

# Official Journal

## of the European Communities

ISSN 0378 - 6978

L 226

Volume 32

3 August 1989

English edition

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## COUNCIL

## COUNCIL DIRECTIVE

of 18 July 1989

amending with regard to European emission standards for cars below 1,4 litres, Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles

(89/458/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the first programme of action of the European Communities on the protection of the environment, approved by the Council on 22 November 1973, called for account to be taken of the latest scientific advances in combating atmospheric pollution caused by gases emitted from motor vehicles and for Directives adopted previously to be amended accordingly;

Whereas the third programme of action provides for additional efforts to be made to reduce considerably the present level of emissions of pollutants from motor vehicles;

Whereas Directive 70/220/EEC <sup>(4)</sup> as last amended by Directive 88/436/EEC <sup>(5)</sup> lays down the limit values for carbon monoxide and unburnt hydrocarbon emissions from such engines; whereas these limit values were first reduced by Directive 74/290/EEC <sup>(6)</sup> and supplemented, in accordance with Directive 77/102/EEC <sup>(7)</sup>, by limit values for permissible emissions of nitrogen oxides; whereas the limit values for these three pollutants were successively reduced by Directives 78/665/EEC <sup>(8)</sup>, 83/351/EEC <sup>(9)</sup> and 88/76/EEC <sup>(10)</sup> and limit values for particulate pollutant emissions from diesel engines introduced by Directive 88/436/EEC;

Whereas the work undertaken by the Commission in that sphere has shown that the Community has available, or is currently perfecting, technologies which allow a further reduction of the limit values in question for all engine sizes;

Whereas a particular effort should be made to promote clean technologies as regards motor vehicles in the context of the research programme for the development of new technologies;

<sup>(1)</sup> OJ No C 56, 27. 2. 1988, p. 9 and OJ No C 134, 31. 5. 1989, p. 8.

<sup>(2)</sup> OJ No C 262, 10. 10. 1988, p. 89 and OJ No C 120, 16. 5. 1989.

<sup>(3)</sup> OJ No C 208, 8. 8. 1988, p. 7.

<sup>(4)</sup> OJ No L 76, 6. 4. 1970, p. 1.

<sup>(5)</sup> OJ No L 214, 6. 8. 1988, p. 1.

<sup>(6)</sup> OJ No L 159, 15. 6. 1974, p. 61.

<sup>(7)</sup> OJ No L 32, 3. 2. 1977, p. 32.

<sup>(8)</sup> OJ No L 223, 14. 8. 1978, p. 48.

<sup>(9)</sup> OJ No L 197, 20. 7. 1983, p. 1.

<sup>(10)</sup> OJ No L 36, 9. 2. 1988, p. 1.

Whereas in order to allow the European environment to benefit to the maximum from these provisions and at the same time ensure the unity of the market, it appears necessary to implement more stringent European standards based on total harmonization which are at least as severe as those in the United States of America and as those voted by the European Parliament; whereas these limit values are based on the current test procedures, laid down in Directive 70/220/EEC, and will need to be reconsidered when supplemented by a test representing driving conditions in extra-urban areas;

Whereas in view of the major role played by pollutant emissions from motor vehicles and their contribution to the gases responsible for the greenhouse effect, their emissions of CO<sub>2</sub> in particular must be stabilized and subsequently reduced in line with the decision of the Governing Council of the United Nations Environment Programme (UNEP) Governing Council of 24 May 1989, and in particular point 11 (d) thereof,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

Annex I of Directive 70/220/EEC is hereby amended as follows:

1. In item 5.2.1.1.4., the bottom line of the table is replaced by the following:

'C < 1,400      19      5      —'.

2. In item 7.1.1.1., the bottom line of the table is replaced by the following:

'C < 1,400      22      5,8      —'.

#### Article 2

1. From 1 January 1990 no Member State may, on grounds relating to air pollution by emission from an engine having a capacity of less than 1 400 cm<sup>3</sup>:

- refuse to grant EEC type approval, to issue the document referred to in the last indent of Article 10 (1) of Directive 70/156/EEC<sup>(1)</sup> as last amended by Directive 87/403/EEC<sup>(2)</sup> or to grant national type approval for a type of motor vehicle,
- or
- prohibit the initial entry into services of motor vehicles,

where emissions from this type of motor vehicle or from such vehicles meet the provisions of Directive 70/220/EEC, as amended by this Directive.

<sup>(1)</sup> OJ No L 42, 23. 2. 1970, p. 1.

<sup>(2)</sup> OJ No L 220, 8. 8. 1987, p. 44.

2. From 1 July 1992, in respect of types of vehicle equipped with an engine having a capacity of less than 1 400 cm<sup>3</sup>, Member States:

- may no longer issue the document provided for in the last indent of Article 10 (1) of Directive 70/156/EEC for a type of motor vehicle,
- shall refuse national type approval for a type of motor vehicle,

the emissions from which do not meet the requirements of the Annexes to Directive 70/220/EEC, as amended by this Directive.

3. From 31 December 1992, in respect of vehicles equipped with an engine having a capacity of less than 1 400 cm<sup>3</sup>, Member States shall prohibit the initial entry into service of vehicles the emissions from which do not meet the requirements of the Annexes to Directive 70/220/EEC, as amended by this Directive.

#### Article 3

Member States may make provision for tax incentives for the vehicles covered by this Directive. Such incentives shall meet the provisions of the Treaty as well as the following conditions:

- they shall apply to all domestic car production and to vehicles imported for marketing in a Member State and fitted with equipment allowing the European standards to be met in 1992 to be satisfied ahead of time,
- they shall cease upon the date set in Article 2 (3) for the compulsory entry into force of the emission values for new vehicles,
- they shall be of a value, for each type of vehicle, substantially lower than the actual cost of the equipment fitted to meet the values set and of its fitting on the vehicle.

The Commission shall be informed of any plans to introduce or amend the tax incentives referred to in the first subparagraph in sufficient time to allow it to submit comments.

#### Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary in order to comply with this Directive before 1 January 1990. They shall forthwith inform the Commission thereof.

#### Article 5

Before the end of 1990, the Council shall, acting by a qualified majority on a proposal from the Commission decide to

- also align, for vehicles equipped with an engine having a capacity equal to or more than 1 400 cm<sup>3</sup>, the dates and standards set in this Directive on the basis of an improved European test procedure including an extra-urban driving sequence,
- incorporate into this improved European test procedure the limit values laid down in this Directive for vehicles equipped with an engine having a capacity of less than 1 400 cm<sup>3</sup>.

*Article 6*

Acting by a qualified majority on a proposal from the Commission, which will take account of the results of the

work in progress on the greenhouse effect, the Council shall decide on measures designed to limit CO<sub>2</sub> emissions from motor vehicles.

*Article 7*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*

*The President*

R. DUMAS

## COUNCIL DIRECTIVE

of 18 July 1989

on the approximation of the laws of the Member States relating to the tread depth of tyres of certain categories of motor vehicles and their trailers

(89/459/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the Council and the Representatives of the Governments of the Member States, meeting within the Council on 19 December 1984, adopted a resolution on road safety <sup>(4)</sup> inviting the Commission to submit proposals in this connection to the Council in this context;

Whereas rules on the minimum tread depth of tyres, despite being an individual and specific problem, are among the objectives and the work scheduled for 1986, which was Road Safety Year in the Community;

Whereas the European Parliament passed a resolution on 18 February 1986 on the Commission's programme for Road Safety Year 1986 <sup>(5)</sup> which included the tread depth of tyres as one of the Commission provisions to be adopted as soon as possible;

Whereas provisions of this kind must ensure a higher degree of safety;

Whereas national requirements governing minimum tread depth vary from one Member State to another and whereas such differences cause problems with regard to compliance with road law by motorists who use their cars in the territories of different Member States;

Whereas harmonization of these requirements will facilitate the free movement of vehicles and individual travel between Member States and help to remove barriers to trade and distortions of competition,

*Article 1*

Member States shall take all necessary steps to ensure that, throughout their service life on the road, tyres for category M1, N1, 01 and 02 vehicles as defined in Annex I to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers <sup>(6)</sup>, as last amended by Directive 87/403/EEC <sup>(7)</sup>, have a tread depth in the main grooves of the tread surface of at least 1,6 mm.

'Main grooves' means the broad grooves in the central part of the tread surface, which covers about three-quarters of the width of the tread surface.

*Article 2*

After consulting the Commission, Member States may exclude from the scope of this Directive, or make special provisions for, vehicles which are declared to be of historical interest and, originally equipped with tyres, whether pneumatic or other, which, when new, had a tread depth of less than 1,6 mm, provided that they are equipped with such tyres, are used in exceptional conditions and are never, or hardly ever, used on public roads.

*Article 3*

After consulting the Commission, Member States shall adopt and publish before 1 June 1991 the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1992. Member States shall inform the Commission of the texts of the provisions they adopt to implement this Directive.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

For the Council  
The President  
R. DUMAS

<sup>(1)</sup> OJ No C 279, 17. 10. 1987, p. 5.

<sup>(2)</sup> OJ No C 47, 27. 2. 1989, p. 185.

<sup>(3)</sup> OJ No C 80, 28. 3. 1988, p. 22.

<sup>(4)</sup> OJ No C 341, 24. 12. 1984, p. 1.

<sup>(5)</sup> OJ No C 68, 24. 3. 1986, p. 35.

<sup>(6)</sup> OJ No L 42, 23. 2. 1970, p. 1.

<sup>(7)</sup> OJ No L 220, 8. 8. 1987, p. 44.

