

Official Journal

of the European Communities

ISSN 0378-6978

L 372

Volume 29

31 December 1986

English edition

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 8 December 1986

on the annual accounts and consolidated accounts of banks and other financial institutions

(86/635/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

Whereas Council Directive 78/660/EEC of 25 July 1978, based on Article 54 (3) (g) of the Treaty, on the annual accounts of certain types of companies ⁽⁴⁾, as last amended by Directive 84/569/EEC ⁽⁵⁾, need not be applied to banks and other financial institutions, hereafter referred to as 'credit institutions', pending subsequent coordination; whereas in view of the central importance of these undertakings in the Community, such coordination is necessary;

Whereas Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the Treaty, on consolidated

accounts ⁽⁶⁾, provides for derogations for credit institutions only until expiry of the deadline imposed for the application of this Directive; whereas this Directive must therefore also include provisions specific to credit institutions in respect of consolidated accounts;

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

Whereas in virtually all the Member States of the Community credit institutions within the meaning of Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions ⁽⁷⁾, having many different legal forms, are in competition with one another in the banking sector; whereas it therefore seems advisable not to confine coordination in respect of these credit institutions to the legal forms covered by Directive 78/660/EEC but rather to opt for a scope which includes all companies and firms as defined in the second paragraph of Article 58 of the Treaty;

Whereas as far as financial institutions are concerned the scope of this Directive should however be confined to those financial institutions taking one of the legal forms referred to in Directive 78/660/EEC; whereas financial institutions

⁽¹⁾ OJ No C 130, 1. 6. 1981, p. 1, OJ No C 83, 24. 3. 1984, p. 6 and OJ No C 351, 31. 12. 1985, p. 24.

⁽²⁾ OJ No C 242, 12. 9. 1983, p. 33 and OJ No C 163, 10. 7. 1978, p. 60.

⁽³⁾ OJ No C 112, 3. 5. 1982, p. 60.

⁽⁴⁾ OJ No L 222, 14. 8. 1978, p. 11.

⁽⁵⁾ OJ No L 314, 4. 12. 1984, p. 28.

⁽⁶⁾ OJ No L 193, 18. 7. 1983, p. 1.

⁽⁷⁾ OJ No L 322, 17. 12. 1977, p. 30.

which are not subject to that Directive must automatically come under this Directive;

Whereas a link with coordination in respect of credit institutions is necessary because aspects of the provisions governing annual accounts and consolidated accounts will have an impact on other areas of that coordination, such as authorization requirements and the indicators used for supervisory purposes;

Whereas although, in view of the specific characteristics of credit institutions, it would appear appropriate to adopt a separate Directive on the annual accounts and consolidated accounts of such institutions, this does not imply a new set of rules separate from those under Directives 78/660/EEC and 83/349/EEC; whereas such separate rules would be neither appropriate nor consistent with the principles underlying the coordination of company law since, given the important role which they play in the Community economy, credit institutions cannot be excluded from a framework of rules devised for undertakings generally; whereas, for this reason, only the particular characteristics of credit institutions have been taken into account and this Directive deals only with exceptions to the rules contained in Directives 78/660/EEC and 83/349/EEC;

Whereas the structure and content of the balance sheets of credit institutions differ in each Member State; whereas this Directive must therefore prescribe the same layout, nomenclature and terminology for the balance sheets of all credit institutions in the Community; whereas derogations should be allowed if necessitated by the legal form of an institution or by the special nature of its business;

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

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

Whereas the same applies to the layout and definition of the items in the profit and loss account;

Whereas the comparability of figures in the balance sheet and profit and loss account also depends crucially on the values at which assets and liabilities are entered in the balance sheet;

Whereas, in view of the particular risks associated with banking and of the need to maintain confidence, provision should be made for the possibility of introducing a liabilities item in the balance sheet entitled 'Fund for general banking risks'; whereas it would appear advisable for the same reasons that the Member States be permitted, pending subsequent coordination, to allow credit

institutions some discretion, especially in the valuation of loans and advances and of certain securities; whereas, however, in this last case the Member States should allow these same credit institutions to create the 'Fund for general banking risks' mentioned above; whereas it would also appear appropriate to permit the Member States to allow credit institutions to set of certain charges and income in the profit and loss account;

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

Whereas, in the desire to place on the same footing as many credit institutions as possible, as was the case with Directive 77/780/EEC, the relief under Directive 78/660/EEC is not provided for in the case of small and medium-sized credit institutions; whereas, nevertheless, if in the light of experience such relief were to prove necessary it would be possible to provide for it in subsequent coordination; whereas for the same reasons the scope allowed the Member States under Directive 83/349/EEC to exempt parent undertakings from the consolidation requirement if the undertakings to be consolidated do not together exceed a certain size has not been extended to credit institutions;

Whereas the application of the provisions on consolidated accounts to credit institutions requires certain adjustments to some of the rules applicable to all industrial and commercial companies; whereas explicit rules have been provided for in the case of mixed groups and exemption from subconsolidation may be made subject to additional conditions;

Whereas, given the scale on which banking networks extend beyond national borders and their constant development, the annual accounts and consolidated accounts of a credit institution having its head office in one Member State should be published in all the Member States in which it is established;

Whereas the examination of problems which arise in connection with the subject matter of this Directive, notably concerning its application, requires the cooperation of representatives of the Member States and the Commission in a contact committee; whereas, in order to avoid the proliferation of such committees, it is desirable that such cooperation take place in the Committee provided for in Article 52 of Directive 78/660/EEC; whereas, nevertheless, when examining problems concerning credit institutions, the Committee will have to be appropriately constituted;

Whereas, in view of the complexity of the matter, the credit institutions covered by this Directive must be allowed a longer period than usual to implement its provisions;

Whereas provision should be made for the review of certain provisions of this Directive after five years' experience of its application, in the light of the aims of greater transparency and harmonization,

HAS ADOPTED THIS DIRECTIVE:

SECTION 1

PRELIMINARY PROVISIONS AND SCOPE

Article 1

1. Articles 2, 3, 4 (1), (3) to (5), 6, 7, 13, 14, 15 (3) and (4), 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 45 (1), 46, 48 to 50, 51 (1), 54, 56 to 59 and 61 of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise.

2. Where reference is made in Directives 78/660/EEC and 83/349/EEC to Articles 9 and 10 (balance sheet) or to Articles 23 to 26 (profit and loss account) of Directive 78/660/EEC, such references shall be deemed to be references to Articles 4 (balance sheet) or to Articles 27 and 28 (profit and loss account) of this Directive.

3. References in Directives 78/660/EEC and 83/349/EEC to Articles 31 to 42 of Directive 78/660/EEC shall be deemed to be references to those Articles, taking account of Articles 35 to 39 of this Directive.

4. Where reference is made in the aforementioned provisions of Directive 78/660/EEC to balance sheet items for which this Directive makes no equivalent provision, such references shall be deemed to be references to the items in Article 4 of this Directive which include the assets and liabilities in question.

Article 2

1. The coordination measures prescribed by this Directive shall apply to

- (a) credit institutions within the meaning of the first indent of Article 1 of Directive 77/780/EEC which are companies or firms as defined in the second paragraph of Article 58 of the Treaty;
- (b) financial institutions having one of the legal forms referred to in Article 1 (1) of Directive 78/660/EEC which, on the basis of paragraph 2 of that Article, are not subject to that Directive.

For the purposes of this Directive 'credit institutions' shall also include financial institutions unless the context requires otherwise.

2. The Member States need not apply this Directive to:

- (a) the credit institutions listed in Article 2 (2) of Directive 77/780/EEC;
- (b) institutions of the same Member State which, as defined in Article 2 (4) (a) of Directive 77/780/EEC, are affiliated to a central body in that Member State. In that case, without prejudice to the application of this Directive to the central body, the whole constituted by the central body and its affiliated institutions must be the subject of consolidated accounts including an annual report which shall be drawn up, audited and published in accordance with this Directive;

(c) the following credit institutions:

- in Greece: ETEBA (National Investment Bank for Industrial Development) and Τράπεζα Επενδύσεων (Investment Bank),
- in Ireland: Industrial and Provident Societies,
- in the United Kingdom: Friendly Societies and Industrial and Provident Societies.

4. Without prejudice to Article 2 (3) of Directive 78/660/EEC and pending subsequent coordination, the Member States may:

- (a) in the case of the credit institutions referred to in Article 2 (1) (a) of this Directive which are not companies of any of the types listed in Article 1 (1) of Directive 78/660/EEC, lay down rules derogating from this Directive where derogating rules are necessary because of such institutions' legal form;
- (b) in the case of specialized credit institutions, lay down rules derogating from this Directive where derogating rules are necessary because of the special nature of such institutions' business.

Such derogating rules may provide only for adaptations to the layout, nomenclature, terminology and content of items in the balance sheet and the profit and loss account; they may not have the effect of permitting the institutions to which they apply to provide less information in their annual accounts than other institutions subject to this Directive.

The Member States shall inform the Commission of those credit institutions, possibly by category, within six months of the end of the period stipulated in Article 47 (2). They shall inform the Commission of the derogations laid down to that end.

