treaties, and in particular Article 6 (7) thereof;

Having regard to Council Regulation (EEC) No 985/68 (3) of 15 July 1968 laying down general rules for intervention on the market in butter and cream, as last amended by Regulation (EEC) No 2714/72 (4), and in particular Article 7a thereof;

Whereas, pursuant to Commission Regulation (EEC) No 1519/72 (5) of 14 July 1972 on the sale of butter at a reduced price for the exportation of certain fat compounds, as last amended by Regulation (EEC) No 1467/73 (6), the intervention agencies have put up for sale by standing invitation to tender certain quantities of butter they hold;

Whereas, Article 9 of Regulation (EEC) No 1519/72 provides that for each individual invitation to tender, in the light of the tender received, a minimum selling price must be fixed for each of the uses referred to in Article 19 (2) (a) and (b) of the Regulation or a Decision must be taken not to proceed with the invitation to tender; whereas, pursuant to Article 10 of the Regulation, the amount of the processing and export security is to be fixed at the same time in the light of the minimum price and the market price for butter;

Whereas, having regard to the situation of the market for butter, in the light of the tender received in response to the 21st individual invitation to tender it is necessary to fix at the levels specified below, and the amounts of the processing and export security should be determined in consequence;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products;

HAS ADOPTED THIS DECISION:

Article 1

For the 21st individual invitation to tender under Regulation (EEC) No 1519/72, in respect of which the time limit for submission of tenders expired on 10 July 1973, the minimum prices to be considered when awarding contracts and the amounts of the processing and export security shall be as follows:

Use of the butter	Minimum price u.a./100 kg	Security in u.a./100 kg
(a) Article 19 (2) (a) of Regulation (EEC) No 1519/72	36	140
(b) Article 19 (2) (b) of Regulation (EEC) No 1519/72	the invitation to tender is not proceeded with	

Article 2

This Decision is addressed to all Member States.

Done at Brussels, 16 July 1973.

For the Commission

The President

François-Xavier ORTOLI

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 73, 27. 3. 1972, p. 14.
(3) OJ No L 169, 18. 7. 1968, p. 1.
(4) OJ No L 291, 28. 12. 1972, p. 15.
(5) OJ No L 162, 18. 7. 1972, p. 1.
(6) OJ No L 146, 4. 6. 1973, p. 15.

COMMISSION DECISION

of 16 July 1973

fixing the minimum sale price for butter for the 25th individual invitation to tender under the standing invitation to tender provided for by Regulation (EEC) No 1259/72

(73/249/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68 [1] of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by the Act [2] on the Conditions of Accession and the Adjustments to the Treaties, and in particular Article 6 (7) thereof;

Having regard to Council Regulation (EEC) No 985/68 [3] of 15 July 1968 laying down general rules for intervention on the market in butter and cream, as last amended by Regulation (EEC) No 2714/72 [4], and in particular Article 7a thereof;

Whereas, pursuant to Commission Regulation (EEC) No 1259/72 [5] of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings, as last amended by Regulation (EEC) No 1237/73 [6], the intervention agencies have put up for sale by standing invitation to tender certain quantities of butter they hold;

Whereas Article 9 of that Regulation provides that a minimum selling price must be fixed in the light of tenders received, and the amount of the processing security must be fixed in the light of the difference between the minimum price and the market price of butter, and that a decision may alternatively be taken not to proceed with the invitation to tender;

Whereas in the light of the tenders received in response to the 25th individual invitation to tender the minimum price should be fixed at the level specified below and the processing security should be determined in consequence;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products;

HAS ADOPTED THIS DECISION:

Article 1

For the 25th individual invitation to tender under Regulation (EEC) No 1259/72, in respect of which the time limit for submission of tenders expired on 10 July 1973.

(a) the minimum selling price to be considered when awarding contracts shall be 55 u.a./100 kg of butter;

(b) the processing security shall be 132 u.a./100 kg of butter.

Article 2

This Decision is addressed to all Member States.

Done at Brussels, 16 July 1973.

For the Commission

The President

François-Xavier ORTOLI

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 73, 27. 3. 1972, p. 14.
(3) OJ No L 169, 18. 7. 1968, p. 1.
(4) OJ No L 291, 28. 12. 1972, p. 15.
(5) OJ No L 139, 17. 6. 1972, p. 18.
(6) OJ No L 128, 15. 5. 1973, p. 1.

