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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3675/93

of 20 December 1993

on the conclusion of the Agreement in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 in conjunction with Article 228, paragraph 3, first subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Canada is a major partner of the European Community, with whom sound relations should be maintained in the fisheries sector; whereas a framework should accordingly be established for mutual cooperation with a view to fostering effective conservation and to introducing the exploitation of fishery resources in the north-west Atlantic on a lasting basis; whereas in that connection the two Parties have agreed on the aspects to be covered by their relations in the fisheries sector;

Whereas the Agreement in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations should be approved;

Whereas the two Parties intend implementing the specific cooperation measures provided for in the memorandum of understanding appended to the exchange of letters pursuant to the United Nations Convention on the Law of the Sea, to which they are signatories, and pursuant to the Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries, to which they are Contracting Parties; whereas it should accordingly be made clear that the Commission is authorized to conduct the consultations provided for to that end in accordance with the negotiating directives decided upon on 15 December 1992;

Whereas the relations between the two Parties in the fisheries sector are based, in particular, on access to surplus resources in Canadian waters;

Whereas specific provisions should be laid down for terminating cooperation if the Community is unable to maintain it owing to special circumstances,

HAS ADOPTED THIS REGULATION:

Article 1

The Agreement in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations is hereby approved in the name of the Community.

The text of the Agreement in the form of exchanges of letters, of which the memorandum of understanding forms an integral part, is attached.

Article 2

The Presidency of the Council is hereby authorized to designate the persons empowered to sign the Agreement in the form of exchanges of letters in order to bind the Community.

Article 3

The Commission, assisted by a committee comprising representatives of the Member States, shall conduct the consultations between the Community and the Government of Canada pursuant to points I(d), (e), (g) and (h) and II of the memorandum of understanding.

Article 4

1. In the event of difficulties, as provided for in point IV(d) of the memorandum of understanding, the Commission shall immediately forward a report accompanied by its opinion to the Council and the Member States to the effect that the conditions for terminating the Agreement are fulfilled. Within 10 days of the forwarding of the opinion to the Council, any Member State may raise the matter in the Council. The Council, acting by a qualified majority, may decide not to terminate the Agreement. Unless a decision not to terminate is taken within one month following the forwarding of the opinion to the Council, or unless a Member State raises the matter in the Council within the abovementioned 10 days, the Agreement shall be terminated by the Commission.

2. The Commission, in the name of the Community, shall notify the termination of the Agreement in the form of an exchange of letters in accordance with point IV(e) of the memorandum of understanding.

Article 5

1. Where the Government of Canada decides, in accordance with point III(b) of the memorandum of understanding, to offer the Community possibilities of fishing surplus resources in its fishing zone, the Council, acting by a qualified majority on a proposal from the Commission, shall take a decision on allocation between the Member States within two months following receipt thereof.

2. The owner or operator of a vessel of a Member State which conducts fishing or any other operations

under point III(c) of the memorandum of understanding shall provide the competent authorities of the Community with any information which may be required pursuant to that point concerning fish or fishery products caught or otherwise obtained. The detailed rules for the application of this paragraph shall be adopted in accordance with the procedure laid down in Article 18 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽¹⁾.

Article 6

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

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

Done at Brussels, 20 December 1993.

For the Council
The President
A. BOURGEOIS

⁽¹⁾ OJ No L 389, 31. 12. 1992, p. 1.

AGREEMENT

in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations

A. Letter from Canada

Sir,

I have the honour to refer to the negotiations between the delegations of Canada and the European Community held in Brussels from 16 to 17 December 1992 on bilateral fisheries relations. These negotiations resulted, on 17 December 1992, in the initialling of the enclosed memorandum of understanding between the Government of Canada and the European Community on fisheries relations which aims at the attainment, in conformity with the provisions of the United Nations Convention on the Law of the Sea and the 1978 Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries, of effective conservation and sustainable exploitation of north-west Atlantic fisheries resources.

I have the further honour to propose that this letter, which is authentic in Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish, and the enclosed memorandum, if such meets with the approval of the Community, together with your letter in reply indicating such concurrence shall constitute an Agreement on fisheries relations between the Government of Canada and the European Community which shall enter into force on the date of your reply.

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

*For the
Government of Canada*

MEMORANDUM OF UNDERSTANDING

between the European Community and the Government of Canada on fisheries relations

Following negotiations between the delegations of Canada and the European Community held in Brussels from 16 to 17 December 1992 on bilateral fisheries relations,

The Government of Canada and the European Community (hereinafter referred to as 'the Parties'),

recalling the 1976 Framework Agreement for Commercial and Economic Cooperation between Canada and the European Community;

recalling the 1990 Declaration on EC-Canada Regulations in which both sides reaffirm their determination further to strengthen their partnership and to seek close cooperation on matters of mutual interest, in particular within international bodies;

noting the commitment of the Parties to cooperate closely in all international fora with a view to promoting the effective implementation of the provisions of the United Nations Convention on the Law of the Sea in conformity with international law, particularly in matters pertaining to the conservation and utilization of the living resources of the sea;

recalling the 1978 Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries, and in particular that the Parties are committed to implement with respect to their nationals the proposals for joint action regulating fishing in the Regulatory Area adopted in conformity with Article XI of that Convention;

noting the Parties' concern regarding the current state of the fish stocks in the north-west Atlantic, particularly the high fishing mortality and the catch of juveniles which impede rebuilding of the stocks;

noting the agreement of both Parties that effective implementation of the measures adopted by the Fisheries Commission at the 14th annual NAFO meeting, notably those referring to minimum mesh size and minimum fish sizes, is expected to reduce fishing mortality and the catch of juveniles;

noting the gravity of the situation and the fact that previous reductions in catch possibilities have not resulted in a commensurate reduction in fishing mortality;

noting the agreement of the Parties that fishing effort in the NAFO Regulatory Area shall be managed in a way that contributes to the rebuilding of the stocks;

noting the moratorium on fishing for 2J3KL cod inside the Canadian fishing zone imposed by Canada in 1992 to ensure the conservation of the stock and the decision at the 14th annual NAFO meeting that directed fisheries for this stock in Division 3L in the NAFO Regulatory Area shall not be permitted in 1993;

noting that the Parties, both bilaterally and in the framework of NAFO, are cooperating in designing and adopting measures to ensure effective international inspection and control of fishing activity in the NAFO Regulatory Area;

noting that the Parties, both individually and in the framework of NAFO, are considering measures intended to improve the balance between fishing effort and legitimate fishing possibilities in the NAFO Regulatory Area;

noting the agreement of the Parties that the practice of vessels re-flagging to States that are not Contracting Parties to the NAFO Convention in order to fish without restraint in the NAFO Regulatory Area constitutes an unacceptable threat to conservation of north-west Atlantic fish stocks;

recalling the observation by the NAFO Scientific Council that vessels flying the flags of States that are not Contracting Parties to the NAFO Convention fish in the NAFO Regulatory Area for stocks and with small mesh gear contrary to conservation measures enacted by Contracting Parties, thus affecting adversely the attainment of the objectives of the Convention;

recalling that the Parties have cooperated within NAFO on steps aimed at eliminating fishing contrary to NAFO conservation decisions by vessels flying the flags of States that are not Contracting Parties to the NAFO Convention and that the Parties have also sought the cooperation of these flag States to obtain the withdrawal of their vessels from the NAFO Regulatory Area;

recognizing that the actions taken by flag States which are not Contracting Parties to the NAFO Convention have not resolved the current threat to conservation in the NAFO Regulatory Area;

recognizing that both Parties have adopted and implemented measures within the NAFO framework to improve inspection and control in the Regulatory Area:

- (a) for the documentation and marking of fishing vessels and gears to standards adopted by NAFO;
- (b) to enable the regular exchange of surveillance and control information, as well as the exchange of inspectors;
- (c) on aerial surveillance under the NAFO Scheme of Joint International Inspection and Surveillance and the treatment of aerial surveillance reports;
- (d) on the NAFO hail system;
- (e) to ensure that their appropriate authorities take prompt action to conduct the investigations necessary to obtain evidence of apparent infringements of NAFO conservation and enforcement measures and to ensure immediate judicial or administrative action as appropriate;
- (f) on the monitoring of the quota uptake (i.e., catches compared to quotas) and verification that fishery prohibitions are being respected, by an inspection presence in the NAFO Regulatory Area and through inspections of landings;

recognizing that both Parties will implement as of 1 January 1993 the following measures agreed in NAFO:

- (a) an 18-month pilot observer scheme;
- (b) the requirement for vessel masters to present NAFO inspectors with stowage plans or production log books;
- (c) minimum sizes for cod and flatfish;
- (d) a standard mesh size of 130 mm for groundfish, including two derogations accepted by NAFO;
- (e) rules on incidental by-catches; and
- (f) a one net rule (secure stowage of gear that is not authorized for use in the NAFO Regulatory Area);

I. The Parties have agreed:

- (a) to cooperate to support effective conservation and sustainable exploitation of north-west Atlantic fisheries resources;
- (b) to comply with the decisions of NAFO on fisheries management and conservation, in accordance with their rights and obligations under the NAFO Convention;
- (c) to support the adoption by the NAFO Fisheries Commission of management and conservation measures which are in conformity with Article XI of the NAFO Convention, having regard to the cooperative manner in which Canada and the Community contributed to management and conservation decisions reached at the 1992 annual NAFO meeting. As required by the foregoing Article, Canada shall continue to inform the Fisheries Commission of its management and conservation measures and decisions;
- (d) to identify ways to encourage further economic and commercial cooperation between Canadian and Community fisheries interests;
- (e) to consult with a view to presenting joint proposals, without prejudice to international rights and obligations, in time for consideration at the 1993 annual NAFO meeting on:
 - a dispute settlement mechanism to resolve disputes between NAFO Contracting Parties that may arise from use of the objection procedure in a way which might affect adversely the attainment of the objectives of the NAFO Convention,
 - measures to prevent fishing in the NAFO Regulatory Area by vessels flying the flags of States which are not Contracting Parties to the NAFO Convention which affect adversely the attainment of the objectives of the NAFO Convention, in particular measures applicable to such flag States which do not take effective and timely action with respect to the fishing activities of their nationals or vessels in the NAFO Regulatory Area,

- further measures including the possibility of preventing imports of fish caught in the NAFO Regulatory Area by vessels flying the flags of States which are not Contracting Parties to the NAFO Convention;
- (f) to apply measures to deter re-flagging of their vessels to flags of States which are not Contracting Parties to the NAFO Convention for the purpose of fishing in the NAFO Regulatory Area contrary to NAFO conservation and enforcement measures;
- (g) to cooperate on the implementation and improvement of measures to ensure effective surveillance and inspection of fishing activity in the NAFO Regulatory Area so that agreed management measures are respected;
- (h) to work together within NAFO on development and implementation of further measures to improve the balance between fishing effort and legitimate fishing possibilities and to take domestic action as necessary to ensure effective implementation of such measures;
- (i) to establish a Joint Committee of Senior Officials to meet as necessary but at least once a year to review the operation of the Agreement and the implementation of their respective undertakings by the Parties;
- (j) to ensure appropriate enforcement of NAFO conservation and enforcement measures and their own regulations applicable to fisheries by their vessels in the NAFO Regulatory Area;
 - beginning in 1993, the Community shall exercise at least the same degree of control over Community vessels as in 1992 to ensure that their catches do not exceed quotas, by closing fisheries when quotas are deemed to have been exhausted and by endeavouring to limit fishing effort (number of vessels and fishing days) in relation to quotas and other legitimate fishing possibilities so as to ensure effective surveillance and control;
- (k) to continue to have fisheries patrol vessels in the NAFO Regulatory Area for inspections under the NAFO Scheme of Joint International Inspection and Surveillance subject to operational requirements;
 - to this end, for 1993 the European Commission intends to assign a fisheries patrol vessel to the NAFO Regulatory Area for a period of 10 months as in 1992,
 - in the absence of a Community patrol vessel and, when practicable for both Parties, the European Commission will assign fisheries inspectors to carry out NAFO inspection duties from a Canadian patrol vessel; and
- (l) to continue to carry out in 1993, and without prejudice to subsequent years by mutual agreement, quarterly reviews of Canadian and Community surveillance and inspection activities and data, including reports of catches by their vessels in the NAFO Regulatory Area so as to ensure accurate and timely determination of the actual uptake of quotas.