## COUNCIL DIRECTIVE

of 18 July 1989

amending, with a view to fixing an expiry date for the derogations accorded to Ireland and the United Kingdom, Directive 85/3/EEC on the weights, dimensions and certain other technical characteristics of certain road vehicles

(89/460/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to Council Directive 85/3/EEC of 19 December 1984 on the weights, dimensions and certain other technical characteristics of certain road vehicles <sup>(1)</sup>, as last amended by Directive 89/338/EEC <sup>(2)</sup>, and in particular Article 8 (6) thereof,

Having regard to the proposal from the Commission <sup>(3)</sup>,

Having regard to the opinion of the European Parliament <sup>(4)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(5)</sup>,

Whereas Directive 85/3/EEC lays down maximum authorized weights, dimensions and certain other technical characteristics of certain road vehicles;

Whereas the state of certain portions of the road network in Ireland and the United Kingdom did not make it possible for these Member States to apply, at the time of the adoption of Directive 85/3/EEC and its subsequent amendments, all the provisions of the Directive;

Whereas the application of some of these provisions in those Member States was therefore temporarily deferred;

Whereas on 4 February 1987 the Commission transmitted a first report to the Council concerning the derogations accorded to Ireland and the United Kingdom under Article 8 (1) and (3) of Directive 85/3/EEC and indicating that the bridges in Ireland and the United Kingdom which were built according to the design standards in force in those Member States are sufficiently strong to carry the maximum authorized weights laid down in the said Directive;

Whereas, on the basis of the first report and information since provided, the Commission submitted a second report concerning the said derogations on 16 January 1989;

Whereas this report concludes that there will be no further justification for the derogations accorded by Article 8 (1) and (3) once the bridges of insufficient weight-bearing capacity have been identified and those on principal routes have been strengthened;

Whereas the information provided in the abovementioned report also leads to the conclusion that the derogations granted to Ireland and the United Kingdom under Article 8 (5) of Directive 85/3/EEC would no longer be justified as from that moment;

Whereas it will be possible for the works necessary to bring about this objective to be completed by 31 December 1998;

Whereas bridges which still require strengthening after 31 December 1998 could be covered by local weight restrictions;

Whereas, once safety considerations are met in this way, the full application of the provisions of Directive 85/3/EEC throughout the whole territory of the Community will have beneficial effects on the operation of transport facilities,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Article 8 of Directive 85/3/EEC is replaced by the following:

*'Article 8*

Article 3 shall not apply in Ireland and the United Kingdom until 31 December 1998:

— as regards the standards referred to in points 2.2, 2.3.1, 2.3.3, 2.4 and 3.3.2 of Annex I:

— with the exception of the articulated vehicles referred to in point 2.2.2 where:

- (i) the total laden weight does not exceed 38 tonnes;
- (ii) the weight on any tri-axle at the spacing specified in point 3.3.2 of Annex I does not exceed 22,5 tonnes;

<sup>(1)</sup> OJ No L 2, 3. 1. 1985, p. 14.

<sup>(2)</sup> OJ No L 142, 25. 5. 1989, p. 3.

<sup>(3)</sup> OJ No C 45, 24. 2. 1989, p. 14.

<sup>(4)</sup> OJ No C 120, 16. 5. 1989.

<sup>(5)</sup> Opinion delivered on 31 May 1989 (not yet published in the Official Journal).

- with the exception of the vehicles referred to in points 2.2.3, 2.2.4, 2.3 and 2.4, where the total laden weight does not exceed:
  - (i) 35 tonnes for the vehicles referred to in points 2.2.3 and 2.2.4;
  - (ii) 17 tonnes for the vehicles referred to in point 2.3.1;
  - (iii) 30 tonnes for the vehicles referred to in point 2.3.3, subject to compliance with the conditions specified in that point and in point 4.3;
  - (iv) 27 tonnes for the vehicles referred to in point 2.4,
- as regards the standard referred to in point 3.4 of Annex I, with the exception of the vehicles referred to in point 2.2, 2.3 and 2.4 of Annex I, where the weight per driving axle does not exceed 10,5 tonnes.

*Article 2*

After consulting the Commission, Ireland and the United Kingdom shall take the measures necessary to comply with this Directive and shall inform the Commission thereof.

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*  
*The President*  
R. DUMAS



## COUNCIL DIRECTIVE

of 18 July 1989

amending, with a view to fixing certain maximum authorized dimensions for articulated vehicles, Directive 85/3/EEC on the weights, dimensions and certain other technical characteristics of certain road vehicles

(89/461/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, in order to make combined vehicles more productive, manufacturers are proposing a maximum usable volume within the constraints imposed by Directive 85/3/EEC <sup>(4)</sup>, as last amended by Directive 89/460/EEC <sup>(5)</sup>;

Whereas this increase in the usable volume involves a reduction in the space reserved for the driver and in the space between the tractive unit and the semi-trailer by means of special coupling devices;

Whereas there is a consequent deterioration in the comfort and safety of the driver's working area;

Whereas the current standards should be improved so as to lead to a better balance between the rational and economic use of commercial road vehicles and the requirements of road safety by making tractive units for semi-trailers more interchangeable while ensuring that drivers have enough room,

HAS ADOPTED THIS DIRECTIVE:

## Article 1

Council Directive 85/3/EEC is hereby amended as follows:

## 1. The following Article is inserted:

## 'Article 4a

Articulated vehicles put into circulation before 1 January 1991 which do not comply with the new specifications contained in points 1.6 and 4.4 of Annex I shall be

deemed to comply with such specifications for the purposes of Article 3 (1) if they do not exceed the total length of 15,50 metres.'

## 2. Point 1.1 of Annex I is replaced by the following:

## '1.1 Maximum length

— motor vehicle	12,00 metres
— trailer	12,00 metres
— articulated vehicle	16,50 metres
— road train	18,00 metres
— articulated bus	18,00 metres'

## 3. The following point is inserted in Annex I:

'1.6. Maximum distance between the axis of the fifth-wheel king pin and the rear of a semi-trailer 12,00 metres'.

## 4. The following point is inserted in Annex I:

## '4.4. Semi-trailers:

The distance measured horizontally between the axis of the fifth-wheel king pin and any point at the front of the semi-trailer must not exceed 2,04 metres'.

## Article 2

After consulting the Commission, the Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1991.

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

## Article 3

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

For the Council

The President

R. DUMAS

<sup>(1)</sup> OJ No C 214, 16. 8. 1988, p. 1.

<sup>(2)</sup> OJ No C 47, 27. 2. 1989, p. 157.

<sup>(3)</sup> OJ No C 71, 29. 3. 1989, p. 17.

<sup>(4)</sup> OJ No L 2, 3. 1. 1985, p. 14.

<sup>(5)</sup> See page 5 of this Official Journal.

## COUNCIL DIRECTIVE

of 18 July 1989

amending Directive 78/546/EEC on statistical returns in respect of carriage of goods by road,  
as part of regional statistics

(89/462/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 213 thereof,

Having regard to the draft Directive submitted by the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Directive 78/546/EEC <sup>(4)</sup>, as last amended by the 1985 Act of Accession, must be amended to take account of changes in the common transport policy;

Whereas that Directive provides only for annual data supplied up to 12 months after the end of the reference year; whereas these data have to be compared with data for other means of transport which are compiled every month or every quarter; whereas certain quarterly data are therefore needed;

Whereas the said Directive provides only for the compilation of statistical data for national and international traffic; whereas it is evident that cross-trade is a form of traffic which will develop in the future; whereas it is therefore appropriate to compile statistical returns on this traffic;

Whereas all Member States have data on the movements of tractor vehicles but not all have data on the movements of trailer units; whereas the gathering of data should therefore be standardized on the basis of the movements of tractor vehicles, but without affecting the legal and administrative arrangements applicable to haulage licences;

Whereas Directive 78/546/EEC does not enumerate some East European countries individually in the list of third countries but simply groups them together under 'other European countries'; whereas it has become clear that these countries should be listed individually so that comparisons can be made with other means of transport and so that the flow of goods to and from these countries can be monitored more effectively;

Whereas the list of data which can be required by the Member States on the movement of goods within the Community will be strictly limited as from 1 January 1988; whereas this measure is part of a policy which has been adopted by the Council and the Commission and is designed to reduce as far as possible the administrative documentation required in Community trade; whereas the collection of statistical data at frontiers within the Community should be dispensed with, except where this is provided for by Community rules;

Whereas it is appropriate to apply Article 9 of Directive 78/546/EEC to the amended system for compiling statistical data;

Whereas the Kingdom of Denmark at the moment supplies the Commission with statistical data on the international carriage of goods, as provided for by Directive 78/546/EEC, by relying on statistics relating to foreign trade; whereas that Member State is in the process of establishing a statistical system which is specific to the carriage of goods by road; whereas therefore it is desirable that application in Denmark of the provisions of this Directive concerning the compilation of statistics on cross-trade should be postponed,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 78/546/EEC is hereby amended as follows:

1. The following is added to Article 1:

'(c) between two other Member States or between another Member State and a non-member State (hereinafter referred to as "cross-trade").'

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

'1. Each Member State shall compile statistical data on carriage as referred to in Article 1 by vehicles registered in its territory. The transport parameters shall be determined by the tractor vehicle. If, in a coupled combination of vehicles, the tractor vehicle and the trailer unit are registered in different countries, the complete vehicle shall be deemed to be registered in the country where the tractor vehicle is registered.'

3. The introductory phrase of Article 3 (2) is replaced by the following:

'2. The statistical data shall be broken down under the following headings:'.

<sup>(1)</sup> OJ No C 4, 8. 1. 1988, p. 4.

<sup>(2)</sup> OJ No C 167, 27. 6. 1988, p. 425.

<sup>(3)</sup> OJ No C 134, 24. 5. 1988, p. 7.

<sup>(4)</sup> OJ No L 168, 26. 6. 1978, p. 29.

