DIRECTORATE-GENERAL FOR ENERGY (DG XVII)

ENERGY IN EUROPE

COMPENDIUM OF LEGISLATION AND OTHER INSTRUMENTS RELATING TO ENERGY

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EUROPEAN COMMISSION

Directorate-General for Energy (DG XVII)

ENERGY IN EUROPE

Compendium of legislation and other instruments relating to energy

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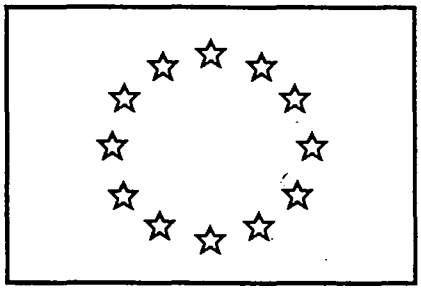

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[1] References preceding the number of the legal text are the corresponding CELEX documents.

[2] This text is not reproduced in this compendium.

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[1] This text is not reproduced in this compendium.
[2] This Directive will abrogate Directive 90/531/EEC when implemented by the Member States.

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485D0161

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OJ L 113, 30.4.1986, p. 1

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Council Regulation (EC) No 518/94 of 7 March 1994 on common rules for imports and repealing Regulation (EEC) No 288/82

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OJ L 324, 27.12.1969, p. 25

382R1934

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OJ L 308, 23.12.1968, p. 14

372L0425

72/425/EEC: Council Directive of 19 December 1972 amending the Council Directive of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products

OJ L 291, 28.12.1972, p. 154

368D0416

68/416/EEC: Council Decision of 20 December 1968 on the conclusion and implementation of individual agreements between governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products

OJ L 308, 23.12.1968, p. 19

375L0339

75/339/EEC: Council Directive of 20 May 1975 obliging Member States to maintain minimum stocks of fossil fuel at thermal power stations

OJ L 153, 13.6.1975, p. 35

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[1] This text is no longer in force as from 30.6.1981, but is included here as it constitutes a basic regulation.

[2] This text is no longer in force as from 31.12.1980, but is included here as the annex contains the scheme for the declaration by companies of oil imports to Member States.

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OJ L 292, 16.11.1977, p. 9

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79/639/EEC: Commission Decision of 15 June 1979 laying down detailed rules for the implementation of Council Decision 77/706/EEC

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OJ L 120, 25.5.1972, p. 7

376R1215

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OJ L 140, 28.5.1976, p. 1

377R3025

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OJ L 358, 31.12.1977, p. 12

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OJ L 140, 28.5.1976, p. 4

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77/190/EEC: Commission Decision of 26 January 1977 implementing Directive 76/491/EEC regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community

OJ L 61, 5.3.1977, p. 34

381D0833

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OJ L 334, 12.12.1985, p. 20

387L0441

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390L0547

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392D01677

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358R5003

EAEC Council: Regulation No 3 implementing Article 24 of the Treaty establishing the European Atomic Energy Community

OJ 17, 6.10.1958, p. 406

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358X1101P0534

EAC Council: The Statutes of the Euratom Supply Agency

OJ 27, 6.12.1958, p. 534

373D0045

73/45/Euratom: Council Decision of 8 March 1973 amending the Statutes of the Euratom Supply Agency following the accession of new Member States to the Community

OJ L 83, 30.3.1973, p. 20 [1]

360D0501P0776

EAEC Commission: Decision fixing the date on which the Euratom Supply Agency shall take up its duties and approving the Agency Rules of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

OJ 32, 11.5.1960; p. 776

360X0601P0777

Rules of the Supply Agency of the European Atomic Energy Community determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

OJ 32, 11.5.1960, p. 777

375X0701

Regulation of the Supply Agency of the European Atomic Energy Community amending the rules of the Supply Agency of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

OJ L 193, 25.7.1975, p. 37

366R5017

Commission Regulation No 17/66/Euratom of 29 November 1966 exempting the transfer of small quantities of ores, source materials and special fissile materials from the Rules of the Chapter on supplies

OJ 241, 28.12.1966, p. 4057

374R3137

Regulation (Euratom) No 3137/74 of the Commission of 12 December 1974 amending Commission Regulation No 17/66/Euratom of 29 November 1966 exempting the transfer of small quantities of ores, source materials and special fissile materials from the rules of the chapter on supplies

OJ L 333, 13.12.1974, p. 27

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[1] The Statutes of the Agency were amended upon the accession of Greece, Spain and Portugal (see accession documents), as well as by this Decision.

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377D0270

77//270/Euratom: Council Decision of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

OJ L 88, 6.4.1977, p. 9

377D0271

77/271/Euratom: Council Decision of 29 March 1977 on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

OJ L 88, 6.4.1977, p. 11

390D0212

92/212/Euratom: Council Decision of 23 April 1990 amending Decision 77/271/Euratom on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

OJ L 122, 3.5.1990, p. 26

4.2.3. Information concerning investment projects

358R5004

EAEC Council: Regulation No 4 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community

OJ 17, 6.10.1958, p. 417

358R5001

EAEC Commission: Regulation No 1 determining procedures for effecting the communications prescribed under Article 41 of the Treaty

OJ 25, 27.11.1958, p. 511

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376R3227

Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards

OJ L 363, 31.12.1976, p. 1

393R2130

Commission Regulation (Euratom) No 2130/93 of 27 July 1993 amending Regulation (Euratom) No 3227/76 concerning the application of the provisions on Euratom safeguards

OJ L 191, 31.7.1993, p. 75

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380D0237

80/237/Euratom: Council Decision of 18 February 1980 on the setting-up of an *ad hoc* Advisory Committee on the reprocessing of irradiated nuclear fuels

OJ L 52, 26.2.1980, p. 9

392L0003

Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community

OJ L 35, 12.2.1992, p. 24

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[1] These texts fall under the responsibility of DG XI, and are not included in the compendium.

393R1493

Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States

OJ L 148, 19.6.1993, p. 1

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380L0836

80/836/Euratom: Council Directive of 15 July 1980 amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation

OJ L 246, 17.9.1980, p. 1

384L0467

84/467/Euratom: Council Directive of 3 September 1984 amending Directive 80/836/Euratom as regards the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation

OJ L 265, 5.10.1984, p. 4

384L0466

84/466/Euratom: Council Directive of 3 September 1984 laying down basic measures for the radiation protection of persons undergoing medical examination or treatment

OJ L 265, 5.10.1984, p. 1

387D0600

87/600/Euratom: Council Decision of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency

OJ L 371, 30.12.1987, p. 76

389L0618

89/618/Euratom: Council Directive of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency

OJ L 357, 7.12.1989, p. 31

390L0641

90/641/Euratom: Council Directive of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas

OJ L 349, 13.12.1990, p. 21

4.6. EURATOM COOPERATION AGREEMENTS [1]

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281A0921(01)

82/672/Euratom: Agreement between the Government of Australia and the European Atomic Energy Community concerning transfers of nuclear material from Australia to the European Atomic Energy Community

OJ L 281, 4.10.1982, p. 8

[1] The texts of Euratom Cooperation Agreements are mentioned here simply for reference but are not included in the compendium. The complete texts are to be found in the Official Journal (references as above), and in the *Collection of Agreements concluded by the European Communities*.

4.6.2. Canada

259A1006(01)

Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the peaceful uses of atomic energy

OJ 60, 24.11.1959, p. 1165

278A0116(01)

78/217/Euratom: Amendment to the Agreement of 6 October 1959, in the form of an exchange of letters, between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy

OJ L 65, 8.3.1978, p. 16

281A1218(05)

82/52/Euratom: Agreement in the form of an exchange of letters between the European Atomic Community (Euratom) and the Government of Canada intended to replace the 'Interim arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada' constituting Annex C of the Agreement in the form of an exchange of letters of 16 January 1978 between Euratom and the Government of Canada

OJ L 27, 4.2.1984, p. 25

285A0731

(Agreement of 6 October 1959: not in English)

4.6.3. United States

258A0629(01)

(Agreement between the European Atomic Energy Committee (Euratom) and the United States of America: not in English)

260A0611(01)

Additional Agreement for cooperation between the United States of America and the European Atomic Energy Community (Euratom) concerning peaceful uses of atomic energy

OJ 31, 29.4.1961, p. 668

263A0622(01)

Amendment to the additional Agreement of 11 June 1960, as amended between the United States of America and the European Atomic Energy Community (Euratom)

OJ 163, 21.10.1964, p. 2586

272A0920(01)

74/254/Euratom: Amendment to the additional Agreement for cooperation of 11 June 1960 between the European Atomic Energy Community (Euratom) and the Government of the United States of America

OJ L 139, 22.5.1974; p. 24

4.6.4. Russia

290A0315(01)

Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation

OJ L 68, 15.3.1990, p. 2

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275A1201(01)

75/780/Euratom: Cooperation Agreement between the European Atomic Energy Community and the International Atomic Energy Agency

OJ L 329, 23.12.1975, p. 28

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(Agreement of 1976: not in English)

(Agreement between France, the European Atomic Energy Community and the International Atomic Energy Agency: not in English)

278A0222(01)

78/164/Euratom: Agreement between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the European Atomic Energy Community and the International Atomic Energy Agency in the implementation of Article III(1) and (4) of the Treaty on the non-proliferation of nuclear weapons

OJ L 51, 22.2.1978, p. 1
(Amendment: OJ L 74, 16.3.1978, p. 40)

CHAPTER 5 — RATIONAL ENERGY USE AND RENEWABLE ENERGY SOURCES

5.1. RATIONAL ENERGY USE

378L0170

78/170/EEC: Council Directive of 13 February 1978 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings [1]

OJ L 52, 23.2.1978, p. 32

382L0885

82/885/EEC: Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings

OJ L 378, 31.12.1982, p. 19

379L0531

79/531/EEC: Council Directive of 14 May 1979 applying to electric ovens; Directive 79/530/EEC on the indication by labelling of the energy consumption of household appliances

OJ L 145, 13.6.1979, p. 7

389D0364

89/364/EEC: Council Decision of 5 June 1989 on a Community action programme for improving the efficiency of electricity use

OJ L 157, 9.6.1989, p. 32

391D0565

91/565/EEC: Council Decision of 29 October 1991 concerning the promotion of energy efficiency in the Community (SAVE programme)

OJ L 307, 8.11.1991, p. 34

[1] This text is not reproduced in this compendium.

392L0042

92/42/EEC: Council Directive of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels

OJ L 167, 22.6.1992, p. 17

392L0075

92/75/EEC: Council Directive of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances

OJ L 297, 13.10.1992, p. 16

393L0076

93/76/EEC: Council Directive of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE)

OJ L 237, 22.9.1993, p. 28

5.2. Renewable energy sources

392D0412

92/412/EEC: Council Decision of 29 June 1992 concerning the conclusion of a Cooperation Agreement between the European Economic Community and the Republic of Finland on research and technological development in the field of renewable raw materials: forestry and wood products (including cork) ('Forest' 1990 to 1992) [1]

OJ L 228, 11.8.1992, p. 33

392D0413

92/413/EEC: Council Decision of 29 June 1992 concerning the conclusion of a Cooperation Agreement between the European Economic Community and the Kingdom of Sweden on research and technological development in the field of renewable raw materials: forestry and wood products (including cork) (Forest) and the recycling of waste (Reward)

OJ L 228, 11.8.1992, p. 40

393D0500

93/500/EEC: Council Decision of 13 September 1993 concerning the promotion of renewable energy sources in the Community (Altener programme)

OJ L 235, 18.9.1993, p. 41

[1] This text is not reproduced in this compendium.

Chapter 1 — General

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 16 September 1986

concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States

(86/C 241/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having noted the Commission communication of 13 December 1984 on 'Member States' energy policies: main issues for the future' and the work carried out by the Commission departments on 'Energy 2000',

Having noted the Commission communication of 31 May 1985 on new Community energy objectives,

Having noted the recent Commission communications to the Council on various energy matters,

Having noted the opinion of the European Parliament (1),

Having noted the opinion of the Economic and Social Committee (2),

Having noted the opinion of the ECSC Consultative Committee (3),

Having regard to its earlier resolutions of 17 December 1974 (4) and 9 June 1980 (5),

Having regard to its declaration of November 1983 on the role of energy policy within the Community,

Whereas the adequate and secure availability of energy on a satisfactory economic basis remains a prerequisite for the pursuit of the economic and social objectives of the Community and of the Member States;

Whereas, owing to current events on the energy market, there is still considerable uncertainty as to the long-term prospects for supply and demand; whereas it is therefore essential that the substantial progress already made in restructuring the energy economy be maintained and, if necessary, reinforced within the Community;

Whereas, in order to achieve this goal, priority should be given, on the demand side, to containing energy consumption to a greater extent and to restricting the share of oil and, on the supply side, to ensuring that the level of dependence on imported energy, and in particular imported oil, is not unreasonable;

Whereas experience has shown that the framework established by Community objectives is of considerable value as regards the coordination and harmonization of national energy policies;

Whereas such objectives clearly demonstrate to consumers, producers and investors in the Member States and to third countries that the Community and its Member States are determined to improve their energy supply conditions;

Whereas the role played by Member States, in the energy policy context, in enabling market forces to operate should be taken into account;

Whereas political commitment to Community objectives entails effective monitoring of national policies and the adoption of appropriate measures at Community level and at national level to ensure their attainment;

Whereas these objectives, which are ambitious but sufficiently flexible to respond to such changes as may alter the energy market, offer indicative guidelines for Community action and national policies without taking the form of rigid planning instruments;

(1) OJ No C 88, 14. 4. 1986, p. 109.
(2) OJ No C 330, 20. 12. 1985, p. 8.
(3) OJ No C 190, 30. 7. 1985, p. 3.
(4) OJ No C 153, 9. 7. 1975, p. 2.
(5) OJ No C 149, 18. 6. 1980, p. 1.

Whereas, to put the concept of Community solidarity into practice, Member States should, having regard to their own characteristics in the sphere of energy and in the light of their specific possibilities and constraints, make efforts of comparable intensity;

Whereas the Community must have regular and appropriate information on Member States' energy policies between now and 1995 in order, on the basis of detailed Commission reports, to be in a position to verify the convergence of these policies in relation to Community objectives and the extent to which these objectives have been attained at Community level,

1. emphasizes that the aim of any energy policy is to enable consumers to have adequate and secure supplies of energy under satisfactory economic conditions, which is one of the prerequisites for competitive structures and satisfactory economic growth;

2. welcomes the results obtained over more than 10 years in the Community and in the Member States as regards improving the energy situation, these results deriving from the effectiveness of the policies pursued;

3. points out that, possible short-term fluctuations on the energy market apart, efforts made must be maintained and, if necessary, reinforced between now and 1995 and beyond that date in order to reduce to a minimum the risk of tension at a later date on the energy market and in particular on the oil market;

4. states that, in order to achieve the horizontal and sectoral energy objectives defined below:

   — each Member State and the Community as such should continue to rely upon an appropriate combination of policy measures and the operation of market forces,

   — the Member States should use these as a basis for defining their energy policies and continue efforts of comparable intensity, having regard to their own characteristics in the sphere of energy and in the light of their specific possibilities and constraints;

5. considers that the energy policy of the Community and of the Member States must endeavour to achieve the following horizontal objectives:

   (a) more secure conditions of supply and reduced risks of sudden fluctuations in energy prices through:

      — the development of the Community's energy resources under satisfactory economic conditions,

      — geographical diversification of the Community's external sources of supply,

      — appropriate flexibility of energy systems and, *inter alia*, the development, as necessary, of network link-ups,

      — effective crisis measures, particularly in the oil sector,

      — a vigorous policy for energy-saving and the rational use of energy,

      — diversification between the different forms of energy;

   (b) cost efficiency in the implementation of energy policy measures;

   (c) the application, in all consumption sectors and to all forms of energy, of Community energy price formation principles approved by the Council;

   (d) greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness;

   (e) a search for balanced solutions as regards energy and the environment, by making use of the best available and economically justified technologies and by improving energy efficiency, as well as taking account of the desire to limit distortions of competition in the energy markets by a more coordinated approach in environmental affairs in the Community;

   (f) the implementation, in appropriate frameworks, for those regions which are less-favoured, including those less-favoured from the point of view of energy infrastructure, of measures designed to improve the Community's energy balance;

   (g) the continuous and reasonably diversified promotion of technological innovations through research, development and demonstration and by rapid and appropriate dissemination of the results throughout the Community;

   (h) the development of the Community's external relations in the energy sector by virtue of a coordinated approach, in particular, on the basis of regular consultations between Member States and the Commission;

6. adopts for the Community as such the following sectoral objectives which should be regarded as indicative guidelines as regards their quantitative aspects and which could be used as a guide for

examining the convergence and cohesion of the Member States' energy policies between now and 1995:

(a) to achieve even greater energy efficiency in all sectors and act to highlight specific energy-saving possibilities.

The efficiency of final energy demand (1) should be improved by at least 20 % by 1995;

(b) to keep net oil imports from third countries within reasonable proportions by maintaining a policy of oil substitution and by continuing and, if need be, stepping up oil exploration and production in the Community, particularly in promising areas or areas not yet exploited.

Oil consumption should be kept down to around 40 % of energy consumption and net oil imports thus maintained at less than one-third of total energy consumption in the Community in 1995;

(c) to maintain the share of natural gas in the energy balance on the basis of a policy aimed at ensuring stable and diversified supplies and continuing and, if need be, stepping up, natural gas exploration and production in the Community;

(d) to pursue efforts to promote consumption of solid fuels and improve the competitiveness of their production capacities in the Community, taking into account the new possibilities opening up on the market for uses of solid fuels with greater added value.

The share of solid fuels in energy consumption should be increased;

(e) to continue with, and step up, the measures taken to reduce as much as possible the share of hydrocarbons in the production of electricity.

The proportion of electricity generated from hydrocarbons should be reduced to less than 15 % in 1995.

Taking account in this regard of the substantial part played by nuclear power in the Community's energy supply, it is agreed that, on the basis of highest standards of safety, appropriate measures must ensure that all aspects of planning construction and operation of nuclear installations fulfil optimal safety conditions;

(f) to maintain the development of new and renewable energy sources, including conventional hydroelectricity, in particular by continuing with the effort made and by placing greater emphasis on arrangements for disseminating results and reproducing successful projects.

The output from new and renewable energy sources in place of conventional fuels should be substantially increased, thereby enabling them to make a significant contribution to the total energy balance;

7. requests the Commission to make all appropriate recommendations and proposals with a view to increasing the convergence and cohesion of the Member States' energy policies and promoting the attainment of the Community objectives defined above;

8. requests the Member States to submit to the Commission each year all appropriate information about their energy situations and energy forecasts and to inform it at the earliest opportunity of any substantial alteration in their energy policies;

9. requests the Commission to submit, approximately every two years on its own responsibility and in the light of the above information, a detailed survey of the progress made and problems encountered in each Member State and in the Community as a whole compared with the objectives and guidelines defined above;

10. notes that existing market conditions require flexibility of energy policy within clear guidelines;

11. asks the Commission to review the objectives set out above:

— in the event of persistent structural changes in energy market conditions,

— in any event before expiry of a five-year period,

and to submit, if necessary, new long-term energy objectives.

(1) Ratio of final energy demand to GNP.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1729/76

of 21 June 1976

concerning the communication of information on the state of the Community's energy supplies

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 187 and 192 thereof,

Having regard to the draft Regulation submitted by the Commmission,

Whereas the pursuit and attainment of the energy policy objectives adopted by the Council, in particular in its resolutions of 17 December 1974 [1], require the harnessing of the appropriate means defined *inter alia* in the Council resolution of 13 February 1975 [2];

Whereas these means require in particular that the energy supply situation in each Member State and in the Community as a whole be assessed; whereas such assessment must of necessity be uniform and cover all the sectors concerned;

Whereas, therefore, if the Commission is to accomplish the task incumbent upon it in pursuit of the objectives set out above, it must have at its disposal full and consistent information on the energy supply situation;

Whereas in order to meet energy supply requirements it has recently become necessary to make a continuous effort to adjust supply structures to changing market conditions; whereas the Commission must therefore receive a regular flow of information;

Whereas in the event of difficulties which could cause serious disturbances by reducing or threatening to reduce energy supplies, more detailed information on the most important aspects of such a situation must rapidly be made available to the Commission;

Whereas, as a result of difficulties which arose on the energy market the Council adopted, on 30 January 1974, Regulation (EEC) No 293/74 [3] which provides that Member States shall communicate certain information for the establishment of comprehensive energy balance sheets for the Community;

Whereas the aforementioned Regulation no longer meets present requirements, since it does not enable the Commission to obtain the information which is indispensable to it both under normal circumstances and in periods of difficulty;

Whereas it is in the general interest to standardize and rationalize the communication of all the information required at Community level;

Whereas it is desirable to ensure compliance with the obligations provided for in this Regulation and respect for the confidential nature of the data collected,

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[1] OJ No C 153, 9. 7. 1975, pp. 2 and 5.
[2] OJ No C 153, 9. 7. 1975, p. 6.

[3] OJ No L 32, 5. 2. 1974, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The Member States shall communicate to the Commission twice a year the information concerning their energy supply situations set out in Annex I, giving the figures for the preceding calendar half-year and forecasts for the current half-year.

Article 2

If, having consulted the Energy Committee, the Commission ascertains that developments in the conditions of supply in one or more Member States are giving cause for concern and therefore necessitate more immediate and detailed knowledge of the situation on the energy market, it shall inform the Member States accordingly by means of the *Official Journal of the European Communities*.

In the circumstances referred to in the first paragraph the Member States shall communicate to the Commission

(a) the information set out in Annex I, and

(b) the information on the energy consumed by each of their major sectors of consumption set out in Annex II,

taking into account the conventions referred to in Annex III.

The information referred to in (a) and (b) shall be communicated on 31 January, 30 April, 31 July and 31 October of each year, and shall comprise the figures for the preceding quarter and forecasts for the current quarter.

Article 3

1. The Member States may add comments to their communications.

2. The Commission shall transmit to the Member States an annotated summary of the information received pursuant to Articles 1 and 2 and shall hold any consultations which may be necessary.

Article 4

In order to fulfil the obligations laid down in Articles 1 and 2, all persons and undertakings concerned must, at the request of the national authorities, forward the necessary information to them.

Article 5

1. Information forwarded pursuant to this Regulation shall be treated as confidential.

2. Persons who are participating or have participated in the collection and preparation of the information referred to in this Regulation shall be bound not to divulge the specific data or any other specific information which may have come to their knowledge in or during the exercise of their duties.

3. The confidential nature of the information forwarded pursuant to this Regulation shall not prevent the publication of general information or of summaries in a form such that information concerning individual persons and undertakings cannot be identified.

Article 6

The Member States shall take appropriate measures to ensure observance of the obligations arising under Articles 4 and 5.

Article 7

Regulation (EEC) No 293/74 is hereby repealed.

Article 8

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

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

Done at Luxembourg, 21 June 1976.

For the Council

The President

J. HAMILIUS

ANNEX I

QUESTIONNAIRE

ENERGY SUPPLY

(Council Regulation (EEC) No 1729/76)

(in 10^3 toe)

Country: Half-year:	Hard coal and patent fuel	Coke	Lignite and peat and briquettes thereof	Crude oil	Petroleum products	Natural gas	Derived gases	Nuclear energy	Hydroelectric and geothermal energy	Electrical energy	Total
1. Production of primary sources											
2. Production of derived products											
3. Supplies from the Community											
4. Imports from non-member countries											
6. Stocks: (a) Level (end period)											
(b) Changes (*)											
8. Deliveries to the Community											
9. Exports to non-member countries											
10. Gross consumption 1+2+3+4+6–8–9											
11. Bunkers											
Equivalence in primary energy 10 – 2 – 11											
12. Gross inland consumption of primary sources and their equivalents											

(*) (+) decrease; (–) increase.