II. With respect to 2J3KL cod:

recognizing that the NAFO Scientific Council has concluded since 1986 that 5 % of the total biomass of the stock on average over the year is estimated to have occurred in the NAFO Regulatory Area, the Parties:

- (a) note that Canada will request annually that the NAFO Scientific Council carry out an assessment of the stock taking into account all relevant scientific evidence including the findings and supporting data of the Canadian Atlantic Fisheries Scientific Advisory Committee;
- (b) recognize that Canada will set a total allowable catch (TAC) annually and that the NAFO Fisheries Commission will set and allocate to Contracting Parties an amount equal to 5 % of the TAC for the NAFO Regulatory Area in accordance with the distribution key established by the Commission and in conformity with the NAFO Convention and

- (c) agree to support decisions by the NAFO Fisheries Commission, based on any relevant information or advice provided to it by the NAFO Scientific Council, regarding 5 % of the TAC which are consistent with the management and conservation decisions taken by Canada.

III. The Parties note the decision of the Government of Canada:

- (a) to permit Community fishing vessels to enter and use Canadian ports in accordance with Canadian law, rules and conditions;
- (b) to make available to the Community allocations of fish designated by Canada as surplus to Canadian harvesting requirements on a basis comparable to arrangements for licensing of other foreign vessels to fish in the Canadian fishing zone, taking into account the traditional interest of the Community in receiving, in the event of any surpluses being available, allocations of groundfish (such as in particular redfish, witch and Greenland halibut) and
- (c) to permit Community vessels to participate with Canadian companies in commercial arrangements under developmental or other fisheries programmes in accordance with policies established by the Government of Canada.

IV. The Parties agree that:

- (a) nothing in this Agreement shall prejudice any multilateral convention to which Canada and the Community, or Canada and any Member State of the Community, are parties, or the views of either Party with respect to any question relating to the Law of the Sea;
- (b) this Agreement is without prejudice to the delimitation of economic zones or fishery zones between Canada and Member States of the Community;
- (c) this Agreement shall enter into force upon signature, at which time it shall supersede the Agreement on fisheries between the Government of Canada and the European Economic Community signed on 30 December 1981;
- (d) if difficulties arise with respect to the interpretation or implementation of this Agreement, either Party shall so notify the other Party and request that bilateral consultations be held as soon as possible with a view to resolving such difficulties and
- (e) if no solution is agreed despite best efforts by the Parties, either Party may terminate this Agreement at any time following 60 days from the date of receipt by the other Party of the request for consultations mentioned in paragraph (d) above.

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'I have the honour to refer to the negotiations between the delegations of Canada and the European Community held in Brussels from 16 to 17 December 1992 on bilateral fisheries relations. These negotiations resulted, on 17 December 1992, in the initialling of the enclosed memorandum of understanding between the Government of Canada and the European Community on fisheries relations which aims at the attainment, in conformity with the provisions of the United Nations Convention on the Law of the Sea and the 1978 Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries, of effective conservation and sustainable exploitation of north-west Atlantic fisheries resources.

I have the further honour to propose that this letter, which is authentic in Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish, and the enclosed memorandum, if such meets with the approval of the Community, together with your letter in reply indicating such concurrence shall constitute an Agreement on fisheries relations between the Government of Canada and the European Community which shall enter into force on the date of your reply.'

I have the further honour to inform you that the European Community is in agreement with the contents of your letter.

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

*For the
Council of the European Union*

MEMORANDUM OF UNDERSTANDING

between the European Community and the Government of Canada on fisheries relations

Following negotiations between the delegations of Canada and the European Community held in Brussels from 16 to 17 December 1992 on bilateral fisheries relations,

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noting the commitment of the Parties to cooperate closely in all international fora with a view to promoting the effective implementation of the provisions of the United Nations Convention on the Law of the Sea in conformity with international law, particularly in matters pertaining to the conservation and utilization of the living resources of the sea;

recalling the 1978 Convention on Future Multilateral Cooperation in the North-west Atlantic Fisheries, and in particular that the Parties are committed to implement with respect to their nationals the proposals for joint action regulating fishing in the Regulatory Area adopted in conformity with Article XI of that Convention;

noting the Parties' concern regarding the current state of the fish stocks in the north-west Atlantic, particularly the high fishing mortality and the catch of juveniles which impede rebuilding of the stocks;

noting the agreement of both Parties that effective implementation of the measures adopted by the Fisheries Commission at the 14th annual NAFO meeting, notably those referring to minimum mesh size and minimum fish sizes, is expected to reduce fishing mortality and the catch of juveniles;

noting the gravity of the situation and the fact that previous reductions in catch possibilities have not resulted in a commensurate reduction in fishing mortality;

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noting the moratorium on fishing for 2J3KL cod inside the Canadian fishing zone imposed by Canada in 1992 to ensure the conservation of the stock and the decision at the 14th annual NAFO meeting that directed fisheries for this stock in Division 3L in the NAFO Regulatory Area shall not be permitted in 1993;

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noting that the Parties, both individually and in the framework of NAFO, are considering measures intended to improve the balance between fishing effort and legitimate fishing possibilities in the NAFO Regulatory Area;

noting the agreement of the Parties that the practice of vessels re-flagging to States that are not Contracting Parties to the NAFO Convention in order to fish without restraint in the NAFO Regulatory Area constitutes an unacceptable threat to conservation of north-west Atlantic fish stocks;

recalling the observation by the NAFO Scientific Council that vessels flying the flags of States that are not Contracting Parties to the NAFO Convention fish in the NAFO Regulatory Area for stocks and with small mesh gear contrary to conservation measures enacted by Contracting Parties, thus affecting adversely the attainment of the objectives of the Convention;

recalling that the Parties have cooperated within NAFO on steps aimed at eliminating fishing contrary to NAFO conservation decisions by vessels flying the flags of States that are not Contracting Parties to the NAFO Convention and that the Parties have also sought the cooperation of these flag States to obtain the withdrawal of their vessels from the NAFO Regulatory Area;

recognizing that the actions taken by flag States which are not Contracting Parties to the NAFO Convention have not resolved the current threat to conservation in the NAFO Regulatory Area;

recognizing that both Parties have adopted and implemented measures within the NAFO framework to improve inspection and control in the Regulatory Area:

- (a) for the documentation and marking of fishing vessels and gears to standards adopted by NAFO;
- (b) to enable the regular exchange of surveillance and control information, as well as the exchange of inspectors;
- (c) on aerial surveillance under the NAFO Scheme of Joint International Inspection and Surveillance and the treatment of aerial surveillance reports;
- (d) on the NAFO hail system;
- (e) to ensure that their appropriate authorities take prompt action to conduct the investigations necessary to obtain evidence of apparent infringements of NAFO conservation and enforcement measures and to ensure immediate judicial or administrative action as appropriate;
- (f) on the monitoring of the quota uptake (i.e., catches compared to quotas) and verification that fishery prohibitions are being respected, by an inspection presence in the NAFO Regulatory Area and through inspections of landings;

recognizing that both Parties will implement as of 1 January 1993 the following measures agreed in NAFO:

- (a) an 18-month pilot observer scheme;
- (b) the requirement for vessel masters to present NAFO inspectors with stowage plans or production log books;
- (c) minimum sizes for cod and flatfish;
- (d) a standard mesh size of 130 mm for groundfish, including two derogations accepted by NAFO;
- (e) rules on incidental by-catches;
- (f) a one net rule (secure stowage of gear that is not authorized for use in the NAFO Regulatory Area);

I. The Parties have agreed:

- (a) to cooperate to support effective conservation and sustainable exploitation of north-west Atlantic fisheries resources;
- (b) to comply with the decisions of NAFO on fisheries management and conservation, in accordance with their rights and obligations under the NAFO Convention;
- (c) to support the adoption by the NAFO Fisheries Commission of management and conservation measures which are in conformity with Article XI of the NAFO Convention, having regard to the cooperative manner in which Canada and the Community contributed to management and conservation decisions reached at the 1992 annual NAFO meeting. As required by the foregoing Article, Canada shall continue to inform the Fisheries Commission of its management and conservation measures and decisions;
- (d) to identify ways to encourage further economic and commercial cooperation between Canadian and Community fisheries interests;
- (e) to consult with a view to presenting joint proposals, without prejudice to international rights and obligations, in time for consideration at the 1993 annual NAFO meeting on:
 - a dispute settlement mechanism to resolve disputes between NAFO Contracting Parties that may arise from use of the objection procedure in a way which might affect adversely the attainment of the objectives of the NAFO Convention,
 - measures to prevent fishing in the NAFO Regulatory Area by vessels flying the flags of States which are not Contracting Parties to the NAFO Convention which affect adversely the attainment of the objectives of the NAFO Convention, in particular measures applicable to such flag States which do not take effective and timely action with respect to the fishing activities of their nationals or vessels in the NAFO Regulatory Area,

- further measures including the possibility of preventing imports of fish caught in the NAFO Regulatory Area by vessels flying the flags of States which are not Contracting Parties to the NAFO Convention;
- (f) to apply measures to deter re-flagging of their vessels to flags of States which are not Contracting Parties to the NAFO Convention for the purpose of fishing in the NAFO Regulatory Area contrary to NAFO conservation and enforcement measures;
- (g) to cooperate on the implementation and improvement of measures to ensure effective surveillance and inspection of fishing activity in the NAFO Regulatory Area so that agreed management measures are respected;
- (h) to work together within NAFO on development and implementation of further measures to improve the balance between fishing effort and legitimate fishing possibilities and to take domestic action as necessary to ensure effective implementation of such measures;
- (i) to establish a Joint Committee of Senior Officials to meet as necessary but at least once a year to review the operation of the Agreement and the implementation of their respective undertakings by the Parties;
- (j) to ensure appropriate enforcement of NAFO conservation and enforcement measures and their own regulations applicable to fisheries by their vessels in the NAFO Regulatory Area;
 - beginning in 1993, the Community shall exercise at least the same degree of control over Community vessels as in 1992 to ensure that their catches do not exceed quotas, by closing fisheries when quotas are deemed to have been exhausted and by endeavouring to limit fishing effort (number of vessels and fishing days) in relation to quotas and other legitimate fishing possibilities so as to ensure effective surveillance and control;
- (k) to continue to have fisheries patrol vessels in the NAFO Regulatory Area for inspections under the NAFO Scheme of Joint International Inspection and Surveillance subject to operational requirements;
 - to this end, for 1993 the European Commission intends to assign a fisheries patrol vessel to the NAFO Regulatory Area for a period of 10 months as in 1992,
 - in the absence of a Community patrol vessel and, when practicable for both Parties, the European Commission will assign fisheries inspectors to carry out NAFO inspection duties from a Canadian patrol vessel;
- (l) to continue to carry out in 1993, and without prejudice to subsequent years by mutual agreement, quarterly reviews of Canadian and Community surveillance and inspection activities and data, including reports of catches by their vessels in the NAFO Regulatory Area so as to ensure accurate and timely determination of the actual uptake of quotas.

II. With respect to 2J3KL cod:

recognizing that the NAFO Scientific Council has concluded since 1986 that 5 % of the total biomass of the stock on average over the year is estimated to have occurred in the NAFO Regulatory Area, the Parties:

- (a) note that Canada will request annually that the NAFO Scientific Council carry out an assessment of the stock taking into account all relevant scientific evidence including the findings and supporting data of the Canadian Atlantic Fisheries Scientific Advisory Committee;
- (b) recognize that Canada will set a total allowable catch (TAC) annually and that the NAFO Fisheries Commission will set and allocate to Contracting Parties an amount equal to 5 % of the TAC for the NAFO Regulatory Area in accordance with the distribution key established by the Commission and in conformity with the NAFO Convention and

- (c) agree to support decisions by the NAFO Fisheries Commission, based on any relevant information or advice provided to it by the NAFO Scientific Council, regarding 5 % of the TAC which are consistent with the management and conservation decisions taken by Canada.