4. The introductory phrase of Article 3 (2) (b) is replaced by the following:
- '(b) for international transport and cross-trade, expressed in terms of tonnes and tonne-kilometres.'
5. Article 3 (4) is replaced by the following:
- '4. Member States shall forward to the Commission the statistical data specified in this Article in accordance with the specimen tables set out in Annex IV.'
6. Article 4 is replaced by the following:
- 'Article 4*
- When determining the method to be used for compiling statistical data on international transport and cross-trade, Member States shall refrain from carrying out all formalities at frontiers between Member States.'
7. The following subparagraph is added to Article 5 (1):
- 'However, the data for the C tables shall be compiled for the first time for 1990.'
8. Article 5 (2) is replaced by the following:
- '2. Member States shall send the Commission the A, B and C5/C6 tables set out in Annex IV before the end of the year following the reference year and shall send the Commission the C1, C2, C3 and C4 tables set out in Annex IV no later than five months after the end of the reference period.'
9. Article 5 (3) is replaced by the following:
- '3. The Commission shall communicate to Member States the results of the surveys together with any other appropriate information it may have no later than:
- six months from the date on which A, B and C5/C6 tables were last sent,
  - three months from the date on which C1, C2, C3 and C4 tables were last sent.'
10. Article 6 (2) is replaced by the following:
- '2. When determining the method to be used for compiling their data, Member States shall take the steps necessary to obtain sufficient results regarding the tonnage carried in national transport, international transport and cross-trade. They shall provide the Commission with information each year on the non-response rate and, in the form of standard deviations or confidence intervals, on the reliability of the results. They shall in addition report to it on the method used in calculating the figures relating to the transport services provided, expressed in tonne-kilometres.'
11. Article 7 is replaced by the following:
- 'Article 7*
- The Commission shall publish appropriate statistical results.'
12. Article 8 is replaced by the following:
- 'Article 8*
- Before 1 January 1992, the Commission shall submit a report to the Council on experience acquired in the work carried out pursuant to this Directive.
- In so doing, the Commission shall also give an opinion on whether, in the light of the development of the common transport policy, the scope of the surveys defined in Article 1, the statistical data referred to in Article 3 and the breakdown of data in Annexes II and III are still appropriate.'
13. The following second paragraph is added to Article 9:
- 'This system shall also apply during the first three years of the amended system for compiling statistics, from 1990.'
14. The following words are inserted after 'Finland' in the list of third countries in Annex III:
- 'Soviet Union  
Poland  
Hungary  
Romania  
Bulgaria'.
15. The tables in the Annex to this Directive are added to Annex IV.
- Article 2*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1990.
- They shall forthwith inform the Commission thereof.
2. However, the date given in paragraph 1 is replaced by 1 January 1993 in the case of Denmark as regards the compilation of statistics on cross-trade.
- Article 3*
- This Directive is addressed to the Member States.
- Done at Brussels, 18 July 1989.
- For the Council*  
*The President*  
R. DUMAS

## ANNEX

## TABLES TO BE ADDED TO ANNEX IV TO DIRECTIVE 78/546/EEC

## ROAD

TABLE C1

(quarterly)

National and international traffic, according to country and type of carriage

(Tonnes)

Country	Own account	Hire or reward	Total
A. National			
International <sup>(1)</sup> :			
B. Received from			
01			
02			
...			
...			
C. Dispatched to			
01			
02			
...			
...			
Totals:			
EUR (B and C)			
State-trading countries (B and C)			
Third countries (B and C)			
B			
C			
A + B + C			
B + C			
<sup>(1)</sup> Annex III.			

## ROAD

TABLE C2

(quarterly)

National and international traffic, according to country and type of carriage

(Tonne-kilometres)

Country	Own account	Hire or reward	Total
A. National			
International <sup>(1)</sup> :			
B. Received from			
01			
...			
12			
EUR			
C. Dispatched to			
01			
...			
12			
EUR			
Total A + B + C			
Total B + C			
<sup>(1)</sup> Member States.			

## ROAD

TABLE C3

(quarterly)

Cross-trade, according to country and type of carriage

(Tonnes)

Country of		Own account	Hire or reward	Total
Loading	Unloading			
Cross-trade				
01	02			
	03			
	04			
	05			
	...			
	Total 01			
02	01			
	03			
	04			
	05			
	...			
	Total 02			
...	...			
Total	01			
	02			
	03			
	04			
	05			
	...			
	Total			

Totals <sup>(1)</sup>:

EUR

State-trading countries

Third countries

Total

<sup>(1)</sup> Insert the countries of loading/unloading in the columns.

## ROAD

TABLE C4

(quarterly)

Cross-trade, according to country and type of carriage

*(Tonne-kilometres)*

Country of		Own account	Hire or reward	Total
Loading	Unloading			
Cross-trade (limited to Member States)				
01	02			
	03			
	04			
	05			
	...			
	12			
	Total 01			
02	01			
	03			
	04			
	05			
	...			
	12			
	Total 02			
... Total	...			
	01			
	02			
	03			
	04			
	05			
	...			
	12			
	Total			

## ROAD

TABLE C5/C6

(C5: Own account; C6: Hire or reward)

(annually)

Cross-trade, according to country and group of goods

(Tonnes)

Country of		Group of goods <sup>(1)</sup>					
Loading	Unloading	01	02	...		24	Total
01	Cross-trade						
	02						
	03						
	04						
	05						
	...						
	Total 01						
02	01						
	03						
	04						
	05						
	...						
	Total 02						
Total	...						
	01						
	02						
	03						
	04						
	05						
	...						
	Total						

Totals <sup>(2)</sup>:

EUR

State-trading countries

Third countries

Total

<sup>(1)</sup> Annex I..<sup>(2)</sup> Insert the countries of loading/unloading in the columns.

## COUNCIL DIRECTIVE

of 18 July 1989

amending Directive 83/416/EEC concerning the authorization of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States

(89/463/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas Directive 83/416/EEC <sup>(3)</sup>, as last amended by Directive 86/216/EEC <sup>(4)</sup>, establishes a Community procedure for authorizing scheduled inter-regional air services between Member States;

Whereas this initiative represents a significant step towards the completion of the internal market;

Whereas the system set up by the aforementioned Directive is of an experimental nature and Article 13 of the Directive therefore provides for the Council to review the operation of the Directive before 1 July 1986 on the basis of reports furnished by the Commission;

Whereas experience has shown that only a few services have been authorized in accordance with the Directive and that it would therefore be desirable to give air carriers greater scope to develop markets and thereby contribute to the evolution of the intra-Community network;

Whereas common rules should promote the development of direct services between the various regions in the Community rather than indirect services;

Whereas a direct service between two airports should not be rejected when an air service between neighbouring airports exists;

Whereas the potential traffic from some regional airports is small but viable services can be operated from such airports when combined with services to other regional airports in the Community, with consequent energy and cost savings;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a Joint Declaration by the Ministers for Foreign Affairs of the two Member States and such arrangements have yet to come into operation;

Whereas Directive 83/416/EEC should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 83/416/EEC is hereby amended as follows:

## 1. Article 1 shall read as follows:

*'Article 1*

1. This Directive shall apply to procedures for authorizing those scheduled inter-regional air services, for the development of internal Community air transport for the carriage:

- of passengers, or
- of passengers in combination with mail and/or cargo,

on journeys which both originate and end in the European territories of the Member States and which are operated between two airports in the Community which are open to international scheduled traffic of category 2 and 2, 2 and 3 or 3 and 3 respectively. The classification of airports is contained in Annex A.

2. Notwithstanding the provisions of Article 1 (4) of Council Decision 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air-service routes between Member States <sup>(1)</sup>, Article 2 (b) and Articles 3 and 4 of that Decision shall apply to services authorized in accordance with this Directive and operated with aircraft of more than 70 passenger seats.

<sup>(1)</sup> OJ No L 374, 31. 12. 1987, p. 19.

## 2. The second subparagraph of Article 3 (2) is deleted.

## 3. Point (c) of Article 6 (1) is deleted.

<sup>(1)</sup> OJ No C 13, 18. 1. 1988, p. 183.

<sup>(2)</sup> OJ No C 105, 21. 4. 1987, p. 4.

<sup>(3)</sup> OJ No L 237, 26. 8. 1983, p. 19.

<sup>(4)</sup> OJ No L 152, 6. 6. 1986, p. 47.



4. Article 13 is replaced by the following:

*'Article 13*

The Council shall decide on the revision of this Directive by 30 June 1990, on the basis of a Commission proposal to be submitted by 1 November 1989.'

*Article 2*

1. The application of this Directive to the airport of Gibraltar shall be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

2. Application of the provisions of this Directive to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of the Kingdom of Spain and the United Kingdom will so inform the Council on that date.

*Article 3*

1. Member States shall, after consultation of the Commission, take the necessary steps to amend their laws, regulations and administrative provisions to bring them into conformity with this Directive not later than 1 November 1989.

2. Member States shall communicate to the Commission all laws, regulations and administrative provisions made in furtherance of this Directive.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*  
*The President*  
R. DUMAS

## COUNCIL DECISION

of 18 July 1989

adopting a research and training programme for the European Atomic Energy Community in the field of remote handling in hazardous or disordered nuclear environments (1989 to 1993)

TELEMAN

(89/464/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the Commission, submitted after consulting the Scientific and Technical Committee <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, by its Decision 87/516/Euratom, EEC <sup>(4)</sup> as amended by Decision 88/193/EEC, Euratom <sup>(5)</sup>, the Council adopted a framework programme for Community activities in the field of research and technological development (1987 to 1991), which acknowledges the importance of contributing to improving the level of scientific and technical knowledge relevant to nuclear safety;

Whereas the inherent radioactivity of nuclear plant makes remote handling essential for the conduct of nuclear operations on an industrial scale;

Whereas the safety of nuclear installations and protection of their environment depends on operators being able to inspect, maintain and repair plant when necessary;

Whereas exposure of man to radiation should be kept as low as reasonably practicable;

Whereas an action in research on remote handling in hazardous and disordered nuclear environments offers an opportunity to realize these goals more efficiently,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

A specific research and training programme (TELEMAN) for the European Atomic Energy Community in the field of

remote handling in hazardous or disordered nuclear environments, as defined in the Annex, is hereby adopted for a period from 18 July 1989 to 31 December 1993.

*Article 2*

The funds estimated as necessary for the execution of the programme amount to ECU 19 million, including expenditure on a staff of four.

An indicative allocation of these funds is set out in the Annex.