These derogations shall be reviewed within 10 years of the notification of this Directive. The Commission shall, if appropriate, submit suitable proposals. It shall also submit

an interim report within five years of the notification of this Directive.

SECTION 2

GENERAL PROVISIONS CONCERNING THE BALANCE SHEET AND THE PROFIT AND LOSS ACCOUNT

Article 3

In the case of credit institutions the possibility of combining items pursuant to Article 4 (3) (a) or (b) of Directive 78/660/EEC shall be restricted to balance sheet and profit and loss account sub-items preceded by lower-case letters and shall be authorized only under the rules laid down by the Member States to that end.

SECTION 3

LAYOUT OF THE BALANCE SHEET

Article 4

The Member States shall prescribe the following layout for the balance sheet.

Assets

1. Cash in hand, balances with central banks and post office banks
2. Treasury bills and other bills eligible for refinancing with central banks:
 - (a) Treasury bills and similar securities
 - (b) Other bills eligible for refinancing with central banks (unless national law prescribes that such bills be shown under Assets items 3 and 4)
3. Loans and advances to credit institutions:
 - (a) repayable on demand
 - (b) other loans and advances
4. Loans and advances to customers
5. Debt securities including fixed-income securities:
 - (a) issued by public bodies
 - (b) issued by other borrowers, showing separately:
 - own-debt securities (unless national law requires their deduction from liabilities).
6. Shares and other variable-yield securities
7. Participating interests, showing separately:
 - participating interests in credit institutions (unless national law requires their disclosure in the notes on the accounts)
8. Shares in affiliated undertakings, showing separately:
 - shares in credit institutions (unless national law requires their disclosure in the notes on the accounts)
9. Intangible assets as described under Assets headings B and C.I of Article 9 of Directive 78/660/EEC, showing separately:
 - formation expenses, as defined by national law and in so far as national law permits their being shown as an asset (unless national law requires their disclosure in the notes on the accounts)
 - goodwill, to the extent that it was acquired for valuable consideration (unless national law requires its disclosure in the notes on the accounts)
10. Tangible assets as described under Assets heading C.II of Article 9 of Directive 78/660/EEC, showing separately:
 - land and buildings occupied by a credit institution for its own activities (unless national law requires their disclosure in the notes on the accounts)
11. Subscribed capital unpaid, showing separately:
 - called-up capital (unless national law provides for called-up capital to be included under liabilities, in which case capital called but not yet paid must be included either in this Assets item or in Assets item 14)
12. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value to the extent that national law permits their being shown in the balance sheet)
13. Other assets
14. Subscribed capital called but not paid (unless national law requires that called-up capital be shown under Assets item 11)
15. Prepayments and accrued income
16. Loss for the financial year (unless national law provides for its inclusion under Liabilities item 14)

Total assets

Liabilities

1. Amounts owed to credit institutions:
 - (a) repayable on demand
 - (b) with agreed maturity dates or periods of notice
2. Amounts owed to customers:
 - (a) savings deposits, showing separately:
 - those repayable on demand and those with agreed maturity dates or periods of notice where national law provides for such a breakdown (unless national law provides for such information to be given in the notes on the accounts)
 - (b) other debts
 - (ba) repayable on demand
 - (bb) with agreed maturity dates or periods of notice
3. Debts evidenced by certificates:
 - (a) debt securities in issue
 - (b) others
4. Other liabilities
5. Accruals and deferred income
6. Provisions for liabilities and charges:
 - (a) provisions for pensions and similar obligations
 - (b) provisions for taxation
 - (c) other provisions
7. Profit for the financial year (unless national law provides for its inclusion under Liabilities item 14)
8. Subordinated liabilities
9. Subscribed capital (unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately)
10. Share premium account
11. Reserves
12. Revaluation reserve
13. Profit or loss brought forward
14. Profit or loss for the financial year (unless national law requires that this item be shown under Assets item 16 or Liabilities item 7)

Total liabilities

Off-balance sheet items

1. Contingent liabilities, showing separately:
 - acceptances and endorsements
 - guarantees and assets pledged as collateral security
2. Commitments, showing separately:
 - commitments arising out of sale and repurchase transactions

Article 5

The following must be shown separately as sub-items of the items in question:

- claims, whether or not evidenced by certificates, on affiliated undertakings and included in Assets items 2 to 5,
- claims, whether or not evidenced by certificates, on undertakings with which a credit institution is linked by virtue of a participating interest and included in Assets items 2 to 5,
- liabilities, whether or not evidenced by certificates, to affiliated undertakings and included in Liabilities items 1, 2, 3 and 8.
- liabilities, whether or not evidenced by certificates, to undertakings with which a credit institution is linked by virtue of a participating interest and included in Liabilities items 1, 2, 3 and 8.

Article 6

1. Subordinated assets shall be shown separately as sub-items of the items of the layout and the sub-items created in accordance with Article 5.

2. Assets, whether or not evidenced by certificates, are subordinated if, in the event of winding up or bankruptcy, they are to be repaid only after the claims of other creditors have been met.

Article 7

The Member States may permit the disclosure of the information referred to in Articles 5 and 6, duly broken down into the various relevant items, in the notes on the accounts.

Article 8

1. Assets shall be shown under the relevant balance sheet headings even where the credit institution drawing up the

balance sheet has pledged them as security for its own liabilities or for those of third parties or has otherwise assigned them as security to third parties.

2. A credit institution shall not include in its balance sheet assets pledged or otherwise assigned to it as security unless such assets are in the form of cash in the hands of that credit institution.

Article 9

1. Where a loan has been granted by a syndicate consisting of a number of credit institutions, each credit institution participating in the syndicate shall disclose only that part of the total loan which it has itself funded.

2. If in the case of a syndicated loan such as described in paragraph 1 the amount of funds guaranteed by a credit institution exceeds the amount which it has made available, any additional guarantee portion shall be shown as a contingent liability (in Off-balance sheet item 1, second indent).

Article 10

1. Funds which a credit institution administers in its own name but on behalf of third parties must be shown in the balance sheet if the credit institution acquires legal title to the assets concerned. The total amount of such assets and liabilities shall be shown separately or in the notes on the accounts, broken down according to the various Assets and Liabilities items. However, the Member States may permit the disclosure of such funds off the balance sheet provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding-up of a credit institution (or similar proceedings).

2. Assets acquired in the name of and on behalf of third parties must not be shown in the balance sheet.

Article 11

Only those amounts which can at any time be withdrawn without notice or for which a maturity or period of notice of 24 hours or one working day has been agreed shall be regarded as repayable on demand.

Article 12

1. Sale and repurchase transactions shall mean transactions which involve the transfer by a credit institution or customer (the 'transferor') to another credit institution or customer (the 'transferee') of assets, for

example, bills, debts or transferable securities, subject to an agreement that the same assets will subsequently be transferred back to the transferor at a specified price.

2. If the transferee undertakes to return the assets on a date specified or to be specified by the transferor, the transaction in question shall be deemed to be a genuine sale and repurchase transaction.

3. If, however, the transferee is merely entitled to return the assets at the purchase price or for a different amount agreed in advance on a date specified or to be specified, the transaction in question shall be deemed to be a sale with an option to repurchase.

4. In the case of the sale and repurchase transactions referred to in paragraph 2, the assets transferred shall continue to appear in the transferor's balance sheet; the purchase price received by the transferor shall be shown as an amount owed to the transferee. In addition, the value of the assets transferred shall be disclosed in a note in the transferor's accounts. The transferee shall not be entitled to show the assets transferred in his balance sheet; the purchase price paid by the transferee shall be shown as an amount owed by the transferor.

5. In the case of the sale and repurchase transactions referred to in paragraph 3, however, the transferor shall not be entitled to show in his balance sheet the assets transferred; those items shall be shown as assets in the transferee's balance sheet. The transferor shall enter under Off-balance sheet item 2 an amount equal to the price agreed in the event of repurchase.

6. No forward exchange transactions, options, transactions involving the issue of debt securities with a commitment to repurchase all or part of the issue before maturity of any similar transactions shall be regarded as sale and repurchase transactions within the meaning of this Article.

SECTION 4

SPECIAL PROVISIONS RELATING TO CERTAIN BALANCE SHEET ITEMS

Article 13

Assets: Item 1 — Cash in hand, balances with central banks and post office banks

1. Cash in hand shall comprise legal tender including foreign notes and coins.

2. This item may include only balances with the central banks and post office banks of the country or countries in

which a credit institution is established. Such balances must be readily available at all times. Other claims on such bodies must be shown as loans and advances to credit institutions (Assets item 3) or as loans and advances to customers (Assets item 4).

Article 14

Assets: Item 2 — Treasury bills and other bills eligible for refinancing with central banks

1. This item shall comprise, under (a), treasury bills and similar securities, i. e. treasury bills, treasury certificates and similar debt instruments issued by public bodies which are eligible for refinancing with the central banks of the country or countries in which a credit institution is established. Those debt instruments issued by public bodies which fail to meet the above condition shall be shown under Assets sub-item 5 (a).