III. The Parties note the decision of the Government of Canada:

- (a) to permit Community fishing vessels to enter and use Canadian ports in accordance with Canadian law, rules and conditions;
- (b) to make available to the Community allocations of fish designated by Canada as surplus to Canadian harvesting requirements on a basis comparable to arrangements for licensing of other foreign vessels to fish in the Canadian fishing zone, taking into account the traditional interest of the Community in receiving, in the event of any surpluses being available, allocations of groundfish (such as in particular redfish, witch and Greenland halibut) and
- (c) to permit Community vessels to participate with Canadian companies in commercial arrangements under developmental or other fisheries programmes in accordance with policies established by the Government of Canada.

IV. The Parties agree that:

- (a) nothing in this Agreement shall prejudice any multilateral convention to which Canada and the Community, or Canada and any Member State of the Community, are parties, or the views of either Party with respect to any question relating to the Law of the Sea;
- (b) this Agreement is without prejudice to the delimitation of economic zones or fishery zones between Canada and Member States of the Community;
- (c) this Agreement shall enter into force upon signature, at which time it shall supersede the Agreement on fisheries between the Government of Canada and the European Economic Community signed on 30 December 1981;
- (d) if difficulties arise with respect to the interpretation or implementation of this Agreement, either Party shall so notify the other Party and request that bilateral consultations be held as soon as possible with a view to resolving such difficulties and
- (e) if no solution is agreed despite best efforts by the Parties, either Party may terminate this Agreement at any time following 60 days from the date of receipt by the other Party of the request for consultations mentioned in paragraph (d) above.

A. Letter from Canada

Sir,

With reference to the Agreement on fisheries relations between the Government of Canada and the European Community signed on this date, I am writing to you with regard to the decision to be taken on the distribution among NAFO Contracting Parties of the 5% of the total allowable catch of 2J3KL cod that will be available annually in the NAFO Regulatory Area. I have the honour to confirm that Canada and the Community will propose at the 1993 annual NAFO meeting that the Community share of this 5% shall be two-thirds.

I have the honour to confirm my understanding that the Community will limit its catches of 2J3KL cod to the share approved by NAFO.

Canada notes that the Council of the European Union is considering provisions for the reform of the common fisheries policy, including new monitoring measures and a licensing scheme applicable to Community vessels operating in the NAFO Regulatory Area designed to manage fishing effort (number of vessels and fishing days) to ensure that catches are commensurate with established quotas and other legitimate fishing possibilities, and the withdrawal of licences in the event of an infringement.

I have the further honour to propose that this letter, which is equally authentic in English and French, and your letter of even date shall constitute an integral part of the Agreement on fisheries relations between the Government of Canada and the European Community signed on this date.

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

*For the Government
of Canada*

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'With reference to the Agreement on fisheries relations between the Government of Canada and the European Community signed on this date, I am writing to you with regard to the decision to be taken on the distribution among NAFO Contracting Parties of the 5 % of the total allowable catch of 2J3KL cod that will be available annually in the NAFO Regulatory Area. I have the honour to confirm that Canada and the Community will propose at the 1993 annual NAFO meeting that the Community share of this 5 % shall be two-thirds.

I have the honour to confirm my understanding that the Community will limit its catches of 2J3KL cod to the share approved by NAFO.

Canada notes that the Council of the European Union is considering provisions for the reform of the common fisheries policy, including new monitoring measures and a licensing scheme applicable to Community vessels operating in the NAFO Regulatory Area designed to manage fishing effort (number of vessels and fishing days) to ensure that catches are commensurate with established quotas and other legitimate fishing possibilities, and the withdrawal of licences in the event of an infringement.

I have the further honour to propose that this letter, which is equally authentic in English and French, and your letter of even date shall constitute an integral part of the Agreement on fisheries relations between the Government of Canada and the European Community signed on this date.'

I have the honour to confirm that the contents of your letter are acceptable to the Community and that your letter and the present letter constitute an integral part of the Agreement on fisheries relations between the Government of Canada and the European Community signed on this date in accordance with your proposal.

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

*For the
Council of the European Union*

COUNCIL DIRECTIVE 93/118/EC

of 22 December 1993

amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas animal products are included in the list of products contained in Annex II to the Treaty; whereas the marketing of those products constitutes a significant source of income for a large part of the agricultural population;

Whereas Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽⁴⁾, laid down in particular the requirements for veterinary checks to be carried out in the Member State of dispatch for a large number of animal products;

Whereas Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries ⁽⁵⁾ laid down in particular the requirements for checks to be carried out on animal products from third countries;

Whereas Directive 85/73/EEC ⁽⁶⁾ laid down harmonized rules on the financing of health inspections and controls in relation to fresh meat of certain animal species; whereas that Directive lays down in particular that a fee is to be collected for inspections and controls;

Whereas Directive 85/73/EEC should be amended to take account of the new provisions concerning controls;

Whereas the principles laid down by Directive 85/73/EEC, and in particular the principle of charging fees, should be extended; whereas such an extension is justified by the concern to ensure that the control arrangements operate effectively and distortions of competition are avoided;

Whereas the necessary rules should now be laid down to ensure the financing of the checks on meat covered by Directives 64/433/EEC ⁽⁷⁾, 71/118/EEC ⁽⁸⁾ and 72/462/EEC ⁽⁹⁾;

Whereas for the other products of animal origin detailed rules will be established at a later date taking account of the specific nature of the products to be checked, the nature of the checks to be made and the advisability, having regard to the rules of competition, of setting a Community fee;

Whereas the Community provisions on the matter must be presented homogeneously,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/73/EEC is hereby amended as follows:

1. The title shall be replaced by the following:

'Council Directive 85/73/EEC on the financing of veterinary inspections and controls of animal products covered by Annex A to Directive 89/662/EEC and by Directive 90/675/EEC'.

2. Article 1 shall read as follows:

'Article 1

1. The Member States shall ensure

- the collection of a Community fee for the costs occasioned by health inspections and controls on the meat referred to in Directives 64/433/EEC, 72/462/EEC and 71/118/EEC, including the expenses entailed by the checks referred to in Directive 86/469/EEC, as well as those resulting from monitoring the rules laid down in Directive 93/118/EC ^(*),

⁽¹⁾ OJ No L 121, 29. 7. 1964, p. 2012/64.⁽²⁾ OJ No L 55, 8. 3. 1971, p. 23.⁽³⁾ OJ No L 302, 31. 12. 1972, p. 28.⁽¹⁾ OJ No C 325, 14. 12. 1991, p. 21.⁽²⁾ OJ No C 94, 13. 4. 1992, p. 326.⁽³⁾ OJ No C 106, 27. 4. 1992, p. 17.⁽⁴⁾ OJ No L 395, 30. 12. 1989, p. 13. Directive last amended by Directive 92/118/EEC (OJ No L 62, 15. 3. 1993, p. 49).⁽⁵⁾ OJ No L 373, 31. 12. 1990, p. 1. Directive last amended by Directive 92/118/EEC (OJ No L 62, 15. 3. 1993, p. 49).⁽⁶⁾ OJ No L 32, 5. 2. 1985, p. 14. Directive amended by Directive 88/409/EEC (OJ No L 194, 22. 7. 1988, p. 28).

- the financing of:
 - other veterinary inspections and controls laid down for the products referred to in the Directives listed in Annex A to Directive 89/662/EEC,
 - the controls provided for by Directive 90/675/EEC for products of animal origin other than the meat referred to in the first indent, including controls to detect the presence of residues.

2. The fees referred to in paragraph 1 shall be fixed so as to cover the costs incurred by the competent authority for

- salary costs, including social-security costs,
- administrative costs, which may include the expenditure required for in-service training of inspectors

for carrying out the controls and inspections referred to in paragraph 1.

3. Any direct or indirect refund of the fees provided for by this Directive shall be prohibited.

(¹) OJ No L 340, 31. 12. 1993, p. 15¹.

3. Articles 2, 2a, and 3 shall be replaced by the following Articles:

Article 2

1. The Member States shall ensure, for the purpose of financing the controls carried out pursuant to the Directives referred to in Article 1 by the competent authorities and for that purpose only, the collection

- for the types of meat referred to in Directives 64/433/EEC, 71/118/EEC and 72/462/EEC, with effect from 1 January 1994, of the Community fees following the procedures laid down in the Annex,
- from a date to be set at the time of adoption of the decisions provided for by Article 6, of a Community fee for the controls carried out on products of animal origin referred to in Article 1 (1), second indent.

2. Pending the decisions referred to in the second indent of paragraph 1, the Member States may collect national fees with due regard to the relevant principles governing the setting of Community fees.

3. Member States shall be authorized to collect an amount exceeding the level or levels of the Community fees, provided that the total fee collected by each Member State is not greater than the actual figure for inspection costs.

4. The Community fees shall replace all other health inspection charges or fees levied by the

national, regional or local authorities of the Member States for the inspections and controls referred to in Article 1 and the certification thereof. However, until 31 December 1995, the Member States shall be authorized to collect registration costs for establishments approved in accordance with the rules referred to in Annex A to Directive 89/662/EEC.

This Directive shall not preclude Member States from collecting a fee for combating epizootic diseases.

5. The Member States shall forward information — initially two years after the introduction of the new system and subsequently at the Commission's request — to the Commission concerning the distribution and use of the fees and must be able to justify their method of calculation.

Article 3

1. As part of the checks provided for in Article 12 of Directive 64/433/EEC, Article 10 of Directive 71/118/EEC and Article 20 of Directive 90/675/EEC, the Commission may, by random spot checks, verify whether the provisions of this Directive are being applied.

2. Where a Member State considers that the controls in another Member State are carried out in such a way that the fees provided for in this Directive do not correspond to the actual costs of the controls, it shall have recourse to the relevant provisions of Directive 89/608/EEC and, in particular, Articles 10 and 11 thereof.

Article 4

The fees shall be payable by the operator or owner of the establishment carrying out the operations referred to in the Directives listed in Annex A to Directive 89/662/EEC, who shall have the option of passing on the cost of the fee for the operation concerned to the natural or legal person on whose behalf the said operations are carried out. For imports the fees shall be payable by the importer or the customs agent acting for the importer.

Article 5

The rate of conversion into national currency of the amounts in ecus specified in this Directive shall be that published annually on the first working day of the month of September in the C series of the *Official Journal of the European Communities*.

This rate shall apply from 1 January of the following year.

However, the Member States shall apply for 1994 the rate of conversion applicable on 1 September 1992 and, for 1995, the average of the conversion rates published in accordance with the first paragraph for the last three years.

Article 6

1. The Council, acting by a qualified majority on a proposal from the Commission, may supplement this Directive with specific Annexes, so as to set the standard levels of the Community fees and determine the rules and principles for the application of this Directive, including exceptions to be made, as required for the implementation of the checks laid down in the Directives referred to in Annex A to Directive 89/662/EEC and in Directive 90/675/EEC.

2. The Annex to this Directive may be amended or supplemented by the procedure provided for in paragraph 1.

3. Before 1 January 1996, the Council shall review this Directive on the basis of a report from the Commission, accompanied by proposals where appropriate.

Article 7

The Member States shall inform the Commission

- of the conversion rates adopted each year in accordance with Article 5,
- of the place or places where fees are charged, in accordance with Chapter I.6 of the Annex, giving any necessary explanations.

Article 8

1. Greece shall be authorized to derogate from the principles laid down in this Directive where, because of geographical characteristics, the costs of collecting a fee in geographically remote regions are greater than the yield from the fee.

The Greek authorities shall inform the Commission of the territorial extent of the derogations granted.

The information shall be accompanied by any necessary explanations.

2. In the case of other outermost regions, other Member States may be authorized, in accordance with the procedure provided for in Article 18 of Directive 89/662/EEC, to benefit from the same derogations.