*Article 3*

Detailed rules for the implementation of the programme and the rate of the Community's financial participation are set out in the Annex.

*Article 4*

The Commission shall be assisted in the implementation of the programme by the Management and Coordination Advisory Committee CGC-5 for Nuclear Fission Reactors and Safety, Safeguards and Fissile Materials Management, set up by Council Decision 84/338/Euratom, ECSC, EEC of 29 June 1984 dealing with structures and procedures for the management and coordination of Community research, development and demonstration activities <sup>(6)</sup>.

Contracts concluded by the Commission shall govern the rights and obligations of each party, in particular arrangements for the dissemination, protection and exploitation of research results.

*Article 5*

In the third year of implementation, the Commission shall undertake a review of the programme and send a report on the results of its review to the European Parliament, the Council and the Economic and Social Committee. This

<sup>(1)</sup> OJ No C 311, 6. 12. 1988, p. 6.

<sup>(2)</sup> OJ No C 96, 17. 4. 1989, p. 215.

<sup>(3)</sup> OJ No C 102, 24. 4. 1989, p. 13.

<sup>(4)</sup> OJ No L 302, 24. 10. 1987, p. 1.

<sup>(5)</sup> OJ No L 89, 6. 4. 1988, p. 35.

<sup>(6)</sup> OJ No L 177, 4. 7. 1984, p. 25.

report shall be accompanied, where necessary, by proposals for the amendment or extension of the programme.

At the end of the programme, an evaluation of the results achieved shall be conducted by the Commission, which shall report thereon to the European Parliament and the Council.

The abovementioned reports shall be established having regard to the objectives set out in the Annex to this Decision and in accordance with Article 2 (2) of Decision 87/516/Euratom, EEC.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*  
*The President*  
R. DUMAS

## ANNEX

## PROGRAMME OBJECTIVES, CONTENTS, IMPLEMENTATION, INDICATIVE ALLOCATION OF FUNDS AND EVALUATION CRITERIA

## 1. OBJECTIVES

TELEMAN's objective is to realize advanced tele-operators that respond to the ultimate needs of the nuclear industry in order to reinforce the scientific and technological base used for the design of nuclear remote handling equipment. Tele-operators contribute to the safety and profitability of man and plant employed in all parts of the nuclear industry, from mining through reactor operation to reprocessing and decommissioning. This programme concerns the contribution that tele-operators can make to nuclear safety in the areas of accident management where the environment may have changed unpredictably and decommissioning, including prevention, inspection and maintenance.

The tele-operators of interest are mechanical arms to which a variety of tools and sensors can be attached, manipulators attached to movable gantries and partially autonomous vehicles equipped for specialized jobs.

In particular, TELEMAN will help the nuclear industry to comply with the requirements that workers be exposed to the minimum practicable amount of radiation, always remaining within relevant limits, without compromising inspection, maintenance and repair operations.

## 2. PROGRAMME TECHNICAL CONTENT

*Indicative  
allocation  
of funds  
(millions of ecus)*

**Area 1: Tele-operator component and sub-system development**

8,8

In the framework of the abovementioned nuclear safety objectives, research and development will be carried out on the utilization, modification and, where necessary, the development of sensors, perception and decision-making systems, information transmission and engineering for tele-operator mobility and dexterity in nuclear environments.

**Area 2: Environmental tolerance**

2,5

Research will be carried out throughout the life of the programme on the adaptation of sensors and electronic hardware to nuclear environments, the development of machine monitoring systems and design strategies that permit easy repair or recovery of stranded machines.

**Area 3: Research machine projects**

6,4

Development will be focussed on tele-operators that respond to the demands of the nuclear industry for enhanced safety. These will be defined in consultation with end-users who in turn will be expected to test new tele-operators in their installations (cf. Area 4). Definition of industry's needs will precede the launching of research in Areas 1 and 2.

Products of research on components and sub-systems will be demonstrated by incorporating them into research machines that already exist or into new machines that typify nuclear industry requirements, such as intelligent manipulators and cranes equipped with control systems suitable for use in high radiation fields, and a mobile platform for information gathering under normal and abnormal conditions.

**Area 4: Product evaluation and studies**

1,3

End-users of TELEMAN technology will be encouraged to test and evaluate the practicality and reliability of the products of the programme in realistic environments to guide the subsequent commercialization of successful ones by industry. Studies will be made of topics relating to the application of new technologies, new uses for computer assisted tele-operators, the evolution of guidelines and standards and programme development.

TOTAL

19,0

### 3. IMPLEMENTATION

The programme consists of activities carried out by means of shared-cost research contracts with competent public organizations or private firms established in the Member States. The participation of small and medium-sized enterprises in the programme will be encouraged.

The Commission shall distribute, in all Community languages, information packs to accompany the invitation to participate in order to guarantee equal opportunities for the undertakings, universities and research centres in the Member States.

In addition to shared-cost research contracts, the programme may also be carried out by means of study contracts, coordination projects and awards of training and mobility grants. Such contracts and grants shall, where appropriate, be awarded following a selection procedure based on calls for proposals published in the *Official Journal of the European Communities*.

Participants in shared-cost contracts may be industrial organizations, research institutes and universities, established in the Community. Each contracting party will be expected to make a significant contribution to projects. The contracting party shall be expected to bear a substantial proportion of the costs, 50 % of which shall normally be borne by the Community. Alternatively, in respect of universities and similar organizations carrying out projects, the Community may bear up to 100 % of the additional expenditure involved.

Shared-cost research projects should, where appropriate, be carried out by participants from more than one Member State.

The information resulting from the implementation of the shared-cost activities shall be made accessible on an equal basis to all Member States. Licences and/or other rights developed in the framework of the programme will be subject to the normal contractual conditions of the Community.

### 4. EVALUATION CRITERIA

The Commission requires that, where possible, the objectives and milestones of each research programme be set out in a quantitative form to facilitate evaluation.

The long term objectives (2 000) are that operators of nuclear installations should be able to buy world-class computer assisted tele-operators from Community-based manufacturers and that the radiation exposure of workers should be appreciably reduced.

TELEMAN's principal technical objectives relate to reinforcing the scientific and engineering base upon which the design of nuclear remote handling is based, to solving problems of manipulation, material transport and mobile surveillance within the nuclear environment and to demonstrating the feasibility of the solutions offered.

The technical criteria in terms of which the different aspects of the programme are to be evaluated, initially in 1992 to 1993 and more thoroughly in about 1996, are:

- the extent to which projects were selected against credible technical criteria,
- the development achieved within TELEMAN projects, e.g. whether TELEMAN projects achieved a significant (100 %) improvement in performance and performance/price ratios. Typical performance parameters might be sensor resolution, power/weight ratio, system response time, etc.,
- the extent to which different technologies have been integrated,
- the performance and acceptance of research machines in tests conducted with the participation of potential end-users,
- whether the projects were of high scientific value as judged by the number and impact of patents, publications in referred journals and invited contributions to conferences. Output should be compared with that from other similar programmes being executed elsewhere.

TELEMAN's industrial objectives relate to more effective application of investment in research, generation of awareness of the potential of computer assisted tele-operators, and creation of a pool of experienced firms and engineers able to exploit research machines and manage the application of the new technology.

The industrial criteria in terms of which the different aspects of the programme are to be evaluated are:

- whether the calls for proposals attracted sufficient industrial interest to permit formulation of a coherent programme. The criterion of sufficiency would be that the ratio resources proffered by industrial contractors to Community funding is to be greater than 1,5,
  - the extent to which projects were selected against credible industrial criteria,
  - that at least half the proposals received envisage a major role for a university or research laboratory in a Member State other than that of an industrial partner,
  - the extent to which links formed to execute TELEMAN projects have continued and led to joint development of industrial products, new multinational firms or new research projects,
  - application of technology and patents arising from TELEMAN are applied by other firms and in other industries.
-

## EIGHTEENTH COUNCIL DIRECTIVE

of 18 July 1989

on the harmonization of the laws of the Member States relating to turnover taxes — Abolition of certain derogations provided for in Article 28 (3) of the Sixth Directive, 77/388/EEC

(89/465/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Article 28 (3) of the Sixth Council Directive, 77/388/EEC, of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(4)</sup>, as last amended by the Act of Accession of Spain and Portugal, allows Member States to apply measures derogating from the normal rules of the common system of value added tax during a transitional period; whereas that period was originally fixed at five years; whereas the Council undertook to act, on a proposal from the Commission, before the expiry of that period, on the abolition, where appropriate, of some or all of those derogations;

Whereas many of those derogations give rise, under the Communities' own resources system, to difficulties in calculating the compensation provided for in Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax <sup>(5)</sup>; whereas, in order to ensure that that system operates more efficiently, there are grounds for abolishing those derogations;

Whereas the abolition of those derogations will also contribute to greater neutrality of the value added tax system at Community level;

Whereas some of the said derogations should be abolished respectively from 1 January 1990, 1 January 1991, 1 January 1992 and 1 January 1993;

Whereas, having regard to the provisions of the Act of Accession, the Portuguese Republic may, until 1 January 1994 at the latest, postpone the abolition of the exemption of the transactions referred to in points 3 and 9 in Annex F to Directive 77/388/EEC;

Whereas it is appropriate that, before 1 January 1991, the Council should, on the basis of a Commission report, review the situation with regard to the other derogations provided for in Article 28 (3) of Directive 77/388/EEC, including the one referred to in the second subparagraph of point 1 of Article 1 of this Directive, and that it should take a decision, on a proposal from the Commission, on the abolition of these derogations, bearing in mind any distortion of competition which has resulted from their application or which may arise in connection with the future completion of the internal market,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 77/388/EEC is hereby amended as follows:

1. With effect from 1 January 1990 the transactions referred to in points 1, 3 to 6, 8, 9, 10, 12, 13 and 14 of Annex E shall be abolished.