ANNEX II

ADDITIONAL QUESTIONNAIRE

ENERGY CONSUMPTION

(Council Regulation (EEC) No 1729/76)

(in 10^3 toe)

Country: Quarter:	Hard coal and patent fuel	Coke	Lignite and peat and briquettes thereof	Crude oil	Petroleum products	Natural gas	Derived gases	Electrical energy	Total
131. Power stations									
132. Patent fuel plants									
133. Gas works									
134. Coke ovens									
135. Blast furnaces									
136. Refineries									
13. Transformation 131+132+133+134+135+136									
14. Energy sector consumption									
15. Distribution losses									
18. Statistical difference									
171. Industry									
172. Transport									
173. Households, etc.									
16. Non-energy uses									
16. Final consumption +17. 171+172+173+16									

(in 10^3 toe)

	LPG and refinery gas	Motor spirit	Aviation fuels	Gas/diesel oil	Residual fuel oil	Other petroleum products	Total
Net refinery production							
Inland deliveries							

ANNEX III

Conventions referred to in Article 2

When replying to the questionnaires in Annexes I and II the following conventions should be observed:

1. The nomenclature of energy products, the general framework, the definitions and field covered by each line of the balance-sheet are based on the conventions adopted by the Statistical Office of the European Communities and systematically listed in all its 'Energy Statistics' publications (quarterly bulletins and yearbooks).

2. For the application of this Regulation, specific conventions will be set out in a work-sheet annexed to the questionnaires.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2008/90

of 29 June 1990

concerning the promotion of energy technology in Europe (Thermie programme)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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 its resolution of 16 September 1986 concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States (4) the Council stated that, possible short-term fluctuations on the energy market apart, efforts made must be maintained and, if necessary, reinforced between now and 1995 and beyond that date in order to reduce to a minimum the risk of tension at a later date on the market;

Whereas that same resolution states that one of the horizontal objectives of Community energy policy is to encourage continuous and reasonably diversified promotion of technological innovations and appropriate dissemination of the results throughout the Community; whereas in spite of the present energy situation there should be no relaxation of efforts to diversify the Community's energy supply and improve energy efficiency; whereas the promotion of new technologies will help to achieve these objectives and to ensure better protection of the environment from the impact of energy technologies;

Whereas it is important to dovetail these efforts with the Community strategy for science and technology and with the specific programmes defined in the framework programme for Community activities in the field of research and technological development, both in terms of programme execution and in terms of the financial status of the programme in the financial perspective;

Whereas the resolution of 16 September 1986 also states that the Community should search for balanced solutions as regards energy and the environment by making use of the best available economically justified technoligies; whereas under Article 130r of the Treaty environmental protection requirements are to be a component of the Community's other policies and action by the Community relating to the environment must be designed to ensure a prudent and rational utilization of natural resources; whereas energy technology has a key role to play in meeting the ecological challenge by increasing energy efficiency, developing new and renewable sources and ensuring the clean use of solid fuels; whereas major efforts in all these areas will be needed to face up to the threat of climatic change;

Whereas the promotion of projects for exploiting the indigenous energy potential of the regions, particularly less-developed regions, will help to strengthen the economic and social cohesion of the Community, an objective which, according to Article 130b of the Treaty, should be taken into account when implementing common policies and the internal market;

Whereas support for the promotion of energy technologies will benefit economic and social cohesion;

Whereas action to promote innovative technologies taken at Community level will avoid the dissipation of resources and increase effectiveness;

Whereas this action should be coordinated with action being taken by the Community within the framework of other specific programmes concerned, in particular, with research and development in the field of energy, innovation and technology transfer and the dissemination and utilization of the results of scientific and technical research;

Whereas financial support should be granted in appropriate cases to projects for the promotion of advanced technology in the field of energy;

Whereas, when selecting projects, preference should be given to projects involving the association of independent

(1) OJ No C 101, 22. 4. 1989, p. 3 and OJ No C 111, 5. 5. 1990, p. 13.
(2) OJ No C 38, 19. 2. 1990, p. 107.
(3) OJ No C 221, 28. 8. 1989, p. 6.
(4) OJ No C 241, 25. 9. 1986, p. 1.

undertakings established in different Member States in projects proposed by small and medium-sized undertakings and in dissemination projects;

Whereas for reasons of effectiveness it is necessary to make provision for a programme of five years duration with appropriate overall funding;

Whereas it is necessary to estimate the Community finance needed to implement this programme; whereas that amount must be covered by the financial perspectives defined by interinstitutional agreements; whereas the appropriations actually available will be determined under the budgetary procedure in compliance with the said agreements;

Whereas, notwithstanding the new impetus that the promotion of innovative energy technologies requires, the continuity of measures undertaken under demonstration projects and industrial pilot projects in the energy field referred to by Regulation (EEC) No 3640/85 [1] and the programme of support for technological development in the hydrocarbons sector referred to in Regulation (EEC) No 3639/85 [2] must be ensured in accordance with this Regulation; whereas such continuity must be achieved on the one hand through the pursuit of measures to promote and disseminate technologies that have received Community support under such Regulations; whereas it may also be achieved through support for the later stages of projects that have already received partial support under the same Regulations; whereas it must be possible in certain cases to support projects of the same sort as those covered by these Regulations provided they also fulfil the requirements of this Regulation;

Whereas cooperation between undertakings in various Member States in the field of energy technology must be maintained and encouraged;

Whereas technology transfer in the energy sector could contribute significantly to more efficient energy production and the reduction of pollutant emissions in the less favoured areas of the Community and in third countries;

Whereas such technology transfers should therefore be encouraged both within the framework of existing Community programmes and by any other appropriate means;

Whereas the grant of Community support must not affect conditions of competition in such a way as to be incompatible with the competition provisions of the Treaty;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

The Community may, under the conditions laid down in this Regulation, grant financial support for projects for the promotion of energy technology in Europe (Thermie) in the fields of application referred to in Article 3 and undertake the associated measures referred to in Article 5.

The amount of Community expenditure deemed necessary to implement the programme covered by this Regulation for the period 1990 to 1992 is ECU 350 million.

The budgetary authority shall determine the appropriations available for each financial year.

Article 2

1. For the purposes of this Regulation, 'projects for the promotion of energy technology', hereinafter referred to as 'projects', means projects designed to advance, implement and/or promote innovative technologies in the field of energy, implementation of which entails a large element of technical and economic risk, such that those projects would in all likelihood not be executed without Community financial support.

2. Community financial support may be granted for:

(a) innovatory projects; these are projects designed to advance or implement innovatory techniques, processes or products for which the research and development stage has for the most part been completed, or new applications of established techniques, processes or products. This type of project is designed to prove the technical and economic viability of new technologies by applying them on a sufficiently large scale for the first time. These criteria shall apply as necessary according to the requirements of continuity of the fields of application referred to in Article 3;

(b) dissemination projects; these are projects designed to promote with a view to their broader utilization within the Community, either under different economic or geographical conditions or with technical modifications, innovatory techniques, processes or products which have already been applied once but, owing to residual risk, have not yet penetrated the market.

Article 3

The fields of application of this Regulation are as follows:

— rational use of energy,

— renewable energy sources,

[1] OJ No L 350, 27. 12. 1985, p. 29.
[2] OJ No L 350, 27. 12. 1985, p. 25.

— solid fuels,

— hydrocarbons.

Annexes I to IV list the sectors of application covered by each of these fields. The contents of these Annexes may be amended by the Commission to keep pace with technological developments in accordance with the procedures defined in Articles 9 (2) and 10 (1), the European Parliament and the Council being kept informed.

Article 4

Whenever it appears to be necessary, and in particular where a need is not being met or where significant technological advance could be achieved through cooperation between persons or undertakings in at least two Member States, the initiative may be taken to encourage or coordinate the setting-up of specific projects, called 'targeted projects'.

Article 5

The Commission shall undertake associated measures, such as those defined in Annex V, designed to encourage the application and market penetration of energy technologies. To that end the Community may provide technical and financial support for bodies that promote innovative technologies in the Member States. A list of these measures appears in Annex V, the contents of which may be amended by the Commission in accordance with the procedures defined in Articles 9 (2) and 10 (1).

These associated measures may be carrried out in third countries in so far as such extension is in keeping with the objectives of this Regulation.

Article 6

1. Any project within the meaning of Articles 2 and 4 must meet the following conditions:

(a) it must use, with a view to their implementation and propagation, innovatory techniques, processes or products, or new applications of established techniques, processes or products;

(b) it must offer technically and economically viable prospects of subsequent commercial exploitation of the relevant technology;

(c) it must offer appropriate solutions compatible with safety and environmental protection requirements;

(d) it must be difficult to finance because of major technical and economic risks;

(e) it must be proposed by natural or legal persons capable, in the case of the techniques, processes or products referred to in (a), of implementing and applying them, and of contributing to or assisting in the dissemination thereof;

(f) in the case of any project of a total cost of ECU 6 million or more, it must be submitted by at least two independent promoters established in different Member States.

However, the Commission may agree to exceptions for projects submitted by a single promoter if their implementation would be of particular interest to the Community;

(g) it must be carried out within the Community unless it is essential to the interests of the Community to have all or part of it carried out in an area outside the Community, in particular because of the special characteristics of the project.

2. Additional conditions specific to the sectors of application are given in Annexes I to IV.

3. When selecting projects, the Commission shall, as an adjunct to the criteria laid down in paragraphs 1 and 2, take account of a preference to be given to projects with the following characteristics:

(a) projects, other than those referred to in paragraph 1 (f), involving an association of at least two independent undertakings established in different Member States, provided that it is established that each undertaking can make an effective and significant contribution to carrying out the project;

(b) projects proposed by small and medium-sized undertakings or by an association of such undertakings;

(c) projects referred to in Article 2 (2) (b) which are to be implemented in regions whose development is lagging behind as defined by Article 8 of Regulation (EEC) No 2052/88 [1].

Article 7

1. Support for a project shall take the form of a financial contribution by the Community granted in accordance with the conditions set out in the paragraphs below and in Articles 8, 12 and 15.

2. Financial support may be granted for an entire project or for different stages of a project. In the latter case, without prejudice to the responsibilities conferred upon the budgetary authority of the European Communities, financial support shall continue to be granted for later stages of the same project provided that the eligibility criteria continue to be met and that the Commission is satisfied with the progress of the project.

[1] OJ No L 185, 15. 7. 1988, p. 9.

3. Financial support may not exceed 40 % of the eligible cost of the project in the case of the innovatory projects referred to in Article 2 (2) (a) and of the targeted projects referred to in Article 4; it may not exceed 35 % of the eligible cost in the case of the dissemination projects referred to in Article 2 (2) (b).

4. The amount of financial support shall be determined separately for each project. When determining the amount, the Commission shall take account of the element or proportion of the risk which will have to be borne directly by those responsible for the project and of other support received or expected, in such a way that the total amount of public support does not exceed 49 % of the total cost of the project. To this end, the person responsible for the project shall be obliged to inform the Commission of any public aid expected or received.

5. The Commission shall retain the possibility of introducing, if necessary and in accordance with the procedures defined in Articles 9 (2) and 10 (1), other appropriate financial mechanisms.

Article 8

1. Projects shall be submitted by natural or legal persons established within the Community, whether individually or in the form of associations, following the publication of an invitation to submit projects in one or more of the fields of application referred to in Article 3 in the *Official Journal of the European Communities,* in accordance with this Regulation.

2. In the invitations to submit projects, the Commission shall specify those sectors to be given priority when projects are selected; this list of priorities shall be drawn up in accordance with the procedures defined in Articles 9 (2) and 10 (1). The Commission shall also specify the information applicants will be required to supply for the purposes of the selection of projects.

Article 9

1. The Commission shall be responsible for applying this Regulation.

2. In carrying out the tasks listed below, the Commission shall apply the procedure referred to in Article 10 (1):

(a) amendment of the contents of Annexes I to VI;

(b) the establishment of priorities for invitations to submit projects;

(c) the selection of projects, including the fixing of the rate of financial support, for every project with a total cost exceeding ECU 500 000;

(d) any adaptation of financing techniques.

3. As regards the selection of projects, including the fixing of the rate of financial support for every project with a total cost exceeding ECU 100 000 but not exceeding ECU 500 000, the Commission shall apply the procedure referred to in Article 10 (2).

Article 10

1. In carrying out the tasks referred to in Article 9 (2), the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In the event, the Commission shall defer application of the measures which it has decided for a period of one month from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

2. As regards the projects referred to in Article 9 (3), the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the

committee of the manner in which its opinion has been taken into account.

Article 11

In implementing this Regulation, the Commission shall ensure coordination with projects carried out under other Community programmes relating to research and development, innovation and the transfer of technology, and the dissemination and utilization of research results, as well as under the Structural Funds.

It shall also ensure closer coordination with national schemes in order to avoid duplication of similar projects.

In addition it shall ensure the dovetailing of the programme referred to in this Regulation with the framework programme for research and technological development.

Article 12

1. The contractor responsible for carrying out a project receiving financial support from the Community shall undertake to use the successful technique, process or product or to facilitate its use, and to allow dissemination of the results obtained.

2. The Commission shall, in cooperation with the bodies responsible in the Member States, endeavour to ensure the dissemination and application of projects supported in accordance with this Regulation and Regulations (EEC) No 3056/73 [1], (EEC) No 1302/78 [2], (EEC) No 1303/78 [3], (EEC) No 1971/83 [4], (EEC) No 1972/83 [5], (EEC) No 3639/85 [6] and (EEC) No 3640/85 [7], and to promote their exploitation. It shall take appropriate steps to achieve this objective in connection with the measures referred to in Article 5, and if necessary shall also give suitable assistance to the contractor.

Article 13

Contracts shall be signed between the Community and the persons referred to in Article 15 for the implementation of the projects adopted under this Regulation; they shall govern the rights and obligations of each party, including the methods of dissemination, protection and exploitation of the results of the projects and the possibility of repayment of the financial support in the event of non-compliance with contractual obligations.

Article 14

Subject to Article 12, the information obtained by the Commission under this Regulation shall remain confidential.

Article 15

Responsibility for any project shall lie with a physical or legal person constituted in accordance with the law applicable in the Member States, or with an association of such persons, within which they are jointly and severally liable.

Article 16

Financial support granted by the Community must not affect conditions of competition in such a way as to be incompatible with the relevant provisions of the Treaty.

Article 17

Three years after the entry into force of this Regulation and also upon expiry thereof, the Commission shall submit a report on the implementation of this Regulation and on the compatibility between national and Community action to the European Parliament and to the Council for the purposes of assessing the results obtained.

Article 18

1. The amounts to be granted under this Regulation shall be entered each year in the general budget of the European Communities.

The appropriations shall cover the financial support to be granted to projects referred to in Articles 2 (2) and 4, as well as measures referred to in Articles 5 and 7 (5) and expenditure relating to the implementation of this Regulation.

2. Annex VI contains an indicative breakdown of the total amount fixed in paragraph 1 between the various fields, measures and mechanisms defined in Articles 3, 5 and 7 (5) respectively; this breakdown may be modified by decision of the Community in accordance with the procedures defined in Articles 9 (2) and 10 (1).

Article 19

Regulations (EEC) No 3639/85 and (EEC) No 3640/85 shall continue to apply to projects to which support has been granted pursuant to those Regulations.

Article 20

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

It shall apply until 31 December 1994.

[1] OJ No L 312, 13. 11. 1973, p. 1.
[2] OJ No L 158, 16. 6. 1978, p. 3.
[3] OJ No L 158, 16. 6. 1978, p. 6.
[4] OJ No L 195, 19. 7. 1983, p. 1.
[5] OJ No L 195, 19. 7. 1983, p. 6.
[6] OJ No L 350, 27. 12. 1985, p. 25.
[7] OJ No L 350, 27. 12. 1985, p. 29.

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

Done at Luxembourg, 29 June 1990.

For the Council
The President
M. SMITH

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 9 September 1991

adopting a specific research and technological development programme in the field of non-nuclear energy (1990 to 1994)

(91/484/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130q (2) thereof,

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

In cooperation with the European Parliament (2),

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

Whereas by its Decision 90/221/Euratom, EEC (4), the Council adopted a third framework programme for Community activities in the field of research and technological development (1990 to 1994), specifying *inter alia* the activities to be pursued for developing the scientific knowledge and technical know-how needed by the Community, in particular to carry out its role relating to non-nuclear energy; whereas this Decision should be taken in the light of the grounds set out in the preamble to that Decision;

Whereas Article 130k of the Treaty stipulates that the framework programme is to be implemented through specific programmes developed within each activity;

Whereas basic research in the field of non-nuclear energy must be encouraged throughout the Community;

Whereas, in addition to the specific programme concerning human resources and mobility, it might be necessary to encourage the training of research workers and engineers in the context of this programme;

Whereas in the context of this programme it is desirable that an assessment be made of the economic and social impact as well as of any technological risks;

Whereas, pursuant to Article 4 and Annex I of Decision 90/221/Euratom, EEC, the funds estimated as necessary for the whole framework programme include an amount of ECU 57 million for the centralized dissemination and exploitation of results, to be divided up in proportion to the amount envisaged for each specific programme;

Whereas Decision 90/221/Euratom, EEC provides that a particular aim of Community research must be to strengthen the scientific and technological basis of European industry, and to encourage it to become more competitive at the international level; whereas that Decision also provides that Community action is justified where research contributes, *inter alia*, to the strengthening of the economic and social cohesion of the Community and to the promotion of its overall harmonious development, while being consistent with the pursuit of scientific and technical excellence; whereas this programme should contribute to the achievement of these objectives;

Whereas small and medium-sized enterprises (SME) should be involved to the maximum extent possible in this programme; whereas account should be taken of their special requirements without prejudice to the scientific and technical quality of this programme;

(1) OJ No C 174, 16. 7. 1990, p. 77 and OJ No C 76, 21. 3. 1991, p. 9.
(2) OJ No C 48, 25. 2. 1991, p. 130 and OJ No C 240, 16. 9. 1991.
(3) OJ No C 31, 6. 2. 1991, p. 20.
(4) OJ No L 117, 8. 5. 1990, p. 28.

Whereas it is necessary, as Annex II to Decision 90/221/Euratom, EEC provides, to contribute to the development of new energy options that are both economically viable and more environmentally friendly;

Whereas the R&D activities in this programme occur upstream of the 'project for the promotion of energy technology', defined in Article 2 of Regulation (EEC) No 2008/90 (1) concerning the Thermie programme, which are eligible for financial support under that programme only if the research and development stage has for the most part been completed;

Whereas the Scientific and Technical Research Committee (Crest) has been consulted,

HAS ADOPTED THIS DECISION:

Article 1

A specific research and technological development programme in the field of non-nuclear energy, hereafter referred to as the 'programme', as defined in Annex I, is hereby adopted for a period running from 9 September 1991 to 31 December 1994.

Article 2

1. The funds estimated as necessary for the execution of the programme amount to ECU 155,43 million, including expenditure on staff and administration amounting to ECU 18 million.

2. An indicative allocation of funds is set out in Annex II.

3. Should the Council take a decision pursuant to Article 1 (4) of Decision 90/221/Euratom, EEC, this Decision shall be adapted accordingly.

Article 3

Detailed rules for the implementation of the programme and the amount of the Community's financial contribution are set out in Annex III.

Article 4

1. In the course of the second year of implementation of the programme, the Commission shall review it and send a report on the results of its review to the European Parliament and the Council. This report shall be accompanied, where necessary, by proposals for amendment of the programme.

2. At the end of the programme, an evaluation of the results achieved shall be conducted for the Commission by a group of independent experts. This group's report, together with any comments by the Commission, shall be submitted to the European Parliament and the Council.

3. The reports referred to in paragraphs 1 and 2 shall be established having regard to the objectives set out in Annex I to this Decision and in accordance with Article 2 (4) of Decision 90/221/Euratom, EEC.

Article 5

1. Contracts concluded by the Commission shall govern the rights and obligations of each party, in particular the arrangements for the dissemination, protection and exploitation of research results, in accordance with the provisions adopted pursuant to the second paragraph of Article 130k of the Treaty.

2. A work programme shall be drawn up in accordance with the aims set out in Annex I and updated where necessary. It shall set out the detailed objectives and types of projects to be undertaken, and the corresponding financial arrangements to be made for them. The Commission shall make calls for proposals for projects on the basis of the work programme.

Article 6

1. The Commission shall be responsible for the implementation of the programme. It shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

2. In the cases referred to in Article 7 (1), 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, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 7

1. The procedure laid down in Article 6 shall apply in particular to:

— the preparation and updating of the work programme referred to in Article 5 (2),

— the contents of the calls for proposals,

— the assessment of the research projects provided for in Annex III and the estimated amount of the Community's contribution to them,

— departures from the general rules set out in Annex III,

— the participation in any project of non-Community organizations and enterprises referred to in Article 8 (1) and (2),

(1) OJ No L 185, 17. 7. 1990, p. 1.

— any adaptation of the indicative allocation of the funds set out in Annex II,

— the measures to be undertaken to evaluate the programme,

— the arrangements for the dissemination, protection and exploitation of the results of research carried out under the programme.

2. The Commission shall inform the committee on the implementation of the accompanying measures and concerted actions referred to in Annex III.

Article 8

1. The Commission is authorized to negotiate, in accordance with Article 130n of the Treaty, international agreements with third countries members of COST, in particular with member countries of the European Free Trade Area (EFTA) and the countries of Central and Eastern Europe with a view to associating them with all or part of the programme.

2. Bodies and enterprises established in European non-Member States may, on the basis of the criterion of mutual benefit, be allowed to become partners in a project undertaken within the programme.

No contracting body based in the countries referred to in paragraph 2 and participating as a partner in a project undertaken under the programme may benefit from Community financing for this programme. Such a body shall contribute to the general administrative costs.

Article 9

This Decision is addressed to the Member States.

Done at Brussels, 9 September 1991.

For the Council

The President

W. KOK

ANNEX I

SCIENTIFIC AND TECHNICAL OBJECTIVES AND CONTENT

This specific programme fully reflects the approach embodied in the third framework programme in terms of the scientific and technical goals and underlying aims which it pursues.

The objective is to contribute to the development of new energy options that are both economically viable and more environmentally safe, including energy-saving technologies, by means of joint activities to assist Member States in this direction. In this connection, increased attention must be paid to work on those energy technologies which, despite their high potential and the fact that they have no adverse effects on the environment, particularly the climate, cannot be used under satisfactory economic conditions at present as this work cannot yet be fully funded by industry.

For the purposes of this Decision, the subprogrammes and projects established pursuant to this programme are defined as joint research and technological development actions which contribute to the formulation of new energy options that are both economically viable and environmentally safe, including energy-saving technologies.

The activities envisaged include : either technological projects designed to explore, establish a structure for or test the technical feasibility of minority concepts prior to any industrial development, or strategic fundamental research projects aimed at developing new areas of basic knowledge likely to became the focus for industrial research work.

The projects for the promotion of energy technology, situated downstream of the projects eligible under this programme, will be financed wholly pursuant to Regulation (EEC) No 2008/90 concerning the Thermie programme, with which they must be closely coordinated.

Coordination must also be established with the other specific research programmes, particularly the 'agricultural and agro-industry' and 'industrial and materials technology' programmes.

Research into modelling is a horizontal research area which will be carried out to gain more knowledge of the processes involved and to enable technological strategies to be assessed.

The following presents an analytical description of the content of the specific programme, based on and taking account of the above elements.