COMMISSION DECISION

of 16 July 1973

fixing the amount by which the monetary compensatory amounts for beef and veal are to be reduced

(73/250/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 974/71 (1) of 12 May 1972 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 1225/73 (2);

Having regard to Commission Regulation (EEC) No 1463/73 (3) of 30 May 1973 as to the detailed rules for applying the monetary compensatory amounts, and in particular Article 5 thereof;

Having regard to the Opinion of the Monetary Committee;

Whereas Commission Regulation (EEC) No 1469/73 (4) of 30 May 1973, as last amended by Regulation (EEC) No 1902/73 (5), fixed the monetary compensatory amounts to be applied from 16 July 1973;

Whereas these compensatory amounts have been fixed without taking account of Article 4a (2) of Regulation (EEC) No 974/71, which provides that in trade among the States and between the States and third countries the compensatory amounts applicable because of a depreciation of the currency concerned cannot exceed the tax on imports from third countries;

Whereas, in order that this rule may be observed, Article 5 of Regulation (EEC) No 1463/73 has stated that for the application of Article 4a (2) of Regulation (EEC) No 974/71 to meat the Commission shall give notice of the amounts by which the monetary compensatory amounts are to be reduced;

Whereas the amounts fixed in accordance with this rule are periodically altered when changes in the tax on imports from third countries make this necessary;

Whereas Council Regulation (EEC) No 1695/73 of 25 June 1973 (6), amended by Regulation (EEC) No 1824/73 (7), has determined to what extent the monetary compensatory amounts applicable to beef and veal by reason of the depreciation of a currency may be higher than the charge on imports from third countries;

Whereas, if the levy system is to operate normally, world market prices should be calculated on the following basis:

— in the case of currencies which are maintained in relation to each other, at any given moment, within a band of 2·25%, at a rate of exchange based on their effective parity,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period, in relation to the Community currencies referred to in the previous subparagraph;

Whereas application of the said criteria results in a fixing of the amounts by which the monetary compensatory amounts are to be adjusted to the level appearing in the Annex hereto;

HAS ADOPTED THIS DECISION:

Article 1

With effect from 16 July 1973 the amounts by which the monetary compensatory amounts appearing in

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 125, 11. 5. 1973, p. 49.
(3) OJ No L 146, 4. 6. 1973, p. 1.
(4) OJ No L 147, 4. 6. 1973, p. 17.
(5) OJ No L 195, 16. 7. 1973, p. 1.
(6) OJ No L 173, 28. 6. 1973, p. 1.
(7) OJ No L 185, 7. 7. 1973, p. 1.

the Annex to Regulation (EEC) No 1469/73, last amended by Regulation (EEC) No 1902/73, must be reduced in accordance with Article 5 of Regulation (EEC) No 1463/73 are fixed in the Annex hereto.

Article 2

This Decision is addressed to all Member States.

Done at Brussels, 16 July 1973.

For the Commission

The President

François-Xavier ORTOLI

ANNEX

Amounts to be deducted from the monetary compensatory amounts

CCT heading No	Italy (Lit/100 kg)	Ireland (£/100 kg)	United Kingdom (£/100 kg)
	— Live weight —		
ex 01.02 A II a) (1)	9 672	0	0
ex 01.02 A II a) (2)	9 672	5·877	5·877
ex 01.02 A II b) (3)	8 499	0	0
ex 01.02 A II b) (4)	8 499	4·876	4·876
	— Net weight —		
02.01 A II a) 1 aa) 11	12 463	9·168	9·168
02.01 A II a) 1 aa) 22	9 587	7·052	7·052
02.01 A II a) 1 aa) 33	15 339	11·284	11·284
02.01 A II a) 1 bb) 11	13 712	9·264	9·264
02.01 A II a) 1 bb) 22	10 971	7·412	7·412
02.01 A II a) 1 bb) 33	16 455	11·117	11·117
02.01 A II a) 1 cc) 11	22 769	16·749	16·749
02.01 A II a) 1 cc) 22	26 044	19·159	19·159
02.01 A II a) 2 aa)	13 677	7·493	7·493
02.01 A II a) 2 bb)	10 257	5·620	5·620
02.01 A II a) 2 cc)	17 096	9·366	9·366
02.01 A II a) 2 dd) 11	20 516	11·240	11·240
02.01 A II a) 2 dd) 22 aaa)	17 096	9·366	9·366
02.01 A II a) 2 dd) 22 bbb)	23 524	12·888	12·888
02.06 C I a) 1	2 298	3·596	7·515
02.06 C I a) 2	2 628	4·747	0

(1) Calves for fattening weighing less than 80 kg.

(2) Calves other than those referred to in (1) above. Entry in this subheading is subject to the conditions to be determined by the competent authorities.

(3) Young male bovine animals for fattening of a minimum weight of 220 kg and a maximum weight of 300 kg.

(4) Young male bovine animals other than those referred to in (3) above. Entry in this subheading is subject to the conditions to be determined by the competent authorities.