Those Member States which, on 1 January 1989, subjected to value added tax the transactions listed in Annex E, points 4 and 5, are authorized to apply the conditions of Article 13A (2) (a), final indent, also to services rendered and goods delivered, as referred to in Article 13A (1) (m) and (n), where such activities are carried out by bodies governed by public law.

2. In Annex F:

- (a) The transactions referred to in points 3, 14 and 18 to 22 shall be abolished with effect from 1 January 1990;
- (b) The transactions referred to in points 4, 13, 15 and 24 shall be abolished with effect from 1 January 1991;
- (c) The transaction referred to in point 9 shall be abolished with effect from 1 January 1992;
- (d) The transaction referred to in point 11 shall be abolished with effect from 1 January 1993.

<sup>(1)</sup> OJ No C 347, 29. 12. 1984, p. 3 and OJ No C 183, 11. 7. 1987, p. 9.

<sup>(2)</sup> OJ No C 125, 11. 5. 1987, p. 27.

<sup>(3)</sup> OJ No C 218, 29. 8. 1985, p. 11.

<sup>(4)</sup> OJ No L 145, 13. 6. 1977, p. 1.

<sup>(5)</sup> OJ No L 155, 7. 6. 1989, p. 9.

*Article 2*

The Portuguese Republic may defer until 1 January 1994 at the latest the dates referred to in Article 1, point 2 (a), for the deletion of point 3 from Annex F and in Article 1, point 2 (c), for the deletion of point 9 from Annex F.

*Article 3*

By 1 January 1991 the Council, on the basis of a report from the Commission, shall review the situation with regard to the other derogations laid down in Article 28 (3) of Directive 77/388/EEC, including that referred to in the second subparagraph of point 1 of Article 1 of this Directive and, acting on a Commission proposal, shall decide whether these derogations should be abolished, having regard to any distortions of competition which have resulted from their having been applied or which might arise from measures to complete the Internal Market.

*Article 4*

In respect of the transactions referred to in Article 1, 2 and 3, Member States may take measures concerning deduction of value added tax in order totally or partially to prevent the

taxable persons concerned from deriving unwarranted advantages or sustaining unwarranted disadvantages.

*Article 5*

1. Member States shall take the necessary measures to comply with this Directive not later than the dates laid down in Article 1 and 2.

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

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

*For the Council*

*The President*

R. DUMAS



## COUNCIL DECISION

of 18 July 1989

authorizing the United Kingdom to apply a measure derogating from Article 11 (A) (1) (b) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/466/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(1)</sup>, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom, by letter addressed to the Commission and registered on 9 January 1989, requested authorization to introduce a special measure derogating from Article 11 of the said Directive;

Whereas the other Member States were informed of the United Kingdom's request on 9 February 1989;

Whereas, by letter dated 10 April 1989, the Commission, having decided that it had fundamental objections to the United Kingdom Government's request, asked, in accordance with Article 27 (4) of the Sixth Directive, that the matter be raised by the Council;

Whereas, by a note dated 10 May 1989, the United Kingdom informed the Council that it was modifying and narrowing the scope of the derogation notified to the Commission on 9 January 1989;

Whereas the United Kingdom currently exempts all building land under Article 28 (3) (b), read in conjunction with point 16 of Annex F to the Sixth Directive;

Whereas, in order to comply with the spirit of the Court of Justice ruling in Case 416/85, the United Kingdom wishes to tax supplies of buildings and the land on which they stand where these are used for commercial or industrial purposes, while retaining zero rating for supplies of residential buildings and exemption for supplies of building land;

Whereas, in order to simplify the procedure for charging the tax and to prevent certain types of tax evasion or avoidance, the United Kingdom wishes to apply the tax to transactions relating to commercial or industrial buildings and to the land on which they stand before first occupation on the basis of the open market value at the time they are taken into use; whereas, in the case of supply or letting with the developer option for taxation under Article 13 (C) (a) of the Sixth Directive, this objective is achieved because the price of the supply or the rent necessarily reflects the value of the land at the time of such supply or letting;

Whereas, in order to achieve the objective in question where the building is to be occupied by a taxable person who has constructed it and who is not entitled to full deduction of the tax or where the same taxable person lets the building on an exempt basis under Article 13 (B) (b) of the Sixth Directive, the United Kingdom intends to make use of the option provided for in Article 5 (7) (a) and (b) of the said Directive to tax such occupation or letting of the property on the basis of its open market value;

Whereas, as a result of the taxable amount being determined by reference to the open market value in this way, the amended request derogates from Article 11 (A) (1) (b) of the Sixth Directive, which stipulates that, in respect of supplies referred to in Article 5 (6) and (7), the taxable amount is the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;

Whereas it is appropriate to accede to the request of the United Kingdom pending deletion of point 16 of Annex F to the Sixth Directive, which permits Member States to exempt temporarily supplies of new buildings and building land;

<sup>(1)</sup> OJ No L 145, 13. 6. 1977, p. 1.

Whereas the said special measure will not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

By way of derogation from Article 11 (A) (1) (b) of the Sixth Directive, the United Kingdom is hereby authorized to use the open market value as the taxable amount for the supply, within the meaning of Article 5 (7) (a) and (b) of the said Directive, of buildings or parts of buildings before first occupation and of the land on which they stand.

*Article 2*

This authorization shall be granted pending the deletion of point 16 of Annex F to the Sixth Directive.

*Article 3*

This Directive is addressed to the United Kingdom.

Done at Brussels, 18 July 1989.

*For the Council*  
*The President*  
R. DUMAS

# COMMISSION

## COMMISSION DECISION

of 12 July 1989

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/30.566 — UIP)

(Only the English and Dutch texts are authentic)

(89/467/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty <sup>(1)</sup>, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 4, 6 and 8 thereof,

Having regard to the application for negative clearance and the notification for exemption, submitted under Articles 2 and 4 of Regulation No 17 on 11 February 1982 by United International Pictures BV on behalf of Paramount Pictures Corporation, MCA Int., and Metro-Goldwyn-Mayer Film Co., of joint venture agreements and related agreements concerning mainly the production and distribution of feature motion pictures,

Having regard to the summary of the application and notification published <sup>(2)</sup> pursuant to Article 19 (3) of Regulation No 17,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

### I. THE FACTS

- (1) On 11 February 1982 United International Pictures BV i.o. (hereinafter referred to as 'UIP') notified to the Commission, pursuant to Articles 2 and 4 of Regulation No 17 and on behalf of Paramount Pictures Corporation (Paramount), MCA Inc. (MCA), and Metro-Goldwyn-Mayer Film Co. (MGM), a series of agreements, parties to which are the above undertakings, United Artists Corporation

(UA) and Cinema International Corporation NV (CIC), with a view to obtaining negative clearance or alternatively an exemption pursuant to Article 85 (3) of the Treaty.

- (2) After a preliminary examination, the Commission considered that the agreements contained a number of clauses that could not be exempted pursuant to Article 85 (3). On 21 May 1985 it therefore opened proceedings and on 20 June 1985 sent the applicants a statement of objections prior to a decision under Article 3 (1) of Regulation No 17.
- (3) On 4 November 1985 UIP submitted its reply to the statement of objections requesting an oral hearing in accordance with Article 7 of Regulation No 99/63/EEC <sup>(3)</sup>. The hearing took place on 29 and 30 January 1986.
- (4) Following discussions with the Commission, UIP presented in December 1987 and July 1988 two memoranda including several undertakings and setting out a number of amendments to the notified agreements.

### A. The parties and the market concerned

- (5) Paramount is a company with its registered offices in the State of New York; MCA is situated in California and is the parent company of Universal City Studios Inc. (Universal); MGM is also situated in California and wholly owns UA, a New York company, since July 1981; CIC is a Netherlands company created in 1970 and owned in equal shares by MCA and Paramount. On 1 November 1981 Paramount, MCA and MGM, hereinafter referred to as 'the parent companies', agreed to form UIP as a corporation under Netherlands law.

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

<sup>(2)</sup> OJ No C 286, 10. 11. 1988, p. 4.

<sup>(3)</sup> OJ No 127, 20. 8. 1963, p. 2268/63.

- (6) The parent companies are all engaged directly, or indirectly through their subsidiaries, in the financing, production and distribution of feature films and other entertainment programmes for exhibition in cinemas, on television and through other media.
- (7) The object of UIP is the distribution and licensing on an exclusive basis — principally for exhibition in cinemas — of feature motion pictures, short subjects and trailers produced and/or distributed by Paramount, MCA or MGM/UA or any of their respective parents, subsidiaries, related companies or concessionaries, franchisees or sub-licensees.
- (8) The distribution and licensing rights of UIP are geographically described as the entire world other than the United States, United States territories, Puerto Rico and Canada. In the Community, UIP has subsidiaries acting as local distributors in all Member States except Portugal, where it currently distributes its films through a licensee.
- (9) Originally, Paramount, MCA, MGM and UA distributed their own films within the Community through their own separate organizations as they still do in the USA. Paramount and MCA founded CIC, in 1970, as a joint venture to merge their separate distribution organizations outside the USA and Canada. CIC had the same object, for them, as UIP. In 1973, MGM decided to abandon its separate distribution organization. On 27 October 1973 it made an agreement with CIC, guaranteed by Paramount and MCA, appointing CIC as its exclusive agent for theatrical and public teledistribution of all its pictures within the same territory. From 1973 until 1981, therefore, CIC engaged in the same activities for Paramount, MCA and MGM as are now undertaken by UIP for Paramount, MCA and MGM/UA.
- UA continued to distribute its own films within the Community through its own separate organization until the formation of UIP in November 1981.
- (10) The structure of arrangements for financing and for the physical production of theatrical feature films varies greatly from film to film. Films are commonly produced (that is the creative function of arranging for the artistic inputs and supervising the making of the picture itself) by independent persons or companies. These independent persons or companies are financed in whole or in part by production companies such as Paramount, MCA or MGM/UA. When the film is completed and delivered, all rights pass to the producer in the special sense, here Paramount, MCA and MGM/UA, which thereafter markets the film through distributors who take from the producer concerned a licence to distribute the film in certain territories.
- (11) This distribution function is generally exercised either in two stages, where the producer licenses the distribution rights for one country or territory to a

local distributor, or in three stages, where an international distributor acquires the rights for several countries, or even world-wide, and sub-licenses these rights to a local distributor in individual countries. Local distributors sub-license the exhibition right to exhibitors, in other words to cinema operators. The function of the local distributor is to negotiate film rental agreements with exhibitors, advertise and promote the film, collect and disburse rental fees, and arrange for the physical production of an adequate number of prints and their delivery (rental) to local cinemas. The amount of licence fee paid by the exhibitor to the distributor is usually a fixed percentage of net box-office takings to which a break clause is attached allowing the percentage to rise as box-office returns rise over an agreed ceiling.