Area 1 : Analysis of strategies and modelling

The aim of the modelling activities is to define energy R&D strategies and to analyse national or Community policies dealing with energy and environment. The programme will expand the existing capacity to draw up energy forecasts and evaluate energy policies by introducing the new environment and internal market dimensions. It will develop new concepts not envisaged or inadequately covered by previous activities.

Analysis of strategies

Models will be used to assess the strategic role of energy efficiency at demand and supply level and renewables towards a reduction of the damaging effect of energy production and utilization on the environment, emphasis being put on greenhouse gas emissions, in particular CO_2. Energy policy options taking into account different scenarios of CO_2 constraints will be made available.

Given the inherent problems of the environment and the greenhouse effect, the analyses carried out in this area will allow for a Europe-wide and international dimension in view of the role played by third countries.

Development of new methods

This task will consist of conceptual research to account for the impact of the internal market on the energy system, for the social constraints involved in policy decision making, for the treatment of uncertainty and for the economic impact of the policies modelled. New working tools will be tested and made operational for the analysis of strategies.

Area 2 : Minimum emission power production from fossil sources

Subject to the development and extension of projects already carried out pursuant to the Joule programme, this research aims at optimizing energy production from fossil sources and reducing the adverse effects on the environment resulting from the widespread use of fossil fuels.

Two main lines of activity are planned, firstly in the fields of advanced technologies for energy production and secondly in removal and fixation of CO_2, as well as work on combustion models. Technico-economic evaluation of the several possible routes, their ecological effects and the action needed to offset those effects will be performed in parallel with development of geophysical methods and tools. On the basis of the outcome of these technico-economic evaluations, experimental work will be performed on the more promising high-efficiency power producing systems with CO_2 capture and an CO_2 disposal.

Energy production from fossil sources using advanced technologies

The objective is to increase the efficiency of energy production from fossil sources, by means of advanced technologies. Both the theoretical and experimental work will establish the technical feasibility and the costs — cost per unit kWh produced, capital cost — of these advanced technologies. The work will contribute to the development of high-efficiency multicycle conversion systems including fluidized-bed combustion systems for electricity production from fossil fuels with a potential efficiency of 50 % or more, as compared with the present 38 % level, in order to reduce greenhouse gas emissions per kWh produced and to compensate for energy losses and expenses related to minimum emission measures. For this purpose the development of fossil fuel combustion with oxygen and CO_2 recirculation will be studied because of its potential impact on efficiency and on the limitation of emissions.

Taking into account the essential role of hydrocarbons and to ensure the future energy security of the Community, R&D actions in the field of hydrocarbons will be continued with attention being paid to the need to protect the environment. Activities will also cover basic research on techniques for the discovery, appraisal and exploitation of new fields, especially smaller and more complex fields, as well as for the early recovery of hydrocarbons in such fields and the ultimate use of fuels.

Reduction of emissions

The objective is to reduce emissions through the capture and stable disposal of pollutants. This work comprises two elements : first, technico-economic evaluations, study models and related technical studies for minimizing emissions in fossil fuelled power production systems and in methanol and hydrogen production from fossil fuels. This work could also be relevant to R&D on appropriate techniques which are used to reduce emissions from fossil-fuelled power stations and from oil refineries. Second, the development of safe and stable geological disposal for CO_2 in new reservoirs, as well as in spent or operating oil and gas fields. This will entail research on the interaction of CO_2 with mineral materials in the geological sites. CO_2 storage in the ocean depths and the problems of the siting of large power stations with regard to the possibilities for storage, recycling and processing of CO_2 will also be studied. In support of this part of the programme, advanced geophysical methods and tools will be developed for CO_2 storage assessment, hydrocarbons prospection and reservoir engineering. Scrubbing, absorption or other methods to separate CO_2 from flue gases with subsequent fixation of CO_2 will also be studied.

Area 3 : Renewable energy sources

The aim is to accelerate technological readiness and to prepare for early market integration of all the most promising technical options. Within a global systems approach, particular objectives are to increase the conversion efficiency of solar, wind, mini-hydraulic, wave, tidal, biomass and geothermal systems, decrease their costs and improve their attractiveness to developers, industry and consumers.

The solar house

The objective is to contribute to solar design concepts by integrating heat use and photovoltaic conversion for new and old dwellings and buildings. Research will aim at maximizing the use of solar radiation and ambient heat for heating and power in such buildings, offering improved living and/or working conditions to the occupants, and employing modular and cost-effective building elements using new or traditional materials.

Emphasis will be on the further development of solar components, heat storage devices and concepts, and the development and integration of photovoltaic cells and modules. Design concepts and pilot systems will be developed as part of a broad attempt to stimulate solar architecture in new and renovated buildings and the utilization of new technologies in architecture at large. 'Pre-standardization' research in the building sector and on urban planning will be encouraged.

Renewable power plants

The objective is to develop renewable energy for future large-scale application in electric utility systems, such as the development of grid-connected solar power plants, wind generators, wave power systems, tidal power schemes, small hydro-electric power systems and co-generation plants for heat and power based on biofuels and organic waste, including safe storage and environmentally acceptable back-up systems, e.g. solar hydrogen.

Research will be carried out on the optimization in size and technology of large wind generators whose power is in the megawatt range, in order to effect further cost reduction. This will include work on new materials and components, e.g. composite blades, design criteria and possibly a set of new pilot systems suitable for large-scale utilization on land and off-shore. In addition, a comparative assessment will be made of the cost, efficiency and ecological effects of the two families of large-size wind generators (in the megawatt range).

Research aimed at optimizing grid-connected photovoltaic systems and the associated components will be carried out. Emphasis will be on further improvement of the efficiency and cost of solar cells. Due attention will be given to fundamental R&D and innovative concepts. Research on solar thermal power, wave power and tidal schemes in the form of studies and exploratory research will be aimed at exploiting the considerable potential of these sources of energy at the earliest possible date. Analysis work will be devoted to the combined use of the various renewable power systems in future utility systems.

Biomass

The objective is to promote the development of energy produced from the biomass for research on the techniques applicable to its conversion and use, including experimenting with autonomous, regional energy systems. The Commission, assisted by the two programme committees concerned, will coordinate with the actions carried out under the specific agricultural and agro-industrial research programme.

Renewable energies for rural electricity, local fuel and water

The objective is, for electricity and water, to provide an integrated approach to rural development. This will concern stand-alone rural power systems employing photovoltaics and other systems as well as wind (electrification of remote houses and new agro-industrial enterprises, solar water pumps, solar sea water desalination, etc.). The development of electricity storage devices will be a particularly important feature for such off-grid systems. For fuels, technologies for using biomass residues and energy crops in cost-effective and environment friendly energy generation systems, on-site or for local networks, will be further developed. An important aspect will be the combined use of these systems and integration with other renewables. In particular, the needs of rural zones, e.g. in the Mediterranean Member States of the Community and of some developing countries, will be taken into consideration.

Geothermal energy

The main objective is the development of a single European prototype hot dry rock system ; following selection of the site(s) and subject to satisfactory evaluation of results, the major task will be the creation and management of an artificial reservoir based on the pattern of natural fractures in the basement rock. In order to achieve the main objective scientific studies on the appropriate sites will focus on fracture location, reservoir development and management and water-rock interactions.

Corrosion and scaling in conventional high- and low-enthalpy geothermal systems will also be studied, as will problems related to the reinjection of used fluids, with the objective of widening the availability of suitable geothermal resources.

In addition, the deep geology of Europe will be studied, using appropriate geographical and geochemical methods, in order to obtain a better understanding of the processes which have led to the development of geothermal and hydrocarbon reservoirs.

Area 4 : Energy utilization and conservation

New options in energy conversion

The general aim is to develop highly efficient and clean electrochemical energy conversion systems for electricity generation, cogeneration, hydrogen and methanol production, transport and industrial electrochemical reactors.

As regards large fuel cells for electricity production, cogeneration and ship engines, the long term goal is the development of MW size solid oxide (SOFC) and molten carbonate (MCFC) fuel cell plants fired by oil, gas or coal. The objective is to develop fuel cell plants which, compared with conventional systems, bring about energy savings of 30 to 40 % and a 10 to 100 times lower pollution. Targets are the development of a 20 kW SOFC prototype plant as a part of a plan aiming at 200 kW cogeneration units for industry in 1997, and the development of internal and external reforming MCFC prototype plants of 10 and 100 kW respectively.

Small (20 to 50) kW methanol and hydrogen fuel cells will be developed for small-scale electricity production and transport.

Reserach will also be carried out on clean and energy-saving production of hydrogen and methanol with SOFC-based technologies, aiming at 40 % electricity savings in the case of hydrogen. Industrial electrochemical reactors for production of chemical compounds by electrolysis and oxidation will also be considered.

Technologies for energy saving

The goal is to develop and improve technologies which are expected to have a major impact on heat and electricity savings and on a reduction of pollution. These technologies should lead to energy savings of 20 to 25 % in new equipment, buildings and processes.

Current work on energy-saving in industry has allowed new goals to be determined. In particular, process intensification and process integration will be extended to include environmental aspects. As a result, the following priorities have been established in close collaboration with industry : unit operations, e.g. separation techniques heat exchanges, process intensification, chemical reactors ; process integration leading to energy-saving and decreased pollution ; energy conversion equipment such as catalytic combustion, industrial high temperature heat pumps for heating and refrigeration, addressing also the problem of CFC substitutes ; electricity saving.

Given the potential for energy savings and consequential reductions in greenhouse gas emissions through new and improved technologies in the domestic sector, R&D work will be directed at realizing this potential.

Research on energy-saving in buildings will include in particular passive cooling, aiming at reducing the electricity demand for cooling, in particular for southern European countries. New daylighting techniques will be developed to reduce lighting and cooling requirements. Work on heat pumps will in future be focused on integration of catalytic combustors and cheap compact heat exchangers. Aerogel research will be extended to the development of highly insulating transparent and adaptable windows. Air management systems in buildings will also be given consideration.

New energy-saving schemes will be devised to provide architects with tools to introduce energy-saving techniques in the building sector and urban planning. Particular attention will be paid to 'pre-standardization' research on building schemes which use passive solar energy and thus give rise to considerable energy savings.

Energy efficiency in transport, including suitable substitutes for conventional fuels

The aim is to develop advanced technologies which can lead to highly efficient and clean transport. This area, which will involve the participation of industry, deals with short, medium and long term research and includes both combustion engines and fuel-cell and battery-driven electric vehicles. Coordination with transport projects carried out under the Industrial and Materials Technologies programme will be the responsibility of the Commission, assisted by the two programme Committees concerned.

As a follow-up to past work on the optimization of combustion engines, research will include : advanced petrol engines such as learn-burn, two-stroke and stratified-charge engines ; catalyst exhaust systems and their integration and optimization with the engine ; continued basic combustion research ; internal combustion engines using clean fuel (hydrogen, methanol, compressed natural gas (CNG), fuels from biomass). Research on diesel engines will be focused on energy efficiency and on the reduction of soot and particulate formation to levels which will be required in the future.

Research on hydrogen-fuelled polymer fuel cells and their integration in electric vehicles aims at achieving efficiencies of 60 to 65 % (three to four times better than petrol engines). In order to allow the use of methanol and methane in such electric vehicles, compact and cheap methanol and methane reformers will be developed. Another research route will aim at the use of fuel cells which directly oxidize methanole while not requiring a reformer. Work will be focused on scaling up to 1 kWh by 1994.

Research will aim at scaling up new cost-effective solid Lithium batteries with polymer electrolytes to 20 kWh and at their integration into electric vehicles, in order to achieve a range of 300 kilometres on one charge.

ANNEX II

INDICATIVE ALLOCATION OF FUNDS DEEMED NECESSARY

(in millions of ecu)

Area	Allocation
1. Analysis of strategies and modelling	9
2. Minimum emission power production from fossil sources	36
3. Renewable energy sources	57,43
4. Energy utilization and conservation	53
Total	155,43 (1) (2)

(1) Including staff costs amounting to ECU 11 million and administrative costs amounting to ECU 7 million.

(2) An amount deemed necessary of ECU 1,57 million, not included in the ECU 155,43 million, would be set aside as a contribution from the specific programme on non-nuclear energies to centralized action for disseminating and exploiting the results.

The breakdown between different areas does not exclude the possibility that projects could cover several areas.

ANNEX III

RULES FOR IMPLEMENTING THE PROGRAMME AND ACTIVITIES FOR DISSEMINATING AND EXPLOITING THE RESULTS

1. The Commission will implement the programme on the basis of the objectives and the scientific and technical content described in Annex I.

2. The rules for implementing the programme, referred to in Article 3, comprise research and technological development projects, accompanying measures and concerted actions. Selection of projects must take account of the criteria listed in Annex III to Decision 90/221/Euratom, EEC and of the objectives set out in Annex I to this programme.

   A. **Research projects**

   The projects will be the subject of shared-cost research and technological development contracts and Community financial participation will not normally be more than 50 %. Universities and other research centres participating in shared-cost projects will have the option of requesting, for each project, either 50 % funding of total expenditure or 100 % funding of the additional marginal costs.

   Shared-cost research projects must, as a general rule, be carried out by participants established within the Community. The projects, which may involve, for example, universities, research organizations and industrial firms, including small and medium-sized enterprises, must, as a general rule, provide for participation by at least two mutually independent partners established in different Member States. Contracts relating to shared-cost research projects must as a general rule be concluded following a selection procedure based on calls for proposals published in the *Official Journal of the European Communities.*

   Where projects are of equal scientific value, the Commission, by agreement with the Committee, will pay special attention to projects which can be integrated into regional energy planning.

   B. **Accompanying measures**

   The accompanying measures referred to in Article 7 will consist of:

   — the organization of seminars, workshops and scientific conferences,
   — internal coordination through the creation of integrating groups,
   — advanced technology training programmes, with emphasis being placed on multidisciplinarity,
   — promotion of the exploitation of results,
   — independent scientific and strategic evaluation of the operation of the projects and the programme.

   C. **Concerted actions**

   Concerted actions consist of action by the Community to coordinate the individual research activities carried out in the Member States. They may benefit from funding of up to 100 % of coordinating expenditure.

3. The knowledge acquired in the course of the projects will be disseminated both within the programme and by means of a centralized activity, pursuant to the Decision referred to in Article 4 (3) of Decision 90/221/Euratom, EEC.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 20 March 1985

on the approximation of the laws of the Member States concerning the lead content of petrol

(85/210/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 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 the protection and improvement of public health and of the environment are at present, and will in the future be, one of the items of major concern for all industrialized countries; whereas the effects on public health and the environment of pollution caused by substances emitted in the exhaust gas of vehicles must be regarded as serious owing to the continuous increase in the volume of motor vehicle traffic;

Whereas Council Directive 78/611/EEC of 29 June 1978 on the approximation of the laws of the Member States concerning the lead content of petrol (4) fixed a maximum value for the permitted lead-compound content of petrol of between 0,40 and 0,15 g/l;

Whereas the third action programme on the environment, the general approach of which was approved in the resolution of 7 February 1983 (5) by the Council and the representatives of the governments of the Member States meeting within the Council, provides for further efforts to reduce considerably the present levels of exhaust pollution;

Whereas existing or future disparities in the national laws of the Member States concerning the composition of petrol and in particular the rules governing the limitations on the lead content and on the benzene content of motor vehicle petrol may directly affect the functioning of the common market;

Whereas refining technology allows for a lowering of the lead content of leaded petrol to 0,15 g Pb/l without adverse effects on the quality of petrol;

Whereas the reduction and, ultimately, the elimination of lead in petrol will improve the health protection of the population, particularly in areas with dense traffic; whereas the early introduction of unleaded petrol is also desirable to permit, where appropriate, the application of certain anti-pollution technologies for drastically reducing polluting emissions from motor vehicles, in particular nitrogen oxides and unburned hydrocarbons;

Whereas for a certain time leaded petrol must continue to be available on Member States' markets alongside unleaded petrol, in order to satisfy, given the prevailing economic and technical conditions, the requirements of a large proportion of the existing vehicle fleet;

(1) OJ No C 178, 6. 7. 1984, p. 5.
(2) OJ No C 12, 14. 1. 1985, p. 56.
(3) OJ No C 25, 28. 1. 1985, p. 46.
(4) OJ No L 197, 20. 7. 1978, p. 19.
(5) OJ No C 46, 17. 2. 1983, p. 1.

Whereas, owing to the importance of preventive measures against adverse effects on public health and the environment, Member States should be enabled to introduce unleaded petrol on to their markets before the compulsory date laid down for the Community as a whole;

Whereas the protection of public health also requires a limitation on the benzene content of petrol;

Whereas the quality of unleaded 'premium' petrol in terms of minimum research and motor octane numbers should be guaranteed in order to ensure satisfactory operation throughout the Community of motor vehicles designed to be fuelled by such petrol;

Whereas it should be possible to market another unleaded 'regular' petrol with lower octane ratings;

Whereas lead is only an additive to petrol; whereas the reduction or elimination of lead must not have the effect of significantly increasing other pollutants contained in the exhaust gases of motor vehicles as a consequence of modifications in the composition of petrol;

Whereas the reduction of lead content and the introduction of unleaded petrol at a given date must in no way affect the free circulation, or the putting on the market, of petrol within the Community;

Whereas a regular check at the final distribution stage, on the lead and benzene content of petrol is required to ensure that consumers receive the appropriate type of petrol;

Whereas a certain proportion of the existing motor vehicle fleet could run on unleaded petrol; whereas the Member States should therefore be requested to take all appropriate measures compatible with the Treaty to promote the widest possible use of unleaded petrol;

Whereas further examination of some aspects of the measures taken to reduce the concentrations of lead or other polluting substitutes in the atmosphere should be continued at Community level; whereas Member States should, where appropriate, provide the Commission with all relevant information;

Whereas the subsequent development of reference methods for measuring the lead and benzene content of petrol and for calculating octane ratings referred to in this Directive may be desirable in the light of scientific and technical progress in this area; whereas, in order to facilitate implementation of the work necessary to this end, a procedure should be set up to establish close cooperation between the Member States and the Commission within a Committee on Adaptation to Scientific and Technical Progress;

Whereas, by reason of their geographical position and the possible consequences for their oil markets of applying this Directive, the French overseas departments should be excluded from its scope,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

(a) 'petrol' shall mean any volatile mineral oil intended for the operation of internal combustion spark-ignited engines used for the propulsion of vehicles;

(b) 'unleaded petrol' shall mean any petrol the contamination of which by lead compounds calculated in terms of lead, does not exceed 0,013 g Pb/l;

(c) 'leaded petrol' shall mean all petrol other than unleaded petrol. This shall have a maximum permitted lead-compound content, calculated in terms of lead, of not more than 0,40 g Pb/l and not less than 0,15 g Pb/l.

Article 2

1. As from the entry into force of this Directive, and subject to paragraph 2, Member States shall continue to ensure the availability and balanced distribution of leaded petrol within their territories.

2. If, as the result of a sudden change in the supply of crude oil or petroleum products, it becomes difficult for a Member State to apply the limit on the maximum lead content of leaded petrol, that Member State may, after having informed the Commission, authorize a higher limit within its territory for a period of four months. The Council, acting by a qualified majority on a proposal from the Commission, may extend this period.

3. Member States shall, as soon as they consider it appropriate, reduce to 0,15 g Pb/l the permitted lead-compound content, calculated in terms of lead, of leaded petrol put on their markets.

Article 3

1. Subject to paragraphs 2 and 3, Member States shall take the necessary measures to ensure the availability and balanced distribution within their territories of unleaded petrol from 1 October 1989.

The first subparagraph shall not preclude measures being taken to introduce unleaded petrol on the market of a Member State from a date earlier than 1 October 1989.

2. Member States may, with the Commission's agreement, derogate from the first subparagraph of paragraph 1 for a period of four months if, as a result of a sudden change in the supply of crude oil or petroleum products, it becomes impossible to meet the demand for unleaded petrol of the quality specified in Article 5 (1). However, every effort must be made to maintain a minimum distribution network for unleaded petrol. The period of four months may be extended by the Council acting by a qualified majority on a proposal from the Commission.

3. Until 1 April 1990, Member States may, by way of derogation, allow the contamination of unleaded petrol by lead compounds to exceed 0,013 g Pb/l provided it does not exceed 0,020 g Pb/l. Until that date, all pumps carrying unleaded petrol should be clearly labelled to show that the lead content does not exceed either 0,020 or 0,013 g Pb/l, together with any appropriate supplementary advice.

Article 4

From 1 October 1989 the benzene content of leaded petrol and of unleaded petrol shall not exceed 5,0 % by volume.

Where recourse is had to the second subparagraph of Article 3 (1), this benzene limit shall apply to unleaded petrol from the date chosen at national level for the earlier introduction of such petrol.

Article 5

1. Subject to paragraph 2, unleaded petrol made available pursuant to Article 3 of this Directive shall have a minimum motor octane number (MON) of 85,0 and a minimum research octane number (RON) of 95,0 at the pump ('premium').

2. Paragraph 1 shall not preclude the introduction on to the market of a Member State of another unleaded petrol with lower octane numbers than those provided for in paragraph 1 ('regular').

Article 6

Member States shall take all appropriate steps to ensure that neither the reduction of the lead content of petrol nor the introduction of unleaded petrol causes a significant increase in the quality and/or quantity of pollutants in the gases emitted from motor vehicles.

Article 7

1. Subject to paragraph 2, Member States shall not prevent or restrict, on grounds of lead or benzene content, the free circulation and marketing of petrol which complies with this Directive.

2. When a Member State applies Article 2 (3), the maximum permitted lead content of leaded petrol placed on its market shall be fixed at 0,15 g Pb/l.

Article 8

1. Member States shall take appropriate measures to ensure compliance, at the final distribution stage, with the provisions relating to the maximum lead and benzene content of petrol, and to the quality of petrol as regards octane rating.

2. Where a Member State establishes that petrol fails to comply with Articles 1, 2, 4 and 5 it shall without undue delay take the necessary measures to ensure compliance with those provisions.

Article 9

1. The lead content of petrol shall be established in accordance with the procedures set out in section I of the Annex.

2. The benzene content of leaded and unleaded petrol shall be established in accordance with the procedure set out in Section II of the Annex.

3. The octane ratings (MON and RON) of unleaded petrol shall be determined in accordance with the procedure set out in Section III of the Annex.

Article 10

The procedures laid down in Articles 11 and 12 for the adaptation of this Directive to technical progress shall cover the subsequent development of the reference methods of analysis referred to in the Annex, taking into account in particular other equivalent methods.

Such adaptation must not result in any direct or indirect modification of the limit values laid down in this Directive.

Article 11

1. For the purposes of applying Article 10, a Committee on the adaptation of this Directive to scientific and technical progress, hereinafter called 'the Committee', shall be set up; it shall consist of representatives of the Member States, with a Commission representative as chairman.

2. The Committee shall adopt its own rules of procedure.

Article 12

1. Where the procedure laid down in this Article is invoked, the Committee shall be convened by the chairman, either on his own initiative or at the request of the representative of a Member State.

2. The Commission representative shall submit a draft of the measures to be taken to the Committee. The Committee shall give its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. Decisions shall be taken by a majority of 45 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall adopt the proposed measures if they are consistent with the opinion of the Committee,

Where the proposed measures are not consistent with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal on the measures to be taken. The Council shall decide by a qualified majority.

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

Article 13

Member States shall take appropriate measures to ensure as far as possible that leaded petrol is not used in motor vehicles designed to run on unleaded petrol.

Article 14

Member States are invited, for the purpose of applying Article 3, to promote the widest possible use of unleaded petrol in all existing vehicles capable of running on such fuel. To that end, they are invited to take such measures as they consider appropriate which are compatible with the Treaty.

Article 15

1. Member States shall supply the Commission, as early as possible, with information on:

— the date of introduction of unleaded petrol on the market in accordance with Article 3,

— the measures envisaged pursuant to Article 14.