4. The existing Articles 4 and 5 shall become Articles 9 and 10 respectively.

5. The Annex attached to this Directive is hereby added.

Article 2

Decision 88/408/EEC is hereby repealed with effect from 1 January 1994.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1993 as regards the requirements in the Annex and in Article 5, and not later than 31 December 1994 as regards the other provisions.

Portugal shall be allowed an additional period of one year to comply with the new provisions in Chapter I of the Annex.

Member States shall forthwith inform the Commission of the provisions adopted.

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

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1993.

For the Council
The President
J.-M. DEHOUSSE

ANNEX

'ANNEX

FEES APPLYING TO MEAT COVERED BY DIRECTIVES 64/433/EEC, 71/118/EEC AND 72/462/EEC

CHAPTER I

Meat covered by Directives 64/433/EEC and 71/118/EEC

The fee referred to in Article 1 (1), first indent, is fixed in accordance with Article 1 (2) as follows:

1. Without prejudice to the application of points 4 and 5, Member States will collect for inspection costs relating to slaughter

— the following standard amounts:

- (a) beef and veal
 - adult bovine animals: ECU 4,75 per animal,
 - young bovine animals: ECU 2,5 per animal;
- (b) solipeds/equidae: ECU 4,4 per animal;
- (c) pigs: ECU 1,3 per animal;
- (d) sheepmeat and goatmeat: animals of a carcase weight
 - (i) of less than 12 kilograms: ECU 0,175 per animal;
 - (ii) of between 12 and 18 kilograms: ECU 0,35 per animal;
 - (iii) of more than 18 kilograms: ECU 0,5 per animal.

Pending a review of the rules governing inspection for lambs, goats and piglets of less than 12 kilograms, and until 31 December 1995 at the latest, the Member States may collect an amount corresponding to the actual cost of inspection for the inspection of those slaughtered animals;

- (e) Until 31 December 1995, the minimum amount to be collected for the ante-mortem and post-mortem inspection provided for in Directive 71/118/EEC shall be fixed:

- (i) either at a standard rate as follows:
 - for broilers, other young poultry for fattening weighing less than two kilograms and for cast hens: ECU 0,01 per animal,
 - other young poultry for fattening of a carcase weight of more than two kilograms: ECU 0,02 per animal,
 - other heavy adult poultry weighing more than five kilograms: ECU 0,04 per animal;
- (ii) or, where a Member State decides not to make the distinction between categories of poultry as in (i), at ECU 0,03 per bird;

— a share of the fees for

- (a) administrative costs may not be lower than ECU 0,725 per tonne;
- (b) examination for the presence of residues may not be lower than ECU 1,35 per tonne.

2. The controls and inspections connected with the cutting operations referred to in Article 3 (1)(B) of Directive 64/433/EEC and Article 3 (1)(B) of Directive 71/118/EEC shall be covered

- (a) either at a standard rate by the addition of a standard amount of ECU 3 per tonne on meat entering a cutting plant.

This amount is added to the amounts referred to in point 1 above;

- (b) or by collecting the actual costs of inspection per hour worked, any hour started being counted as an hour worked.

Where the cutting operations are carried out in the establishment where the meat is obtained, the amounts laid down in the first subparagraph may be reduced by up to 55%.

3. Member States shall collect an amount corresponding to the actual expenditure necessary for controls or inspections of the meat being stored, pursuant to Article 3 (1)(D) of Directive 64/433/EEC and Article 3 (1)(C) of Directive 71/118/EEC.

The rules of application of this point may be fixed under the procedure provided for in Article 16 of Directive 64/433/EEC or Article 21 of Directive 71/118/EEC, with a view in particular to settling the cases of intervention meat and meat subject to short-term storage in successive coldstores.

4. In order to cover increased costs, Member States may,

- (a) increase the standard amounts for fees pursuant to points 1 and 2(a) for individual establishments;

This would be subject, for example, to one or more of the following conditions (apart from the condition laid down in 5(a)):

- higher inspection costs due to a particular lack of uniformity in the animals for slaughter from the point of view of age, size, weight and state of health,
- longer waiting and otherwise non-productive periods for inspection staff owing to inadequate advance planning by the establishment of animal deliveries or technical inadequacies or failures, for example in older establishments,
- frequent delays in the slaughtering process, e.g. as a result of insufficient slaughter staff and hence under-employment of inspection staff,
- higher costs due to special travelling times,
- more time taken up on inspections due to frequently changing slaughter periods beyond the control of inspection staff,
- frequent interruptions in the slaughtering process to meet cleaning and disinfecting requirements;
- inspections of animals which, at the request of the owner, are slaughtered outside normal slaughtering hours.

The amount of the increases in the central standard rate for fees shall depend on the level of the costs to be covered;

- (b) or collect a special fee covering actual costs.

5. Member States in which salary costs, the structure of establishments and the relationship between veterinarians and inspectors diverge from the Community average taken as a basis for calculation of the standard amounts fixed in points 1 and 2(a) may exceptionally reduce them to meet the real costs of inspection:

- (a) in general, where there are substantial differences in the cost of living and salary costs;

- (b) for individual establishments, where the following conditions are met:

- a minimum daily slaughter rate must enable the deployment of the relevant inspection staff to be planned in advance,
- the number of slaughtered animals must be constant, so that animal deliveries may be planned in advance thus enabling rational use to be made of the inspection staff,
- strict organization and planning must prevail within the establishment together with a rapid slaughter rate and optimum use of inspection staff,
- there must be no waiting or otherwise non-productive periods for inspection staff,
- the animals for slaughter must so far as possible be uniform in age, size, weight and state of health.

In no case should the application of these exemptions result in reductions of more than 55 % of the levels indicated in point 1.

6. The fees referred to in points 1 to 4 shall be collected, as appropriate, at the slaughterhouse, cutting plant or cold store.

By way of exception to the first paragraph, in the case of establishments carrying out more than one operation and of chains of production covering more than one operation, the Member States may collect a total aggregate fee including the various amounts simultaneously and at a single location.

However, if the fee collected at the slaughterhouse covers the whole of the inspection costs referred to in the first paragraph, the Member States shall not collect any fee at the cutting-plant or the cold store.

CHAPTER II

Meat falling under Directive 72/462/EEC

1. The fee referred to in the first indent of Article 1 (1) is fixed in accordance with Article 1 (2) at the minimum standard level of ECU 5 per tonne, with a minimum amount of ECU 30 per consignment; that minimum is not however charged in the case of small consignments imported in cross-border trade.

However, Member States may exceptionally increase this amount to meet real costs.

2. Until 1 July 1994 Member States may however continue to collect a reduced amount for third country meat to which on 1 July 1993 they applied a reduced frequency of controls. This reduction may not exceed 55 % of the standard level referred to in point 1.
3. When the decisions provided for in Article 8 (3) of Directive 90/675/EEC are adopted and under the same procedure, the amounts laid down in point 1 may be adapted, taking account of the reduction in the frequency of controls decided on.

When taking these decisions the Commission will take account in particular of the guarantees given by the third countries concerning acceptance of the principle of regionalization and of the other Community principles.

4. As from 1 July 1994, in the absence of a decision in accordance with point 3, the Member States shall apply an amount reduced in line with the reduction in frequency of controls decided on within the framework of any agreement the Community has concluded in that respect with a third country or, in the absence of any such agreement, the amounts referred to in point 1.
 5. The fee referred to in point 1 is payable by the importer and collected at the customs office responsible for the border inspection post.
 6. Member States may allocate part of the yield of the fees provided for in this Chapter to a health solidarity fund designed to strengthen the veterinary services to allow them to react more effectively to any appearance of an exotic disease.
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COUNCIL DIRECTIVE 93/119/EC

of 22 December 1993

on the protection of animals at the time of slaughter or killing

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

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

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

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

Whereas Council Directive 74/577/EEC ⁽⁴⁾ established rules on the stunning of animals before slaughter;

Whereas the European Convention for the Protection of Animals for Slaughter was approved on behalf of the Community by Council Decision 88/306/EEC ⁽⁵⁾; whereas the scope of the Convention is wider than existing Community rules on the matter;

Whereas national laws concerning the protection of animals at the time of slaughter or killing have an impact on the conditions of competition and accordingly on the operation of the common market in agricultural products;

Whereas there is therefore a need to establish common minimum standards for the protection of animals at the time of slaughter or killing in order to ensure rational development of production and to facilitate the completion of the internal market in animals and animal products;

Whereas at the time of slaughter or killing animals should be spared any avoidable pain or suffering;

Whereas, however, it is necessary to allow for technical and scientific experiments to be carried out and to take account of the particular requirements of certain religious rites;

Whereas the rules should also ensure satisfactory protection, at the time of slaughter or killing, for animals not covered by the Convention;

Whereas in the declaration on the protection of animals annexed to the Final Act of the Treaty on European Union, the Conference calls upon the European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing Community legislation on the common agricultural policy, to pay full regard to the welfare requirements of animals;

Whereas in so doing Community action must comply with the requirements arising out of the principle of subsidiarity laid down in Article 3b of the Treaty;

Whereas Directive 74/577/EEC should be repealed,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

1. This Directive shall apply to the movement, lairaging, restraint, stunning, slaughter and killing of animals bred and kept for the production of meat, skin, fur or other products and to methods of killing animals for the purpose of disease control.

2. It shall not apply to:

- technical or scientific experiments relating to the procedures mentioned in paragraph 1, carried out under the supervision of the competent authority,
- animals which are killed in cultural or sports events,
- wild game killed in accordance with Article 3 of Directive 92/45/EEC.

Article 2

For the purposes of this Directive the following definitions shall apply:

1. *slaughterhouse*: any premises, including facilities for moving or lairaging animals, used for the commercial slaughter of animals referred to in Article 5 (1);
2. *movement*: unloading of animals or driving of them from unloading platforms, stalls or pens at slaughterhouses to the premises or place where they are to be slaughtered;
3. *lairaging*: keeping animals in stalls, pens, covered areas or fields used by slaughterhouses in order to

⁽¹⁾ OJ No C 314, 5. 12. 1991, p. 14.

⁽²⁾ OJ No C 241, 21. 9. 1992, p. 75.

⁽³⁾ OJ No C 106, 27. 4. 1992, p. 15.

⁽⁴⁾ OJ No L 316, 26. 11. 1974, p. 10.

⁽⁵⁾ OJ No L 137, 2. 6. 1988, p. 25.

give them any necessary attention (water, fodder, rest) before they are slaughtered;

4. *restraint*: the application to an animal of any procedure designed to restrict its movements in order to facilitate effective stunning or killing;
5. *stunning*: any process which, when applied to an animal, causes immediate loss of consciousness which lasts until death;
6. *killing*: any process which causes the death of an animal;
7. *slaughter*: causing the death of an animal by bleeding;
8. *competent authority*: the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence.

However, in the Member States, the religious authority on whose behalf slaughter is carried out shall be competent for the application and monitoring of the special provisions which apply to slaughter according to certain religious rites. As regards the said provisions, that authority shall operate under the responsibility of the official veterinarian, as defined in Article 2 of Directive 64/433/EEC.

Article 3

Animals shall be spared any avoidable excitement, pain or suffering during movement, lairaging, restraint, stunning, slaughter or killing.

CHAPTER II

Requirements applicable to slaughterhouses

Article 4

The construction, facilities and equipment of slaughterhouses, and their operation, shall be such as to spare animals any avoidable excitement, pain or suffering.

Article 5

1. Solipeds, ruminants, pigs, rabbits and poultry brought into slaughterhouses for slaughter shall be:
 - (a) moved and if necessary lairaged in accordance with the provisions of Annex A;
 - (b) restrained in accordance with the provisions of Annex B;
 - (c) stunned before slaughter or killed instantaneously in accordance with the provisions of Annex C;

(d) bled in accordance with the provisions of Annex D.

2. In the case of animals subject to particular methods of slaughter required by certain religious rites, the requirements of paragraph 1(c) shall not apply.