2. This item shall comprise, under (b), bills eligible for refinancing with central banks, i.e. all bills held in portfolio that were purchased from credit institutions or from customers to the extent that they are eligible, under national law, for refinancing with the central banks of the country or countries in which a credit institution is established.

Article 15

Assets: Item 3 — Loans and advances to credit institutions

1. Loans and advances to credit institutions shall comprise all loans and advances arising out of banking transactions to domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Loans and advances to undertakings which do not satisfy the above conditions shall be shown under Assets item 4.

Article 16

Assets: Item 4 — Loans and advances to customers

Loans and advances to customers shall comprise all types of assets in the form of claims on domestic and foreign customers other than credit institutions, regardless of their actual designations.

The only exception shall be loans and advances represented by debt securities or any other security, which must be shown under Assets item 5.

Article 17

Assets: Item 5 — Debt securities including fixed-income securities

1. This item shall comprise negotiable debt securities including fixed-income securities issued by credit institutions, by other undertakings or by public bodies; such securities issued by the latter, however, shall be included only if they are not to be shown under Assets item 2.

2. Securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities including fixed-income securities.

3. Only repurchased and negotiable own-debt securities may be included in sub-item 5 (b).

Article 18

Liabilities: Item 1 — Amounts owed to credit institutions

1. Amounts owed to credit institutions shall include all amounts arising out of banking transactions owed to other domestic or foreign credit institutions by the credit institution drawing up the balance sheet, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. For the purposes of this Article credit institutions shall comprise all undertakings on the list published in the *Official Journal of the European Communities* pursuant to Article 3 (7) of Directive 77/780/EEC, as well as central banks and official domestic and international banking organizations and all private and public undertakings

which are not established in the Community but which satisfy the definition in Article 1 of Directive 77/780/EEC.

Article 19

Liabilities: Item 2 — Amounts owed to customers

1. Amounts owed to customers shall include all amounts owed to creditors that are not credit institutions within the meaning of Article 18, regardless of their actual designations.

The only exception shall be liabilities represented by debt securities or by any other security, which must be shown under Liabilities item 3.

2. Only deposits which satisfy the conditions laid down in national law shall be treated as savings deposits.

3. Savings bonds shall be shown under the corresponding sub-item only if they are not represented by negotiable certificates.

Article 20

Liabilities: Item 3 — Debts evidenced by certificates

1. This item shall include both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts, '*bons de caisse*' and liabilities arising out of own acceptances and promissory notes.

2. Only acceptances which a credit institution has issued for its own refinancing and in respect of which it is the first party liable ('drawee') shall be treated as own acceptances.

Article 21

Liabilities: Item 8 — Subordinated liabilities

Where it has been contractually agreed that, in the event of winding up or of bankruptcy, liabilities, whether or not evidenced by certificates, are to be repaid only after the claims of all other creditors have been met, the liabilities in question shall be shown under this item.

Article 22

Liabilities: Item 9 — Subscribed capital

This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal

structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors.

Article 23

Liabilities: Item 11 — Reserves

This item shall comprise all the types of reserves listed in Article 9 of Directive 78/660/EEC under Liabilities item A.IV, as defined therein. The Member States may also prescribe other types of reserves if necessary for credit institutions the legal structures of which are not covered by Directive 78/660/EEC.

The types of reserve referred to in the first paragraph shall be shown separately, as sub-items of Liabilities item 11, in the balance sheets of the credit institutions concerned, with the exception of the revaluation reserve which shall be shown under item 12.

Article 24

Off-balance sheet: Item 1 — Contingent liabilities

This item shall comprise all transactions whereby an institution has underwritten the obligations of a third party.

Notes on accounts shall state the nature and amount of any type of contingent liability which is material in relation to an institution's activities.

Liabilities arising out of the endorsement of rediscounted bills shall be included in this item only if national law does not require otherwise. The same shall apply to acceptances other than own acceptances.

Sureties and assets pledged as collateral security shall include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, particularly in respect of sureties and irrevocable letters of credit.

Article 25

Off-balance sheet: Item 2 — Commitments

This item shall include every irrevocable commitment which could give rise to a risk.

Notes on accounts shall state the nature and amount of any type of commitment which is material in relation to an institution's activities.

Commitments arising out of sale and repurchase transactions shall include commitments entered into by a credit institution in the context of sale and repurchase transactions (on the basis of firm agreements to sell with options to repurchase) within the meaning of Article 12 (3).

SECTION 5

LAYOUT OF THE PROFIT AND LOSS ACCOUNT

Article 26

For the presentation of the profit and loss account, the Member States shall prescribe one or both of the layouts provided for in Articles 27 and 28. If a Member State prescribes both layouts it may allow undertakings to choose between them.

Article 27

Vertical layout

1. Interest receivable and similar income, showing separately that arising from fixed-income securities
2. Interest payable and similar charges
3. Income from securities:
 - (a) Income from shares and other variable-yield securities
 - (b) Income from participating interests
 - (c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income
8. General administrative expenses:
 - (a) Staff costs, showing separately:
 - wages and salaries
 - social security costs, with a separate indication of those relating to pensions
 - (b) Other administrative expenses
9. Value adjustments in respect of Assets items 9 and 10
10. Other operating charges

11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
15. Tax on profit or loss on ordinary activities
16. Profit or loss on ordinary activities after tax
17. Extraordinary income
18. Extraordinary charges
19. Extraordinary profit or loss
20. Tax on extraordinary profit or loss
21. Extraordinary profit or loss after tax
22. Other taxes not shown under the preceeding items
23. Profit or loss for the financial year

Article 28

Horizontal layout

A. Charges

1. Interest payable and similar charges
2. Commissions payable
3. Net loss on financial operations
4. General administrative expenses:
 - (a) Staff costs, showing separately:
 - wages and salaries
 - social security costs, with a separate indication of those relating to pensions
 - (b) Other administrative expenses
5. Value adjustments in respect of Assets items 9 and 10
6. Other operating charges

7. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
8. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
9. Tax on profit or loss on ordinary activities
10. Profit or loss on ordinary activities after tax
11. Extraordinary charges
12. Tax on extraordinary profit or loss
13. Extraordinary loss after tax
14. Other taxes not shown under the preceding items
15. Profit for the financial year

B. Income

1. Interest receivable and similar income, showing separately that arising from fixed-income securities
2. Income from securities:
 - (a) Income from shares and other variable-yield securities
 - (b) Income from participating interests
 - (c) Income from shares in affiliated undertakings
3. Commissions receivable
4. Net profit on financial operations
5. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
6. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
7. Other operating income
8. Profit or loss on ordinary activities after tax
9. Extraordinary income
10. Extraordinary profit after tax
11. Loss for the financial year

SECTION 6

SPECIAL PROVISIONS RELATING TO CERTAIN ITEMS IN THE PROFIT AND LOSS ACCOUNT

Article 29

Article 27, items 1 and 2 (vertical layout)

Article 28, items A 1 and B 1 (horizontal layout)

Interest receivable and similar income and interest payable and similar charges.

These items shall include all profits and losses arising out of banking activities, including:

- (1) all income from assets entered under Assets items 1 to 5 in the balance sheet, however calculated. Such income shall also include income arising from the spreading on a time basis of the discount on assets acquired at an amount below, and liabilities contracted at an amount above, the sum payable at maturity;
- (2) all charges arising out of liabilities entered under Liabilities items 1, 2, 3 and 8, however calculated. Such charges shall also include charges arising from the spreading on a time basis of the premium on assets acquired at an amount above, and liabilities contracted at an amount below, the sum payable at maturity;
- (3) income and charges resulting from covered forward contracts, spread over the actual duration of the contract and similar in nature to interest;
- (4) fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

Article 30

Article 27, item 3 (vertical layout)

Article 28, item B 2 (horizontal layout)

Income from shares and other variable-yield securities, from participating interests, and from shares in affiliated undertakings

This item shall comprise all dividends and other income from variable-yield securities, from participating interests and from shares in affiliated undertakings. Income from shares in investment companies shall also be included under this item.

Article 31

Article 27, items 4 and 5 (vertical layout)

Article 28, items A 2 and B 3 (horizontal layout)

Commissions receivable and commissions payable

Without prejudice to Article 29, commissions receivable shall include income in respect of all services supplied to third parties, and commissions payable shall include charges for services rendered by third parties, in particular

- commissions for guarantees, loans administration on behalf of other lenders and securities transactions on behalf of third parties,
- commissions and other charges and income in respect of payment transactions, account administration charges and commissions for the safe custody and administration of securities,
- commissions for foreign currency transactions and for the sale and purchase of coin and precious metals on behalf of third parties,
- commissions charged for brokerage services in connection with savings and insurance contracts and loans.

Article 32

Article 27, item 6 (vertical layout)

Article 28, item A 3 or item B 4 (horizontal layout)

Net profit or net loss on financial operations.