2. At the request of the Commission, Member States shall supply:

(a) information which they have available on the annual quantities of leaded and unleaded petrol supplied to the internal Community market;

(b) a summary of the results of the measures taken in accordance with Article 8 (1);

(c) information which they have available on the effects on the application of this Directive, and in particular Article 6, on:

— the development of the concentrations of lead and polluting substitutes in the atmosphere,

— energy policy, in particular in the refinery and distribution sector.

Article 16

1. Member States shall take the measures necessary to comply with this Directive at the latest on 1 January 1986. They shall forthwith inform the Commission thereof.

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

Article 17

Directive 78/611/EEC shall cease to be applicable on 31 December 1985.

Article 18

This Directive shall not apply to the French overseas departments.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 20 March 1985.

For the Council

The President

A. BIONDI

ANNEX

REFERENCE METHODS

As regards the reference methods, the versions in the various languages published by ISO and ASTM respectively shall be authentic, as shall other language versions which the Commission certifies as conforming to them.

I. Reference method for measuring the lead content of petrol

A. *Leaded petrol*

For the measurement of the lead content of petrol, the reference method shall be that laid down in ISO 3830 (edition approved in 1981).

B. *Unleaded petrol*

For the measurement of the trace lead content of petrol, the reference method shall be that laid down in ASTM D. 3237 (approved edition dated 31 August 1979) using atomic absorption spectrometry.

II. Reference method for measuring the benzene content of petrol

For the measurement of the benzene content of petrol, the reference method shall be that laid down in ASTM D. 2267 (edition approved in 1978) using gas chromatographic determination with polar column and internal standard.

III. Reference methods for the determination of octane ratings

The octane ratings (motor octane number and research octane number) shall be determined by the methods described in ISO 5164 and ISO 5163 respectively (editions approved in 1977).

IV. Interpretation of results

The results of individual measurements shall be interpreted on the basis of the method described in ISO 4259 (published in 1979).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 21 July 1987

amending Directive 85/210/EEC on the approximation of the laws of the Member States concerning the lead content of petrol

(87/416/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130 S thereof,

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

Having regard to the proposal from the European Parliament (2),

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

Whereas Directive 85/210/EEC (4), as amended by Directive 85/581/EEC (5), obliges Member States to take the necessary measures to ensure the availability and balanced distribution within their territories of unleaded petrol from 1 October 1989;

Whereas serious damage to public health and to the environment has been observed and attributed to lead; whereas, since leaded petrol is a major source of pollution, Member States should be allowed to prohibit the marketing of regular leaded petrol;

Whereas the Community is committed to reducing the use of leaded petrol and whereas this is to be considered as part of a sustained effort to limit further the exposure of the population to lead in the environment;

Whereas the co-existence on the market of too many different types of petrol inhibits increased use of unleaded petrol to the detriment of environmental improvement;

Whereas the withdrawal of regular leaded petrol from the market would entail the use of products which substitute for it;

Whereas vehicles currently running on regular leaded petrol are technically capable of running either on premium leaded petrol or on unleaded petrol;

Whereas it is to be expected that there will be a switch to the use of unleaded petrol where this does not entail excessive costs for the consumer;

Whereas the banning of regular leaded petrol from the market of a Member State should therefore lead to an improvement in the level of environmental and human health protection;

Whereas at least six months' notice should be given to the public before regular leaded petrol is banned from national markets,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 2 of Directive 85/210/EEC is hereby replaced by the following:

'Article 2

1. As from the entry into force of this Directive, and subject to paragraphs 2 and 4, Member States shall continue to ensure the availability and balanced distribution of leaded petrol within their territories.

(1) OJ No C 90, 4. 4. 1987, p. 3.
(2) OJ No C 190, 20. 7. 1987, p. 180.
(3) OJ No C 180, 8. 7. 1987, p. 16.
(4) OJ No L 96, 3. 4. 1985, p. 25.
(5) OJ No L 372, 31. 12. 1985, p. 37.

2. If, as the result of a sudden change in the supply of crude oil or petroleum products, it becomes difficult for a Member State to apply the limit on the maximum lead content of leaded petrol, that Member State may, after having informed the Commission, authorize a higher limit within its territory for a period of four months. The Council, acting by a qualified majority on a proposal from the Commission, may extend this period.

3. Member States shall, as soon as they consider it appropriate, reduce to 0,15 g Pb/litre the permitted lead-compound content, calculated in terms of lead, of leaded petrol put on their markets.

4. Member States may prohibit the marketing in their territory of leaded petrol having a motor octane number (MON) lower than 85 at the pump and a research octane number (RON) lower than 95 at the pump if such a measure is justified on grounds of the protection of human health and the environment and promotes the availability and balanced distribution of unleaded petrol within their territory in accordance with Article 3 (1).

5. If a Member State introduces into its rules the prohibition referred to in paragraph 4, it shall give at least six months' notice to the Commission and to the public. The Commission shall immediately inform the other Member States. Within three months of the date on which it receives notification from the Member State, the Commission shall examine the measures envisaged to ensure that they comply with this Directive and with other provisions of Community law.'

Article 2

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

Article 3

This Directive shall enter into force on the day following its notification.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 21 July 1987.

For the Council

The President

Ch. CHRISTENSEN

COUNCIL DIRECTIVE 93/12/EEC

of 23 March 1993

relating to the sulphur content of certain liquid fuels

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas in order to improve air quality with regard to sulphur dioxide and other emissions, the Community has to take measures to reduce progressively the sulphur content of gas oil used for self-propelling vehicles, including aircraft and vessels, and for heating, industrial and marine purposes;

Whereas, under Article 2 (1) and Article 5 (1) of Directive 75/716/EEC (4), the provisions in force in the Member States lay down two limits with respect to the sulphur content of liquid fuels; whereas these provisions differ from one Member State to another;

Whereas these differences oblige Community oil companies to adjust the maximum sulphur content of their products, depending on which Member State is being supplied; whereas such differences thus constitute a barrier to trade in these products, thereby directly affecting the establishment and functioning of the single market;

Whereas, in addition, Article 6 of Directive 75/716/EEC provides that in the light of any new information available the Commission is to submit a report to the Council accompanied by an appropriate proposal with a view to the establishment of a single value;

Whereas successive action programmes of the European Communities on the environment (5) stress the importance of preventing and reducing air pollution;

Whereas fuel quality plays an important role in reducing air pollution by vehicle eshaust emissions;

Whereas, in addition, by virtue of Decision 81/462/EEC (6) the Community is a contracting party to the Convention on long-range transboundary air pollution, which provides in particular for the development of strategies and policies to limit and, as far as possible, gradually reduce and prevent air pollution;

Whereas reducing the sulphur content of certain liquid fuels serves to further one of the Community's objectives, which is to preserve, protect and improve the quality of the environment and to contribute towards protecting human health, by rectifying environmental damage at source;

Whereas, in accordance with Directive 75/716/EEC, several Member States have already fixed a value of 0,2 % by weight;

Whereas Member States must take steps to ensure that diesel fuels of a maximum sulphur content of 0,05 % by weight are gradually made available;

Whereas, in order to attain the particulate emission levels set in specific Community Directives, the sulphur content of diesel fuels placed on the market within the Community may not exceed 0,2 % by weight as from 1 October 1994 and 0,05 % by weight as from 1 October 1996; whereas the Member States must take appropriate measures to achieve that objective;

Whereas the increasing use of gas oil for motor vehicles implies further efforts with regard to the quality of diesel fuel, in order to limit the adverse effects of such use on air quality; whereas setting a maximum sulphur content of 0,05 % by weight to apply from 1 October 1996 for diesel fuel allows the industries concerned sufficient time to make the technical adjustments required;

Whereas the other uses of gas oils and medium oils require an effort to be made to reduce air pollution, wherein account should be taken of their contribution having regard to air quality improvement and environmental costs and benefits; whereas the Commission should submit to the Council, which will take a decision

(1) OJ No C 174, 5. 7. 1991, p. 18 and OJ No C 120, 12. 5. 1992, p. 12.
(2) OJ No C 94, 13. 4. 1992, p. 209 and OJ No C 337, 21. 12. 1992.
(3) OJ No C 14, 20. 1. 1992, p. 17.
(4) OJ No L 307, 27. 11. 1975, p. 22. Directive as amended by Directive 87/219/EEC (OJ No L 91, 3. 4. 1987, p. 19).
(5) OJ No C 112, 20. 12. 1973, p. 1, OJ No C 139, 13. 6. 1977, p. 1 and OJ No C 46, 17. 2. 1983, p. 1.
(6) OJ No L 171, 27. 6. 1981, p. 11.

thereon by 31 July 1994 at the latest, a proposal introducing, by 1 October 1999 at the latest, a lower limit for the sulphur content and setting new limit values for aviation kerosenes;

Whereas a sudden change in crude oil supplies leading to an increase in average sulphur content may, in view of available desulphurization capacity, jeopardize supplies to consumers in a Member State; whereas it would therefore seem advisable to authorize that Member State to derogate under certain conditions from the sulphur content limits laid down in respect of its own market;

Whereas the introduction of a low sulphur content level in marine gas oils for sea-going ships raises specific technical and economic problems for Greece; whereas a derogation of limited duration in favour of Greece should not depress trade in marine gas oils since Greek refinery installations currently cover no more than domestic demand for gas oils and medium oils; whereas exports for final combustion from Greece to another Member State must comply with the provisions of the Directive applicable in that Member State; whereas Greece could be granted a five-year derogation before introducing marine gas oils with the required sulphur content; whereas this period will end on 30 September 1999;

Whereas spot checks should be carried out to ascertain the sulphur content of gas oils and medium oils placed on the market; whereas for this purpose provision should be made for a uniform method based on the best available technology,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the purposes of this Directive:

(a) 'gas oil' means any petroleum product falling under CN code 2710 00 69, or any petroleum product which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 % by volume, including distillation losses, distils at 350° C;

(b) 'diesel fuels' means gas oils used for self-propelling vehicles as referred to in Directive 70/220/EEC [1] and Directive 88/77/EEC [2].

2. This Directive shall not apply to gas oils:

— contained in the fuel tanks of vessels, aircraft or motor vehicles crossing a frontier between a third country and a Member State;

— intended for processing prior to final combustion.

Article 2

1. Member States shall, in order to reach the particulate emission levels laid down in specific Community Directives, prohibit the marketing of diesel fuels in the Community if their sulphur compound content, expressed in sulphur (hereinafter 'sulphur content'), exceeds:

— 0,2 % by weight as from 1 October 1994,

— 0,05 % by weight as from 1 October 1996.

Member States shall take steps to ensure that the diesel fuels referred to in the first paragraph with a sulphur content not exceeding 0,05 % by weight are gradually made available.

2. Member States shall prohibit the marketing in the Community of gas oils other than, or used for purposes other than, those referred to in paragraph 1 with the exception of aviation kerosene, as from 1 October 1994, if their sulphur content exceeds 0,2 % by weight.

Before 1 January 1994, the Commission shall indicate, in a report to the Council, what progress has been made in controlling sulphur dioxide emissions. At the same time it shall submit to the Council a proposal, in the more general framework of the policy to improve air quality, for transition to a second phase, prescribing a lower limit by 1 October 1999 at the latest, and setting new limit values for aviation kerosene.

The Council shall act by a qualified majority by 31 July 1994 at the latest.

3. If, as the result of a sudden change in the supply of crude oil or petroleum products, it becomes difficult for a Member State to apply the limit on the maximum sulphur content of gas oil, that Member State shall inform the Commission thereof. The Commission may authorize a higher limit to be applicable within the territory of that Member State for a period not exceeding six months, and shall notify its decision to the Council. Any Member State may contest that Decision before the Council within one month. The Council, acting by a qualified majority, may adopt a different decision within two months.

[1] OJ No L 76, 6. 4. 1970, p. 1. Directive as last amended by Directive 91/441/EEC (OJ No L 242, 30. 8. 1991, p. 1).
[2] OJ No L 36, 9. 2. 1988, p. 1. Directive as last amended by Directive 91/542/EEC (OJ No L 295, 25. 10. 1991, p. 1).

By way of derogation the Government of Greece may, up to 30 September 1999, authorize marketing of gas oil for marine use with a sulphur content in excess of 0,2 % by weight.

Article 3

No Member State may, as from the dates of application laid down in Article 2 (1) and (2), prohibit, restrict or prevent the placing on the market of gas oils on the grounds of their sulphur content, if those gas oils comply with the requirements of this Directive.

Article 4

1. Member States shall take all necessary measures to check by sampling the sulphur content of gas oils which are placed on the market.

2. The reference method adopted for determining the sulphur content of gas oils which are placed on the market shall be that defined by ISO method 8754. The statistical interpretation of the results of the checks made to determine the sulphur content of the gas oils placed on the market shall be made in accordance with ISO standard 4259 (1979 edition).

Article 5

As from 1 October 1994, Directive 75/716/EEC shall be replaced by this Directive.

Article 6

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 October 1994. 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 a reference shall be laid down by the Member States.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 23 March 1993.

For the Council

The President

S. AUKEN

COMMISSION DECISION

of 13 May 1993

defining the conditions under which contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the Commission information relating to the contracts they award

(93/327/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (1), and in particular Articles 3 (2) (b) and 32 (4) to (7) thereof,

Having regard to the opinion of the Advisory Committee for Public Contracts,

Whereas Article 3 (2) (b) of Directive 90/531/EEC provides that contracting entities exploiting geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels must communicate to the Commission, under conditions to be defined by it, information relating to the contracts they award;

Whereas this information must enable the Commission to carry out its task of monitoring the application of Community law and to compile statistical studies;

Whereas the obligation to communicate information relating to each contract awarded should, however, be confined to contracts whose value is sufficiently high, namely all contracts with a value exceeding ECU 5 million;

Whereas more concise periodic information should suffice for contracts with a value of between ECU 400 000 and 5 million,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall ensure that contracting entities carrying on one or more of the activities referred to in Article 3 (1) of Directive 90/531/EEC communicate to the Commission, for any contract they award whose value (determined in accordance with Article 12 of that Directive) exceeds ECU 5 million, all the information specified in the Annex to this Decision, within 48 days of the date on which the contract in question is awarded.

Article 2

For contracts with a value of between ECU 400 000 and 5 million, the contracting entities referred to in Article 1 shall:

1. retain in respect of each contract the information referred to in items 1 to 9 of the Annex for not less than four years from the date on which the contract is awarded;

2. supply this information to the Commission either immediately, on its request, or not later than 48 days after the end of the calendar quarter in which the contract in question is awarded.

Article 3

This Decision shall be applicable to the contracts which have been awarded since the 1 January 1993.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 13 May 1993.

For the Commission

Raniero VANNI D'ARCHIRAFI

Member of the Commission

(1) OJ No L 297, 29. 10. 1990, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 17 September 1990

on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

(90/531/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing in the European Economic Community and in particular the last sentence of Article 57 (2), Article 66, Article 100a and Article 113 thereof,

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

In cooperation with the European Parliament (2),

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

Whereas the measures aimed at progressively establishing the internal market, during the period up to 31 December 1992, need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;

Whereas the European Council has drawn conclusions concerning the need to bring about a single internal market;

Whereas restrictions on the free movement of goods and on the freedom to provide services in respect of supply contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the Treaty;

Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community;

Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (4), as last amended by Council Directive 89/440/EEC (5), and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts (6), as last amended by Directive 88/295/EEC (7);

(1) OJ No C 264, 16. 10. 1989, p. 22.
(2) OJ No C 158, 26. 6. 1989, p. 258 and OJ No C 175, 16. 7. 1990, p. 78.
(3) OJ No C 139, 5. 6. 1989, pp. 23 and 31.
(4) OJ No L 185, 16. 8. 1971, p. 5.
(5) OJ No L 210, 21. 7. 1989, p. 1.
(6) OJ No L 13, 15. 1. 1977, p. 1.
(7) OJ No L 127, 20. 5. 1988, p. 1.

Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;

Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;

Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, so permitting them to be addressed in one instrument;

Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to, provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;

Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities' administrative, managerial or supervisory bodies;

Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but nevertheless are directly exposed to competitive forces in markets to which entry is unrestricted;

Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by the Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;

Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;

Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;

Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;

Whereas Regulations (EEC) No 3975/87 [1] and (EEC) No 3976/87 [2], Directive 87/601/EEC [3] and Decision 87/602/EEC [4] are designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;

Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;

Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;

Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;

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[1] OJ No L 374, 31. 12. 1987, p. 1.
[2] OJ No L 374, 31. 12. 1987, p. 9.
[3] OJ No L 374, 31. 12. 1987, p. 12.
[4] OJ No L 374, 31. 12. 1987, p. 19.

Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;

Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;

Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;

Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principle of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;

Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;

Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public works contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the Treaty;

Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;

Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third country origin;

Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;

Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third country origin, pursuant to a Council Decision;

Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;

Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;

Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas, nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;

Whereas this Directive should be re-examined in the light of experience;

Whereas the opening up of contracts, on 1 January 1993, in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purposes of this Directive:

1. 'public authorities' shall mean the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

   A body is considered to be governed by public law where it:

— is established for the specific purpose of meeting needs in the general interest, not being of a commercial or industrial nature, and

— has legal personality, and

— is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;

2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

— hold the major of the undertaking's subscribed capital, or

— control the majority of the votes attaching to shares issued by the undertaking, or

— can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

3. 'supply and works contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2 and a supplier or contractor and which have as their object:

(a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products or of software services. These contracts may in addition cover siting and installation operations.

Software services shall be covered by this definition where they are procured by a contracting entity exercising and activity defined in Article 2 (2) (d) and are for use in the operation of a public telecommunications network or are intended to be used in a public telecommunications service as such;

(b) in the case of works contracts, either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution.

Contracts which include the provision of services other than those referred to in (a) and (b) shall be regarded as supply contracts if the total value of supplies, including siting and installation operations necessary for the execution of the contract and of software services within the meaning of subparagraph (a), is greater than the value of the other services covered by the contract;

4. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers or contractors, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;

5. 'tenderer' shall mean a supplier or contractor who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure;

6. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:

(a) in the case of open procedures, all interested suppliers or contractors may submit tenders;

(b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;

(c) in the case of negotiated procedures, the contracting entity consults suppliers or contractors of its choice and negotiates the terms of the contract with one or more of them;

7. 'technical specifications' shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product or supply, and enabling a piece of work, a material, a product or a supply to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical prescriptions may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, or supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and

all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

8. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;

9. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (CENELEC) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';

10. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States which a view to uniform application in all Member States and published in the *Official Journal of the European Communities;*

11. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [1]. European technical approval shall be issued by an approval body designated for this purpose by the Member State;

12. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;

13. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.

'Network termination point' shall mean all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

14. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities.

'Telecommunications services' shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television.

Article 2

1. This Directive shall apply to contracting entities which:

(a) are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;

(b) or, when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2. Relevant activities for the purposes of this Directive shall be:

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:

(i) drinking water, or

(ii) electricity, or

(iii) gas or heat,

or the supply of drinking water, electricity, gas or heat to such networks;

(b) the exploitation of a geographical area for the purpose of:

(i) exploring for or extracting oil, gas, coal or other solid fuels, or

(ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;

(c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;

(d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

[1] OJ No L 40, 11. 2. 1989, p. 12.

3. For the purpose of applying paragraph 1 (b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.

A contracting entity shall be considered to enjoy special or exclusive rights in particular where:

(a) for the purpose of constructing the networks or facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;

(b) in the case of paragraph 2 (a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.

4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2 (c) where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the contracting entities.

5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than public authority shall not be considered as a relevant activity within the meaning of paragraph 2 (a) where:

(a) in the case of drinking water or electricity:

— the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and

— supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;

(b) in the case of gas or heat:

— the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and

— supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 32.

Article 3

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for, or extracting, oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

(a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;

(b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;

(c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out the exploitation for extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;

(d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and

(e) contracting entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on a contracting entity's intended or actual sources of procurement, except at the request of national authorities and exclusively with a view to the objectives mentioned in Article 36 of the Treaty.

2. Member States which apply the provisions of paragraph 1 shall ensure, through the conditions of the authorization or other appropriate measures, that any entity:

(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies and works contracts, in particular as regards the information that the entity makes available to undertakings concerning its procurement intentions;

(b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 32, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 37, paragraphs 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

4. A Member State which wishes to apply paragraph 1 shall inform the Commission accordingly. In doing so, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in paragraphs 1 and 2.

The Commission shall take a decision in accordance with the procedure laid down in Article 32 (4) to (7). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 36.

Article 4

1. When awarding supply or works contracts, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Contracting entities shall ensure that there is no discrimination between different suppliers or contractors.

3. In the context of provision of technical specifications to interested suppliers and contractors, of qualification and selection of suppliers or contractors and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

4. The provisions of this Directive shall not limit the right of suppliers or contractors to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

Article 5

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1 (3) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 15 (2) (i) when awarding contracts based on that agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 15 (2) (i).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 6

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Article 2 (2) or for the pursuit of such activities in a non-member country, in conditions not involving the physical use of a network or geographical area within the Community.

2. However, this Directive shall apply to contracts awarded on behalf of the entities which exercise an activity referred to in Article 2 (2) (a) (i) and which:

(a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation or drainage installations; or

(b) are connected with the disposal or treatment of sewage.

3. The contracting entities shall notify the Commission at its request of any activities they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the

Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 7

1. The provisions of this Directive shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 8

1. This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2 (2) (d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

2. The contracting entities shall notify the Commission at its request of any services they regard as covered by the exclusion referred to in paragraph 1. The Commission may periodically publish the list of services which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 9

1. This Directive shall not apply to:

(a) contracts which the contracting entities listed in Annex I award for the purchase of water;

(b) contracts which the contracting entities specified in Annexes II, III, IV and V award for the supply of energy or of fuels for the production of energy.

2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

Article 10

This Directive shall not apply to contracts when they are declared to be secret by the Member State, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic security interests of that State so requires.

Article 11

This Directive shall not apply to contracts governed by different procedural rules and awarded:

1. pursuant to an international agreement concluded in conformity with the Treaty beween a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC [1], as last amended by Decision 77/63/EEC [2], or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 31;

2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;

3. pursuant to the particular procedure of an international organization.

Article 12

1. This Directive shall apply to contracts whose estimated value, net of VAT, is not less than:

(a) ECU 400 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (a), (b) and (c);

(b) ECU 600 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (d);

(c) ECU 5 million in the case of works contracts.

2. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:

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[1] OJ No L 185, 16. 8. 1971, p. 15.
[2] OJ No L 13, 15. 1. 1977, p. 15.

(a) in the case of fixed-term-contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;

(b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

3. Where a proposed supply contract expressly specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental or hire-purchase permissible, inclusive of the option clauses.

4. In the case of a procurement of supplies over a given period by means of a series of contracts to be awarded to one or more suppliers or of contracts which are to be renewed, the contract value shall be calculated on the basis of:

(a) the total value of contracts which had similar characteristics awarded over the previous fiscal year or 12 months, adjusted where possible for anticipated changes in quantity or value over the subsequent 12 months;

(b) or the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.

5. The basis for calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

6. The basis for calculating the value of a works contract for the purposes of paragraph 1 shall be the total value of the work. 'Work' shall mean the building and engineering activities taken as a whole that are intended to fulfil an economic function by themselves.

In particular, where a supply or work is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraph 1. Where the aggregate value of the lots equals or exceeds the value laid down in paragraph 1, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraph 1 in respect of lots whose estimated value net of VAT is less then ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

7. For the purposes of paragraph 1, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contract which they make available to the contractor.

8. The value of supplies which are not necessary for the execution of a particular works contract may not be added to that of the contract with the result of avoiding application of this Directive to the procurement of those supplies.