3. With due regard for the general rules of the Treaty, the competent authorities of the Member States may, for establishments qualifying for derogations pursuant to Articles 4 and 13 of Directive 64/433/EEC, Article 4 of Directive 91/498/EEC and Articles 7 and 18 of Directive 71/118/EEC, grant derogations from paragraph 1(a) in respect of cattle, and from paragraph 1(a) and from the methods for stunning and killing referred to in Annex C in respect of poultry, rabbits, pigs, sheep and goats, provided that the requirements laid down in Article 3 are met.

Article 6

1. Instruments, restraint and other equipment and installations used for stunning or killing must be designed, constructed, maintained and used in such a way as to achieve rapid and effective stunning or killing in accordance with the provisions of this Directive. The competent authority shall check that the instruments, restraint and other equipment used for stunning or killing comply with the above principles and shall check regularly to ensure that they are in a good state of repair and will allow the aforementioned objective to be attained.

2. Suitable spare equipment and instruments must be kept at the place of slaughter for emergency use. They shall be properly maintained and inspected regularly.

Article 7

No person shall engage in the movement, lairaging, restraint, stunning, slaughter or killing of animals unless he has the knowledge and skill necessary to perform the tasks humanely and efficiently, in accordance with the requirements of this Directive.

The competent authority shall ensure that persons employed for slaughtering possess the necessary skill, ability and professional knowledge.

Article 8

Inspections and controls in slaughterhouses shall be carried out under the responsibility of the competent authority, which shall at all times have free access to all parts of slaughterhouses in order to ascertain compliance with this Directive. However, such inspections and controls may be carried out at the same time as controls carried out for other purposes.

CHAPTER III

Slaughter and killing outwith slaughterhouses

Article 9

1. Where animals referred to in Article 5 (1) are slaughtered outwith slaughterhouses, Article 5 (1)(b), (c) and (d) shall apply.

2. Member States may, however, grant derogations from paragraph 1 in respect of poultry, rabbits, pigs, sheep and goats slaughtered or killed outwith slaughterhouses by their owner for his personal consumption, provided that Article 3 is complied with and that pigs, sheep and goats have been stunned in advance.

Article 10

1. Where animals referred to in Article 5 (1) are to be slaughtered or killed for purposes of disease control, this shall be carried out in accordance with Annex E.

2. Animals farmed for their fur shall be killed in accordance with Annex F.

3. Surplus day-old chicks, as defined in Article 2 (3) of Directive 90/539/EEC, and embryos in hatchery waste shall be killed as rapidly as possible in accordance with Annex G.

Article 11

Articles 9 and 10 shall not apply in the case of an animal which has to be killed immediately for emergency reasons.

Article 12

Injured or diseased animals must be slaughtered or killed on the spot. However, the competent authority may authorize the transport of injured or diseased animals for the purpose of slaughter or killing provided that such transport does not entail further suffering for the animals.

CHAPTER IV

Final provisions

Article 13

1. If necessary, rules on the protection of animals at the time of slaughter or killing other than those in this Directive shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

2. (a) The Annexes to this Directive shall be amended by the Council acting on a proposal from the

Commission, in accordance with the procedure laid down in paragraph 1, in particular in order to adapt them to technological and scientific progress;

(b) in addition, and no later than 31 December 1995, the Commission shall submit to the Council a report drawn up on the basis of an opinion from the Scientific Veterinary Committee together with appropriate proposals concerning the use, in particular, of:

- free bullet pistols, applied to the brain, or of gases other than those referred to in Annex C or combinations thereof for stunning and more particularly carbon dioxide for stunning poultry,
- gases other than those referred to in Annex C or combinations thereof for killing,
- any other scientifically recognized procedure for stunning or killing.

The Council shall act by a qualified majority on these proposals;

(c) by way of derogation from (a), and no later than 31 December 1995, the Commission, in accordance with the procedure laid down in Article 16, shall submit to the Standing Veterinary Committee a report drawn up on the basis of an opinion from the Scientific Veterinary Committee, together with appropriate proposals, with a view to laying down:

- (i) the strength and duration of use of the current necessary to stun the various species concerned;
- (ii) the gas concentration and length of exposure necessary to stun the various species concerned;

(d) pending implementation of paragraphs (b) and (c), national rules in the matter shall apply, in compliance with the general provisions of the Treaty.

Article 14

1. Commission experts may make on-the-spot checks in so far as is necessary to ensure uniform application of this Directive. In order to do this, they may check a representative sample of establishments to ensure that the competent authority is checking that the said establishments are fulfilling the requirements of this Directive.

The Commission shall inform the Member States of the result of the checks carried out.

2. The checks referred to in paragraph 1 shall be carried out in collaboration with the competent authority.

3. A Member State in whose territory a check is being carried out shall give all the necessary assistance to the experts in carrying out their duties.

4. The detailed rules for implementing this Article shall be determined in accordance with the procedure laid down in Article 16.

Article 15

In the course of the inspection of slaughterhouses or establishments which have been or are to be approved in third countries for the purpose of being able to export to the Community in accordance with Community rules, the Commission experts shall ensure that the animals referred to in Article 5 have been slaughtered under conditions which offer guarantees of humane treatment at least equivalent to those provided for in this Directive.

To enable meat to be imported from a third country the health certificate accompanying such meat must be supplemented by an attestation certifying that the above requirement has been met.

Article 16

1. Where the procedure laid down in this Article is to be followed, the matter shall without delay be referred to the Standing Veterinary Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the intended measures when they are in accordance with the opinion of the committee.

(b) Where the intended measures are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall

without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date on which the matter was referred to it, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

Article 17

Directive 74/577/EEC shall be repealed with effect from 1 January 1995.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions, including any penalties, necessary to comply with this Directive on 1 January 1995. They shall forthwith inform the Commission thereof.

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

2. However, as from the date laid down in paragraph 1, Member States may, with due regard for the general rules of the Treaty, maintain or apply in their territory more stringent provisions than those contained in this Directive. They shall inform the Commission of any such measures.

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

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1993.

For the Council
The President
J.-M. DEHOUSSE

ANNEX A

REQUIREMENTS FOR THE MOVEMENT AND LAIRAGING OF ANIMALS IN
SLAUGHTERHOUSES

I. General requirements

1. Every slaughterhouse coming into operation after 30 June 1994 must have suitable equipment and facilities available for the purpose of unloading animals from means of transport, and all existing slaughterhouses must comply with these requirements by 1 January 1996.
2. Animals must be unloaded as soon as possible after arrival. If delay is unavoidable they must be protected from extremes of weather and provided with adequate ventilation.
3. Animals which might injure each other on account of their species, sex, age or origin must be kept and lairaged apart from each other.
4. Animals must be protected from adverse weather conditions. If they have been subjected to high temperatures in humid weather they must be cooled by appropriate means.
5. The condition and state of health of the animals must be inspected at least every morning and evening.
6. Without prejudice to the provisions laid down in Chapter VI of Annex I to Directive 64/433/EEC, animals which have experienced pain or suffering during transport or upon arrival at the slaughterhouse, and unweaned animals, must be slaughtered immediately. If this is not possible, they must be separated and slaughtered as soon as possible and at least within the following two hours. Animals which are unable to walk must not be dragged to the place of slaughter, but must be killed where they lie or, where it is possible and does not entail any unnecessary suffering, transported on a trolley or movable platform to the place of emergency slaughter.

II. Requirements for animals delivered other than in containers

1. Where slaughterhouses have equipment for unloading animals, such equipment must have non-slip flooring and, if necessary, be provided with lateral protection. Bridges, ramps and gangways must be fitted with sides, railings or some other means of protection to prevent animals falling off them. Exit or entry ramps must have the minimum possible incline.
2. During unloading, care must be taken not to frighten, excite or mistreat the animals, and to ensure that they are not overturned. Animals must not be lifted by the head, horns, ears, feet, tail or fleece in such a way as to cause them unnecessary pain or suffering. When necessary, they must be led individually.
3. Animals must be moved with care. Passageways must be so constructed as to minimize the risk of injury to animals, and so arranged as to exploit their gregarious tendencies. Instruments intended for guiding animals must be used solely for that purpose, and only for short periods. Instruments which administer electric shocks may be used only for adult bovine animals and pigs which refuse to move, provided that the shocks last no more than two seconds, are adequately spaced out and that the animals have room ahead of them in which to move. Such shocks may be applied only to the muscles of the hindquarters.
4. Animals must not be struck on, nor shall pressure be applied to, any particularly sensitive part of the body. In particular, animals' tails must not be crushed, twisted or broken and their eyes must not be grasped. Blows and kicks must not be inflicted.
5. Animals must not be taken to the place of slaughter unless they can be slaughtered immediately. If they are not slaughtered immediately on arrival they must be lairaged.
6. Without prejudice to derogations granted pursuant to Articles 4 and 13 of Directive 64/433/EEC, slaughterhouses must be equipped with a sufficient number of pens for adequate lairaging of the animals with protection from the effects of adverse weather.
7. In addition to complying with requirements already laid down in Community rules, lairages must have:
 - floors which minimize the risk of slipping and which do not cause injury to animals in contact with them,

- adequate ventilation, taking into account the extremes of temperature and humidity which may be expected. Where mechanical means of ventilation are required, provision must be made for emergency back-up facilities in the event of breakdown,
 - artificial lighting at a level sufficient to permit inspection of all animals at any time; if necessary, adequate back-up lighting must be available,
 - where necessary, equipment for tethering animals,
 - where necessary, adequate supplies of a suitable bedding material for all animals kept in the lairage overnight.
8. Where, in addition to the lairages referred to above, slaughterhouses also have field lairages without natural shelter or shade, appropriate protection from adverse weather must be provided. Field lairages must be maintained in such condition as to ensure that animals are not subjected to physical, chemical or other health hazards.
 9. Animals which are not taken directly upon arrival to the place of slaughter must have drinking water available to them from appropriate facilities at all times. Animals which have not been slaughtered within 12 hours of their arrival must be fed, and must subsequently be given moderate amounts of food at appropriate intervals.
 10. Animals which are kept for 12 hours or more at a slaughterhouse must be lairaged and, where appropriate, tethered, in such a way that they can lie down without difficulty. Where animals are not tethered, food must be provided in a way which will permit the animals to feed undisturbed.

III. Requirements for animals delivered in containers

1. Containers in which animals are transported must be handled with care, and must not be thrown, dropped or knocked over. Where possible, they must be loaded and unloaded horizontally and mechanically.
2. Animals delivered in containers with perforated or flexible bottoms must be unloaded with particular care in order to avoid injury. Where appropriate, animals must be unloaded from the containers individually.
3. Animals which have been transported in containers must be slaughtered as soon as possible; otherwise they must if necessary be watered and fed in accordance with point II.9.

ANNEX B

RESTRAINT OF ANIMALS BEFORE STUNNING, SLAUGHTER OR KILLING

1. Animals must be restrained in an appropriate manner in such a way as to spare them any avoidable pain, suffering, agitation, injury or contusions.

However, in the case of ritual slaughter, restraint of bovine animals before slaughter using a mechanical method intended to avoid any pain, suffering or agitation and any injuries or contusions to the animals is obligatory.

2. Animals' legs must not be tied, and animals must not be suspended before stunning or killing. However, poultry and rabbits may be suspended for slaughter provided that appropriate measures are taken to ensure that, on the point of being stunned, they are in a sufficiently relaxed state for stunning to be carried out effectively and without undue delay.

Furthermore, holding an animal in a restraint system may in no circumstances be regarded as suspension.

3. Animals which are stunned or killed by mechanical or electrical means applied to the head must be presented in such a position that the equipment can be applied and operated easily, accurately and for the appropriate time. The competent authority may, however, in the case of solipeds and cattle, authorize the use of appropriate means to restrain head movements.
 4. Electrical stunning equipment must not be used as a means of restraint or immobilization or to make animals move.
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ANNEX C

STUNNING OR KILLING OF ANIMALS OTHER THAN ANIMALS REARED FOR FUR

I. PERMITTED METHODS

A. Stunning

1. Captive bolt pistol
2. Concussion
3. Electronarcosis
4. Exposure to carbon dioxide

B. Killing

1. Free bullet pistol or rifle
2. Electrocutation
3. Exposure to carbon dioxide

- C. The competent authority may, however, authorize decapitation, dislocation of the neck and the use of a vacuum chamber as a method of killing for certain specific species, provided that Article 3 is complied with and that the specific requirements laid down in point III of this Annex are met.