This item covers:

1. the net profit or loss on transactions in securities which are not held as financial fixed assets together with value adjustments and value re-adjustments on such securities, taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article; however, in those Member States which exercise the option provided for in Article 37, these net profits or losses and value adjustments and value re-adjustments shall be included only in so far as they relate to securities included in a trading portfolio;
2. the net profit or loss on exchange activities, without prejudice to Article 29, point 3;
3. the net profits and losses on other buying and selling operations involving financial instruments, including precious metals.

Article 33

Article 27, items 11 and 12 (vertical layout)

Article 28, items A 7 and B 5 (horizontal layout)

Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments**Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments.**

1. These items shall include, on the one hand, charges for value adjustments in respect of loans and advances to be shown under Assets items 3 and 4 and provisions for contingent liabilities and for commitments to be shown under Off-balance sheet items 1 and 2 and, on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.

2. In those Member States which exercise the option provided for in Article 37, this item shall also include the net profit or loss on transactions in securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities taking into account, where Article 36 (2) has been applied, the difference resulting from application of that article. The nomenclature of this item shall be adapted accordingly.

3. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

4. Value adjustments in respect of loans and advances to credit institutions, to customers, to undertakings with which a credit institution is linked by virtue of participating interests and to affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting-off pursuant to paragraph 3.

Article 34

Article 27, items 13 and 14 (vertical layout)

Article 28, items A 8 and B 5 (horizontal layout)

Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings**Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.**

1. These items shall include, on the one hand, charges for value adjustments in respect of assets shown in Assets items 5 to 8 and, on the other hand, all the amounts written back following earlier value adjustments, in so far as the charges and income relate to transferable securities held as financial fixed assets as defined in Article 35 (2), participating interests and shares in affiliated undertakings.

2. The Member States may permit the charges and income covered by these items to be set off against each other, so that only a net item (income or charge) is shown.

3. Value adjustments in respect of these transferable securities, participating interests and shares in affiliated undertakings shall be shown separately in the notes on the accounts where they are material. This provision need not be applied if a Member State permits setting off pursuant to paragraph 2.

SECTION 7

VALUATION RULES

Article 35

1. Assets items 9 and 10 must always be valued as fixed assets. The assets included in other balance sheet items shall be valued as fixed assets where they are intended for use on a continuing basis in the normal course of an undertakings's activities.

2. Where reference is made to financial fixed assets in Section 7 of Directive 78/660/EEC, this term shall in the case of credit institutions be taken to mean participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking's activities.

3. (a) Debt securities including fixed-income securities held as financial fixed assets shall be shown in the balance sheet at purchase price. The Member States may, however, require or permit such debt securities to be shown in the balance sheet at the amount repayable at maturity.

(b) Where the purchase price of such debt securities exceeds the amount repayable at maturity the amount of the difference must be charged to the profit and loss account. The Member States may, however, require or permit the amount of the difference to be written off in instalments so that it is completely written off by the time when the debt securities are repaid. The difference must be shown separately in the balance sheet or in the notes on the accounts.

(c) Where the purchase price of such debt securities is less than the amount repayable at maturity, the Member States may require or permit the amount of the difference to be released to income in instalments over the period remaining until repayment. The difference must be shown separately in the balance sheet or in the notes on the accounts.

Article 36

1. Where transferable securities which are not held as financial fixed assets are shown in the balance sheet at purchase price, credit institutions shall disclose in the notes on their accounts the difference between the purchase price and the higher market value of the balance sheet date.

2. The Member States may, however, require or permit those transferable securities to be shown in the balance sheet at the higher market value at the balance sheet date. The difference between the purchase price and the higher market value shall be disclosed in the notes on the accounts.

Article 37

1. Article 39 of Directive 78/660/EEC shall apply to the valuation of credit institutions' loans and advances, debt securities, shares and other variable-yield securities which are not held as financial fixed assets.

2. Pending subsequent coordination, however, the Member States may permit:

(a) loans and advances to credit institutions and customers (Assets items 3 and 4) and debt securities, shares and other variable-yield securities included in Assets items 5 and 6 which are neither held as financial fixed assets as defined in Article 35 (2) nor included in a trading portfolio to be shown at a value lower than that which would result from the application of Article 39 (1) of Directive 78/660/EEC, where that is required by the prudence dictated by the particular risks associated with banking. Nevertheless, the difference between the two values must not be more than 4 % of the total amount of the assets mentioned above after application of the aforementioned Article 39;

(b) that the lower value resulting from the application of subparagraph (a) be maintained until the credit institution decides to adjust it;

(c) where a Member State exercises the option provided for in subparagraph (a), neither Article 36 (1) of this Directive nor Article 40 (2) of Directive 78/660/EEC shall apply.

Article 38

1. Pending subsequent coordination, those Member States which exercise the option provided for in Article 37 must permit and those Member States which do not exercise that option may permit the introduction of a Liabilities item 6A entitled 'Fund for general banking risks'. That item shall include those amounts which a credit institution decides to put aside to cover such risks where that is required by the particular risks associated with banking.

2. The net balance of the increases and decreases of the 'Fund for general banking risks' must be shown separately in the profit and loss account.

Article 39

1. Assets and liabilities denominated in foreign currency shall be translated at the spot rate of exchange ruling on the balance sheet date. The Member States may, however, require or permit assets held as financial fixed assets and tangible and intangible assets, not covered or not specifically covered in either the spot or forward markets, to be translated at the rates ruling on the dates of their acquisition.

2. Uncompleted forward and spot exchange transactions shall be translated at the spot rates of exchange ruling on the balance sheet date.

The Member States may, however, require forward transactions to be translated at the forward rate ruling on the balance sheet date.

3. Without prejudice to Article 29 (3), the differences between the book values of the assets, liabilities and forward transactions and the amounts produced by translation in accordance with paragraphs 1 and 2 shall be shown in the profit and loss account. The Member States may, however, require or permit differences produced by translation in accordance with paragraphs 1 and 2 to be included, in whole or in part, in reserves not available for distribution, where they arise on assets held as financial fixed assets, on tangible and intangible assets and on any transactions undertaken to cover those assets.

4. The Member States may provide that positive translation differences arising out of forward transactions, assets or liabilities not covered or not specifically covered by other forward transactions, or by assets or liabilities shall not be shown in the profit and loss account.

5. If a method specified in Article 59 of Directive 78/660/EEC is used, the Member States may provide that any translation differences shall be transferred, in whole or

in part, directly to reserves. Positive and negative translation differences transferred to reserves shall be shown separately in the balance sheet or in the notes on the accounts.

6. The Member States may require or permit translation differences arising on consolidation out of the re-translation of an affiliated undertaking's capital and reserves or the share of a participating interest's capital and reserves at the beginning of the accounting period to be included, in whole or in part, in consolidated reserves, together with the translation differences arising on the translation of any transactions undertaken to cover that capital and those reserves.

7. The Member States may require or permit the income and expenditure of affiliated undertakings and participating interests to be translated on consolidation at the average rates of exchange ruling during the accounting period.

SECTION 8

CONTENTS OF THE NOTES ON THE ACCOUNTS

Article 40

1. Article 43 (1) of Directive 78/660/EEC shall apply, subject to Article 37 of this Directive and to the following provisions.

2. In addition to the information required under Article 43 (1) (5) of Directive 78/660/EEC, credit institutions shall disclose the following information relating to Liabilities item 8 (Subordinated liabilities):

(a) in respect of each borrowing which exceeds 10 % of the total amount of the subordinated liabilities:

(i) the amount of the borrowing, the currency in which it is denominated, the rate of interest and the maturity date or the fact that it is a perpetual issue;

(ii) whether there are any circumstances in which early repayment is required;

(iii) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability and the terms of any such provisions.

(b) an overall indication of the rules governing other borrowings.

3. (a) In place of the information required under Article 43 (1) (6) of Directive 78/660/EEC, credit

institutions shall in the notes on their accounts state separately for each of the Assets items 3 (b) and 4 and the Liabilities items 1 (b), 2 (a), 2 (b) (bb) and 3 (b) the amounts of those loans and advances and liabilities on the basis of their remaining maturity as follows:

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

For Assets item 4, loans and advances on call and at short notice must also be shown.

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

However, for five years after the date referred to in Article 47 (2) the Member States may require or permit the listing by maturity of the assets and liabilities referred to in this Article to be based on the originally agreed maturity or period of notice. In that event, where a credit institution has acquired an existing loan not evidenced by a certificate, the Member States shall require classification of that loan to be based on the remaining maturity as at the date on which it was acquired. For the purposes of this subparagraph, the originally agreed maturity for loans shall be the period between the date of first drawing and the date of repayment; the period of notice shall be deemed to be the period between the date on which notice is given and the date on which repayment is to be made; if loans and advances or liabilities are redeemable by instalments, the agreed maturity shall be the period between the date on which such loans and advances or liabilities arose and the date on which the last instalment falls due. Credit institutions shall also indicate for the balance sheet items referred to in this subparagraph what proportion of those assets and liabilities will become due within one year of the balance sheet date.