9. Contracting entities may not circumvent this Directive by splitting contracts or using special methods of calculating the value of contracts.

TITLE II

Technical specifications and standards

Article 13

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.

2. The technical specifications shall be defined by reference to European specifications where these exist.

3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.

4. Contracting entities shall define such further requirements as are necessary to complement European specifications or other standards. In doing so, they shall prefer specifications that indicate performance requirements rather than design or description characteristics unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

5. Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types, or specific origin or production shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications

which are sufficiently precise and fully intelligible to all concerned.

6. Contracting entities may derogate from paragraph 2 if:

(a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;

(b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment [1], or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications [2];

(c) in the context of adapting existing practice to take account of European specifications, use of these specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of a clearly defined and recorded strategy with a view to a change-over to European specifications;

(d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;

(e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

7. Notices published pursuant to Article 16 (1) (a) shall indicate any recourse to the derogations referred to in paragraph 6.

8. This Article shall be without prejudice to compulsory technical rules insofar as these are compatible with Community law.

Article 14

1. Contracting entities shall make available on demand to suppliers or contractors interested in obtaining a contract the technical specifications regularly referred to in their supply or works contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 17.

2. Where such technical specifications are based on documents available to interested suppliers or contractors, a reference to those documents shall be sufficient.

TITLE III

Procedures for the award of contracts

Article 15

1. Contracting entities may choose any of the procedures described in Article 1 (6), provided, subject to paragraph 2, a call for competition has been made in accordance with Article 16.

2. Contracting entities may use a procedure without prior call for competition in the following cases:

(a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;

(b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs;

(c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier or contractor;

(d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

[1] OJ No L 217, 5. 8. 1986, p. 21.
[2] OJ No L 36, 7. 2. 1987, p. 31.

(f) for additional works not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor executing the original contract:

— when such additional works cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,

— or when such additional works, although separable from the execution of the original contract, are strictly necessary to its later stages;

(g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 12;

(h) for supplies quoted and purchased on a commodity market;

(i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;

(j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;

(k) for purchases of goods under particularly advantageous conditions either from a supplier definitively winding up his business activities or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations.

Article 16

1. A call for competition may be made:

(a) by means of a notice drawn up in accordance with Annex XII A, B or C; or

(b) by means of a periodic indicative notice drawn up in accordance with Annex XIV; or

(c) by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII.

2. When a call for competition is made by means of a periodic indicative notice:

(a) the notice must refer specifically to the supplies or works which will be the subject of the contract to be awarded;

(b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;

(c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

3. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

4. The notices referred to in this Article shall be published in the *Official Journal of the European Communities*.

Article 17

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

(a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 12, is equal to or greater than ECU 750 000, and which they intend to award over the following 12 months;

(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than the threshold laid down in Article 12 (1).

2. The notice shall be drawn up in accordance with Annex XIV and published in the *Official Journal of the European Communities*.

3. Where the notice is used as a means of calling for competition in accordance with Article 16 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 16 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 20 (2).

4. Contracting entities may, in particular, publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided it is clearly stated that such notices are additional notices.

Article 18

1. Contracting entities which have awarded a contract shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 32, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV.

2. Information provided under Section I of Annex XV shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information in connection with points 6 and 9 of Annex XV.

3. Information provided under Section II of Annex XV must not be published except, in aggregated form, for statistical purposes.

Article 19

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 15 to 18.

2. The notices shall be published in full in their original language in the *Official Journal of the European Communities* and in the TED data bank. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 16 (1) (a) within five days in response to a request by the contracting entity and provided the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one ore more notices shall reproduce the model notice or notices on which the published notice or notices are based.

4. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities.

5. Contracts in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 16 (1) shall not be published in any other way before that notice has been dispatched to the Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

Article 20

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 17 (1).

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

(a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 16 (1) (a) or in response to an invitation from a contracting entity in accordance with Article 16 (2) (c), shall, as a general rule, be at least five weeks from the date of dispatch of the notice and shall in any case not be less than the time limit for publication laid down in Article 19 (3) plus 10 days;

(b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;

(c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 22 (3).

Article 21

In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's responsibility.

Article 22

1. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers or contractors by the contracting entities as a general rule within six days of receipt of the application.

2. Provided it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.

3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account in fixing the appropriate time limits.

4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

(a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods of payment of any sum to be paid for such documents;

(b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;

(c) a reference to any tender notice published;

(d) an indication of any document to be annexed;

(e) the criteria for the award of the contract if these are not given in the notice;

(f) any other special condition for participation in the contract.

5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telefax, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in Article 20 (1) or of the time limit set by contracting entities pursuant to Article 20 (2).

Article 23

1. The contracting entity may state in the contract documents, or be obliged by a Member State so to do, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the works are to be executed and which shall be applicable to the works carried out on site during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 27 (5) concerning the examination of abnormally low tenders.

TITLE IV

Qualification, selection and award

Article 24

1. Contracting entities which so wish may establish and operate a system of qualification of suppliers or contractors.

2. The system, which may involve different qualification stages, shall operate on the basis of objective rules and criteria to be established by the contracting entity. The contracting entity shall use European standards as a reference where they are appropriate. The rules and criteria may be updated as required.

3. The rules and criteria for qualification shall be made available on request to interested suppliers or contractors. The updating of these criteria and rules shall be communicated to the interested suppliers and contractors. Where a contracting entity considers that the qualification or certification system of certain third entities or bodies meet its requirements, it shall communicate to interested suppliers and contractors the names of such third entities or bodies.

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

5. In reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities may not:

— impose conditions of an administrative, technical or financial nature on some suppliers or contractors that are not imposed on others,

— require tests or proof that duplicate objective evidence already available.

6. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in paragraph 2.

7. A written record of qualified suppliers or contractors shall be kept, and it may be divided into categories according to the type of contract for which the qualification is valid.

8. Contracting entities may bring the qualification of a supplier or contractor to an end only for reasons based on the criteria referred to in paragraph 2. The intention to bring qualification to an end must be notified in writing to the supplier or contractor beforehand, together with the reason or reasons justifying the proposed action.

9. The qualification system shall be the subject of a notice drawn up in accordance with Annex XIII and published in the *Official Journal of the European Communities*, indicating the purpose of the qualification system and the availability of the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 25

1. Contracting entities which select candidates to tender in restricted procedures or to participate in negotiated procedures shall do so according to objective criteria and rules which they lay down and which they shall make available to interested suppliers or contractors.

2. The criteria used may include the criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC.

3. The criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract award procedure and the resources required to complete it. The number of candidates selected must, however, take account of the need to ensure adequate competition.

Article 26

Groupings of suppliers or contractors shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

Article 27

1. The criteria on which the contracting entities shall base the award of contracts shall be:

(a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or

(b) the lowest price only.

2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria they intend to apply to the award, where possible in descending order of importance.

3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

5. If, for a given contract, tenders appear abnormally low in relation to the services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has not been able to show that the aid in question has been notified

to the Commission pursuant to Article 93 (3) of the Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Article 28

1. Article 27 (1) shall not apply where a Member State bases the award of contracts on other criteria within the framework of rules in force at the time of adoption of this Directive whose aim is to give preference to certain tenderers provided the rules invoked are compatible with the Treaty.

2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of national provisions in force on the award of supply or works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in disadvantaged regions or those suffering from industrial decline, provided that the provisions concerned are compatible with the Treaty and with the Community's international obligations.

Article 29

1. This Article shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods [1], as last amended by Regulation (EEC) No 3860/87 [2], exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in the equipment of telecommunication networks shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 27, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

4. However, a tender shall not be preferred to another pursuant to paragraph 3 where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

5. For the purposes, in this Article, of determining the proportion referred to in paragraph 2 of products originating in third countries, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account.

6. The Commission shall submit an annual report to the Council (for the first time in the second half of 1991) on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

TITLE V

Final provisions

Article 30

1. The value in national currencies of the thresholds specified in Article 12 shall in principle be revised every two years with effect from the date provided for in Directive 77/62/EEC as far as the thresholds for supply and software service contracts are concerned and from the date provided for in Directive 71/305/EEC as far as the threshold for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of October preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

2. The method of calculation laid down in paragraph 1 shall be examined pursuant to the provisions of Directive 77/62/EEC.

Article 31

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity defined in Article 2 (2) (d), by a Committee of

[1] OJ No L 148, 28. 6. 1968, p. 1.
[2] OJ No L 363, 23. 12. 1987, p. 30.

an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

(a) amendments to Annex X;

(b) revision of the currency values of the thresholds;

(c) the rules concerning contracts awarded under international agreements;

(d) the review of the application of this Directive;

(e) the procedures described in Article 32 (2) relating to notices and statistical accounts.

Article 32

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 3 to 7 with a view to ensuring that they fulfil the criteria of Article 2.

2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 16, 17 and 18 and of the statistical reports provided for in Article 34 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 3 to 7.

3. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities*.

4. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 31 of this Directive.

5. The Commission representative shall submit to the Committee a draft of the decisions 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, if necessary by taking a vote.

6. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask for its position to be recorded in the minutes.

7. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 33

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

(a) the qualification and selection of contractors or suppliers and award of contracts;

(b) recourse to derogations from the use of European specifications in accordance with Article 13 (6);

(c) use of procedures without prior call for competition in accordance with Article 15 (2);

(d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if it so requests.

Article 34

1. The Member States shall ensure that each year, in accordance with the arrangements to be laid down under the procedure provided for in Article 32 (3) to (7), the Commission receives a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 12 which would, if they were not below those thresholds, be covered by this Directive.

2. Arrangements shall be fixed in accordance with the procedure referred to in Article 32 to ensure that:

(a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;

(b) the confidential nature of the information provided is respected.

Article 35

1. Article 2 (2) of Directive 77/62/EEC is hereby replaced by the following:

'2. This Directive shall not apply to:

(a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (*) or fulfilling the conditions in Article 6 (2) of the said Directive;

(b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires.

(*) OJ No L 297, 29. 10. 1990, p. 1.'

2. Article 3 (4) and (5) of Directive 71/305/EEC is hereby replaced by the following:

'4. This Directive shall not apply to contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in water, energy, transport and telecommunications sectors (*) or fulfilling the conditions in Article 6 (2) of the said Directive.

(*) OJ No L 297, 29. 10. 1990, p. 1.'

Article 36

Not later than four years after the application of this Directive, the Commission, acting in close cooperation with the Advisory Committee for Public Contracts, shall review the manner in which this Directive has operated and its field of application and, if necessary, make further proposals to adapt it, in the light of developments concerning in particular progress in market opening and the level of competition. In the case of entities exercising an activity defined in Article 2 (2) (d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

Article 37

1. Member States shall adopt the measures necessary to comply with this Directive by 1 July 1992. They shall forthwith inform the Commission thereof.

2. Member States may stipulate that the measures referred to in paragraph 1 shall apply only from 1 January 1993.

Nevertheless, in the case of the Kingdom of Spain, 1 January 1993 shall be replaced by 1 January 1996. As regards the Hellenic Republic and the Portuguese Republic, 1 January 1993 shall be replaced by 1 January 1998.

3. Council recommendation 84/550/EEC of 12 November 1984 concerning the first phase of opening up access to public telecommunications contracts (1) shall cease to have effect as from the date on which this Directive is applied by the Member States.

Article 38

Member States shall communicate to the Commission the text of the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field governed by this Directive.

Article 39

This Directive is addressed to the Member States.

Done at Brussels, 17 September 1990.

For the Council

The President

P. ROMITA

(1) OJ No L 298, 16. 11. 1984, p. 51.

ANNEXES

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the *décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.*

Entity set up pursuant to the *arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.*

Entity set up pursuant to the *arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.*

Entities producing or distributing water and set up pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

Entities producing or distributing water set up pursuant to the *code communal, article 47* bis, ter *et* quater *sur les régies communales.*

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of *lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985.*

GERMANY

Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder (Kommunale Eigenbetriebe).*

Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder.*

Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937* and the *erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937.*

(Regiebetriebe) producing or distributing water pursuant to the *Kommunalgesetze* and notably with the *Gemeindeordnungen der Länder.*

Entities set up pursuant to the *Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985* or *GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai 1986,* or having the legal status of a *Kommanditgesellschaft,* producing or distributing water on the basis of a special contract with regional or local authorities.

GREECE

The Water Company of Athens / *Εταιρεία Υδρεύσεως — Αποχετεύσεως Πρωτευούσης* set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica / *Οργανισμός Υδρεύσεως Θεσσαλονίκης* operating pursuant to Presidential Decree 61/1988.

The Water Company of Volos / *Εταιρεία Υδρεύσεως Βόλου* operating pursuant to Law 890/1979.

Municipal companies / *Δημοτικές Επιχειρήσεις ύδρευσης — αποχέτευσης* producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities *(Σύνδεσμοι ύδευυσης)* operating pursuant to the Code of local authorities *(Κώδικας Δήμων και Κοινοτήτων)* implemented by Presidential Decree 76/1985.

SPAIN

— Entities producing or distributing water pursuant to *Ley n° 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real n° 781/1986 Texto Refundido Régimen local.*

— *Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.*

— *Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.*

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermages).

IRELAND

Entities producing or distributing water pursuant to the *Local Government (Sanitary Services) Act 1878 to 1964.*

ITALY

Entities producing or distributing water pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Ente Autonomo Acquedotto Pugliese set up pursuant to *RDL 19 ottobre 1919, n. 2060.*

Ente Acquedotti Siciliani set up pursuant to *leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.*

Ente Sardo Acquedotti e Fognature set up pursuant to *legge 5 luglio 1963 n. 9.*

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981* and pursuant to the *loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.*

NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957,* amended by the *wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.*

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the *Decreto-Lei nº 190/81 de 4 de Julho de 1981.*

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to the *Water Acts 1945 and 1989.*

The *Central Scotland Water Development Board* producing water and the *water authorities* producing or distributing water pursuant to the *Water (Scotland) Act 1980.*

The *Department of the Environment for Northern Ireland* responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973.*

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to *article 5: Des régies communales et intercommunales* of the *loi du 10 mars 1925 sur les distributions d'énergie électrique.*

Entities transporting or distributing electricity pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *article 8 — les concessions communales et intercommunales* of the *loi du 10 mars 1952 sur les distributions d'énergie électrique.*

The *Société publique de production d'électricité (SPE).*

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to § *3, stk. 1,* of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.*

Entities distributing electricity as defined in § *3, stk. 2,* of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the *lov om elektriske stærkstrømsanlæg, jf lovbekendtgørelse nr. 669 af 28. december 1977.*

GERMANY

Entities producing, transporting or distributing electricity as defined in § 2 *Absatz* 2 of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935.* Last modified by the *Gesetz of 19 December 1977,* and auto-production of electricity so far as this is covered by the field of application of the directive pursuant to Article 2, paragraph 5.

GREECE

Δημόσια Επιχείρηση Ηλεκτρισμού (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού,* and operating pursuant to the law *57/85: Δομή, ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημόσιας Επιχείρησης Ηλεκτρισμού.*

SPAIN

Entities producing, transporting or distributing electricity pursuant to Article 1 of the *Decreto de 12 de marzo de 1954,* approving the *Reglamento de verificaciones eléctricas y regularidad en el suministro de energía* and pursuant to *Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia le instalaciones eléctricas.*

Red Eléctrica de España SA, set up pursuant to *Real Decreto 91/1985 de 23 de enero.*

FRANCE

Électricité de France, set up and operating pusuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities *(sociétés d'économie mixte* or *régies)* distributing electricity and referred to in article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie nationale du Rhône.

IRELAND

The Electricity Supply Board (ESB) set up and operating pursuant to the *Electricity Supply Act 1927.*

ITALY

Ente nazionale per l'energia elettrica set up pursuant to *legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965.*

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of *legge 6 dicembre 1962, n. 1643 — Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.*

Entities operating on the basis of concession pursuant to article 20 of *Decreto del Presidente delle Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'énergia elettrica.*

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to the *convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928.*

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

NETHERLANDS

Elektriciteitsproduktie Oost-Nederland.

Elektriciteitsbedrijf Utrecht—Noord-Holland—Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence *(vergunning)* granted by the provincial authorities pursuant to the *Provinciewet.*

PORTUGAL

Electricidade de Portugal (EDP) , set up pursuant to the *Decreto-Lei nº 502/76 de 30 de Junho de 1976.*

Entities distributing electricity pursuant to *artigo 1º do Decreto-Lei nº 344-B/82 de 1 de Setembro de 1982,* amended by *Decreto-Lei nº 297/86 de 19 de Setembro de 1986.* Entities producing electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Independant producers of electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Empresa de Electricidade dos Açores — EDA, EP, created pursuant to the *Decreto Regional nº 16/80 de 21 de Agosto de 1980.*

Empresa de Electricidade da Madeira, EP, created pursuant to the *Decreto-Lei nº 12/74 de 17 de Janeiro de 1974* and regionalized pursuant to the *Decreto-Lei nº 31/79 de 24 de Fevereiro de 1979, Decreto-Lei nº 91/79 de 19 de Abril de 1979.*

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the *Electricity Act 1947* and the *Electricity Act 1957.*

The *North of Scotland Hydro-Electricity Board (NSHB),* producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The *South of Scotland Electricity Board (SSEB)* producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The *Northern Ireland Electricity Service (NIES),* set up pursuant to the *Electricity Supply (Northern Ireland) Order 1972.*

ANNEX III

TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

BELGIUM

Distrigaz SA operating pursuant to the *loi du 29 juillet 1983.*

Entities transporting gas on the basis of an authorization or concession pursuant to the *loi du 12 avril 1985* as amended by the *loi du 28 juillet 1987.*

Entities distributing gas and operating pursuant to the loi relative aux Intercommunales du 22 décembre 1986.

Local authorities, or associations of these local authorities supplying heat to the public.

DENMARK

Dansk Olie og Naturgas A/S operating on the basis of an exclusive right granted pursuant to *bekendtgørelse nr. 869 af 18. juni 1979 om eneretsbevilling til indførsel, forhandling, transport og oplagring af naturgas.*

Entities operating pursuant to *lov nr. 294 af 7. juni 1972 om naturgasforsyning.*

Entities distributing gas or heat on the basis of an approval pursuant to chapter IV of *lov om varmeforsyning, jf. lovbekendtgørelse nr. 330 af 29. juni 1983.*

Entities transporting gas on the basis of an authorization pursuant to *bekendtgørelse nr. 141 af 13. marts 1974 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter* (installation of pipelines on the continental shelf for the transport of hydrocarbons).

GERMANY

Entities transporting or distributing gas as defined in § 2 Absatz 2 of the *Gesetz zur Förderung der Energiewirtschaft vom 13. Dezember 1935 (Energiewirtschaftsgesetz), as last amended by the law of 19 December 1977.*

Local authorities, or associations of these local authorities supplying heat to the public.

GREECE

DEP transporting or distributing gas pursuant to the Ministerial decision 2583/1987 *(Ανάθεση στη Δημόσια Επιχείρηση Πετρελαίου αρμοδιοτήτων σχετικών με το φυσικό σέριο) Σύσταση της ΔΕΠΑ ΑΕ (Δημόσια Επιχείρηση Αερίου, Ανώνυμος Εταιρεία).*

Athens Municipal Gasworks S.A. *DEFA* transporting or distributing gas.

SPAIN

Entities operating pursuant to *Ley nº 10 de 15 de junio de 1987.*

FRANCE

Société nationale des gaz du Sud-Ouest transporting gas.

Gaz de France, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities *(sociétés d'économie mixte* or *régies)* distributing electricity and referred to in Article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie française du méthane transporting gas.

Local authorities, or associations of, supplying heat to the public.

IRELAND

Irish Gas Board and operating pursuant to the *Gas Act 1976 to 1987* and other entities governd by *Statute.*

Dublin Corporation, supplying heat to the public.

ITALY

SNAM and *SGM e Montedison* transporting gas.

Entities distributing gas pursuant to the *Testo unico delle leggi sull'assunzione diretta del pubblici servizi da parte del comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Entities distributing heat to the public referred to in Article 10 of the *Legge 29 maggio 1982, n. 308 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi.*

Local authorities, or associations of, supplying heat to the public.

LUXEMBOURG

Société de transport de gaz SOTEG SA.

Gaswierk Esch-Uelzecht SA.

Service industriel de la commune de Dudelange.

Service industriel de la commune de Luxembourg.

Local authorities, or associations of these local authorities supplying heat to the public.

NETHERLANDS

NV Nederlandse Gasunie

Entities transporting or distributing gas on the basis of a licence *(vergunning)* granted by the local authorities pursuant to the *Gemeentewet.*

Local or provincial entities transporting or distributing gas to the public pursuant to the *Gemeentewet and the Provinciewet.*

Local authorities, or associations of these local authorities supplying heat to the public.

PORTUGAL

Petroquímica e Gás de Portugal, EP Decreto-Lei nº 346-A/88 de 29 de Setembro de 1988.

UNITED KINGDOM

British Gas plc and other entities operating pursuant to the *Gas Act 1986.*

Local authorities, or associations of, supplying heat to the public pursuant to the *Local Government (Miscellaneous Provisions) Act 1976.*

Electricity Boards distributing heat pursuant to the *Electricity Act 1947.*

ANNEX IV

EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

The entities granted an authorization, permit, licence or concession to explore for or extract oil and gas pursuant to the following legal provisions:

BELGIUM

Loi du 1 mai 1939 complétée par l'arrêté royal n° 83 du 28 novembre 1939 sur l'exploration et l'exploitation du pétrole et du gaz.

Arrêté royal du 15 novembre 1919.

Arrêté royal du 7 avril 1953.

Arrêté royal du 15 mars 1960 loi au sujet de la plate-forme continentale du 15 juin 1969.

Arrêté de l'exécutif régional wallon du 29 septembre 1982.

Arrêté de l'exécutif flamand du 30 mai 1984.

DENMARK

Lov nr. 293 af 10. juni 1981 om anvendelse af Danmarks undergrund.

Lov om kontinentalsoklen, jf. lovbekendtgørelse nr. 182 af 1. maj 1979.

GERMANY

Bundesberggesetz vom 13. August 1980, as last amended on 12 February 1990.

GREECE

Law 87/1975 setting up DEP-EKY *(Περί ιδρύσεως Δημοσίας Επιχειρήσεως Πετρελαίου).*

SPAIN

Ley sobre Investigación y Explotación de Hidrocarburos de 27 de Junio de 1974 and its implementing decrees.

FRANCE

Code minier (décret 56-838 du 16 août 1956) amended by the *loi 56-1327 du 29 décembre 1956, ordonnance 58-1186 du 10 décembre 1958, décret 60-800 du 2 août 1960, décret 61-359 du 7 avril 1961, loi 70-1 du 2 janvier 1970, loi 77-620 du 16 juin 1977, décret 80-204 du 11 mars 1980.*

IRELAND

Continental Shelf Act 1960.

Petroleum and Other Minerals Development Act 1960.

Ireland Exclusive Licensing Terms 1975.

Revised Licensing Terms 1987.

Petroleum (Production) Act (NI) 1964.

ITALY

Legge 10 febbraio 1953, n. 136.

Legge 11 gennaio 1957, n. 6, modificata dalla legge 21 luglio 1967, n. 613.

LUXEMBOURG

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NETHERLANDS

Mijnwet nr. 285 van 21 april 1810.

Wet opsporing delfstoffen nr. 258 van 3 mei 1967.

Mijnwet continentaal plat 1965, nr. 428 van 23 september 1965.