- (12) There are many possible measures of the size of the market for the exhibition of films in cinemas: the number of films; admissions (the number of tickets sold); box-office receipts; or rentals (the part of box office receipts paid by the cinemas to the distributors for the right to show a film). Of these, box-office receipts (the amount paid by the public to see a film) seems to be the most generally meaningful although completely comprehensive figures are not available.
- (13) Taking into consideration the limited availability of statistics, the figures provided by the parties and by the relevant national trade associations indicate that the parent companies account for approximately 22 % of Community box-office receipts although averaging, in the last few years, a higher share in some Member States (UK:  $\pm 35\%$ ) and lower in others (Greece:  $\pm 13\%$ ; France:  $\pm 16\%$ ).

It should be stressed however that market share figures also vary widely from year to year depending on the success of the films available. Taking, by way of example, the first four years of operation of the joint venture, UIP's estimated market share in the then Member States was as follows:

(in %)				
Country	1981	1982	1983	1984
Belgium/Luxembourg	25	17	31	18
Denmark	23	23	33	22
France	16	13	17	14
Germany	21	16	30	19
Italy	15	21	25	31
United Kingdom	34	35	56	36
Ireland	22	23	37	21
Netherlands	26	14	26	21

Later figures confirm this finding:

Country	(in %)			
	1985	1986	1987	1988
Belgium/Luxembourg	20	23	21	23
Denmark	21	31	23	24
France	11	13	12	11
Germany	20	22	21	25
Italy	14	20	16	20
United Kingdom	21	29	26	33
Ireland	15	15	12	19
Netherlands	29	38	31	30

## B. The agreements as originally notified

### 1. Enumeration

(14) The agreements comprise:

- an agreement called the joint venture agreement (JVA) dated 5 October 1981 and an amendment thereto dated 1 November 1981, under which the parent companies agree to set up and run UIP,
- four franchise agreements (FA) dated 1 November 1981, signed between subsidiaries of the parent companies and UIP, which regulate the various relationships arising from the JVA:
  - agreement between Paramount Pictures Corp. International BV and UIP,
  - agreement between MCA International BV and UIP,
  - agreement between MGM International BV and UIP,
  - agreement between CIC NV and UIP,
- four guaranties all dated 1 November 1981, signed by each parent company to UIP in relation to the FA,
- two further agreements, dated 5 October and 1 November 1981 respectively, concerning the expansion of UIP's activities to include the exclusive distribution of films for exhibition on pay television,
- two agency agreements, dated 1 November 1981 and appointing CIC and UA as UIP's agents for the distribution of feature films for the period 1981 to 1991; that is to say during the currency of the franchise agreements,
- an agreement dated 5 October 1981 making the effectiveness of the joint venture agreement in any particular jurisdiction conditional upon the satisfaction of any required filings or approvals in such jurisdiction.

### 2. Purpose in forming UIP

- (15) According to the parent companies, the sole purpose in forming UIP was to reduce fixed overhead expenses. UIP was conceived as a means of avoiding maintaining the duplicate organizations of CIC and UA. In this context it is further the purpose of UIP to maximize for each parent company the gross receipts from the pictures distributed (Article 3 (d) FA).

### 3. Relevant provisions

The JVA and FA provide *inter alia* for the following:

### Organization

- (16) Under the notified agreements, each parent company appoints an equal number of directors to the board of UIP (the number of directors is decided by the parent companies jointly from time to time). The board may only act unanimously (Article 1.4 (b) JVA). UIP was to be managed jointly by two co-presidents: one co-president appointed by the directors representing MCA and Paramount, acting together, and the other by the directors representing MGM/UA. As far as possible, the co-presidents were to consult each other on all material matters before taking action with respect thereto (Article 1.4 (c) JVA). However, since the filing of the notification, UIP has replaced the co-presidents with a single chief executive officer. Any action of the stockholders of UIP, other than the election of directors, shall be by unanimous consent of the parent companies (Article 1.4 (d)). The parent companies shall at all times maintain equal rights and interests in UIP (Article 1.4 (a) JVA).

Subsequently, a partners committee was formed, authorized to direct and supervise the board of directors of UIP and empowered with the ultimate authority to manage UIP. A quorum of this committee must include representatives of all three parent companies and in practice it acts unanimously. Those members of the partners committee who also serve on the partners operating committee have full responsibility for overseeing the day-to-day operations of UIP. Among the matters subject to the approval of the partners committee are individual proposals to acquire local products.

### Exclusivity

- (17) The parent companies grant to UIP an exclusive licence under copyright or otherwise to distribute all feature-length pictures, short subjects and trailer films produced and/or distributed by each parent company or any of its parents, subsidiaries, affiliates and related companies (Article I 1.1 JVA — Article 1 (A) FA).

This exclusivity is granted for the period commencing 1 November 1981 and ending 31 October 1991, and from year to year thereafter, until the agreements be terminated.

The exclusivity is world-wide, except for the USA and Canada. The exclusive licence is granted for the distribution of films for general theatrical and non-theatrical exhibition and for exhibition by pay television, i.e. all exhibition other than by broadcast television and on videocassettes, and other than to some specified customers (e.g. military installations, airlines) (Article IV 4.1 (b) JVA — Article 3 FA).

- (18) The parent companies offer UIP their respective rights to all feature-length motion pictures produced, supplied and/or distributed by each of them and for which they own international distribution rights. Under the notified agreements, UIP is not required to distribute all the films offered by the parent companies; it may decline for commercial reasons to distribute a film in one or more Member States. The parent companies may distribute any refused film through other distributors on their own account (Article 3 (d) FA).

However, according to a resolution of UIP's partners committee, UIP is obliged to distribute any picture designated by the respective parent company in any area outside the United States and Canada. Moreover, should a parent company not require UIP to distribute a film, preferring to exercise its right to distribute on its own account, it shall consult UIP regarding the terms of the independent offer to distribute.

- (19) Further to the exclusive right for distribution, the parent companies have given UIP the exclusive right to produce, finance and distribute for them non-English-language foreign local product, which means films intended to be distributed primarily in the territory where produced. This right extends to the acquisition (picking up) for distribution by UIP of local films already produced: decisions on such acquisitions are taken by the partners committee. The parent companies retain the right to produce non-English-language pictures for wider distribution but must notify UIP before doing so (Article 5 FA).

#### Distribution

- (20) Prior to the release of any film, UIP has to consult the respective parent company as to the general plans for distribution (including the advertising campaign, dates for release and estimated distribution costs); similar consultations can take place during the release of the film (Article 3 (e) FA). UIP has a duty to use its best efforts to maximize the gross receipts for a film (Article 3 (d) FA).
- (21) According to the notified agreements, the parent companies retain control over the manner in which

their pictures are produced and financed (save that, before producing non-English-language product for wider distribution, the parent companies must notify UIP). They also reserve the right to control, at their sole discretion, the number of prints of the film, the laboratory to produce them and the amount of advertising expenditure for the pictures to be distributed by UIP, provided, however, that the parent companies agree to the provision of sufficient prints and adequate advertising in order to put UIP in a position to obtain maximum profits from distribution. The cost of advertising, dubbing and printing a film is borne by the respective parent company. The ownership of all prints and advertising material remains with the parent companies.

- (22) The general expenses of UIP, i.e. the operating and overhead expenses involved in maintaining its distribution organization, are to be borne by the parent companies in equal shares (Article IV 4.5 (a) JVA). Those expenses are recouped through a distribution fee paid by each parent company to UIP based upon the gross receipts (rentals) derived from the distribution of each parent company's pictures up to the point where such fees equal that parent company's one-third share of UIP's general expenses. After that point, UIP is entitled to a lower distribution fee of any further film rentals earned on that parent company's films.
- (23) According to Article 15 (d) FA, '... UIP shall pay to the licensor (parent company) as directed all monies then due or reasonably estimated to be due, pursuant to the terms of this agreement'. In addition, the parent companies agree that the profits of UIP will be paid to each parent company in equal shares as dividends on a regular basis subject to the availability of cash and the requirements of law (Article I 1.4 JVA).

#### C. The agreements as amended following the Commission's intervention

- (24) At the Commission's request, UIP and its partners agreed, in their memorandum dated 2 December 1987, to modify the notified agreements in the following manner:

##### 1. Exclusivity

- (25) Each parent company electing to distribute a picture outside the United States and Canada must grant a right of first refusal, (i.e. the parent company must offer its product for distribution first to UIP) on a territory-by-territory basis, of the theatrical distribution rights to UIP. For these purposes, the Community will be considered one territory. If UIP elects not to exercise its right to distribute a picture, UIP nevertheless must distribute such picture if the

individual party holding the distribution rights in any territory, at its sole discretion, so directs. In these two cases, if UIP elects to distribute a picture or is directed to do so by the individual party holding the distribution rights in a territory, the party holding distribution rights to such picture must grant UIP an exclusive licence to such picture in such territory. It is understood that if UIP advises a party that UIP elects not to distribute a picture theatrically in a territory and the party accepts that determination, UIP loses all further right and interest in the theatrical distribution of such picture and it may be distributed theatrically by some other means in that territory.

Neither the partners committee nor the operating committee nor any other committee of UIP composed of representatives of the parties will participate in UIP's decision whether to exercise its right of first refusal; such responsibility shall be the responsibility solely of UIP's chief executive officer.