- (b) Credit institutions shall, in respect of Assets item 5 (Debt securities including fixed-income securities) and Liabilities item 3 (a) (Debt securities in issue), indicate what proportion of assets and liabilities will become due within one year of the balance sheet date.
- (c) The Member States may require the information referred to in subparagraphs (a) and (b) to be given in the balance sheet.

- (d) Credit institutions shall give particulars of the assets which they have pledged as security for their own liabilities or for those of third parties (including contingent liabilities); the particulars should be in sufficient detail to indicate for each Liabilities item and for each Off-balance sheet item the total amount of the assets pledged as security.

4. Where credit institutions have to provide the information referred to in Article 43 (1) (7) of Directive 78/660/EEC in Off-balance sheet items, such information need not be repeated in the notes on the accounts.

5. In place of the information required under Article 43 (1) (8) of Directive 78/660/EEC, a credit institution shall indicate in the notes on its accounts the proportion of its income relating to items 1, 3, 4, 6 and 7 of Article 27 or to items B 1, B 2, B 3, B 4 and B 7 of Article 28 by geographical markets, in so far as, taking account of the manner in which the credit institution is organized, those markets differ substantially from one another. Article 45 (1) (b) of Directive 78/660/EEC shall apply.

6. The reference in Article 43 (1) (9) of Directive 78/660/EEC to Article 23 (6) of that Directive shall be deemed to be a reference to Article 27 (8) or Article 28 (A 4) of this Directive.

7. By way of derogation from Article 43 (1) (13) of Directive 78/660/EEC, credit institutions need disclose only the amounts of advances and credits granted to the members of their administrative, managerial and supervisory bodies, and the commitments entered into on their behalf by way of guarantees of any kind. That information must be given in the form of a total for each category.

Article 41

1. The information prescribed in Article 15 (3) of Directive 78/660/EEC must be given in respect of assets held as fixed assets as defined in Article 35 of this Directive. The obligation to show value adjustments separately shall not, however, apply where a Member State has permitted set-offs between value adjustments pursuant to Article 34 (2) of this Directive. In that event value adjustments may be combined with other items.

2. The Member States shall require credit institutions to give the following information as well in the notes on their accounts:

- (a) a breakdown of the transferable securities shown under Assets items 5 to 8 into listed and unlisted securities;

- (b) a breakdown of the transferable securities shown under Assets items 5 and 6 into securities which, pursuant to Article 35, are or are not held as financial fixed assets and the criterion used to distinguish between the two categories of transferable securities;
- (c) the value of leasing transactions, apportioned between the relevant balance sheet items;
- (d) a breakdown of Assets item 13, Liabilities item 4, items 10 and 18 in the vertical layout or A 6 and A 11 in the horizontal layout and items 7 and 17 in the vertical layout or B 7 and B 9 in the horizontal layout in the profit and loss account into their main component amounts, where such amounts are important for the purpose of assessing the annual accounts, as well as explanations of their nature and amount;
- (e) the charges paid on account of subordinated liabilities by a credit institution in the year under review;
- (f) the fact that an institution provides management and agency services to third parties where the scale of business of that kind is material in relation to the institution's activities as a whole;
- (g) the aggregate amounts of assets and of liabilities denominated in foreign currencies, translated into the currency in which the annual accounts are drawn up;
- (h) a statement of the types of unmatured forward transactions outstanding at the balance sheet date indicating, in particular, for each type of transaction, whether they are made to a material extent for the purpose of hedging the effects of fluctuations in interest rates, exchange rates and market prices, and whether they are made to a material extent for dealing purposes. These types of transaction shall include all those in connection with which the income or expenditure is to be included in Article 27, item 6, Article 28, items A 3 or B 4 or Article 29 (3), for example, foreign currencies, precious metals, transferable securities, certificates of deposit and other assets.

SECTION 9

PROVISIONS RELATING TO CONSOLIDATED ACCOUNTS

Article 42

1. Credit institutions shall draw up consolidated accounts and consolidated annual reports in accordance with Directive 83/349/EEC, in so far as this section does not provide otherwise.
2. Insofar as a Member State does not have recourse to Article 5 of Directive 83/349/EEC, paragraph 1 of this

Article shall also apply to parent undertakings the sole object of which is to acquire holdings in subsidiary undertakings and to manage such holdings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly credit institutions.

Article 43

1. Directive 83/349/EEC shall apply, subject to Article 1 of this Directive and paragraph 2 of this Article.
2. (a) Articles 4, 6, 15 and 40 of Directive 83/349/EEC shall not apply.
- (b) The Member States may make application of Article 7 of Directive 83/349/EEC subject to the following additional conditions:
 - the parent undertaking must have declared that it guarantees the commitments entered into by the exempted undertaking; the existence of that declaration shall be disclosed in the accounts of the exempted undertaking;
 - the parent undertaking must be a credit institution within the meaning of Article 2 (1) (a) of this Directive.
- (c) The information referred to in the first two indents of Article 9 (2) of Directive 83/349/EEC, namely:
 - the amount of the fixed assets and
 - the net turnover
 shall be replaced by:
 - the sum of items 1, 3, 4, 6 and 7 in Article 27 or B 1, B 2, B 3, B 4 and B 7 in Article 28 of this Directive.
- (d) Where, as a result of applying Article 13 (3) (c) of Directive 83/349/EEC, a subsidiary undertaking which is a credit institution is not included in consolidated accounts but where the shares of that undertaking are temporarily held as a result of a financial assistance operation with a view to the reorganization or rescue of the undertaking in question, the annual accounts of that undertaking shall be attached to the consolidated accounts and additional information shall be given in the notes on the accounts concerning the nature and terms of the financial assistance operation.

- (e) A Member State may also apply Article 12 of Directive 83/349/EEC to two or more credit institutions which are not connected as described in Article 1 (1) or (2) of that Directive but are managed on a unified basis other than pursuant to a

contract or provisions in the memorandum or articles of association.

- (f) Article 14 of Directive 83/349/EEC, with the exception of paragraph 2, shall apply subject to the following provision.

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

- (g) For the purposes of the layout of consolidated accounts:

— Articles 3, 5 to 26 and 29 to 34 of this Directive shall apply;

— the reference in Article 17 of Directive 83/349/EEC to Article 15 (3) of Directive 78/660/EEC shall apply to the assets deemed to be fixed assets pursuant to Article 35 of this Directive.

- (h) Article 34 of Directive 83/349/EEC shall apply in respect of the contents of the notes on consolidated accounts, subject to Articles 40 and 41 of this Directive.

SECTION 10

PUBLICATION

Article 44

1. The duly approved annual accounts of credit institutions, together with the annual reports and the reports by the persons responsible for auditing the accounts shall be published as laid down by national law in accordance with Article 3 of Directive 68/151/EEC ⁽¹⁾.

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

2. Paragraph 1 shall also apply to the duly approved consolidated accounts, the consolidated annual reports and the reports by the persons responsible for auditing the accounts.

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

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

5. The Member States shall provide for appropriate sanctions for failure to comply with the publication rules referred to in this Article.

SECTION 11

AUDITING

Article 45

A Member State need not apply Article 2 (1) (b) (iii) of Directive 84/253/EEC ⁽²⁾ to public savings banks where the statutory auditing of the documents of those undertakings referred to in Article 1 (1) of that Directive is reserved to an existing supervisory body for those savings banks at the time of the entry into force of this Directive and where the person responsible complies at least with the conditions laid down in Article 3 to 9 of Directive 84/253/EEC.

SECTION 12

FINAL PROVISIONS

Article 46

The Contact Committee established in accordance with Article 52 of Directive 78/660/EEC shall, when meeting as constituted appropriately, also have the following functions:

⁽¹⁾ OJ No L 65, 14. 3. 1968, p. 8.

⁽²⁾ OJ No L 126, 12. 5. 1984, p. 20.

- (a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;
- (b) to advise the Commission, if necessary, on additions or amendments to this Directive.

Article 47

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 31 December 1990. They shall forthwith inform the Commission thereof.

2. A Member State may provide that the provisions referred to in paragraph 1 shall first apply to annual accounts and consolidated accounts for financial years beginning on 1 January 1993 or during the calendar year 1993.

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

Article 48

Five years after the date referred to in Article 47 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise all those provisions of this Directive which provide for Member State options, together with Articles 2 (1), 27, 28 and 41, in the light of the experience acquired in applying this Directive and in particular of the aims of greater transparency and harmonization of the provisions referred to by this Directive.

Article 49

This Directive is addressed to the Member States.

Done at Brussels, 8 December 1986.