PORTUGAL

Decreto-Lei nº 543/74 de 16 de Outubro de 1974, nº 168/77 de 23 de Abril de 1977, nº 266/80 de 7 de Agosto de 1980, nº 174/85 de 21 de Maio de 1985 and *Despacho nº 22 de 15 de Março de 1979.*

Decreto-Lei nº 47973 de 30 de Setembro de 1967, nº 49369 de 11 de Novembro de 1969, nº 97/71 de 24 de Março de 1971, nº 96/74 de 13 de Março de 1974, nº 266/80 de 7 de Agosto de 1980, nº 2/81 de 7 de Janeiro de 1981 and *nº 245/82 de 22 de Junho de 1982.*

UNITED KINGDOM

Petroleum (Production) Act 1934 as extended by the Continental Shelf Act 1964.

Petroleum (Production) Act (Northern Ireland) 1964.

ANNEX V

EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

BELGIUM

Entities exploring or extracting coal or other solid fuels pursuant to the *arrêté du Régent du 22 août 1948* and the *loi du 22 avril 1980.*

DENMARK

Entities exploring or extracting coal or other solid fuels pursuant to the *lovbekendtgørelse nr. 531 af 10. oktober 1984.*

GERMANY

Entities exploring or extracting coal or other solid fuels pursuant to the *Bundesberggesetz vom 13. August 1980,* as last amended on 12 February 1990.

GREECE

Public Power Corporation *exploring or extracting* coal or other fuels pursuant to *the Mining code of 1973 as amended by the law of 27 April 1976. Δημόσια Επιχείρηση Ηλεκτρισμού.*

SPAIN

Entities exploring or extracting coal or other solid fuels pursuant to *Ley 22/1973, de 21 de julio, de Minas,* as amended by *Ley 54/1980 de 5 de noviembre* and by *Real Decreto Legislativo 1303/1986, de 28 de junio.*

FRANCE

Entities exploring extracting coal or other solid fuels pursuant to *code minier (décret 58-863 du 16 août 1956),* as amended by the *loi 77-620 du 16 juin 1977, décret 80-204* et *arrêté du 11 mars 1980.*

IRELAND

Bord na Mona.

Entities prospecting or extracting coal pursuant to the *Minerals Development Acts, 1940 to 1970.*

ITALY

Carbo Sulcis SpA

LUXEMBOURG

—

NETHERLANDS

—

PORTUGAL

Empresa Carbonífera do Douro.

Empresa Nacional de Urânio.

UNITED KINGDOM

British Coal Board (BCC) set up pursuant to the *Coal Industry Nationalization Act 1946.*

Entities benefiting from a licence granted by the BCC pursuant to the *Coal Industry Nationalization Act 1946.*

Entities exploring or extracting solid fuels pursuant to the Mineral Development Act (Northern Ireland) 1969.

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB)

Entities operating set up pursuant to *lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.*

GERMANY

Deutsche Bundesbahn

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of *Allgemeines Eisenbahngesetz of 29 March 1951.*

GREECE

Οργανισμός Σιδηροδρόμων Ελλάδος (ΟΣΕ). Organization of Railways in Greece (OSE).

SPAIN

Red Nacional de Los Ferrocarriles Españoles.

Ferrocarriles de Vía Estrecha (FEVE).

Ferrocarrils de la Generalitat de Catalunya (FGC).

Eusko Trenbideak (Bilbao).

Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

Société nationale des chemins de fer français and other *réseaux ferroviaires ouverts au public* referred to in the *loi d'orientation des transports intérieurs du 30 décembre 1982, titre II, chapitre 1er du transport ferroviaire.*

IRELAND

Iarnrod Éireann (Irish Rail).

ITALY

Ferrovie dello Stato

Entities providing railway services on the basis of a concession pursuant to Article 10 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'Industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in *Titolo XI, Capo II, Sezione Ia del Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities providing railway services on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410 — Concorso dello Stato per la riattivazione del pubblici servizi di trasporto in concessione.*

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Railways Boards.

Northern Ireland Railways.

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by *SNCV* pursuant to Articles 16 and 21 of the *arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars.*

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to the *loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer* of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with *STIB* pursuant to *Article 10* or with other transport entities pursuant to *Article 11* of the *arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications.*

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public *(almindelig rutekørsel)* on the basis of an authorization pursuant to *lov nr. 115 af 29. marts 1978 om buskørsel.*

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public *(Öffentlichen Personennahverkehr)* pursuant of the *Personenbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989.*

GREECE

Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς, (Electric Buses of the Athens — Piraeus Area) operating pursuant to *decree 768/1970 and law 588/1977).*

Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς. (Athen-Piraeus Electric Railways) operating pursuant to *laws 352/1976 and 588/1977.*

Επιχείρηση Αστικών Συγκοινωνιών. (Enterprise of Urban Transport) operating pursuant to *law 588/1977.*

Κοινό Ταμείο Εισπράζεως Λεωφορείων. (Joint receipts Fund of Buses) operating pursuant to *decree 102/1973.*

ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων. Ρόδου) Roda: Municipal bus enterprise in Rhodes.

Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης. (Urban Transport Organization of Thessaloniki) operating pursuant to decree 3721/1957 and law 716/1980.

SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen local.*

Corporación metropolitana de Madrid.
Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.*

Entities providing bus services to the public, pursuant to Article 71 of the *Ley de Ordinación de Transportes Terrestres de 31 de julio de 1987.*

FEVE, RENFE (or *Empresa Nacional de Transportes de Viajeros por Carretera)* providing bus services to the public pursuant to the *Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.*

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.*

FRANCE

Entities providing transport services to the public pursuant to *article 7-11 of the loi n° 82-1153 du 30 décembre 1982, transports intérieurs, orientation).*

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorization granted by the *syndicat des transports parisiens* pursuant to the *ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.*

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended *Road Transport Act 1932.*

ITALY

Entities providing transport services of a concession pursuant to *Legge 28 settembre 1939, n. 1822 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata)* — Article 1 as modified by Article 45 of *Decreto del Preisidente della Repubblica 28 giugno 1955, n. 771.*

Entities providing transport services to the public pursuant to Article 1, n. 4 or n. 15 of *Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del Testo unico della legge sull'assunzione diretta del pubblici servizi da parte dei comuni e delle province.*

Entities operating on the basis of a concession pursuant to Article 242 or 255 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities or local authorities operating on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.*

Entities operating on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the *règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.*

NETHERLANDS

Entities providing transport services to the public pursuant to chapter II *(Openbaar vervoer)* of the *Wet Personenvervoer van 12 maart 1987.*

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the *London Regional Transport Act 1984.*

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the *arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes* amended by *arrêté royal du 5 octobre 1970 portant refonte du statut de la régle des voies aériennes.*

DENMARK

Airports operating on the basis of an authorization pursuant to *§ 55, stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985.*

GERMANY

Airports as defined in Article *38 Absatz 2 no* of the *Luftverkehrszulassungsordnung vom 19. März 1979,* amended last by the *Verordnung vom 21. Juli 1986.*

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service *(Υπηρεσία Πολιτικής Αεροπορίας (ΥΠΑ)).*

International airports operating pursuant to presidential decree 647/981.

SPAIN

Airports managed by *Aeropuertos Nacionales* operating pursuant to the *Real Decreto 278/1982 de 15 de octubre de 1982.*

FRANCE

Aéroports de Paris operating pursuant to *titre V, articles L 251-1 à 252-1 du code de l'aviation civile.*

Aéroport de Bâle — Mulhouse, set up pursuant to the *convention franco-suisse du 4 juillet 1949.*

Airports as defined in *article L 270-1, code de l'aviation civile.*

Airports operating pursuant to the *cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955.*

Airports operating on the basis of a *convention d'exploitation* pursuant to *article L/221, code de l'aviation civile.*

IRELAND

Airports of *Dublin, Cork* and *Shannon* managed by *Aer Rianta — Irish Airports.*

Airports operating on the basis of a *Public use License* granted, pursuant to the *Air Navigation and Transport Act No 23 1936,* the *Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959)* and *the Air Navigation (Aerodromes and Visual Ground Aids)* Order 1970 (SI No 291 of 1970).

ITALY

Civil Stat. airports *(aerodroal civili istituiti dallo Stato* referred to in Article 692 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to articles 18 and following of the *Luchtvaartwet* of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by *Aeroportos de Navegação Aérea (ANA), EP* pursuant to *Decreto-Lei nº 246/79.*

Aeroporto do Funchal and *Aeroporto de Porto Santo,* regionalized pursuant to the *Decreto-Lei nº 284/81.*

UNITED KINGDOM

Airports managed by *British Airports Authority plc.*

Airports which are *public limited companies (plc)* pursuant to the *Airports Act 1986.*

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER TERMINAL FACILITIES

BELGIUM

Société anonyme du canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges — Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut — Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuwport.

Port d'Ostende.

DENMARK

Ports as defined in Article 1, I to III of the *bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.*

GERMANY

Seaports owned totally or partially by territorial authorities *(Länder, Kreise, Gemeinden).*

Inland ports subject to the *Hafenordnung* pursuant to the *Wassergesetze der Länder.*

GREECE

Piraeus port *(Οργανισμός Λιμένος Πειραιώς)* set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port *(Οργανισμός Λιμένος Θεσσαλονίκης)* set upt pursuant to decree N.A. 2251/1953.

Other ports governed by presidential decree 649/1977 (NA. 649/1977) Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων. (supervision, organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the *Decreto de 2 de octubre de 1969, n° 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

Puerto de Barcelona set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

Puerto de Bilbao set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

Puerto de Valencia set up pursuant to the *Decreto de 25 de agosto de 1978, n° 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

Juntas de Puertos operating pursuant to the *Lei 27/68 de 20 de junio de 1968; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, n° 1350/70. Juntas de Puertos. Reglamento.*

Ports managed by the *Comisión Administrativa de Grupos de Puertos,* operating pursuant to the *Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978* and *Decreto 571/81 de 6 de mayo de 1981.*

Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

FRANCE

Port autonome de Paris set up pursuant to *loi 68/917 du 24 octobre 1968 relative au port autonome de Paris.*

Port autonome de Strasbourg set up pursuant to the *convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port,* approved by the *loi du 26 avril 1924.*

Other inland waterway ports set up or managed pursuant to *article 6 (navigation intérieure)* of the *décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes.*

Ports autonomes operating pursuant to *articles L 111-1 et suivants* of the *code des ports maritimes.*

Ports non autonomes operating pursuant *articles R 121-1 et suivants* of the *code des ports maritimes.*

Ports managed by regional authorities *(départements)* or operating pursuant to a concession granted by the regional authorities *(départements)* pursuant to *article 6* of the *loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État.*

IRELAND

Ports operating pursuant to the *Harbour Acts 1946 to 1976.*

Port of *Dun Laoghaire* operating pursuant to the *State Harbours Act 1924.*

Port of *Rosslare Harbour* operating pursuant to the *Finguard and Rosslare Railways and Harbours Act 1899.*

ITALY

State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32.*

Autonomous ports *(enti portuali)* set up by special laws pursuant to Article 19 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

LUXEMBOURG

Port de Mertert set up and operating pursuant to *loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle.*

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the *Gemeentewet van 29 juni 1851.*

Havenschap Vlissingen, set up by the *wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen.*

Havenschap Terneuzen, set up by the *wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen.*

Havenschap Delfzijl, set up by the *wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl.*

Industrie- en havenschap Moerdijk, set up by *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970,* approved by *Koninklijke Besluit nr. 23 van 4 maart 1972.*

PORTUGAL

Porto do Lisboa set up pursuant to *Decreto Real do 18 de Fevereiro de 1907* and operating pursuant to *Decreto-Lei nº 36976 de 20 de Julho de 1948.*

Porto do Douro e Leixões set up pursuant to *Decreto-Lei nº 36977 de 20 de Julho de 1948.*

Porto de Sines set up pursuant to *Decreto-Lei nº 508/77 de 14 de Dezembro de 1977.*

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to the *Decreto-Lei nº 37754 de 18 de Fevereiro de 1950.*

UNITED KINGDOM

Harbour Authorities within the seaning of *section 57 of the Harbours Act 1964* providing port facilities to carriers by sea or inland water way.

ANNEX X

OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF TELECOMMUNICATIONS SERVICES

BELGIUM

Régie des télégraphes et des téléphones/Regie van Telegrafie en Telefonie.

DENMARK

Kjøbenhavns Telefon Aktieselskab.

Jydsk Telefon.

Fyns Telefon.

Statens Teletjeneste.

Tele Sønderjylland.

GERMANY

Deutsche Bundespost — Telekom.

Mannesmann — Mobilfunk GmbH.

GREECE

OTE/Hellenic Telecommunications Organization.

SPAIN

Compañia Telefónica Nacional de España.

FRANCE

Direction générale des télécommunications.

Transpac.

Telecom service mobile.

Société française de radiotéléphone.

IRELAND

Telecom Éireann.

ITALY

Amministrazione delle poste e delle telecommunicazioni.

Azienda di stato per i servizi telefonici.

Società italiana per l'esercizio telefonico SpA.

Italcable.

Telespazio SpA.

LUXEMBOURG

Administration des postes et télécommunications.

NETHERLANDS

Koninklijke PTT Nederland NV and subsidiaries (1).

(1) Except PTT Post BV.

PORTUGAL

Telefones de Lisboa e Porto, SA.

Companhia Portuguesa Rádio Marconi.

Correios e Telecomunicações de Portugal.

UNITED KINGDOM

British Telecommunications plc.

Mercury Communications Ltd.

City of Kingston upon Hull.

Racal Vodafone.

Telecoms Securicor Cellular Radio Ltd (Cellnet).

ANNEX XI

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES

Classes	Groups	Subgroups and items	Description
50			BUILDING AND CIVIL ENGINEERING
	500		General building and civil engineering work (without any particular specification) and demolition work
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repointing, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		Civil engineering: construction of roads, bridges, railways, etc.
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		Installation (fittings and fixtures)
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		Building completion work
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

ANNEX XII

A. OPEN PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).

3. (a) Place of delivery, or site.

   (b) Nature and quantity of the goods to be supplied;

   or

   the nature and extent of the services to be provided and general nature of the work.

   (c) Indication of whether the suppliers can tender for some and/or all of the goods required.

   If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.

   (d) Authorization to submit variants.

   (e) For works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Derogation from the use of European specifications, in accordance with Article 13 (6).

5. Time limits for delivery or completion.

6. (a) Name and address of the service from which the contract documents and additional documents may be requested.

   (b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

7. (a) The final date for receipt of tenders.

   (b) The address to which they must be sent.

   (c) The language or languages in which they must be drawn up.

8. (a) Where appropriate, the persons authorized to be present at the opening of tenders.

   (b) The date, hour and place of such opening.

9. Where appropriate, any deposits and guarantees required.

10. Main terms concerning financing and payment and/or references to the provisions in which are contained.

11. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.

12. Minimum economic and technical conditions required of the supplier or contractor to whom the contract is awarded.

13. Period during which the tenderer is bound to keep open his tender.

14. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

15. Other information.

16. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.

17. Date of dispatch of the notice by the contacting entities.

18. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. RESTRICTED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).

3. (a) Place of delivery, or site.

(b) Nature and quantity of the goods to be supplied;

or

the nature and extent of the services to be provided and general nature of the work.

(c) Indication of whether the suppliers can tender for some and/or all of the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.

(d) Authorization to submit variants.

(e) For works contracts:

information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Derogation from the use of European specifications, in accordance with Article 13 (6).

5. Time limits for delivery or completion.

6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.

7. (a) The final date for receipt of requests to participate.

(b) The address to which they must be sent.

(c) The language or languages in which they must be drawn up.

8. The final date for dispatch of invitations to tender.

9. Where appropriate, any deposits and guarantees required.

10. Main terms concerning financing and payment and/or references to the texts in which these are contained.

11. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.

12. The criteria for the award of the contract where they are not mentioned in the invitation to tender.

13. Other information.

14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.

15. Date of dispatch of the notice by the contracting entities.

16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. NEGOTIATED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).

3. (a) Place of delivery, or site.

   (b) Nature and quantity of the goods to be supplied;

   or

   the nature and extent of the services to be provided and general nature of the work.

   (c) Indication of whether the suppliers can tender for some and/or all of the goods required.

   If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.

   (d) For works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Derogation from the use of European specifications, in accordance with Article 13 (6).

5. Time limit for delivery or completion.

6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.

7. (a) The final date for receipt of tenders.

   (b) The address to which they must be sent.

   (c) The language or languages in which they must be drawn up.

8. Where appropriate, any deposits and guarantees required.

9. Main terms concerning financing and payment and/or references to the texts in which these are contained.

10. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.

11. Where appropriate, the names and addresses of suppliers or contractors already selected by the contracting entity.

12. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.

13. Other information.

14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.

15. Date of dispatch of the notice by the contracting entities.

16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XIII

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Purpose of the qualification system.

3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1.).

4. Where applicable, duration of the qualification system.

ANNEX XIV

PERIODIC INFORMATION NOTICE

A. *For supply contracts:*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Nature and quantity or value of the services or products to be supplied.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).
   (b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. *For works contracts*

1. The name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) The site.
   (b) The nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.
   (c) An estimate of the cost of the service to be provided.
3. (a) Type of award procedure to be used.
   (b) The date scheduled for initiating the award procedures in respect of the contract or contracts.
   (c) The date scheduled for the start of the work.
   (d) Planned time table for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information (for example, indicate if a call for competition will be published later).
6. Date of dispatch of the notice by the contracting entities.
7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. INFORMATION FOR PUBLICATION IN THE *OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES*

1. Name and address of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. At least a summary indication of the nature of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).
   (b) Reference of publication of the notice in the *Official Journal of the European Communities*.
   (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 15 (2).
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases under Article 15 (2) (j).
9. Name and address of successful supplier(s) or contractor(s).
10. State, where appropriate, whether the contract has been, or may be, sub-contracted.
11. Optional information:
   — value and share of the contract which may be sub-contracted to third parties,
   — award criteria,
   — price paid (or range of prices).

II. INFORMATION NOT INTENDED FOR PUBLICATION

12. Number of contracts awarded (where an award has been split between more than one supplier).
13. Value of each contract awarded.
14. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under Article 13 (6). If so, which?
16. Which award criteria was used (most economically advantageous: lowest price: criteria permitted under Article 28)?
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 27 (3)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 27 (5)?
19. Date of transmission of the notice by the contracting entities.

STATEMENT

concerning Article 15 of Directive 90/531/EEC

The Council and the Commission state that in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting entities and provided this does not involve discrimination.

COUNCIL DIRECTIVE 92/13/EEC

of 25 February 1992

coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (4) lays down rules for procurement procedures to ensure that potential suppliers and contractors have a fair opportunity to secure the award of contracts, but does not contain any specific provisions ensuring its effective application;

Whereas the existing arrangements at both national and Community levels for ensuring its application are not always adequate;

Whereas the absence of effective remedies or the inadequacy of existing remedies could deter Community undertakings from submitting tenders; whereas, therefore, the Member States must remedy this situation;

Whereas Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (5) is limited to contract award procedures within the scope of Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (6), as last amended by Directive 90/531/EEC, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts (7), as last amended by Directive 90/531/EEC;

Whereas the opening-up of procurement in the sectors concerned to Community competition implies that provisions must be adopted to ensure that appropriate review procedures are made available to suppliers or contractors in the event of infringement of the relevant Community law or national rules implementing that law;

Whereas it is necessary to provide for a substantial increase in the guarantees of transparency and non-discrimination and whereas, for it to have tangible effects, effective and rapid remedies must be available;

Whereas account must be taken of the specific nature of certain legal orders by authorizing the Member States to choose between the introduction of different powers for the review bodies which have equivalent effects;

Whereas one of these options includes the power to intervene directly in the contracting entities' procurement procedures such as by suspending them, or by setting aside decisions or discriminatory clauses in documents or publications;

Whereas the other option provides for the power to exert effective indirect pressure on the contracting entities in order to make them correct any infringements or prevent them from committing infringements, and to prevent injury from occurring;

Whereas claims for damages must always be possible;

Whereas, where a claim is made for damages representing the costs of preparing a bid or of participating in an award procedure, the person making the claim is not be required, in order to obtain the reimbursement of his costs, to prove that the contract would have been awarded to him in the absence of such infringement;

(1) OJ No C 216, 31. 8. 1990, p. 8; and OJ No C 179, 10. 7. 1991, p. 18.
(2) OJ No C 106, 22. 4. 1991, p. 82 and OJ No C 39, 17. 2. 1992.
(3) OJ No C 60, 8. 3. 1991, p. 16.
(4) OJ No L 297, 29. 10. 1990, p. 1.
(5) OJ No L 395, 30. 12. 1989, p. 33.
(6) OJ No L 185, 16. 8. 1971, p. 5.
(7) OJ No L 13, 15. 1. 1977, p. 1.

Whereas the contracting entities which comply with the procurement rules may make this known through appropriate means; whereas this requires an examination, by independent persons, of procurement procedures and practices applied by those entities;

Whereas for this purpose an attestation system, allowing for a declaration on the correct application of the procurement rules, to be made in notices published in the *Official Journal of the European Communities*, is appropriate;

Whereas the contracting entities should have the opportunity of having recourse to the attestation system if they so wish; whereas the Member States must offer them the possibility of doing so; whereas they can do so either by setting up the system themselves or by allowing the contracting entities to have recourse to the attestation system established by another Member State; whereas they may confer the task of carrying out the examination under the attestation system to persons, professions or staff of institutions;

Whereas the necessary flexibility in the introduction of such a system is guaranteed by laying down the essential requirements for it in this Directive; whereas operational details should be provided in European Standards to which this Directive refers;

Whereas the Member States may need to determine operational details prior to, or in addition to, the rules contained in European Standards;

Whereas, when undertakings do not seek review, certain infringements may not be corrected unless a specific mechanism is put in place;

Whereas, accordingly, the Commission, when it considers that a clear and manifest infringement has been committed during a contract award procedure, should be able to bring it to the attention of the competent authorities of the Member State and of the contracting entity concerned so that appropriate steps are taken for the rapid correction of that infringement;

Whereas it is necessary to provide for the possibility of conciliation at Community level to enable disputes to be settled amicably;

Whereas the application in practice of this Directive should be reviewed at the same time as that of Directive 90/531/EEC on the basis of information to be supplied by the Member States concerning the functioning of the national review procedures;

Whereas this Directive must be brought into effect at the same time as Directive 90/531/EEC;

Whereas it is appropriate that the Kingdom of Spain, the Hellenic Republic and the Portuguese Republic are granted adequate additional periods to transpose this Directive, taking account of the dates of application of Directive 90/531/EEC in those countries,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Remedies at national level

Article 1

1. The Member States shall take the measures necessary to ensure that decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular, Article 2 (8), on the grounds that such decisions have infringed Community law in the field or procurement or national rules implementing that law as regards:

(a) contract award procedures falling within the scope of Council Directive 90/531/EEC; and

(b) compliance with Article 3 (2) (a) of that Directive in the case of the contracting entities to which that provision applies.

2. Member States shall ensure that there is no discrimination between undertakings likely to make a claim for injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting entity of the alleged infringement and of his intention to seek review.

Article 2

1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers:

either

(a) to take, at the earliest opportunity and by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the contracting entity; and

(b) to set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the notice of contract, the periodic indicative notice, the notice on the existence of a system of qualification, the invitation to tender, the contract documents or in any other document relating to the contract award procedure in question;

or

(c) to take, at the earliest opportunity, if possible by way of interlocutory procedures and if necessary by a final procedure on the substance, measures other than those provided for in points (a) and (b) with the aim of correcting any identified infringement and preventing injury to the interests concerned; in particular, making an order for the payment of a particular sum, in cases where the infringement has not been corrected or prevented.

Member States may take this choice either for all contracting entities or for categories of entities defined on the basis of objective criteria, in any event preserving the effectiveness of the measures laid down in order to prevent injury being caused to the interests concerned;

(d) and, in both the above cases, to award damages to persons injured by the infringement.