II. SPECIFIC REQUIREMENTS FOR STUNNING

Stunning must not be carried out unless it is possible to bleed the animals immediately afterwards.

1. *Captive bolt pistol*

- (a) Instruments must be positioned so as to ensure that the projectile enters the cerebral cortex. In particular, it is prohibited to shoot cattle in the poll position.

Sheep and goats may be shot in the poll position if the presence of horns prevents use of the crown position. In such cases the shot must be placed immediately behind the base of the horns and aimed towards the mouth, and bleeding must commence within 15 seconds of shooting.

- (b) When using a captive bolt instrument, the operator must check to ensure that the bolt retracts to its full extent after each shot. If it does not so retract, the instrument must not be used again until it has been repaired.

- (c) Animals must not be placed in stunning pens unless the operator who is to stun them is ready to do so as soon as the animal is placed in the pen. Animals must not be placed in head restraint until the slaughterman is ready to stun them.

2. *Concussion*

- (a) This is only permitted using a mechanically-operated instrument which administers a blow to the skull. The operator must ensure that the instrument is applied in the proper position and that the correct strength of cartridge is used, in accordance with the manufacturer's instructions, to produce an effective stun without fracture of the skull.

- (b) However, in the case of small batches of rabbits, where a non-mechanical blow to the skull is used, that operation must be carried out in such a way that the animal is immediately rendered unconscious and remains so until its death and in compliance with the general provisions of Article 3.

3. *Electronarcosis*

A. Electrodes

1. Electrodes must be so placed that they span the brain, enabling the current to pass through it. Appropriate measures must also be taken to ensure that there is good electrical contact, in particular by removing excess wool or wetting skin.

2. Where animals are stunned individually, the apparatus must:

- (a) incorporate a device which measures the impedance of the load and prevents operation of the apparatus if the minimum required current cannot be passed;
- (b) incorporate an audible or visible device indicating the length of time of its application to an animal;
- (c) be connected to a device indicating the voltage and the current under load, positioned so as to be clearly visible to the operator.

B. Waterbath stunners

1. Where waterbath stunners are used to stun poultry, the level of the water must be adjustable in order to ensure that there is good contact with the bird's head.

The strength and duration of the current used in this case will be determined by the competent authority so as to ensure that the animal is immediately rendered unconscious and remains so until death.

2. Where poultry are stunned in groups in a waterbath, a voltage sufficient to produce a current strong enough to ensure that every bird is stunned must be maintained.
3. Appropriate measures must be taken to ensure that the current passes properly, in particular good electrical contacts and wetting the shackle-to-leg contact.
4. Waterbaths for poultry must be adequate in size and depth for the type of bird being slaughtered, and must not overflow at the entrance. The electrode which is immersed in the water must extend the length of the waterbath.
5. If necessary, manual back-up must be available.

4. *Exposure to carbon dioxide*

1. The concentration of carbon dioxide for stunning pigs must be at least 70 % by volume.
2. The chamber in which pigs are exposed to the gas, and the equipment used for conveying the pigs through it, must be so designed, constructed and maintained as to avoid injury to the pigs and compression of the chest and enable them to remain upright until they lose consciousness. Adequate lighting must be provided in the conveying mechanism and the chamber to allow pigs to see other pigs or their surroundings.
3. The chamber must be fitted with devices for measuring the gas concentration at the point of maximum exposure and for giving a clearly visible and audible warning if the concentration of carbon dioxide falls below the required level.
4. Pigs must be placed in pens or containers in which they can see each other and conveyed into the gas chamber within 30 seconds from their entry into the installation. They must be conveyed as rapidly as possible from the entrance to the point of maximum concentration of the gas and must be exposed to it for long enough to ensure that they remain unconscious until they have been killed.

III. SPECIFIC REQUIREMENTS FOR KILLING

1. *Free bullet pistol or rifle*

These methods, which may be used to kill various species, in particular large farmed game and deer, are subject to authorization by the competent authority, which must ensure in particular that they are used by duly qualified staff and in compliance with the general provisions of Article 3 of this Directive.

2. *Decapitation and dislocation of the neck*

These methods, which are to be used only for killing poultry, are subject to authorization by the competent authority, which must ensure in particular that they are used by duly qualified staff and in compliance with the general provisions of Article 3 to this Directive.

3. *Electrocution and carbon dioxide*

The competent authority may authorize the killing of various species by these methods provided that, in addition to the general provisions of Article 3, the specific provisions laid

down in point II (3) and (4) of this Annex are complied with. It shall also, to achieve this, lay down the strength and duration of the current used and the concentration and length of exposure to carbon dioxide.

4. *Vacuum chamber*

This method, which is to be used only for the killing without bleeding of certain animals for consumption belonging to farmed game species (quail, partridge and pheasant), is subject to authorization by the competent authority, which shall ensure, in addition to compliance with the requirements laid down in Article 3, that:

- the animals are placed in an airtight chamber in which a vacuum is swiftly achieved by means of a powerful electric pump,
- the vacuum is maintained until the animals are dead,
- the animals are held in groups in transport containers which can be placed in the vacuum chamber, which is designed for that purpose.

ANNEX D

BLEEDING OF ANIMALS

1. For animals which have been stunned, bleeding must be started as soon as possible after stunning and be carried out in such a way as to bring about rapid, profuse and complete bleeding. In any event, the bleeding must be carried out before the animal regains consciousness.
2. All animals which have been stunned must be bled by incising at least one of the carotid arteries or the vessels from which they arise.

After incision of the blood vessels, no further dressing procedures nor any electrical stimulation may be performed on the animals before the bleeding has ended.
3. Where one person is responsible for the stunning, shackling, hoisting and bleeding of animals, that person must carry out those operations consecutively on one animal before carrying them out on another animal.
4. Manual back-up must be available where poultry is bled by means of automatic neck-cutters so that, in the event of a breakdown, birds may be slaughtered immediately.

ANNEX E

KILLING METHODS FOR DISEASE CONTROL

Permitted methods

Any method permitted under Annex C which causes certain death.

In addition, the competent authority may, in compliance with the general provisions of Article 3 of this Directive, permit the use of other methods for killing conscious animals, ensuring in particular that:

- if methods are used which do not cause immediate death (for example, captive bolt shooting), appropriate measures are taken to kill the animals as soon as possible, and in any event before they regain consciousness,
 - nothing more is done to the animals before it has been ascertained that they are dead.
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ANNEX F

METHODS OF KILLING FUR ANIMALS

I. Permitted methods

1. Mechanically-operated instruments which penetrate the brain.
2. Injection of an overdose of a drug with anaesthetic properties.
3. Electrocutation with cardiac arrest.
4. Exposure to carbon monoxide.
5. Exposure to chloroform.
6. Exposure to carbon dioxide.

The competent authority shall decide on the most appropriate method of killing for the different species concerned in compliance with the general provisions of Article 3 of this Directive.

II. Specific requirements

1. *Mechanically-operated instruments which penetrate the brain*

- (a) Instruments must be positioned so as to ensure that the projectile enters the cerebral cortex.
- (b) This method is permitted only if it is followed by immediate bleeding.

2. *Injection of an overdose of a drug with anaesthetic properties*

Only those anaesthetics, doses and applications which cause immediate loss of consciousness followed by death may be used.

3. *Electrocutation with cardiac arrest*

Electrodes must be placed so that they span the brain and the heart and the minimum current level used must lead to immediate loss of consciousness and cardiac arrest. However, for foxes, where electrodes are applied to the mouth and rectum, a current of an average value of 0,3 amps must be applied for at least 3 seconds.

4. *Exposure to carbon monoxide*

- (a) The chamber in which the animals are exposed to the gas must be designed, constructed and maintained in such a way as to avoid injury to the animals and allow them to be supervised.
- (b) The animals must be introduced into the chamber only after it has been filled with a concentration of carbon monoxide of at least 1 % by volume, supplied by a source of 100 % carbon monoxide.
- (c) The gas produced by an engine specially adapted for that purpose may be used to kill mustelids and chinchillas provided that tests have shown that the gas used:
 - has been suitably cooled,
 - has been sufficiently filtered,
 - is free from any irritant matter or gas,
 - and that the animals cannot be placed in the chamber until the concentration of carbon monoxide has reached at least 1 % by volume.
- (d) When inhaled the gas must first induce deep general anaesthesia and must then cause certain death.
- (e) The animals must remain in the chamber until they are dead.

5. *Exposure to chloroform*

Exposure to chloroform may be used to kill chinchillas provided that:

- (a) the chamber in which the animals are exposed to the gas is designed, constructed and maintained in such a way as to avoid injury to the animals and allow them to be supervised;

- (b) the animals are introduced into the chamber only if it contains a saturated chloroform-air compound;
- (c) when inhaled, the gas first induces deep general anaesthesia and then causes certain death;
- (d) the animals remain in the chamber until they are dead.

6. *Exposure to carbon dioxide*

Carbon dioxide may be used to kill mustelids and chinchillas provided that:

- (a) the chamber in which the animals are exposed to the gas is designed, constructed and maintained in such a way as to avoid injury to the animals and allow them to be supervised;
 - (b) the animals are introduced into the chamber only when the atmosphere contains the highest possible concentration of carbon dioxide supplied by a source of 100 % carbon dioxide;
 - (c) when inhaled, the gas first induces deep general anaesthesia and then causes certain death;
 - (d) the animals remain in the chamber until they are dead.
-

ANNEX G

KILLING OF SURPLUS CHICKS AND EMBRYOS IN HATCHERY WASTE

I. Permitted methods for the killing of chicks

1. Use of a mechanical apparatus causing rapid death.
2. Exposure to carbon dioxide.
3. However, the competent authority may permit the use of other scientifically recognized killing methods provided that they comply with the general provisions of Article 3.

II. Specific requirements

1. *Use of a mechanical apparatus producing rapid death*
 - (a) The animals must be killed by an apparatus which contains rapidly rotating mechanically operated killing blades or expanded polystyrene projections.
 - (b) The capacity of the apparatus must be sufficient to ensure that all animals are killed immediately, even if they are handled in large numbers.
2. *Exposure to carbon dioxide*
 - (a) The animals must be placed in an atmosphere with the highest obtainable concentration of carbon dioxide, supplied by a source of 100 % carbon dioxide.
 - (b) The animals must remain in this atmosphere until they are dead.

III. Permitted method for the killing of embryos

1. To kill any living embryos instantaneously, all hatchery waste must be treated by the mechanical apparatus mentioned in point II (1).
 2. However, the competent authority may permit the use of other scientifically recognized killing methods provided that they comply with the general provisions of Article 3.
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COUNCIL DIRECTIVE 93/120/EC

of 22 December 1993

amending Directive 90/539/EEC on animal health conditions governing intra-Community trade in and imports from third countries of poultry and hatching eggs

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

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

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

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

Whereas in the light of developments in the poultry industry with larger and more intensive units there is a need to adjust certain aspects of Directive 90/539/EEC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽⁴⁾ to clarify requirements and to simplify their application by Member States;

Whereas the Council has adopted Directive 92/66/EEC introducing Community measures for the control of Newcastle disease ⁽⁵⁾ and Directive 92/40/EEC introducing Community measures for the control of avian influenza ⁽⁶⁾, thus allowing a simplification of Directive 90/539/EEC;

Whereas, taking account of the report from the Commission to the Council on the risks of transmission of Newcastle disease and the requirements to be met by Newcastle disease vaccines, provision should be made for certain Member States or regions to be approved as Newcastle disease non-vaccinating, if appropriate; whereas, however, provision should also be made for this Newcastle disease non-vaccinating status to be withdrawn if necessary;

Whereas it is necessary to amend the trading rules as applied to third countries to ensure they are equivalent to those applied in Member States, particularly as Newcastle disease and avian influenza,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 90/539/EEC is hereby amended as follows:

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

'3. "day-old chicks" shall mean all poultry less than 72 hours old, not yet fed; however, muscovy ducks (*Cairina moschata*) or their crosses may be fed;'

2. Article 2 (7) shall be replaced by the following:

'7. "flock" shall mean all poultry of the same health status kept on the same premises or in the same enclosure and constituting a single epidemiological unit. In housed poultry this will include all birds sharing the same airspace;'

3. Article 2 (9)(c) shall be replaced by the following:

'(c) rearing establishment:

(i) either a breeding poultry rearing establishment which is an establishment which rears breeding poultry prior to the reproductive stage;

or

(ii) a productive poultry rearing establishment which is an establishment which rears egg-laying productive poultry prior to the laying stage;'

4. Article 2 (15) shall be deleted.

5. Article 5 shall be replaced by the following:

Article 5

In order to be traded in the Community:

(a) hatching eggs, day-old chicks, breeding poultry and productive poultry must satisfy the conditions laid down in Articles 6, 12, 15 and 17. They must also satisfy any conditions laid down pursuant to Articles 13 and 14.