For the Council

The President

N. LAWSON

COUNCIL DECISION

of 11 December 1986

on the conclusion of an Agreement in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984 for the period starting on 27 June 1986

(86/636/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 155 (2) (b) and Article 167 (3) thereof,

Having regard to the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea, on fishing off the coast of Equatorial Guinea⁽¹⁾, signed at Malabo on 15 June 1984,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 12 of the Agreement on fishing off the coast of Equatorial Guinea, the Community and the Republic of Equatorial Guinea conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the first three-year period of application of the Agreement;

Whereas, as a result of those negotiations, an Agreement amending the Agreement was initialled on 25 June 1986;

Whereas, under that Agreement, fishermen from the enlarged Community retain the fishing opportunities open to them in the waters under the sovereignty or jurisdiction of the Republic of Equatorial Guinea;

Whereas under the terms of Article 155 (2) (b) of the Act of Accession, it is for the Council to determine the procedures appropriate to take into consideration all or part of the interests of the Canary Islands when it adopts decisions, case by case, particularly with a view to the conclusion of fisheries agreements with third countries; whereas, in the case in point, the procedures in question should be determined;

Whereas, in order to avoid any interruption in the fishing activities of Community vessels, it is indispensable that the draft Agreement in question be approved as soon as

possible; for this reason, the two parties initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled draft Agreement from the date of expiry of the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea approved on 28 June 1984; whereas the Agreement in the form of an Exchange of Letters should be concluded subject to a definitive decision under Article 43 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984 for the period starting on 27 June 1986, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

With a view to taking into consideration the interests of the Canary Islands, the Agreement referred to in Article 1 and, in so far as is necessary for its application, the provisions of the common fisheries policy relating to the conservation and management of fishery resources shall also apply to vessels which sail under the flag of Spain, which are recorded on a permanent basis in the registers of the competent authorities at local level ('registros de base') in the Canary Islands, under the conditions defined in Note 6 to Annex I to Council Regulation (EEC) No 570/86 of 24 February 1986 concerning the definition of the concept of 'originating products' and methods of administrative cooperation in trade between the customs territory of the Community, Ceuta and Melilla and the Canary Islands⁽²⁾.

⁽¹⁾ OJ No L 188, 16. 7. 1984, p. 1.

⁽²⁾ OJ No L 56, 1. 3. 1986, p. 1.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Brussels, 11 December 1986.

For the Council

The President

K. CLARKE

AGREEMENT

in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984, for the period starting on 27 June 1986

A. Letter from the Government of Equatorial Guinea

Sir,

With reference to the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea, initialled on 25 June 1986, amending the Agreement on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984, I have the honour to inform you that the Government of the Republic of Equatorial Guinea is ready to apply this Agreement on a provisional basis, with effect from 27 June 1986, until its entry into force in accordance with Article 2 of the said Agreement, provided that the European Economic Community is disposed to do the same.

This is on the understanding that payment of a first instalment equal to 40 % of the financial compensation specified in the Agreement is effected by 31 December 1986.

I should be obliged if you would confirm the European Economic Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

*For the Government of
the Republic of Equatorial Guinea*

B. Letter from the European Economic Community

Sir,

I am in receipt of your letter of today's date, which reads as follows:

'With reference to the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea, initialled on 25 June 1986, amending the Agreement on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984, I have the honour to inform you that the Government of the Republic of Equatorial Guinea is ready to apply this Agreement on a provisional basis, with effect from 27 June 1986, until its entry into force in accordance with Article 2 of the said Agreement, provided that the European Community is disposed to do the same.

This is on the understanding that payment of a first instalment equal to 40 % of the financial compensation specified in the Agreement is effected by 31 December 1986.

I should be obliged if you would confirm the European Economic Community's agreement to such a provisional application.'

I have the honour to confirm the European Economic Community's agreement to this provisional application of the Agreement.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of the Council
of the European Communities*

AGREEMENT

amending the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea, signed at Malabo on 15 June 1984

Article 1

The Annex referred to in Article 4 and the Protocol referred to in Article 6 of the Agreement between the European Economic Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea, signed on 15 June 1984 shall be replaced by the texts annexed to this Agreement.

Article 2

This Agreement, drawn up in duplicate in the Danish, German, Greek, English, French, Italian, Dutch, Portuguese and Spanish languages, each of these texts being equally authentic, shall enter into force on the date of signature.

It shall be applicable from 27 June 1986 to 26 June 1989.

ANNEX

CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES IN EQUATORIAL GUINEA'S FISHING ZONE BY VESSELS FLYING THE FLAGS OF MEMBER STATES OF THE COMMUNITY

A. Licence application and issuing formalities

The procedure for applications for, and issue of, the licences enabling vessels flying the flags of the Member States of the Community to fish in Equatorial Guinea's fishing zone shall be as follows:

The relevant Community authorities shall present to the Ministry of Water, Forestry and Reafforestation of the Republic of Equatorial Guinea, via the Delegation of the Commission in Equatorial Guinea, an application for each vessel that wishes to fish under this Agreement, at least 30 days before the date of commencement of the period of validity requested.

The applications shall be made on the forms provided for that purpose by the Government of the Republic of Equatorial Guinea, a specimen of which is annexed hereto.

Each licence application shall be accompanied by proof of payment for the period of the licence's validity into the account referred to in Article 3 of the Protocol. Once signed, the licences shall be issued by the Equatorial Guinea authorities to the shipowners or their representatives. Licences must be held on board at all times.

1. Provisions applicable to trawlers

(a) The licences for trawlers shall be issued for a year, six months or three months. They shall be renewable.

(b) The fees for annual licences shall be set as follows:

- 55 ECU per grt per year for fin fish trawlers;
- 75 ECU per grt per year for shrimp trawlers.

The fees for shorter periods shall be set *pro rata temporis*.

2. Provisions applicable to tuna vessels

(a) The fees shall be set at 20 ECU per tonne caught within Equatorial Guinea's fishing zone.

(b) Applications for licences for tuna vessels shall be issued following payment to the Ministry of Water, Forestry and Reafforestation of a lump sum of 1 000 ECU a year for each tuna seiner and 200 ECU a year for each pole-and-line tuna vessel, equivalent to the fees for:

- 50 tonnes of tuna caught per year in the case of seiners,
- 10 tonnes of tuna caught a year in the case of pole-and-line vessels.

A provisional statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch statements made by each shipowner and forwarded simultaneously to the Equatorial Guinea authorities and the Commission departments responsible. The corresponding amount shall be paid by each shipowner to the Ministry of Water, Forestry and Reafforestation no later than 31 March of the following year in accordance with the procedure for payment set out in Article 3 of the Protocol.

The final statement of the fees due shall be drawn up by the Commission following verification of the volume of catch by a specialist scientific body in the region. The final statement shall be communicated to the Equatorial Guinea authorities and notified to the shipowners, who shall have 30 days to discharge their financial obligations.

However, if the amount of the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursable.

B. Statement of catch

1. Vessels authorized to fish in Equatorial Guinea's waters under the Agreement shall be obliged to make to the Ministry of Water, Forestry and Reafforestation a statement of their catch and send a copy of the statement to the Commission using the procedures set out below:

- trawlers and pole-and-line tuna vessels shall make out a statement according to the specimen annexed hereto, the statements being drawn up monthly and presented at least once every quarter,
 - tuna seiners shall communicate the results of each haul to the radio station at Annobon (call sign 3 CA-24).
2. Any Community vessel fishing in Equatorial Guinea's fishing zone shall allow on board, and assist in the accomplishment of his duties, any official of Equatorial Guinea responsible for inspection and monitoring. Officials should not remain on board any longer than the time required to make spot checks on the catch and carry out any other inspection concerning fishing activities.
3. Should this provision not be adhered to, the Government of Equatorial Guinea reserves the right to suspend the licence of the offending vessel until the formality has been complied with.

C. Landing of catch

Trawlers authorized to fish in the Equatorial Guinea zone shall make a contribution to fish supplies for the local population by landing:

- fin fish trawlers: 6 000 kilograms of fish per vessel per year,
- shrimp trawlers: 4 000 kilograms of fish per vessel per year,

at a price set by the Ministry of Water, Forestry and Reafforestation by mutual agreement with the shipowner on the basis of local market prices and in consultation with the Delegation of the Commission of the European Communities in Equatorial Guinea.

Should the licence be renewed, the fee may be accordingly reduced in relation to the value of the fish landed.

Landings may be made individually or collectively at the most convenient port of Equatorial Guinea.

Any failure to comply with the obligation to land catches shall render the offender liable to the following sanctions on the part of the Equatorial Guinea authorities:

- fine of 1 000 ECU per tonne not landed and
- withdrawal or non-renewal of the licence of the vessel concerned or another vessel belonging to the same shipowner.

D. Signing on of seamen

1. Owners of trawlers who have been issued fishing licences under the Agreement shall contribute to the on-the-job vocational training of Equatorial Guinea nationals subject to the conditions and limits set out below:

- one fisherman on vessels of up to 300 grt,
- two fishermen on vessels of more than 300 grt.

2. The wages of these fishermen, to be borne by the shipowners, shall be fixed by mutual agreement between the shipowners and the Equatorial Guinea authorities. Should Equatorial Guinea not have any candidates to put forward, this obligation shall take the form of a lump sum payment equivalent to 30 % of the fishermen's wages.

This sum will be used for the training of fishermen in Equatorial Guinea and is to be paid into an account specified by the Equatorial Guinea authorities.

E. Fishing zones

The freezer trawlers referred to in Article 1 of the Protocol shall be authorized to carry out fishing activities beyond the six-mile limit.