- (26) As far as pay cable television is concerned, UIP and its partners agreed to delete the agreements dated 5 October and 1 November 1981 relating to pay television from the list of agreements submitted in UIP's notification. UIP and its partners reserve the right to submit a separate notification of those agreements contemporaneously with the deletion of those agreements from the original UIP notification.

#### 2. Availability of UIP and its partners for the distribution of non-partner films

- (27) UIP and its partners agreed to provide an undertaking to the Commission that UIP shall make itself available, based upon its commercial judgment, to produce, finance, acquire distribution rights to, or distribute feature films of third parties in the Community, and that each partner shall also be available individually, based upon its individual commercial judgment, to produce, finance or acquire distribution rights to local products in the Community which are offered to UIP.

#### 3. Non-English-language foreign local product and co-production agreements

- (28) UIP and its partners agreed to amend the FA so that the partners retain the right individually to produce, finance or acquire distribution rights to non-English-language foreign local product and to offer such product to UIP for distribution. If UIP declines to distribute such product, each partner retains the right individually to do so through any alternative means.
- (29) With regard to co-production agreements, each party retains the right not to acquire any or all foreign area (territories outside the United States and Canada) distribution rights to any picture produced under the terms of a co-production or co-financing agreement with a third party. If any or all foreign area rights are so acquired by a third party, such foreign area rights as have been acquired by a third party may be exploited without regard to UIP. This is to apply to all kinds of co-production agreements irrespective of the terms of the acquisition agreement.

#### 4. Cost sharing

- (30) At the Commission's request, the partners agreed to modify the clause referred to in paragraph 22 above so that this additional fee paid to UIP in a given year will be applied as a credit against each licensor's obligation to pay one-third of UIP's total operating and severance costs in the subsequent year.

#### 5. Undertakings

- (31) UIP and its partners agreed to provide an undertaking to the Commission that no committee of UIP composed of representatives of the UIP partners shall consider or discuss plans to release, distribute or market the individual films of any partner.
- (32) UIP and its partners agreed also to provide an undertaking to the Commission that UIP or its partners, as appropriate, will maintain records sufficient to show: (i) the title of local product of third parties produced, financed or distributed by UIP in the Community; (ii) the identity of local product of Community origin for which a formal written offer is made by third parties to UIP for production, financing or distribution by UIP in the Community; (iii) feature films of the UIP partners for which they hold the Community theatrical distribution rights that are not distributed by UIP in the Community; and (iv) co-productions of the UIP partners for which they hold Community theatrical distribution rights that are not distributed by UIP in the Community.
- (33) By letter dated 27 July 1988 UIP provided the Commission with an undertaking relating to the establishment of an arbitration procedure (see Annex), and the standard forms necessary to implement the arrangements for resolving disputes with exhibitors.

#### D. Third parties' observations

- (34) The Commission did not receive any observations from interested third parties following publication of the notice required by Article 19 (3) of Regulation No 17.

### II. LEGAL ASSESSMENT

#### A. Article 85 (1)

- (35) Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may

affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

- (36) The basic agreement between Paramount, MCA and MGM/UA, providing for the formation of a joint venture company (UIP) to distribute and license feature motion pictures principally for exhibition in cinemas, together with the accompanying agreements are agreements between independent undertakings falling within the scope of Article 85 (1).
- (37) The notified agreements have to be considered as a whole having particular regard to their economic consequences. The restrictions of competition are those resulting from the formation of the joint venture itself and from restrictive provisions contained in the other notified agreements.
- (38) The overall relevant geographical market is the Community. The agreements produce their effects more widely, but for the purposes of assessing the applicability of Article 85 (1) the Commission is only concerned with effects within the Community. In evaluating these effects, the Commission bases its analysis on the concept of a Community market made up of sub-markets corresponding to the various Member States, the cinematographic environment of which varies from one to the other.

The product markets affected by these agreements are in part the market in which the parent companies compete with other production companies in financing and producing feature films, but primarily the market in which distributors compete with each other to obtain the best terms and viewing slots from exhibitors for these films.

- (39) As far as the horizontal relationship between Paramount, MCA and MGM/UA is concerned, Article 85 (1) applies since these undertakings are to be considered at least potential competitors on the market in question. Originally Paramount, MCA, MGM and UA distributed their own films within the Community with their own separate organizations, and, at present, they continue to compete with each other in the production of feature films, as distributors of films for theatrical exhibition in the USA and Canada, and as distributors to broadcast television and to publishers of videocassettes. By joining forces in the Community, UIP's parent companies have ceased distributing films independently from and in competition with each other.
- (40) The creation of UIP itself has entailed a loss of decision-making autonomy which the parent companies would otherwise have enjoyed. Pursuant

to the provisions referred to in paragraph 16 above, the parent companies are bound to cooperate with each other in the decision-making process on important matters affecting the operation of the joint venture.

- (41) The agreements also bring about a degree of consensus in the distribution of the parent companies' films as regards place and timing of release which reinforces the restrictive nature of UIP. Prior to the release of any film, UIP has to consult and advise the respective parent company as to the general plans for distribution including the advertising campaign, estimated distribution costs and dates for release. In so doing, UIP is bound to adapt its advice to the interest of all parents. Since UIP is required to maximize each of the three parent companies' profits, UIP and the parents must agree the place and timing of release of all their films to their overall advantage and in such a way that no one film will damage the prospects of other UIP films.
- (42) The agreements contain express obligations which are considered by the parties to form an indispensable part of their arrangement and which restrict the parent companies and UIP in their competitive behaviour.

Pursuant to the agreements each parent company electing to distribute a film in the Community must grant a right of first refusal of its theatrical distribution rights to UIP. The functioning of this provision (as detailed in paragraph 25 above) implies the acceptance of two restrictions of competition by the parent companies. Firstly, they can no longer themselves appear as wholly independent distributors in the market for feature films as they did before the formation of UIP. Secondly, the agreements limit them from entrusting the distribution of their films within the Community to other distributors. Of similar restrictive effect is the right of first refusal granted by the parent companies to UIP in respect of the distribution of non-English-language foreign product (see paragraph 28 above).

- (43) The agreements concerned have an appreciable effect upon trade between Member States. The parent companies account for almost a quarter of the gross box-office receipts from theatrical feature films and are among the largest producers and distributors of films in the Community. The pooling of their distribution for the whole Community in one jointly owned distributor located in one Member State which controls the licensing of films throughout the Community, replaces three independent suppliers who might otherwise have used the services of one or more independent distributors. This necessarily means that trade will develop under conditions different from those which could have existed in the absence of such pooling of functions.



## B. Article 85 (3)

- (44) In view of the changes implemented by the parent companies in the originally notified agreements and of the undertakings provided by them to the Commission, and taking into account the specific characteristics of the cinema industry, the agreements notified by UIP on behalf of Paramount, MCA and MGM/UA satisfy the conditions for exemption laid down in Article 85 (3).
- (45) The cooperation established in the agreements entails economic benefits for the production and distribution of motion pictures and for consumers, which could not be achieved in the absence of the joint venture and which outweigh its disadvantages.
- (46) The creation of UIP makes possible a more effective and rationalized distribution of the product of the parent companies and thereby ensures the maintenance of an economically viable distribution network in a deteriorating market where high financial risks are present.
- (47) Particular importance is to be attached to the fact that the cinema industry has witnessed a remarkable decline in admissions and in box-office receipts in the years prior to the agreements. Cinema admissions declined by an average of 40 % in the Community from 1970 to 1986, levelling out since 1987. Box-office revenue fell also by approximately 26 % during the 1970 to 1986 period although it has shown signs of recovery since 1987. A relevant factor in this process has been the impact on the industry of new technologies associated with television, i.e. cable and satellite television and videocassettes, the role of which as media for film presentation has been continuously growing to the detriment of cinemas. In addition to this, production costs and both variable and fixed operating costs (i.e. prints and advertising, offices and specialized personnel) required to maintain a distribution organization have risen sharply.
- (48) Within this environment, the UIP agreements have allowed the parent companies to achieve greater efficiency by avoiding the duplication of distribution organizations and by reducing to a considerable extent the distribution costs at central-office level and at the level of local operating branches. Such efficiency has increased film availability in the Community and stimulated production therein, especially taking account of UIP's and each parent company's right to finance local products in the Community, and the right of the parents to enter into co-production agreements and agreements concerning non-English-language foreign local product in this territory.
- (49) The agreements as modified also allow consumers (exhibitors, and ultimately the public) a fair share of the resulting benefit by improving both quality and the service offered, bearing in mind the specific characteristics of the sector concerned. A less costly distribution organization will result in a more efficient network of branch offices which will ensure exhibitors both ready access to films and regularity of supplies. Moreover, such improvements will permit UIP to develop closer ties with regional and small exhibitors so that it can better respond to their needs and demands. Finally, an increased supply of films will also benefit cinema viewers by widening the range of choice.
- (50) The agreements contain no restrictions which are not indispensable to the attainment of the said objectives for the duration of the exemption.
- (51) The formation of the joint venture itself is indispensable to continuation of the international distribution of the parent companies' films. Alternatives less restrictive of competition, such as relying on independent distributors throughout the Community for their international distribution, would not provide the benefits expected of UIP.
- (52) There does not exist any independent non-integrated distribution organization covering the entire Community, and at national level the few distributors large enough to offer economies which could approach those realized by UIP are integrated upward. This is the case in Italy with Cidif, Medusa, DLF, Cannon, Columbia, Warner Bros and Twentieth Century Fox (the last three using the same agent); in the United Kingdom with Columbia-EMI-Warner Distributors Limited, Cannon Film Distributors Limited and United Kingdom Film Distributors Limited; in France with Gaumont, UGC and Parafrance; in the Netherlands with Cannon-Tuschinski and Warner Columbia; in Germany with Warner-Columbia, Fox-Disney and Tobis-Constantin; in Belgium with Warner Columbia, Fox-UGC, Gaumont and Dream World; in Ireland with Abbey Films; and in Denmark with Nordisk Film.
- (53) Certain characteristics of the film commodity also decrease the likelihood of a too-close collaboration between the parent companies derived from the creation of UIP. Feature films should not be considered necessarily as homogeneous products, each film having its own merits and commercial

appeal which determine its success or failure. Moreover, it is very difficult to predict accurately the commercial success of a given film prior to its screening. The price paid by exhibitors for each film is a rental fee stated as a percentage (in Belgium and France the fee is fixed by government regulation) or as a set of percentages of box-office receipts which obviously vary depending on the film's performance. In this sense, mutual agreement on prices and licence conditions is not called for and any sales revenue quota is difficult to implement in the absence of a profit-sharing clause. Such a clause existed in the agreements originally notified but has been subsequently amended at the Commission's request. Before the Commission's intervention this clause obliged the parent companies to pay a certain percentage of any additional rental income derived from their films to UIP after each party had covered one-third of UIP's annual total costs. Since at the end of the year each parent receives one-third of the profits UIP has generated, competition was restricted in that the clause imposing the additional fee gave each parent an interest in the receipts of the others. After the amendments the additional fee paid to UIP in a given year will be applied as a credit against each licensor's obligation to cover one-third of UIP's total costs in the subsequent year.