In addition:

— hatching eggs must satisfy the conditions laid down in Article 7,

— day-old chicks must satisfy the conditions laid down in Article 8,

— breeding poultry and productive poultry must satisfy the conditions laid down in Article 9;

⁽¹⁾ OJ No C 89, 31. 3. 1993, p. 8.

⁽²⁾ OJ No C 176, 28. 6. 1993, p. 26.

⁽³⁾ OJ No C 201, 26. 7. 1993, p. 50.

⁽⁴⁾ OJ No L 303, 31. 9. 1990, p. 6.

⁽⁵⁾ OJ No L 260, 5. 9. 1992, p. 1.

⁽⁶⁾ OJ No L 167, 22. 6. 1992, p. 1.

- (b) Slaughter poultry must fulfil the conditions set out in Articles 10, 12, 15 and 17 and those laid down pursuant to Articles 13 and 14;
- (c) Poultry (including day-old chicks) intended for restocking supplies of game must fulfil the conditions set out in Articles 10a, 12, 15 and 17 and those laid down pursuant to Articles 13 and 14.

6. Article 6 (1)(c) shall be replaced by the following:

- '(c) they must not be located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of the outbreak of a disease to which poultry is susceptible;'

7. Article 6 (2) shall be replaced by the following:

- '2. A flock which at the time of consignment presents no clinical sign or suspicion of contagious poultry disease;'

8. Article 7 shall be replaced by the following:

'Article 7

At the time of consignment, hatching eggs must:

1. come from flocks which:

- have been held for more than six weeks in one or more Community establishments as defined in Article 6 (1)(a),
- if vaccinated, have been vaccinated in accordance with the vaccination conditions in Annex III;
- have either undergone an animal health examination carried out by an official veterinarian or an authorized veterinarian during the 72 hours preceding consignment and, at the time of the examination, have shown no clinical sign or suspicion of contagious disease,
- or have had a monthly health inspection visit by an official veterinarian or an authorized veterinarian, the most recent visit having been within 31 days of consignment. If this option is chosen there must also be an examination by the official veterinarian or authorized veterinarian of the records of the health status of the flock and an evaluation of its current health status as assessed by up-to-date information supplied by the person in charge of the flock during the 72 hours preceding consignment. In a case where records or other information give rise to suspicion of disease, the flocks

must have had an animal health examination by the official veterinarian or authorized veterinarian that has ruled out the possibility of contagious poultry disease;

- 2. be marked in accordance with Commission Regulation (EEC) No 1868/77;
- 3. have been disinfected in accordance with the instructions of the official veterinarian.

In addition, if contagious poultry diseases which may be transmitted through eggs develop in the flock which supplied the hatching eggs during the period of their incubation, the hatchery involved and the authority or authorities responsible for the hatchery and the flock of origin must be notified.'

9. Article 8(b) shall be replaced by the following:

- '(b) satisfy the vaccination conditions in Annex III, if they have been vaccinated;'

10. Article 9(b) shall be replaced by the following:

- '(b) satisfy the vaccination conditions in Annex II, if they have been vaccinated;'

11. Article 9(c) shall be replaced by the following:

- '(c) have been submitted to a health examination by an official veterinarian or authorized veterinarian during the 48 hours preceding consignment and, at the time of the examination, have presented no clinical sign or suspicion of contagious poultry disease;'

12. Article 10(c) shall be replaced by the following:

- '(c) where the health examination carried out by the official veterinarian or authorized veterinarian during the 5 days preceding dispatch on the flock from which the consignment to be slaughtered is to be drawn has not revealed within that flock any clinical sign or suspicion of contagious poultry disease;'

13. Article 10(d) shall be replaced by the following:

- '(d) which is not located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of the outbreak of a disease to which poultry is susceptible.'

14. The following Article shall be inserted:

'Article 10a

1. At the time of consignment, poultry over 72 hours old intended for restocking supplies of wild game must have come from a holding:

- (a) where it has been held since hatching or for more than 21 days and where it has not been placed in contact with newly-arrived poultry during the two weeks preceding consignment;

- (b) which is not the subject of any animal health restrictions applicable to poultry;
 - (c) where the health examination carried out by the official veterinarian or authorized veterinarian during the 48 hours preceding dispatch on the flock from which the consignment is to be drawn has not revealed within that flock any clinical sign or suspicion of contagious poultry disease;
 - (d) which is not located in an area which for animal health reasons is subject to prohibition in accordance with Community legislation as a result of an outbreak of disease to which poultry is susceptible.
2. Articles 6 and 9a shall not apply to the poultry referred to in paragraph 1.
15. In Article 11 (2) the third indent shall be replaced by the following:
- ‘— satisfy the vaccination conditions in Annex III, if they have been vaccinated;’.
16. In Article 11 (2) the fifth indent shall be replaced by the following:
- ‘— are not located in an area which for animal health reasons is subject to restrictive measures in accordance with Community legislation as a result of an outbreak of disease to which poultry is susceptible;’.
17. in Article 11 (2) the last indent shall be replaced by the following:
- ‘All birds in the consignment must have been found negative in serological tests for *Salmonella pullorum* and *Salmonella gallinarum* antibodies, in accordance with Annex II, Chapter III, in the month preceding the consignment. In the case of hatching eggs or day-old chicks, the flock of origin must be tested serologically for *Salmonella pullorum* and *Salmonella gallinarum* in the three months preceding the consignment at a level which gives 95 % confidence of detecting infection at 5 % prevalence.’.
18. Article 12 (2) and (3) shall be replaced by the following:
- ‘2. If a Member State or a region or regions of a Member State wish to be established as Newcastle disease non-vaccinating they can present a programme as laid down in Article 13 (1).
- The Commission shall examine the programmes presented by the Member States. The programmes may be approved, in compliance with the criteria referred to in Article 13 (1), in accordance with the procedure laid down in Article 32. Any additional

guarantees, general or specific, which may be required in intra-Community trade may be defined in accordance with the same procedure.

Where a Member State or a region of a Member State considers it has achieved Newcastle disease non-vaccinating status, an application may be made to the Commission for Newcastle disease non-vaccinating status to be established in accordance with the procedure laid down in Article 32.

The elements to be taken into account for determination of a Member State's or region's status as Newcastle disease non-vaccinating shall be the data referred to in Article 14 (1) and, in particular, the following criteria:

- vaccination against Newcastle disease in the poultry referred to in Article 1 shall not have been authorized for the preceding 12 months, except for the compulsory vaccination of racing pigeons referred to in Article 17 (3) of Directive 92/66/EEC,
- breeding flocks shall have been serologically monitored at least once a year for the presence of Newcastle disease according to the detailed rules adopted under the procedure laid down in Article 32,
- the holdings shall contain no poultry which has been vaccinated against Newcastle disease in the previous 12 months, with the exception of racing pigeons vaccinated pursuant to Article 17 (3) of Directive 92/66/EEC.

3. The Commission may suspend Newcastle disease non-vaccinating status in accordance with the procedure laid down in Article 32 in the event of:

- (i) either a serious epizootic of Newcastle disease which is not being brought under control;
- (ii) or the removal of the legislative restrictions prohibiting systematic recourse to routine vaccination against Newcastle disease.

4. The conditions referred to in paragraph 1 will be reviewed by the Council acting by a qualified majority on a proposal from the Commission before legislation harmonizing the use of Newcastle disease vaccines enters into force and not later than 31 December 1994.’.

19. Article 15 (1) shall be replaced by the following:

‘1. “Day-old chicks” and hatching eggs must be transported in:

- either unused purpose-designed disposable containers to be used only once and then destroyed,
- or containers which may be re-used provided they are cleaned and disinfected beforehand.

In any event such containers must:

- (a) contain only day-old chicks or hatching eggs of the same species, category and type of poultry, coming from the same establishment;
 - (b) be labelled with:
 - the name of the Member State and region of origin,
 - the establishment of origin's approval number as provided for in Annex II, Chapter I (2),
 - the number of chicks or eggs in each box,
 - the poultry species to which the eggs or chicks belong.
20. In Article 15 (3) the third indent shall be deleted.
21. In Article 15 (4) the following point shall be added:
- ‘(c) poultry intended for restocking supplies of game must be conveyed without delay to the point of destination without coming into contact with other poultry except poultry intended for restocking supplies of game satisfying the conditions laid down in this Directive.’.
22. In Article 17 the last indent shall be replaced by the following:
- ‘— bears a stamp and a signature of a different colour from that of the certificate.’.
23. Article 19 shall be deleted.
24. Article 22 shall be replaced by the following:

‘Article 22

1. Poultry and hatching eggs must come from third countries:
 - (a) in which avian influenza and Newcastle disease, as defined in Council Directives 92/40/EEC and 92/66/EEC respectively, are legally notifiable diseases;
 - (b) free from avian influenza and Newcastle disease,or
which, although they are not free from these diseases, apply measures to control them which are at least equivalent to those laid down in Directives 92/40/EEC and 92/66/EEC respectively.
2. Additional criteria for classifying third countries in respect of paragraph 1(b), particularly as regards the type of vaccine used, shall be adopted in accordance with the procedure laid down in Article 32 before 1 January 1995.

3. The Commission may, in accordance with the procedure laid down in Article 32, decide under which conditions paragraph 1 is to apply only to a part of the territory of third countries.’

25. Article 24(h) shall be replaced by the following:
- ‘(h) bear a stamp and a signature of a different colour from that of the certificate.’.
26. Article 35 shall be deleted.
27. In Annex I the national reference laboratory for Denmark is changed to the following:
- ‘National Veterinary Laboratory, Poultry Disease Division, Høngevej 2, DK-8200 Aarhus N’.
28. In Annex IV, Model 5, point 14(a) shall be replaced by:
- ‘(a) the birds described above comply with the provisions of Articles 10 and 15 of Directive 90/539/EEC;’.
29. In Annex IV, Model 6, point 14(a) is replaced by:
- ‘(a) the birds described above comply with the provisions of Articles 10a and 15 of Directive 90/539/EEC;’.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1995. They shall forthwith inform the Commission thereof.

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

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1993.

For the Council
The President
J.-M. DEHOUSSE

COUNCIL DIRECTIVE 93/121/EC

of 22 December 1993

amending Directive 91/494/EEC on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultrymeat

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the European Parliament ⁽²⁾,Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 3 (A) (1) of Council Directive 91/494/EEC of 26 June 1991 on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultrymeat ⁽⁴⁾ lays down the rules for Newcastle disease vaccination for flocks of origin of poultrymeat intended for Member States or regions of Member States the status of which has been recognized in accordance with Article 12 (2) of Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs ⁽⁵⁾;

Whereas it is necessary to lay down the Newcastle disease vaccination rules to be applied from 1 January 1993 to trade in fresh poultrymeat intended for Member States or regions of Member States the status of which has been recognized in accordance with Article 12 (2) of Directive 90/539/EEC;

Whereas the Council has adopted Directive 92/66/EEC ⁽⁶⁾ on the control of Newcastle disease and Directive 92/40/EEC ⁽⁷⁾ on the control of avian influenza, thus allowing a simplification of Directive 91/494/EEC;

Whereas it is desirable to allow an alternative to the use of the special mark defined in Article 5 of Directive 91/494/EEC;

Whereas it is necessary to amend the trading rules applied to third countries to ensure they are equivalent to

those applied to Member States, particularly as regards Newcastle disease and avian influenza,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/494/EEC is hereby amended as follows:

1. Article 3(A)(1) shall be replaced by the following:

- '1. has been held in Community territory since hatching or has been imported from third countries in accordance with the requirements of Chapter III of Directive 90/539/EEC. Poultrymeat intended for Member States or regions of Member States the status of which has been recognized in accordance with Article 12 (2) of that Directive must come from poultry which has not been vaccinated against Newcastle disease using a live vaccine during the 30 days preceding slaughter.