Where damages are claimed on the grounds that a decision has been taken unlawfully, Member States may, where their system of internal law so requires and provides bodies having the necessary powers for that purpose, provide that the contested decision must first be set aside or declared illegal.

2. The powers referred to in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.

3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.

4. The Member States may provide that, when considering whether to order interim measures, the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision no to grant interim measures shall not prejudice any other claim of the person seeking these measures.

5. The sum to be paid in accordance with paragraph 1 (c) must be set at a level high enough to dissuade the contracting entity from committing or persisting in an infringement. The payment of that sum may be made to depend upon a final decision that the infringenemt has in fact taken place.

6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law. Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.

7. Where a claim is made for damages representing the costs of preparing a bid or of participating in an award procedure, the person making the claim shall be required only to prove an infringement of Community law in the field of procurement or national rules implementing that law and that he would have had a real chance of winning the contract and that, as a consequence of that infringement, that chance was adversely affected.

8. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

9. Whereas bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measures taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the Treaty and independent of both the contracting entity and the review body.

The members of the independent body referred to in the first paragraph shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

CHAPTER 2

Attestation

Article 3

The Member States shall give contracting entities the possibility of having recourse to an attestation system in accordance with Articles 4 to 7.

Article 4

Contracting entities may have their contract award procedures and practices which fall within the scope of Directive 90/531/EEC examined periodically with a view to obtaining an attestation that, at that time, those procedures and practices are in conformity with Community law concerning the award of contracts and the national rules implementing the law.

Article 5

1. Attestors shall report to the contracting entity, in writing, on the results of their examination. They shall satisfy themselves, before delivering to the contracting entity the attestation referred to in Article 4, that any irregularities identified in the contracting entity's award procedures and practices have been corrected and measures have been taken to ensure that those irregularities are not repeated.

2. Contracting entities having obtained that attestation may include the following statement in notice published in the *Official Journal of the European Communities* pursuant to Articles 16 to 18 of Directive 90/531/EEC:

'The contracting entity has obtained an attestation in accordance with Council Directive 92/13/EEC that, on ....., its contract award procedures and practices were in conformity with Community law and the national rules implementing that law.'

Article 6

1. Attestors shall be independent of the contracting entities and must be completely objective in carrying out their duties. They shall offer appropriate guarantees of relevant professional qualifications and experience.

2. Member States may identify any persons, professions or institutions whose staff, called upon the act as attestors, they regard as fulfilling the requirements of paragraph 1. For these purposes, Member States may require professional qualifications, at least at the level of a higher education diploma within the meaning of Directive 89/48/EEC [1], which they regard as relevant, or provide that particular examinations of professional competence organized or recognized by the State offer such guarantees.

Article 7

The provisions of Articles 4, 5 and 6 shall be considered as essential requirements for the development of European standards on attestation.

CHAPTER 3

Corrective mechanism

Article 8

1. The Commission may invoke the procedures for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of procurement has been committed during a contract award procedure fallig within the scope of Directive 90/531/EEC or in relation to Article 3 (2) (a) of that Directive in the case of the contracting entities to which that provision applies.

2. The Commission shall notify the Member States and the contracting entity concerned of the reasons which have led it to conclude that a clear and manifest infringement has been committed and request its correction by appropriate means.

3. Within 30 days of receipt of the notification referred to in paragraph 2, the Member States concerned shall communicate to the Commission:

(a) its confirmation that the infringement has been corrected; or

(b) a reasoned submission as to why no correction has been made; or

(c) a notice to the effect that the contract award procedure has been suspended either by the contracting entity on its own initiative or on the basis of the powers specified in Article 2 (1) (a).

4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial review proceedings or of a review as referred to in Article 2 (9). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

[1] OJ No L 19, 24. 1. 1989, p. 16.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c), the Member State concerned shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That new notification shall confirm that the alleged infringement has been corrected or include an reasoned submission as to why no correction has been made.

CHAPTER 4

Conciliation

Article 9

1. Any person having or having had an interest in obtaining a particular contract falling within the scope of Directive 90/531/EEC and who, in relation to the procedure for the award of that contract, considers that he has been or risks being harmed by an alleged infringement of Community law in the field of procurement or national rules impelementing that law may request the application of the conciliation procedure provided for in Articles 10 and 11.

2. The request referred to in paragraph 1 shall be addressed in writing to the Commission or to the national authorities listed in the Annex. These authorities shall forward requests to the Commission as quickly as possible.

Article 10

1. Where the Commission considers, on the basis of the request referred to in Article 9, that the dispute concerns the correct application of Community law, it shall ask the contracting entity to state whether it is willing to take part in the conciliation procedure. If the contracting entity declines to take part, the Commission shall inform the person who made the request that the procedure cannot be initiated. If the contracting entity agrees, paragraphs 2 to 7 shall apply.

2. The Commission shall propose, as quickly as possible, a conciliator drawn from a list of independent persons accredited for this purpose. This list shall be drawn up by the Commission, following consultation of the Advisory Committee for Public Contracts or, in the case of contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC, following consultation of the Advisory Committee on Telecommunications Procurement.

Each party to the conciliation procedure shall declare whether it accepts the conciliator, and shall designate an additional conciliator. The conciliators may invite not more than two other persons as experts to advices them in their work. The parties to the conciliation procedure and the Commission may reject any expert invited by the conciliators.

3. The conciliators shall give the person requesting the application of the conciliation procedure, the contracting entity and any other candidate or tenderer participating in the relevant contract award procedure the opportunity to make representations on the matter either orally or in writing.

4. The conciliators shall endeavour as quickly as possible to reach an agreement between the parties which is in accordance with Community law.

5. The conciliators shall report to the Commission on their findings and on any result achieved.

6. The person requesting the application of the concilation procedure and the contracting entity shall have the right to terminate the procedure at any time.

7. Unless the parties decide otherwise, the person requesting the application of the conciliation procedure and the contracting entity shall be responsible for their own costs. In addition, they shall each bear half of the costs of the procedure, excluding the costs of intervening parties.

Article 11

1. Where, in relation to a particular contract award procedure, an interested person within the meaning of Article 9, other than the person requesting the conciliation procedure, is pursuing judicial review proceedings or other proceedings for review within the meaning of this Directive, the contracting entity shall inform the conciliators. These shall inform that person that a request has been made to apply the conciliation procedure and shall invite that person to indicate within a given time limit whether he agrees to participate in that procedure. If that person refuses to participate, the conciliators may decide, acting if necessary by a majority, to terminate the conciliation procedure if they consider that the participation of this person is necessary to resolve the dispute. They shall notify their decision to the Committee and give the reasons for it.

2. Action taken pursuant to this Chapter shall be without prejudice to:

(a) any action that the Commission or any Member State might take pursuant ot Articles 169 or 170 of the Treaty or pursuant to Chapter 3 of this Directive;

(b) the rights of the persons requesting the conciliation procedure, of the contracting entity or of any other person.

CHAPTER 5

Final provisions

Article 12

1. Not later than four years after the application of this Directive, the Commission, in consultation with the Advisory Committee for Public Contracts, shall review the manner in which the provisions of this Directive have been implemented and, in particular, the use of the European Standards and, if necessary, make proposals for amendments.

2. Before 1 March each year the Member States shall communicate to the Commission information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the Commission in consultation with the Advisory Committee for Public Contracts.

3. In the case of matters relating to contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC, the Commission shall also consult the Advisory Committee on Telecommunications Procurement.

Article 13

1. Member States shall take, before 1 January 1993, the measures necessary to comply with this Directive. The Kingdom of Spain shall take these measures not later than 30 June 1995. The Hellenic Republic and the Portuguese Republic shall take these measures not later than 30 June 1997. They shall forthwith inform the Commission thereof.

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

2. Member States shall bring into force the measures referred to in paragraph 1 on the same dates as those (laid down in Directive 90/531/EEC).

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

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 25 February 1992.

For the Council

The President

Vitor MARTINS

ANNEX

National authorities to which requests for application of the conciliation procedure referred to in Article 9 may be addressed

Belgium

Services du Premier Ministre
Diensten Van de Eerste Minister

Ministère des Affaires économiques
Ministerie van Economische Zaken

Denmark

Industri- og Handelsstyrelsen (supply contracts)
Boligsministeriet (works contracts)

Germany

Bundesministerium für Wirtschaft

Greece

Υπουργείο Βιομηχανίας, Ενεργείας και Τεχνολογίας
Υπουργείο Εμπορίου Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων

Spain

Ministerio de Economía y Hacienda

France

Commission centrale des marchés

Ireland

Department of Finance

Italy

Presidenza del Consiglio dei Ministri Politiche Comunitarie

Luxembourg

Ministère des travaux publics

Netherlands

Ministerie van Economische Zaken

Portugal

Conselho de mercados de obras publicas e particulares

United Kingdom

HM Treasury

COUNCIL DECISION

of 10 May 1993

concerning the extension of the benefit of the provisions of Directive 90/531/EEC in respect of the United States of America

(93/324/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors [1] provides that Article 29 thereof applies to tenders comprising products originating in third countries with which the Community has not concluded an agreement ensuring comparable and effective access for Community undertakings to the markets of these third countries;

Whereas the Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement, for the period of its duration, ensures comparable and effective access for Community undertakings to the markets in the United States as regards the award of supplies and works contracts by its entities in the electrical power sector; whereas that Agreement has been approved on behalf of the Council;

Whereas, in view of the international rights and commitments devolving on the Community as a result of acceptance of the said Agreement, the arrangements to be applied to tenderers, products and related services in the electrical power sector from the United States of America are those defined by that Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The benefit of the provisions of Directive 90/531/EEC is hereby extended to tenders comprising products originating in the United States of America made for the award of a supply contract by contracting entities listed in Annex 3 to the Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement.

Article 2

This Decision shall take effect upon entry into force of the Agreement.

Article 3

This Decision shall cease to have effect on the expiry date of the Agreeement.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 10 May 1993.

For the Council

The President

N. HELVEG PETERSEN

[1] OJ No L 297, 29. 10. 1990, p. 1.

COMMISSION

COMMISSION DECISION

of 14 July 1993

establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the United Kingdom an activity defined in Article 2 (2) (b) (i) of Council Directive 90/531/EEC of 17 September 1990 and that entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive

(Only the English text is authentic)

(93/425/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (1), and in particular Articles 3 (4) and 32 (4) to (7) thereof,

Whereas, under Article 3 of Directive 90/531/EEC, a Member State may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels is not to be considered to be an activity defined in Article 2 (2) (b) (i) of of the Directive and that entities are not to be considered as operating under special or exclusive rights wihtin the meaning of Article 2 (3) (b) by virtue of carrying on one or more of those activities, provided that a number of precise conditions are satisfied with respect to the relevant national provisions concerning such activities and that any Member State requesting such a decision ensures that entities observe the principles of non-discrimination and competitive procurement in awarding contracts and communicates to the Commission information relating to the award of such contracts;

Whereas, by letter dated 7 May 1992, the Office of the United Kingdom Permanent Representative to the European Communities requested the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil or gas should not be considered in the United Kingdom to be an activity defined in Article 2 (2) (b) (i) of Directive 90/531/EEC and the entities carrying on such an activity are not to be considered in the United Kingdom as operating under special or exclusive rights wihtin the meaning of Article 2 (3) (b) of the Directive; whereas that request did not cover the exploitation of geographical areas for the purpose of exploring for or extracting coal or other solid fuels;

Whereas that request was accompanied by a copy of the legislative and regulatory provisions in force and a statement of how the five criteria listed in Article 3 (1) could be satisfied with respect to those provisions;

Whereas additional information and supplementary documentation relating to regulatory or administrative measures in force, have been supplied in compliance with the provisions of Article 3 (1) and (2) of the Directive in letters from the Office of the Permanent Representative dated 26 June 1992 and 26 February 1993, and in letters dated 4 August and 18 September 1992 from the Department of Trade and Industry;

Whereas, as regards compliance with the conditions laid down in Article 3 (1) of the Directive, the Commission's services have carried out a detailed analysis of the provisions in force in the United Kingdom (the Petroleum Production Act 1934; the Continental Shelf Act 1964, the Petroleum (Production) (Seaward Areas) Regulations 1988 and Amendments 1990 and 1992; the Petroleum (Production) (Landward Areas) Regulations 1991) as well as documents containing supplementary information used during the procedure of granting authorizations supplementary for exploration or extraction (such as notices in the *Gazette*, Guidance Notes, form for licence requests, model licences, guidance notes in relation to the development plan), which was communicated in full to the British authorities by letter dated 6 November 1992 and the main findings of which are set out below:

(1) OJ No L 297, 29. 10. 1990, p. 1.

— for the offshore regime, the provisions of Regulation 6 of the Petroleum (Production) (Seaward Areas) Regulations 1992 satisfies the requirements of Article 3 (1) (a) relating to freedom of access ; on the other hand, with regard to the onshore regime, Regulation 6 of the Petroleum (Production) (Landward Areas) Regulations 1991, which limits the theoretical possibilities for the presentation of requests for authorizations, must be modified and brought into line with the text of the Petroleum (Production) (Seaward Areas) Regulations 1992,

— the requirement laid down in Article 3 (1) (b) relating to the prior establishment of technical and financial capacity by candidates, is not met by the legislative, regulatory or administrative provisions currently in force in the United Kingdom ; use of guidance notes peculiar to every authorization round, which are not binding on the administration, and which are made available on the application of the candidates to help them to prepare their application for authorization, and to give details on the type of technical or financial information which should be supplied, does not meet the requirement of legal certainty which is generally implied by the implementation of the provisions of the Community Directives, by reason of the specific nature of the guidance notes which are simply information documents,

— the requirements laid down in Article 3 (1) (c) relating to the prior establishment and publication for the criteria for assessing the ways in which it is intended to carry out the exploration or extraction are not satisfied by the legislative, regulatory or administrative provisions currently in force in the United Kingdom ; instructions relating to the applicable criteria have been put into the *Gazette* notices published for each round but the content of these publications, which is not binding on the administration, can vary considerably from one round to another, and like the guidance notes, they do not, because of their specific nature, provide the legal certainty which is essential for the implementation of the Community Directives ; finally the definition of the criteria is not complete and places great discretionary power in the hands of the Secretary of State for Energy,

— the requirements laid down in Article 3 (1) (d) relating to the prior establishment and communication of the conditions for carrying out exploration or extraction are not satisfied by the legislative regulatory and administrative provisions currently in force in the United Kingdom in so far as some of the typical clauses which appear in the regulatory provisions (Petroleum (Production) (Seaward Areas) Regulations 1988 and Petroleum (Production) (Landward Areas) Regulations 1991) are either of a discriminatory nature, or are non-transparent and non-binding in the way in which they give the Minister a discrrtionary power to determine certain conditions as to the way the system works, in detail :

1. schedule 4, clause 30 — 1988 Regulations (offshore) : which could lead to discriminatory treatment as it imposes restrictions on disposal of oil and gas ;

2. schedule 4, clauses 17 (1) and (4), clause 18 — 1988 Regulations (offshore) : which are not transparent as the criteria concerned are to established prior to the issue of licences ;

3. schedule 4, clause 5 — 1988 Regulations (offshore) : which is not transparent as it is not clear which procedure will be used ;

4. schedule 6, clause 13 and 14 — 1991 Regulations (onshore) : — which are not transparent as it is not possible to determine which type of procedure will be applied and the nature of the criteria for consent to future development ;

5. schedule 4, clause 13 — 1988 Regulations (offshore) ; schedule 6, clause 10 — 1991 Regulations (onshore) : which are not transparent as the determinatiion of conditions relates to the exercise of discretion ;

6. schedule 4, clause 42 (2) (g) — 1988 Regulations — offshore,
schedule 3, clause 28 (e) — 1991 Regulations — onshore,
schedule 5, clause 33 (f) — 1991 Regulations — onshore,
schedule 6, clause 35 (g) — 1991 Regulations — onshore :
which are all discriminatory as they require licences to have central management in United Kingdom ;

7. schedule 4, clauses 5 and 6 — 1988 Regulations — offshore,
schedule 6, clause 4 — 1991 Regulations — onshore :
which are not transparent as no criteria relating to requests for extension of a licence are fixed,

— none of the general provisions examined lay down any obligations, as referred to in Article 3 (1) (e), to provide information on sources of procurement, but additional information about the new role of the Offshore Supplies Office and the nature of its relationship with the sector concerned has been judged necessary in order to allay the concerns caused by its previous interference ;

Whereas, in response to the comments addressed to them, the British authorities in letters form the Office of their Permanent Representative dated 19 November, 3, 14, 22 December 1992, 26 February 1993 and 9 June 1993 and following the meeting of 14 May 1993 with the Commission's services have given assurances and information on the new devolved role of the Offshore Supplies Office, which will no longer be in conflict with Article 3 (1) (e), have agreed to make the necessary adjustments by submitting to the Commission the text of the amendments they propose to make to the legislative regulatory and administrative provisions ; whereas these adjustments, the details of which are set out in the Annex to this Decision, are aimed :

— initially, at removing all the provisions judged by the Commission's services not to conform,
— secondly, at introducing into a new statutory instrument the required definition of technical and financial capacities, and the essential and permanent evaluation criteria of the application fo authorization,
— only complementary requirements justified by technical reasons specific to each round are to be defined in the *Gazette* notices;

Whereas, by a notice published in the *Official Journal of the European Communities* on 5 August 1992 (1) the Commission invited interested parties to comment on British provisions and practices; whereas no reply alleging discrimination in the treatment of requests of authorization to carry out exploration or extraction has been received by the Commission;

Whereas the amendments to be made to the provisions in force in the United Kingdom in order to comply with Article 3 (1) of Directive 90/531/EEC have to pass through the legislative process and cannot therefore be adopted before the adoption of the present decision; whereas the British authorities have nevertheless undertaken to strive to complete the process as quickly as possible, whereas this commitment is contained in a Ministerial Statement; whereas British authorities have committed themselves to respect all the aforementioned provisions in practice;

Whereas 'the utilities supply and works contracts Regulations 1992' adopted on 23 December 1992 transpose Directive 90/531/EEC into British law; whereas paragraph 8 is made up of a series of implementing provisions conforming to Article 3 (2); whereas paragraph 8 refers to the principles of non-discrimination and competitive procurement, in particular as regards the informations made available to enterprises; whereas these provisions entered into force on 13 January 1993;

Whereas compliance with the principles of non-discrimination and competitive procurement by entities carrying out exploration or extraction, in particular as regards the information they make available to enterprises concerning their intentions with respect to the award of contracts, as provided for in Article 3 (2) of Directive 90/531/EEC, corresponds to the aim pursued by the Directive; whereas, since such compliance with those conditions is guaranteed as of 13 January 1993 by the provisions of a binding legal instrument, the benefit of the arrangemets introduced by Article 3 of the Directive can be authorized on a temporary basis until the amendments to be made to the national provisions corresponding to Article 3 (1) have been adopted in full;

Whereas, in accordance with Article 32 (4) to (7) of Directive 90/531/EEC, the Advisory Committee for Public Contracts has delivered its opinion on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From 15 July 1993 and for not more than one year, the United Kingdom is authorized to consider that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas is not considered as an activity defined in Article 2 (2) (b) (i) of Council Directive 90/531/EEC, and entities carrying on such an activity shall not be considered in the United Kingdom as operating under special or exclusive rights within the meaning of Article 2 (3) (b) of the Directive.

Article 2

Until the adoption of each of the legislative, regulatory or administrative provisions required for the application of Article 3 (1), the United Kingdom respects the principles of non-discrimination, transparency and competition which are fundamental to the current Decision.

Article 3

The current Decision will be reviewed on the basis of an examination of all the legislative, regulatory and administrative provisions enacted in the United Kingdom for the the purpose of applying Article 3 of Directive 90/531/EEC.

To that end, all such provisions adopted by the United Kingdom must be communicated to the Commission on the date of their adoption and not later than 15 April 1994.

Article 4

The current Decision expires on 15 July 1994.

Article 5

This Decision is addressed to the United Kingdom.

Done at Brussels, 14 July 1993.

For the Commission
Raniero VANNI D'ARCHIRAFI
Member of the Commission

(1) OJ No C 198, 5. 8. 1992, p. 8.

ANNEX

AMENDMENTS PROPOSED BY THE UNITED KINGDOM TO ITS LEGISLATIVE, REGULATORY, OR ADMINISTRATIVE PROVISIONS RELATING TO ARTICLE 3 (1) OF DIRECTIVE 90/531/EEC

I. **Article (3) (1) (a)**

In order to guarantee freedom of access, paragraph 3 of Regulation 6 of the Petroleum (Production) (Landward Areas) Regulations 1991 will be drafted in terms similar to these of Regulation 6 of the Petroleum (Production) (Seaward Areas) Regulations 1992.

The wording of the new provision will be the following:

for paragraph 3 of Regulation 6 of the Principal Regulations (applications for exploration licenses), there shall be substituted the following paragraph:

'3. The requirement set out in paragraph 1 above shall not apply in the case of an application which relates to an area every part of which was comprised in an exploration licence (in this paragraph referred to as "the revoked licence") which has been revoked, either in whole or in relation to the area to which the application relates, provided that:

(a) at the time the revoked licence was revoked, it was held by two or more persons; and

(b) the application is made by one of those persons, or by a group including at least one of those persons.'

II. **Article (3) (1) (b)**

In order to define precisely the required conditions regarding the financial and technical capacity the Petroleum (Production) (Seaward Areas) Regulations and the Petroleum (Production) (Landward Areas) Regulations will be amended as follows:

1. *as regards the Seaward Regulations:*

(a) the following general provision will be introduced:

'The Secretary of State shall not evaluate the merits of any competing application unless he is satisfied that

(a) the applicant has the financial and technical capacity to engage in activities pursuant to the licence; and' (Regulation 4 of the Draft Seaward Regulations 1993);

(b) schedule 3 to the Principal Regulations (form of application for a licence) shall be amended as follows:

(a) for paragraph 5 there shall be substituted the following paragraph:

'5. In the case of an application for a production licence:

(a) the reference number of each block in respect of which the application is made and, if the application is made by tender, the consideration by way of initial payment which the applicant is prepared to offer for each such block (A);

(b) evidence of the applicant's technical and financial capacity to undertake that work programme, including the number of staff the applicant intends to assign for that purpose and any relevant technical qualifications held by those staff;

(c) the database available to the applicant which is relevant to activities under the licence applied for;

(d) an analysis of the geology of the area to which the application relates, identifying, in particular, petroleum prospects;

(e) the technical data on which the analysis is based;

(f) the work programme for evaluating the potential petroleum production from the area to which the application relates which the applicant would be prepared to undertake under the licence applied for;

and

(g) and explanation of the relevance of the work programme to the analysis of the geology.';

(b) in paragraph 7, after subparagraph (f) there shall be inserted the following subparagraphs:

'(g) where the applicant is or has a subsidiary (as defined in section 736 of the Companies Act 1985), a diagram identifying any companies of which it is a subsidiary and any subsidiaries it has;

(h) the training provided in the three-year period ending on the date of the application for the licence for graduate or professional staff employed by the applicant in connection with the exploration for and production of petroleum';

(c) after subparagraph 9 (2) there shall be inserted the following subparagraphs:

'3. If the most recent audited accounts are in respect of a period ending on a date more than 12 months before the date of the application for the licence, there shall accompany the application three copies of a balance sheet as of the latest date within that 12-month period in respect of which a balance sheet can be made available.