(Article 42 of the Fisheries Law)

- [illegible]

*Signed
The Master.*

REPUBLIC OF EQUATORIAL GUINEA

APPLICATIONS FOR A FISHING LICENCE

1. Valid from: to:
2. Name of vessel:
3. Name of shipowner:
4. Port and registration number:
5. Type of fishing:
6. Authorized mesh size:
7. Length of vessel:
8. Width of vessel:
9. Gross registered tonnage:
10. Hold capacity:
11. Engine rating:
12. Type of construction:
13. Usual number of seamen aboard:
14. Radio/electrical equipment:
15. Master's name:

The above information is the sole responsibility of the shipowner or his representative.

Date of application:

PROTOCOL

Establishing fishing rights and financial compensation for the period from 27 June 1986
to 26 June 1989

Article 1

From 27 June 1986, for a period of three years, the fishing authorizations granted pursuant to Article 2 of the Agreement shall be as follows:

1. Freezer trawlers: 9 000 per month, annual average
2. Freezer tuna seiners: 48 vessels
3. Pole-and-line tuna vessels: 11 vessels.

Article 2

The financial compensation referred to in Article 6 of the Agreement shall be, for the period referred to in Article 1, 5 115 000 ECU, payable as follows: 40 % before 31 December 1986 and the balance in two equal annual instalments on 31 January 1988 and 31 January 1989 at the latest.

Article 3

The use to which the compensation provided for in Article 2 is put shall be the sole responsibility of the Government of the Republic of Equatorial Guinea.

The compensation funds shall be paid into Account No 4280 of the Treasury of Equatorial Guinea, opened at the 'Banque des États d'Afrique Centrale' at Malabo. Any changes shall be communicated to the Commission of the European Communities.

Article 4

At the request of the Community, the fishing rights referred to in Article 1 (1) may be increased by successive instalments of 1 000 grt a month on annual average. In this case, the financial compensation referred to in Article 2 shall be increased proportionately *pro rata temporis*.

Article 5

The Community shall also contribute during the period of application of this Agreement a sum of 200 000 ECU towards the financing of an Equatorial Guinea scientific and technical programme to improve information on the fishery resources within the exclusive economic zone of Equatorial Guinea. One of the aims of the programme shall be to undertake a study that will improve knowledge of shrimp resources.

This sum shall be made available to the Government of the Republic of Equatorial Guinea and paid into the account referred to in Article 3. Half of this sum shall be paid before 31 December 1986, payment of the balance being made in relation to progress on the study.

The competent Equatorial Guinea authorities shall send to the Commission a brief report on the utilization of the funds.

Article 6

The Community shall make it easier for nationals of Equatorial Guinea to find places in establishments in its Member States and shall provide for that purpose, during the period referred to in Article 1, 10 study and training grants of a maximum duration of four years in subjects connected with fisheries. One of these grants will be used to cover expenses for participation in international meetings on fisheries.

Article 7

Should the Community fail to make the payments provided for in this Protocol, the Agreement on fishing shall be suspended.

COUNCIL DECISION

of 11 December 1986

on the conclusion of an Agreement in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Guinea on fishing off the coast of Guinea, signed at Conakry on 7 February 1983, for the period starting on 8 August 1986

(86/637/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 155 (2) (b) and Article 167 (3) thereof,

Having regard to the Agreement between the European Economic Community and the Government of the Revolutionary People's Republic of Guinea on fishing off the coast of Guinea ⁽¹⁾, signed at Conakry on 7 February 1983, and extended by Decision 86/95/EEC ⁽²⁾ for a period of six months starting on 8 February 1986,

Having regard to the proposal from the Commission,

Whereas, pursuant to the second paragraph of Article 15 of the Agreement on fishing off the coast of Guinea, the Community and the Republic of Guinea conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the first three-year period of application of the Agreement;

Whereas, as a result of those negotiations, an Agreement amending the Fisheries Agreement was initialled on 12 July 1986;

Whereas, under that Agreement, fishermen from the enlarged Community retain and extend the fishing opportunities open to them in the waters under the sovereignty or jurisdiction of the Republic of Guinea;

Whereas, under the terms of Article 155 (2) (b) of the Act of Accession, it is for the Council to determine the procedures appropriate to take into consideration all or part of the interests of the Canary Islands when it adopts decisions, case by case, particularly with a view to the conclusion of fisheries agreements with third countries; whereas in the case in point, the procedure in question should be determined;

Whereas, in order to avoid any interruption in the fishing activities of Community vessels, it is indispensable that the Agreement in question be approved as soon as possible; for this reason, the two parties initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Agreement from the date of expiry of the interim arrangement laid down by the Agreement in the form of an Exchange of Letters approved by Decision 86/95/EEC ⁽¹⁾; whereas the Agreement in the form of an Exchange of Letters should be concluded provisionally, pending a final decision to be taken on the basis of Article 43 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Guinea on fishing off the coast of Guinea, signed at Conakry on 7 February 1983, for the period starting on 8 August 1986 is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

With a view to taking into consideration the interests of the Canary Islands, the Agreement referred to in Article 1 and in so far as is necessary for its application, the provisions of the common fisheries policy relating to the conservation and management of fishery resources shall also apply to vessels which sail under the flag of Spain, which are recorded on a permanent basis in the registers of the competent authorities at local level ('registros de base') in the Canary Islands, under the conditions defined in Note 6 to Annex I to Council Regulation (EEC) No 570/86 of 24 February 1986 concerning the definition of the concept of 'originating products' and methods of administrative cooperation in trade between the customs territory of the Community, Ceuta and Melilla and the Canary Island ⁽³⁾.

⁽¹⁾ OJ No L 111, 27. 4. 1983, p. 1.

⁽²⁾ OJ No L 80, 25. 3. 1986, p. 52.

⁽³⁾ OJ No L 56, 1. 3. 1986, p. 1.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Brussels, 11 December 1986.

For the Council

The President

K. CLARKE

AGREEMENT

in the form of an Exchange of Letters concerning the provisional application of the Agreement amending the Agreement between the European Economic Community and the Government of the Republic of Guinea on fishing off the coast of Guinea, signed at Conakry on 7 February 1983, for the period starting on 8 August 1986

A. Letter from the Government of Guinea

Sir,

With reference to the Agreement between the European Economic Community and the Government of the Republic of Guinea, initialled on 12 July 1986, amending the Agreement on fishing off the coast of Guinea, signed at Conakry on 7 February 1983, I have the honour to inform you that the Government of Guinea is ready to apply this Agreement on a provisional basis, with effect from 8 August 1986, until its entry into force in accordance with Article 2 of the said Agreement, provided that the European Economic Community is disposed to do the same.

This is on the understanding that payment of a first instalment equal to one third of the final compensation specified in the Agreement is effected by 31 December 1986.

I should be obliged if you would confirm the European Economic Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

*For the Government
of the Republic of Guinea*

B. Letter from the European Economic Community

Sir,

I am in receipt of your letter of today's date, which reads as follows:

'With reference to the Agreement between the European Economic Community and the Government of the Republic of Guinea, initialled on 12 July 1986, amending the Agreement on fishing off the coast of Guinea, signed at Conakry on 7 February 1983, I have the honour to inform you that the Government of Guinea is ready to apply this Agreement on a provisional basis, with effect from 8 August 1986, until its entry into force in accordance with Article 2 of the said Agreement, provided that the European Economic Community is disposed to do the same.

This is on the understanding that payment of a first instalment equal to one third of the final compensation specified in the Agreement is effected by 31 December 1986.

I should be obliged if you would confirm the European Economic Community's agreement to such provisional application.'

I have the honour to confirm the European Economic Community's agreement to this provisional application of the Agreement.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of
the Council of the European Communities*

AGREEMENT

**between the European Economic Community and the Government of the Republic of Guinea
amending the Agreement between the European Economic Community and the Government of the
Revolutionary People's Republic of Guinea on fishing of the coast of Guinea, signed at Conakry on
7 February 1983**

Article 1

The Agreement between the European Economic Community and the Government of the Republic of Guinea on fishing off the coast of Guinea, signed on 7 February 1983, shall be amended as follows:

- (1) In the title and text of the Agreement the term 'Revolutionary People's Republic of Guinea' shall be replaced by 'Republic of Guinea';
- (2) (This amendment is not relevant to the English text);
- (3) Article 8 (3) shall be replaced by the following:
'The financial compensation shall be used solely to finance projects and services relating to fishing';

(4) Annex I, referred to in Articles 2 and 5 of the Agreement, and annexes to it, shall be replaced by the text annexed hereto;

(5) The Protocol referred to in Article 8 of the Agreement shall be replaced by the text annexed hereto.

Article 2

1. This Agreement, drawn up in duplicate in the Danish, German, Greek, English, French, Italian, Dutch, Portuguese and Spanish languages, each of these texts being equally authentic, shall enter into force on the date of signature.