- (54) Moreover, the restrictive character of the joint venture is limited by the fact that parameters vital for competition in the film industry are still determined by the parent companies: they control the number of prints to be made, the selection of the film laboratory, and they bear their own costs for prints, dubbing and advertising. The independence of the parties concerning the release and marketing of their respective films has also been reinforced by an undertaking provided to the Commission according to which no UIP committee may discuss plans in that respect (see paragraph 31 above).

- (55) The right of first refusal granted to UIP by the parent companies regarding their respective distribution rights and defined in the modified agreements is necessary to ensure that a sufficient flow of product reaches UIP so that the joint venture can achieve the economies of scale sought by the partners. The negative effects ordinarily associated with exclusive distribution arrangements of this kind are substantially limited here for two reasons. In the first place, each parent company retains the right to impose on UIP the distribution of a particular film should the joint venture freely elect not to distribute the film in the entire Community, or may distribute the film on its own or through a third party. Secondly, the parent

companies and UIP itself will make themselves available, based upon their commercial judgment, to distribute third parties' films in the Community.

- (56) The agreements do not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question.
- (57) UIP has an average market share of 22 % in the Community. However, competition in the film business tends to be localized due to existing differences in the structure of the industry in the various Member States such as language barriers, governmental regulations and different patterns of distribution and exhibition, all of which makes the economic analysis of the impact of this joint venture based on Community-wide market shares less meaningful. As previously indicated, UIP's local offices compete in some Member States with distributors of approximately the same size and with integrated concerns covering production, distribution and sometimes exhibition. As a result it may reasonably be expected that the position in the market-place of the other distributors will not be jeopardized by UIP.

Moreover, the value of measuring UIP's power in the market by calculating overall market shares is also limited by the fact that annual rentals earned by a distributor vary widely depending on the success of its films. The figures contained in paragraph 13 above are illustrative of such variations. Accordingly, in the first years of operation of the joint venture, UIP's market shares in Germany were 17 %, 21 %, 16 %, 30 % and 19 % respectively. Similar fluctuations had taken place in Belgium during that period, 19 %, 25 %, 17 %, 31 % and 18 %, and in the other Member States. Consequently, any such fluctuations do not necessarily reflect changes in economic power directly attributable to the functioning of the distribution organization but reflect the chance of having, at least for that year, more appealing films.

- (58) UIP's possibilities of eliminating competition are also diminished by the countervailing economic power which is exercised by exhibitors in the Member States, some of which hold prevalent positions in key locations. In the United Kingdom, for instance, the exhibition market is dominated by two powerful circuits, Rank and EMI, that control  $\pm 40\%$  of the screens and  $\pm 65\%$  of box-office revenues. Four national circuits in France represent  $\pm 55\%$  of box-office receipts and similar examples may be found in other Member States. Even larger percentages of screens and box-office receipts appear if the main cities, which usually generate the greatest percentage of revenue, are considered.

- (59) Finally, the establishment of an arbitration procedure as requested by the Commission, which takes into account existing obligations under mandatory arbitration systems in the Member States, for the resolution of disputes relating to film allocation or access to exhibitor screenspace gives additional assurance as to the effective reach and operation of the distribution network in the market place.

#### *Duration of the exemption and obligations*

- (60) Pursuant to Article 6 (1) of Regulation No 17, the Commission is required to specify the date from which an exemption is granted.

The agreements as notified on 11 February 1982 contained several provisions which prevented the granting of an exemption in this case. Following discussions with the Commission, the notifying parties presented a number of amendments to the agreements in order to meet the Commission's objections. Accordingly, the date on which the exemption takes effect will not be the date of the notification but 27 July 1988, the date on which the parties to the agreements presented their last amendments.

- (61) Article 8 (1) of Regulation No 17 provides that exemptions under Article 85 (3) may be granted only for a specific period and that conditions and obligations may be attached to them.

In view of the nature of the market concerned, the duration of the exemption should be fixed at five years. However, so that the Commission can perform its supervisory functions pursuant to Article 8 (3) of Regulation No 17, the undertakings to whom this Decision is addressed must be under an obligation to notify to it any amendment or addition to the agreements as well as all awards by arbitration tribunals settling disputes regarding film allocation and access to screenspace between UIP and exhibitors in the Community,

United Artists Corporation, and Cinema International Corporation NV on the formation of the joint subsidiary, United International Pictures BV, and to the accompanying agreements between the parent companies or subsidiaries of them and the joint venture company.

#### *Article 2*

The declaration of exemption contained in Article 1 shall be subject to the following obligations:

- (a) the undertakings to which this Decision is addressed shall inform the Commission forthwith of any amendment or addition to the agreements referred to in Article 1, and of any change in the scope, nature or extent of the cooperation between them; and
- (b) they shall notify to the Commission all awards by arbitration tribunals settling disputes regarding film allocation and access to screenspace between UIP and exhibitors in the Community.

#### *Article 3*

This Decision is addressed to the following undertakings:

- United International Pictures BV  
Rijswijkstraat 175,  
Amsterdam W3,  
Netherlands;
- Paramount Pictures Corporation,  
One Gulf & Western Plaza,  
New York,  
New York 10023 USA;
- MCA Inc.,  
100 Universal City Plaza,  
Universal City,  
California 91608 USA;
- MGM/UA Communications Co.  
10000 West Washington Boulevard,  
Culver City,  
California 90232 USA.

HAS ADOPTED THIS DECISION:

#### *Article 1*

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period 27 July 1988 to 26 July 1993 to the basic agreement dated 5 October 1981 between Paramount Pictures Corporation, MCA Inc., Metro-Goldwyn-Mayer Film Co.,

Done at Brussels, 12 July 1989.

*For the Commission*  
Sir Leon BRITTAN  
Vice-President

## ANNEX

## Undertaking

'UIP undertakes in good faith that:

- (a) UIP will support cinema industry efforts to establish arbitration or comparable procedures for the resolution of disputes relating to product allocation or access to exhibitor screenspace.
- (b) When a dispute arises with an exhibitor regarding product allocation in those Member States where exhibitors currently cannot compel UIP to submit disputes to arbitration under existing industry arbitration procedures, UIP will advise that exhibitor that it can register with UIP to arbitrate this and all future disputes regarding the allocation of films for which UIP holds the distribution rights which may arise before, during or after any contractual relationship concerning a particular film is entered into between UIP and the exhibitor.

Whenever existing mandatory systems do not foresee arbitration of disputes regarding product allocation arising before, during or after any contractual relationship concerning a particular film is entered into between UIP and the exhibitor concerned, UIP will also advise that exhibitor that it can register with UIP to arbitrate such disputes.

- (c) Any such arbitration shall respect the following principles:
  - 1. The party who intends to bring a dispute before an arbitrator or arbitral tribunal shall give written notice (registered letter) to the other party, stating the nature of the dispute to be resolved, the basis of the claimant's position and the relief requested.
  - 2. The proceeding shall be conducted by one arbitrator nominated jointly by the parties within fifteen (15) days after receipt of the written notice, or by three arbitrators. In the latter case, the parties to the dispute shall appoint one arbitrator each within fifteen (15) days after the period to jointly nominate one arbitrator has elapsed. The arbitrators appointed by the parties shall appoint another arbitrator to be president of the arbitral tribunal within fifteen (15) days after the both of them have been nominated. If the arbitrators do not agree, the third arbitrator shall be appointed by the President of the Court of Appeals having jurisdiction in commercial matters in the capital city of the exhibitor's country.
  - 3. The law applicable to the substance of the case shall be the law of the country of the exhibitor.
  - 4. The internal arbitration procedure shall follow the Rules of the Arbitral Court of the International Chamber of Commerce (ICC Rules). General procedural issues shall be regulated by the law of the country of the exhibitor.
  - 5. The place of arbitration shall be the country of the exhibitor.
  - 6. The arbitration shall be conducted in the language of the exhibitor.
  - 7. Unless otherwise agreed by the parties the arbitral award is to be made within five months after the date on which all the arbitrators accepted office. Arbitrators should be aware of the urgency derived from the specific features of the cinema distribution industry.
  - 8. To the extent permitted by national law, an application to the competent judicial authority for preservation or interim measures shall not be incompatible with the arbitration agreement and shall not imply a renunciation of the agreement.
  - 9. The arbitrator or arbitral tribunal shall fix the on account payment which shall be made by either or both parties towards the costs of arbitration.
  - 10. If an exhibitor elects to arbitrate a product allocation dispute with UIP, that exhibitor thereby agrees to arbitrate any dispute UIP may then or thereafter have relating to access to that exhibitor's screenspace.
  - 11. The arbitration award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.
- (d) This undertaking shall become effective upon the grant of an exemption to UIP and shall remain effective throughout the period of the exemption.