This rule shall be reviewed by the Council acting by a qualified majority on a proposal from the Commission before Community legislation harmonizing the use of Newcastle disease vaccine enters into force and not later than 31 December 1994.'

2. In Article 3(A)(2) the second indent shall be replaced by the following:

- which is not located in an area which for animal health reasons is subject to restrictive measures involving controls on poultrymeat in accordance with Community legislation as a result of an outbreak of disease to which poultry is susceptible;'

3. The following paragraphs shall be added to Article 5:

- '3. By way of derogation from paragraphs 1 and 2 and in the event of an epizootic of Newcastle disease, fresh poultrymeat may be marked in accordance with Article 3 (1)(A)(e) of Directive 71/118/EEC with the health mark described in Annex I, Chapter X, point 44(a) and (b) to Directive 71/118/EEC, provided that such meat comes from poultry which:

- (a) comes from a holding situated within the surveillance zone as defined in Article 9 (1) of

⁽¹⁾ OJ No C 89, 31. 3. 1993, p. 8.

⁽²⁾ OJ No C 176, 28. 6. 1993, p. 26.

⁽³⁾ OJ No C 201, 26. 7. 1993, p. 50.

⁽⁴⁾ OJ No L 268, 24. 9. 1991, p. 35.

⁽⁵⁾ OJ No L 303, 31. 10. 1990, p. 6.

⁽⁶⁾ OJ No L 260, 5. 9. 1992, p. 1.

⁽⁷⁾ OJ No L 167, 22. 6. 1992, p. 1.

Directive 92/66/EEC, but not the protection zone defined in Article 9 (1) of Directive 92/66/EEC, and with respect to which, following an epidemiological examination, no contact with an infected holding has been recorded;

- (b) comes from a flock where a virological examination giving a negative result is carried out on a representative sample of the flock five days before shipment of the poultry; the sampling must be carried out by a veterinarian designated by the competent authority;
- (c) comes from a holding where no signs or clinical symptoms have been found which could indicate the presence of Newcastle disease following a clinical examination by a veterinarian designated by the competent authorities; such examination must have been carried out within the 24 hours before consignment of the poultry;
- (d) without prejudice to the provisions of Article 3(A)(3), is directly transported from the holding of origin to the slaughterhouse; the means of transport used must be sealed by the official veterinarian and cleaned and disinfected before and after each transport;
- (e) is examined in the slaughterhouse at the time of the ante or post-mortem inspection, with a view to detecting symptoms of Newcastle disease.

Member States invoking these provisions shall inform the other Member States and the Commission within the Standing Veterinary Committee of the measures they adopt in this matter.

The general criteria for sampling, frequency of sampling and any conditions to be observed in implementing (a), (b) and (c) shall be laid down in accordance with the procedure provided for in Article 17, after consultation of the Scientific Veterinary Committee and before 1 January 1995.

4. Before 1 January 1998, the Commission shall submit to the Council a report on experience gained since implementation of these provisions, together with any proposals on which the Council shall decide by a qualified majority.'

4. Article 10 shall be replaced by the following:

'Article 10

1. Fresh poultrymeat must come from countries:

- (a) in which avian influenza and Newcastle disease are legally notifiable diseases throughout the country in accordance with international standards;
- (b) free from avian influenza and Newcastle disease, or
which, although they are not free from these diseases, apply measures to control them which are at least equivalent to those laid down in Directives 92/40/EEC and 92/66/EEC respectively.

2. Additional criteria for classifying third countries in respect of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 17 before 1 January 1995.

When implementing paragraph 1, the Commission shall adopt, by means of certification, all measures necessary to safeguard the particular animal health situations in certain regions of the Community.

3. The Commission may, in accordance with the procedure laid down in Article 17, decide under which conditions paragraph 1 is to apply only to a part of the territory of third countries.'

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 1995. They shall forthwith inform the Commission thereof.

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

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1993.

For the Council
The President
J.-M. DEHOUSSE

II

(Acts whose publication is not obligatory)

COUNCIL

CODE OF CONDUCT CONCERNING PUBLIC ACCESS TO COUNCIL AND
COMMISSION DOCUMENTS

(93/730/EC)

THE COUNCIL AND THE COMMISSION,

HAVING REGARD to the declaration on the right of access to information annexed to the final act of the Treaty on European Union, which emphasizes that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration,

HAVING REGARD to the conclusions wherein the European Councils in Birmingham and Edinburgh agreed on a number of principles to promote a Community closer to its citizens,

HAVING REGARD to the conclusions of the European Council in Copenhagen, reaffirming the principle of giving citizens the greatest possible access to information and calling on the Council and the Commission to adopt at an early date the necessary measures for putting this principle into practice,

CONSIDERING it desirable to establish by common agreement the principles which will govern access to Commission and Council documents, it being understood that it is for each of them to implement these principles by means of specific regulations,

WHEREAS the said principles are without prejudice to the relevant provisions on access to files directly concerning persons with a specific interest in them;

WHEREAS these principles will have to be implemented in full compliance with the provisions concerning classified information;

WHEREAS this code of conduct is an additional element in their information and communication policy,

HAVE AGREED AS FOLLOWS:

General principle

The public will have the widest possible access to documents held by the Commission and the Council.

'Document' means any written text, whatever its medium, which contains existing data and is held by the Council or the Commission.

have to contain information that will enable the document or documents concerned to be identified.

Where necessary, the institution concerned will ask the applicant for further details.

Processing of initial applications

An application for access to a document will have to be made in writing, in a sufficiently precise manner; it will

Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author.

In consultation with the applicants, the institution concerned will find a fair solution to comply with repeat applications and/or those which relate to very large documents.

The applicant will have access to documents either by consulting them on the spot or by having a copy sent at his own expense; the fee will not exceed a reasonable sum.

The institution concerned will be able to stipulate that a person to whom a document is released will not be allowed to reproduce or circulate the said document for commercial purposes through direct sale without its prior authorization.

Within one month the relevant departments of the institution concerned will inform the applicant either that his application has been approved or that they intend to advise the institution to reject it.

Processing of confirmatory applications

Where the relevant departments of the institution concerned intend to advise the institution to reject an application, they will inform the applicant thereof and tell him that he has one month to make a confirmatory application to the institution for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

If a confirmatory application is submitted, and if the institution concerned decides to refuse to release the document, that decision, which must be made within a month of submission of the confirmatory application, will be notified in writing to the applicant as soon as possible. The grounds for the decision must be given, and the decision must indicate the means of redress that are available, i.e. judicial proceedings and complaints to the ombudsman under the conditions specified in,

respectively, Articles 173 and 138e of the Treaty establishing the European Community.

Exceptions

The institutions will refuse access to any document whose disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests,
- the protection of confidentiality as requested by the natural or legal persons that supplied the information or as required by the legislation of the Member State that supplied the information.

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.

Implementation

The Commission and the Council will severally take steps to implement these principles before 1 January 1994.

Review

The Council and the Commission agree that the code of conduct will, after two years of operation, be reviewed on the basis of reports drawn up by the Secretaries-General of the Council and the Commission.

Council statement

This code of conduct and the decisions which the Council and the Commission will severally adopt on the basis thereof are intended to allow public access to Council and Commission documents.

They alter neither the existing practices nor the obligations of Member States' Governments toward their parliaments.

COUNCIL DECISION
of 20 December 1993
on public access to Council documents
(93/731/EC)

THE COUNCIL,

Having regard to the Treaty establishing the European Community, and in particular Article 151 (3) thereof,

Having regard to its Rules of Procedure, and in particular Article 22 thereof,

Whereas on 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to Council and Commission documents, reaching common agreement on the principles which must govern such access;

Whereas provisions should be adopted for the implementation of those principles by the Council;

Whereas these provisions are applicable to any document held by the Council, whatever its medium, excluding documents written by a person, body or institution outside the Council;

Whereas the principle of allowing the public wide access to Council documents, as part of greater transparency in the Council's work, must however be subject to exceptions, particularly as regards protection of the public interest, the individual and privacy;

Whereas, in the interests of rationalization and efficiency, the Secretary-General of the Council should sign on behalf of the Council and on its authorization replies to applications for access to documents, except in cases where the Council is called upon to reply to a confirmatory application;

Whereas this Decision must apply with due regard for provisions governing the protection of classified information,

HAS DECIDED AS FOLLOWS:

Article 1

1. The public shall have access to Council documents under the conditions laid down in this Decision.
2. 'Council document' means any written text, whatever its medium, containing existing data and held by the Council, subject to Article 2 (2).

Article 2

1. An application for access to a Council document shall be sent in writing to the Council ⁽¹⁾. It must be made in a sufficiently precise manner and must contain information enabling the document or documents requested to be identified. Where necessary, the applicant shall be asked for further details.

2. Where the requested document was written by a natural or legal person, a Member State, another Community institution or body, or any other national or international body, the application must not be sent to the Council, but direct to the author.

Article 3

1. The applicant shall have access to a Council document either by consulting it on the spot or by having a copy sent at his own expense. The fee shall be set by the Secretary-General.

2. The relevant departments of the General Secretariat shall endeavour to find a fair solution to deal with repeat applications and/or those which relate to very large documents.

3. Anyone given access to a Council document may not reproduce or circulate the document for commercial purposes through direct sale without prior authorization from the Secretary-General.

Article 4

1. Access to a Council document shall not be granted where its disclosure could undermine:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),
- the protection of the individual and of privacy,
- the protection of commercial and industrial secrecy,
- the protection of the Community's financial interests,

⁽¹⁾ The Secretary-General of the Council of the European Union, 170 rue de la Loi, 1048 Brussels, Belgium.

— the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the Member State which supplied any of that information.

2. Access to a Council document may be refused in order to protect the confidentiality of the Council's proceedings.

Article 5

The Secretary-General shall reply on behalf of the Council to applications for access to Council documents, except in the cases referred to in Article 7 (3), in which the reply shall come from the Council.

Article 6

Any application for access to a Council document shall be examined by the relevant departments of the General Secretariat, which shall suggest what action is to be taken on it.

Article 7

1. The applicant shall be informed in writing within a month by the relevant departments of the General Secretariat either that his application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the reasons for this intention and that he has one month to make a confirmatory application for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

2. Failure to reply to an application within a month of submission shall be equivalent to a refusal, except where the applicant makes a confirmatory application, as referred to above, within the following month.

3. Any decision to reject a confirmatory application, which shall be taken within a month of submission of such application, shall state the grounds on which it is based. The applicant shall be notified of the decision in writing as soon as possible and at the same time informed of the content of Articles 138e and 173 of the Treaty establishing the European Community, relating respectively to the conditions for referral to the Ombudsman by natural persons and review by the Court of Justice of the legality of Council acts.

4. Failure to reply within a month of submission of the confirmatory application shall be equivalent to a refusal.

Article 8

This Decision shall apply with due regard for provisions governing the protection of classified information.

Article 9

This Decision shall be reviewed after two years of operation. In 1996 the Secretary-General shall submit a report on the implementation of this Decision in 1994 and 1995, in preparation for that review.

Article 10

This Decision shall take effect on 1 January 1994.

Done at Brussels, 20 December 1993.

For the Council
The President
W. CLAES