2. It shall apply from 8 August 1986.

ANNEX I

CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES IN GUINEA'S FISHING ZONE BY
COMMUNITY VESSELS

A. Licence application and issuing formalities

The procedure for applications for, and issue of, the licences enabling Community vessels to fish in Guinea's fishing zone shall be as follows:

The relevant Community authorities shall present to the Office of the Secretary of State for Fisheries of the Republic of Guinea, via the Delegation of the Commission in Guinea, an application for each vessel that wishes to fish under this Agreement, at least 10 days before the date of commencement of the period of validity requested.

The applications shall be made on the forms provided for that purpose by the Government of the Republic of Guinea, a specimen of which is annexed hereto.

Each licence application shall be accompanied by proof of payment for the period of the licence's validity.

Licences must be held on board at all times.

I. Provisions applicable to trawlers

1. Before receiving a licence, each vessel must be presented at the port of Conakry for inspection in accordance with the rules and regulations in force. Should the licence be renewed in the same calendar year, vessels shall be exempt from inspection.

2. Each vessel must be represented by a factor approved by the Office of the Secretary of State for Fisheries.

3. The licence fees shall be equivalent to the following annual amounts:

- 110 ECU/grt for fin fish trawlers, or 250 kg/grt of fish landed at a Guinean port,
- 130 ECU/grt for cephalopod vessels,
- 133 ECU/grt for shrimp trawlers and trawlers taking mixed catches including over 30 % of shrimps by weight.

These fees shall be paid in the currency indicated by the Guinean authorities and fixed on a *pro rata* basis relating to the period of validity of the licence.

The chosen fee is indicated by the shipowner when introducing the licence application.

Deliveries of fish shall be made according to a programme established when the licences are issued, at least every other month, each delivery being declared to the Guinean authorities at least five days in advance.

II. Provisions applicable to tuna vessels and longliners

1. The fees shall be set at 20 ECU per tonne caught within Guinea's fishing zone.

2. Applications for licences for tuna vessels and longliners shall be issued following payment to the Office of the Secretary of State for Fisheries of a lump sum of 1 000 ECU a year for each tuna seiner, 200 ECU a year for each pole-and-line tuna vessel and 200 ECU a year for each longliner, equivalent to the fees for:

- 50 tonnes of tuna caught per year in the case of seiners,
- 10 tonnes of tuna caught per year in the case of pole-and-line vessels,
- 10 tonnes of swordfish caught per year in the case of longliners.

A provisional statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch statements made by the shipowners and forwarded simultaneously to the Guinean authorities and the Commission departments responsible. The corresponding amount shall be paid by the shipowners to the Office of the Secretary of State for Fisheries no later than 31 March of the following year.

The final statement of the fees due shall be drawn up by the Commission following verification of the volume of catch by a specialist scientific body in the region. The final statement shall be communicated to the Guinean authorities and notified to the shipowners, who shall have 30 days to discharge their financial obligations.

However, if the amount of the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursable.

B. Statement of catch

All vessels authorized to fish in Guinea's waters under the Agreement shall be obliged to forward to the Office of the Secretary of State for Fisheries, via the Commission delegation at Conakry, a statement of their catch made out according to the specimen in Annex II to the Agreement.

These statements of catch must be drawn up for each month and presented at least once every quarter.

C. Signing on of seamen

Shipowners who have been issued fishing licences under the Agreement shall contribute to the on-the-job vocational training of Guinean nationals subject to the conditions and limits set out below:

1. Each trawler owner shall undertake to employ:

- two fishermen, including one fisherman/observer, on vessels of up to 300 grt and on all cephalopod vessels,
- a number, including one observer/fisherman, equivalent to 25 % of the fishermen on board vessels of more than 300 grt.

2. Six Guinean seamen shall be signed on permanently for the fleet of tuna seiners.

In the case of the pole-and-line tuna vessels, eight Guinean seamen shall be signed on for the tuna fishing season in Guinean waters. There may not, however, be more than one Guinean seaman per vessel.

These obligations may instead take the form of an annual lump sum equivalent to the seamen's wages; this sum will be used for the training of Guinean fishermen.

3. The seamen's wages, set in accordance with Guinean scales, and other forms of remuneration shall be borne by the shipowners.

D. Fishing zones

The fishing zones accessible to Community vessels shall comprise all waters under Guinea jurisdiction beyond:

- (1) Three nautical miles as regards shrimp vessels not exceeding 135 grt;
- (2) Six nautical miles as regards shrimp vessels of between 135 and 300 grt;
- (3) Six nautical miles as regards cephalopod vessels during the first year's application of the current Protocol.

At the end of this period specific provisions on access for cephalopod vessels may be adopted by the Joint Committee.
- (4) 12 nautical miles as regards shrimp vessels exceeding 300 grt;
- (5) 15 nautical miles as regards fin fish trawlers.

E. Meshes authorized

1. The mesh authorized for the trawl body (mesh fully extended) shall be:

- (a) 60 mm for fin fish vessels;
- (b) 40 mm for cephalopod vessels;
- (c) 25 mm for shrimp vessels.

2. These mesh sizes apply under Guinean regulations to all ships flying the Guinean or any other flag and may be changed in the light of recommendations formulated by international scientific organizations.

F. Inspection and monitoring of fishing activities

Any Community vessel fishing in Guinea's fishing zone shall allow on board, and assist in the accomplishment of his duties, any official of Guinea responsible for inspection and monitoring.

G. Penalties

Infringements shall be penalized as follows:

- (1) payment of a fine of 500 000 to 1 500 000 Guinean francs, payable in ECU, for non-compliance with mesh size or fishing zones;
- (2) non-renewal of fishing licence for failure to supply statements of catch;
- (3) payment of a fine of 1 000 ECU per tonne of fish not landed.

Specimen provided for in A I ⁽¹⁾

SECRETARIAT OF STATE FOR FISHERIES

REPUBLIC OF GUINEA

DIRECTORATE-GENERAL OF FISHERIES

Labour — Justice — Solidarity

PARTICULARS TO BE FURNISHED IN SUPPORT OF AN APPLICATION FOR A FISHING LICENCE

Applicant

Name

Occupation or style of firm

Registered office

Subscribed capital

Address

Vessels for which licence is sought:

1.

2.

3.

4.

5.

Name and address of Master

Validity of licence applied for

Vessel

Name

Registration No

Call sign

Date and place of construction

Nationality (flag)

Length: 1. o.a.: 1. b.p.

Breadth: 1. o.a. 2. moulded breadth

⁽¹⁾ The application must be submitted on a form in French.

Gross registered tonnage:

Net registered tonnage:

Engine type and rating:

Port of registry:

Crew:

Type of fishing:

Payment formula (fin fish vessels):

A. *Trawling*

Length of trawl

Opening

Mesh size in the body

Mesh size in the wings

B. *Tuna fishing*

Number of lines

Length of net

Number of bait tanks

Volume of bait tanks

Live baits

Purse seine

Is the vessel a freezer vessel?

If so, state:

— total refrigerating power

— freezing capacity

— storage capacity

Technical remarks and opinion of the Director of Fisheries:

.....
.....
.....
.....

PROTOCOL

establishing fishing rights and financial compensation for the period from 8 August 1986 to 7 August 1989

Article 1

From 8 August 1986, for a period of three years, the fishing authorizations granted pursuant to Article 2 of the Agreement shall be as follows:

1. Trawlers — 12 000 (twelve thousand) grt per month, annual average
2. Freezer tuna seiners — 45 vessels
3. Wet pole-and-line tuna vessels — 25 vessels
4. Longliners — 6 vessels

Article 2

1. The financial compensation referred to in Article 8 of the Agreement shall be, for the period referred to in Article 1, 8 600 000 (eight million six hundred thousand) ECU, payable in three annual instalments.
2. The use to which this compensation is put shall be the sole responsibility of the Government of the Republic of Guinea.
3. The compensation shall be paid into an account opened at a financial institution or any other body designated by the Government of the Republic of Guinea.

Article 3

At the request of the Community, the fishing rights referred to in Article 1(1) may be increased by successive instalments of 1 000 grt a month on annual average. In this case, the financial compensation referred to in Article 2 shall be increased proportionately *pro rata temporis*.

Article 4

1. The Community shall also contribute during the period referred to in Article 1 up to 350 000 (three hundred and fifty thousand) ECU towards the financing of Guinean scientific and technical programmes (equipment, infrastructure, etc.) to improve information on the fishery resources within the exclusive economic zone of Guinea.
2. The competent Guinean authorities shall send to the Commission a report on the utilization of the funds.
3. The Community's contribution to the scientific and technical programmes shall be paid on each occasion into an account specified by the Office of the Secretary of State for Fisheries.

Article 5

The Community shall make it easier for nationals of Guinea to find places in establishments in its Member States or in the ACP States and shall provide for that purpose, during the period referred to in Article 1, 11 (eleven) three-year study and training grants in the various scientific, technical and economic subjects connected with fisheries.

Two of these three-year grants, equivalent to a sum of no more than 55 000 (fifty-five thousand) ECU may be used to finance study trips and cover the expenses of participation by officials of the Office of the Secretary of State for Fisheries in conferences and seminars held in the Member States and the ACP States.

Article 6

Should the Community fail to make the payments provided for in this Protocol, the Agreement on fishing may be suspended.