4. In the case of an application for a production licence for each applicant who is not a body corporate there shall accompany the application evidence demonstrating that he will have sufficient resources available to him to undertake the work programme.';

2. *as regards the Landward Regulations:*

(a) the following general provision will be introduced:

'The Secretary of State shall not evaluate the merits of any competing application for a licence unless he is satisfied that

(a) the applicant has the financial and technical capacity to engage in activities pursuant to the licence; and' (Regulation 4 of the Draft Landward Regulations 1993);

(b) in schedule 2 to the principal Regulations (form of application for a licence):

(a) for paragraph 5 there shall be substituted the following paragraph:

'5. in the case of an application for an exploration licence which is made in respect of one or more particular blocks:

(a) the reference number of each block in respect of which the application is made and, if the application is made by tender, the consideration by way of initial payment which the applicant is prepared to offer for each such block (A);

(b) evidence of the applicant's technical and financial capacity to undertake that work programme, including the number of staff the applicant intends to assign for that purpose and any relevant technical qualifications held by those staff;

(c) the database available to the applicant which is relevant to activities under the licence applied for;

(d) an analysis of the geology of the area to which the application relates, identifying, in particular, petroleum prospects;

(e) the technical data on which the analysis is based;

(f) the programme for evaluating the potential petroleum production from the area to which the application relates which the applicant would be prepared to undertake under the licence applied for;

and

(g) an explanation of the relevance of the work programme to the analysis of the geology.';

(b) in paragraph 9 after subparagraph (f) there shall be inserted the following subparagraphs:

'(g) where the applicant is or has a subsidiary (as defined in section 736 of the Companies Act 1985), a diagram identifying any companies of which it is a subsidiary and any subsidiaries it has;

(h) the training provided in the three-year period ending on the date of the application for the licence for graduate or professional staff employed by the applicant in connection with the exploration for and production of petroleum';

(c) after paragraph 10 there shall be inserted the following paragraph :

'10A (1) In the case of an application for a production licence, for each applicant which is a body corporate there shall accompany the application three copies of the most recent audited accounts of each such applicant and three copies of the most recent audited accounts of any body corporate having control of such applicant. Subsections (2) and (4) to (6) of section 416 of the Income and Corporation Taxes Act (a) shall apply, for the purpose of determining whether for the purpose of this paragraph a body corporate has control of another body corporate, with the following modifications, namely :

(a) for the words "the greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more" ;

(b) in the said subsection (b), for the word "may" there shall be substituted the word "shall", the words from "and such attributions" onwards shall be omitted, and in the other provisions of that sub-section any reference to an associate of a person shall be construed as including only a relative of his (as defined by section 417 (4) cf. that Act), a partner of his and a trustee of a settlement (as defined by section 581 (4) cf. that Act) of which he is a beneficiary ;

(c) there shall accompany the application of list of the bodies corporate whose acounts are submitted pursuant to subparagraph (1) above ;

(d) if the most recent audited accounts are in respect of a period ending on a date more than 12 months before the date of the application for the licence, there shall accompany the application three copies of a balance sheet as or the latest date within that 12-month period in respect of which a balance sheet can be made available ;

(e) in the case of an application for a production licence, for each applicant who is not a body corporate there shall accompany the application evidence demonstrating that he will have sufficient resources available to him to undertake the work programme.'

III. **Article (3) (1) (c)**

In order to specify all the criteria on the basis of which authorizations are granted the following provisions will be inserted into the Petroleum (Production) (Landward Areas) Regulations and the Petroleum (Production) (Seaward Areas) Regulations :

1. *as regards the Seaward Regulations :*

— Regulation 3 of the Draft Seaward Regulation 1993 :

'An application for a licence shall, subject to Regulation 4, be determined by the Secretary of State by reference to the following criteria :

(a) the assessment, by the applicant, of the hydrocarbon prospects in the area to which the application relates and the extent to which the work programme proposed by the applicant enables those prospects to be evaluated ;

and

(b) the database and experience available to the applicant which are relevant to activities under the licence applied for ;

predominant weight shall be given to the first of these criteria.',

— Regulation 4 of the Draft Seaward Regulations 1993 :

'The Secretary of State shall not evaluate the merits of any competing application for a licence unless he is satisfied that :

[. . .]

(b) the applicant will be able to engage in such activities with sufficient regard to the environment.' ;

2. *as regards the Landward Regulations :*

— Regulation 3 of the Draft Landward Regulations 1993 :

'An application for a licence shall, subject to regulation 4 be determined by the Minister by reference to the following criteria :

(a) the assessment, by the applicant, of the hydrocarbon prospects in the area to which the application relates and the extent to which the work programme proposed by the applicant enable those prospects to be evaluated ; and

(b) the database and experience avalable to the applicant which are relevant to activities under teh licence applied for;

predominant weight shall be given to the first of these criteria.',

— Regulation 4 of the Draft Landward Regulations 1993

'The Secretary of State shall not evaluate the merits of any competing application for a licence unless he is satisfied that:

[...]

(b) the applicant will be able to engage in such activities with sufficient regard to the environment.'

IV. **Article (3) (1) (d)**

All provisions that could be applied in a discriminatory way or that do not offer the required conditions of transparence will be amended as follows:

1. *clause 30 of schedule 4 — 1988 Regulations (offshore)* shall cease to have effect;

2. *with regard to clauses 17 (1) and (4) and clause 18 of schedule 4 — 1988 Regulations (offshore):*

— paragraph 1 and subparagraph (a) of paragraph 8 of clause 18 (provisions supplementary to clause 17) shall cease to have effect,

— in clause 17 (development and production programmes):

(i) in paragraph (i), the words 'with the consent in writing of the Minister or' shall be omitted;

(ii) in paragraph 4, for subparagraph (a) there shall be substituted the following subparagraph

'(a) that the Minister approves the programme subject to such conditions as may be specified in the notice as the Minister considers necessary in the national interest to secure the maximum ultimate recovery of petroleum from the licensed area;

or';

(iii) in paragraph 7, for the words 'paragraph 4 (b)', there shall be substituted the words 'paragraph 4 (a) or (b)';

— in clause 18 (provisions supplementary to clause 17)

(i) in paragraph 7, for 'clause 17 (4) (b)' there shall be substituted 'clause 17 (4) (a) or (b)', and the words 'or a consent in pursuance of paragraph 1 of this clause' shall be omitted;

(ii) in paragraph 8, the words 'while the consent is in force or' shall be omitted;

3. *with regard to clause 5 of schedule 4 — 1988 Regulations (offshore):*

subparagraph (a) of paragraph 2 of clause 5 (continuance of licence after second term) shall cease to have effect;

4. *with regard to clauses 13 and 14 of schedule 6 — 1991 Regulations (onshore):*

— in clause 13 (development and production programmes):

(i) in paragraph 1, the words 'with the consent in writing of the Minister or' shall be omitted;

(ii) in paragraph 4, for subparagraph (a) there shall be substituted the following subparagraph:

(a) that the Minister approves the programme subject to such conditions as may be specified in the notice as the Minister considers necessary in the national interest to secure the maximum ultimate recovery of petroleum from the licensed area;

or';

(iii) in paragraphs 7 and 8, for the words 'paragraph 4 (b)' there shall be substituted the words 'paragraph 4 (a) or (b)';

— in clause 14 (provisions supplementary to clause 13):

(i) paragraph 1 shall be omitted;

(ii) in paragraph 7, for 'clause 13 (4) (b)' there shall be substituted 'paragraph 4 (a) or (b) of clause 13', and the words after 'of this licence' shall be omitted;

(iii) in paragraph 8 for the words 'a consent or approval' in subparagraph (a) there shall be substituted 'an approval', and the words 'while the consent is in force or' shall be omitted;

5. *clause 13 of schedule 4 — 1988 Regulations (offshore) and clause 10 of schedule 6 — 1991 Regulation (onshore)* shall be omitted;

6. *clauses 42 2 (g) of schedule 4 and 21 2 (f) of schedule 5 — 1988 Regulations (offshore), 28 2 (e) of schedule 3, 33 (2) (f) of schedule 5 and 35 2 (g) of schedule 6 — 1991 Regulations (onshore)* will be amended as follows:

the sentence 'The licensee's ceasing in 'the case of a company to have its central management and control in the United Kingdom' will be replaced by 'the licensee's operations or business activities under or in connection with the licence ceasing to be managed, directed and controlled from a fixed place within the United Kingdom';

7. *clause 5 and 6 of schedule 4 — 1988 Regulations (offshore) and clause 4 of schedule 6 — 1991 Regulations (onshore)* will be changed as follows:

— in subparagraph 2 (d) of clause 5 (continuance of licence after second term) and in clause 6 (power to extend term of licence), for the words 'in his discretion', there shal l be substituted the words 'with a view to securing the maximum economic recovery of petroleum from the licensed area',

— in clause 4 (extension or further extension of licence term), after the words 'any extension thereof' there shall be inserted the words 'and with a view to securing the maximum exonomic recovery of petroleum from the licensed area'.

COUNCIL DIRECTIVE 93/37/EEC

of 14 June 1993

concerning the coordination of procedures for the award of public works contracts

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

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

In cooperation with the European Parliament (2),

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

Whereas Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (4) has been amended substantially and on a number of occasions; whereas, for reasons of clarity and better understanding, the said Directive should be consolidated;

Whereas the simultaneous attainment of freedom of establishment and freedom to provide services in respect of public works contracts awarded in Member States on behalf of the State, or regional or local authorities or other bodies governed by public law entails not only the abolition of restrictions but also the coordination of national procedures for the award of public works contracts;

Whereas such coordination should take into account as far as possible the procedures and administrative practices in force in each Member State;

Whereas this Directive does not apply to certain works contracts which are awarded in the water, energy, transport and telecommunication sectors covered by Directive 90/531/EEC;

Whereas, in view of the increasing importance of concession contracts in the public works area and of their specific nature, rules concerning advertising should be included in this Directive;

Whereas works contracts of less than ECU 5 000 000 may be exempted from competition as provided for under this Directive and it is appropriate to provide for their exemption from coordination measures;

Whereas provision must be made for exceptional cases where measures concerning the coordination of procedures need not be applied, but such cases must be expressly limited;

Whereas the negotiated procedure should be considered to be exceptional and therefore only applicable in certain limited cases;

Whereas it is necessary to provide common rules in the technical field which take account of the Community policy on standards and specifications;

Whereas, to ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community; whereas the information contained in these notices must enable contractors established in the Community to determine whether the proposed contracts are of interest to them; whereas, for this purpose, it is appropriate to give them adequate information on the works undertaken and the conditions attached thereto; whereas, more particularly, in restricted procedures advertisement is intended to enable contractors of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions;

Whereas additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document;

Whereas it is necessary to provide common rules for participation in public works contracts, including both

(1) OJ No C 46, 20. 2. 1992, p. 79.
(2) OJ No C 125, 18. 5. 1992, p. 171 and OJ No C 305, 23. 11. 1992, p. 73.
(3) OJ No C 106, 27. 4. 1992, p. 11.
(4) OJ No L 185, 16. 8. 1971, p. 15; Directive as last amended by Directive 90/531//EEC (OJ No L 297, 29. 10. 1990, p. 1).

qualitative selection criteria and criteria for the award of the contract;

Whereas it would be appropriate to enable certain technical conditions concerning notices and statistical reports required by this Directive to be adapted in the light of changing technical requirements; whereas Annex II to this Directive refers to the General Industrial Classification of Economic Activities within the European Communities (NACE); whereas the Community may, as required, revise or replace its common nomenclature and whereas it is necessary to make provision for the possibility of adapting the reference made to the NACE nomenclature in the said Annex II accordingly;

Whereas this Directive should not affect the obligations of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex VII,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

For th purpose of this Directive:

(a) 'public works contracts' are contracts for pecuniary interest concluded in writing between a contractor and a contracting authority as defined in (b), which have as their object either the execution, or both the execution and design, of works related to one of the activities referred to in Annex II or a work defined in (c) below, or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority;

(b) 'contracting authorities' shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law;

A 'body governed by public law' means any body:

— established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and

— having legal personality, and

— financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

The lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in the second subparagraph are set out in Annex I. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 35. To this end, Member States shall periodically notify the Commission of any changes of their lists of bodies and categories of bodies;

(c) a 'work' means the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function;

(d) 'public works concession' is a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment;

(e) 'open procedures' are those national procedures whereby all interested contractors may submit tenders;

(f) 'restricted procedures' are those national procedures whereby only those contractors invited by the contracting authority may submit tenders;

(g) 'negotiated procedures' are those national procedures whereby contracting authorities consult contractors of their choice and negotiate the terms of the contract with one or more of them;

(h) a contractor who submits a tender shall be designated by the term 'tenderer' and one who has sought an invitation to take part in a restricted or negotiated procedure by the term 'candidate'.

Article 2

1. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50 % a works contract awarded by an entity other than themselves.

2. Paragraph 1 shall concern only contracts covered by Class 50, Group 502, of the general industrial classification

of economic activities within the European Communities (NACE) nomenclature and contracts relating to building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.

Article 3

1. Should contracting authorities conclude a public works concession contract, the advertising rules as described in Article 11 (3), (6), (7) and (9) to (13), and in Article 15, shall apply to that contract when its value is not less than ECU 5 000 000.

2. The contracting authority may:

— either require the concessionnaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage. This minimum percentage shall be specified in the concession contract,

— or request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

3. When the concessionnaire is himself a contracting authority, as referred to in Article 1 (b), he shall comply with the provisions of this Directive in the case of works to be carried out by third parties.

4. Member States shall take the necessary steps to ensure that a concessionnaire other than a contracting authority shall apply the advertising rules listed in Article 11 (4), (6), (7), and (9) to (13), and in Article 16, in respect of the contracts which it awards to third parties when the value of the contracts is not less than ECU 5 000 000. An advertisement is not, however, required where works contracts meet the conditions laid down in Article 7 (3).

Undertakings which have formed a group in order to obtain the concession contract, or undertakings affiliated to them, shall not be regarded as third parties.

An 'affiliated undertaking' means any undertaking over which the concessionnaire may exercise, directly or indirectly, a dominant influence or which may exercise a dominant influence over the concessionnaire or which, in common with the concessionnaire, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking shall be presumed when, directly or indirectly in relation to another undertaking, it:

— holds the major part of the undertaking's subscribed capital, or

— controls the majority of the votes attaching to shares issued by the undertakings, or

— can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

A comprehensive list of these undertakings shall be enclosed with the candidature for the concession. This list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

Article 4

This Directive shall not apply to:

(a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6 (2) of that Directive;

(b) works contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of the Member State's security so requires.

Article 5

This Directive shall not apply to public contracts governed by different procedural rules and awarded:

(a) in pursuance of an international agreement, concluded in conformity with the Treaty, between a Member State and one or more non-member countries and covering works intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Decision 71/306/EEC [1];

(b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;

(c) pursuant to the particular procedure of an international organization.

[1] OJ No L 185, 16. 8. 1971, p. 15; Decision as amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p.15.

Article 6

1. The provisions of this Directive shall apply to public works contracts whose estimated value net of VAT is not less than ECU 5 000 000.

2. (a) The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1992. The calculation of this value shall be based on the average daily values of these currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. The exchange values shall be published in the *Official Journal of the European Communities* at the beginning of November.

(b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts in principle two years after its initial application.

3. Where a work is subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amounts referred to in paragraph 1. Where the aggregate value of the lots is not less than the amount referred to in paragraph 1, the provisions of that paragraph shall apply to all lots. Contracting authorities shall be permitted to depart from this provision for lots whose estimated value net of VAT is less than ECU 1 000 000, provided that the total estimated value of all the lots exempted does not, in consequence, exceed 20 % of the total estimated value of all lots.

4. No work or contract my be split up with the intention of avoiding the application of this Directive.

5. When calculating the amounts referred to in paragraph 1 and in Article 7, account shall be taken not only of the amount of the public works contracts but also of the estimated value of the supplies needed to carry out the works are made available to the contractor by the contracting authorities.

Article 7

1. In awarding public works contracts the contracting authorities shall apply the procedures defined in Article 1 (e), (f) and (g), adapted to this Directive.

2. The contracting authorities may award their public works contracts by negotiated procedure, with prior publication of a contract notice and after having selected the candidates according to publicly known qualitative criteria, in the following cases:

(a) in the event of irregular tenders in response to an open or restricted procedure or in the case of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, insofar as the original terms of the contract are not substantially altered. The contracting authorities shall not, in these cases, publish a contract notice where they include in such negotiated procedure all the enterprises satisfying the criteria of Articles 24 to 29 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) when the works involved are carried out purely for the purpose of research, experiment or development, and not to establish commercial viability or to recover research and development costs;

(c) in exceptional cases, when the nature of the works or the risks attaching thereto do not permit prior overall pricing.

3. The contracting authorities may award their public works contracts by negotiated procedure without prior publication of a contract notice, in the following cases:

(a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure insofar as the original terms of the contract are not substantially altered and provided that a report is communicated to the Commission at its request;

(b) when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may only be carried out by a particular contractor;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseen by the contracting authorities in question, the time limit laid down for the open, restricted or negotiated procedures referred to in paragraph 2 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;

(d) for additional works not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying out of the work described therein, on condition that the award is made to the contractor carrying out such work:

— when such works cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities, or

— when such works, although separable from the execution of the original contract, are strictly necessary to its later stages,

However, the aggregate amount of contracts awarded for additional works may not exceed 50 % of the amount of the main contract;

(e) for new works consisting of the repetition of similar works entrusted to the undertaking to which the same contracting authorities awarded an earlier contact, provided that such works conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4.

As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting authorities when they apply the provisions of Article 6. This procedure may only be adopted during the three years following the conclusion of the original contract.

4. In all other cases, the contracting authorities shall award their public works contracts by the open procedure or by the restricted procedure.

Article 8

1. The contracting authority shall, within 15 days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests of the reasons for rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. For each contract awarded, the contracting authorities shall draw up a written report which shall include at least the following:

— the name and address of the contracting authority, the subject and value of the contract,

— the names of the candidates or tenderers admitted and the reasons for their selection,

— the names of the candidates or tenderers rejected and the reasons for their rejection,

— the name of the successful tenderer and the reasons for his tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to a third party,

— for negotiated procedures, the circumstances referred to in Article 7 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

Article 9

In the case of contracts relating to the design and construction of a public housing scheme whose size and complexity, and the estimated duration of the work involved, require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

In particular, contracting authorities shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, contracting authorities shall, in accordance with Articles 24 to 29, set out in such a contract notice the personal, technical and financial conditions to be fulfilled by candidates.

Where such procedure is adopted, contracting authorities shall apply the common advertising rules relating restricted procedure and to the criteria for qualitative selection.

TITLE II

COMMON RULES IN THE TECHNICAL FIELD

Article 10

1. The technical specifications defined in Annex III shall be given in the general or contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules and insofar as these are compatible with Community law, the technical specifications shall be defined by the contracting authorities by reference to

national standards implementing European standards, or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

(a) the standards, European technical approvals or common technical specifications do not include any provision for establishing conformity, or, if technical means do not exist for establishing satisfactorily the conformity of a product to these standards, European technical approvals or common technical specifications;

(b) use of these standards, European technical approvals or common technical specifications would oblige the contracting authority to acquire products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to change-over, within a given period, to European standards, European technical approvals or common technical specifications;

(c) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the tender notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards or European technical approvals or common technical specifications, the technical specifications:

(a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [1];

(b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;

(c) may be defined by reference to other documents.

In this case, it is appropriate to make reference in order of preference to:

(i) national standards implementing international standards accepted by the country of the contracting authority;

(ii) other national standards and national technical approvals of the country of the contracting authority;

(iii) any other standard.

6. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain undertakings. In particular, the indication of trade marks, patents, types, or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent', it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

TITLE III

COMMON ADVERTISING RULES

Article 11

1. Contracting authorities shall make known, by means of an indicative notice, the essential characteristics of the works contracts which they intend to award and the estimated value of which is not less than the threshold laid down in Article 6 (1).

2. Contracting authorities who wish to award a public works contract by open, restricted or negotiated procedure referred to in Article 7 (2), shall make known their intention by means of a notice.

3. Contracting authorities who wish to award a works concession contract shall make known their intention by means of a notice.

[1] OJ No L 40, 11. 2. 1989, p. 12.

4. Works concessionnaires, other than a contracting authority, who wish to award works contracts to a third party within the meaning of Article 3 (4), shall make known their intention by means of a notice.

5. Contracting authorities who have awarded a contract shall make known the result by means of a notice. However, certain information on the contract award may, in certain cases, not be published where release of such information would impede law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between contractors.

6. The notices referred to in paragraphs 1 to 5 shall be drawn up in accordance with the models given in Annexes IV, V and VI, and shall specify the information requested in those Annexes.

The contracting authorities may not require any conditions but those specified in Articles 26 and 27 when requesting information concerning the economic and technical standards which they require of contracts for their selection (point 11 of Annex IV B, point 10 of Annex IV C and point 9 of Annex IV D).

7. The contracting authorities shall send the notices referred to in paragraphs 1 to 5 as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 14, the notice shall be sent by telex, telegram or telefax.

The notice referred to in paragraph 1 shall be sent as soon as possible after the decision approving the planning of the works contracts that the contracting authorities intend to award.

The notice referred to in paragraph 5 shall be sent at the latest 48 days after the award of the contract in question.

8. The notices referred to in paragraphs 1 and 5 shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the original text alone being authentic.

9. The notices referred to in paragraphs 2, 3 and 4 shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the original languages. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

10. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 14, this period shall be reduced to five days.

11. The notice shall not be published in the official journals or in the press of the country of the contracting authority before the date of dispatch to the *Official Journal of the European Communities* and it shall mention this date. It shall not contain information other than that published in the *Official Journal of the European Communities*.

12. The contracting authorities must be able to supply evidence of the date of dispatch.

13. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Journal, or approximately 650 words. Each edition of the Journal containing one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

Article 12

1. In open procedures the time limit for the receipt of tenders, fixed by the contracting authorities shall be not less than 52 days from the date of dispatch of the notice.

2. The time limit for the receipt of tenders laid down in paragraph 1 may be reduced to 36 days where the contracting authorities have published the notice for in Article 11 (1), drafted in accordance with the specimen in Annex IV A, in the *Official Journal of the European Communities*.

3. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the contractors by the contracting authorities or competent departments within six days of receiving their application.

4. Provided it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting authorities not later than six days before the final date fixed for receipt of tenders.

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied

within the time limits laid down in paragraph 3 or 4 or where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits laid down in paragraphs 1 and 2 shall be extended accordingly.

Article 13

1. In restricted procedures and negotiated procedures as described in Article 7 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

(a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of any sum to be paid for such documents;

(b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;

(c) a reference to the contract notice published;

(d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 11 (7), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 26 and 27;

(e) the criteria for the award of the contract if these are not given in the notice.

3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than 40 days from the date of dispatch of the written invitation.

4. The time limit for the receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the notice provided for in Article 11 (1), drafted in accordance with the model in Annex IV A, in the *Official Journal of the European Communities*.

5. Requests to participate in procedures for the award of contracts may be made by letter, by telegram, telex, telefax or by telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in paragraph 1.

6. Provided it has been requested in good time, additional information relating to the contract documents must be suplied by the contracting authorities not later than six days before the final date fixed for the receipt of tenders.

7. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraphs 3 and 4 shall be extended accordingly.

Article 14

1. In cases where urgency renders impracticable the time limits laid down in Article 13, the contracting authorities may fix the following time limits:

(a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice;

(b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

2. Provided it has been requested in good time, additional information relating to the contract documents must be supplied by the contracting authorities not later than four days before the final date fixed for the receipt of tenders.

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telefax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

Article 15

Contracting authorities who wish to award a works concession contract shall fix a time limit for receipt of candidatures for the concession, which shall not be less than 52 days from the date of dispatch of the notice.

Article 16

In works contracts awarded by a works concessionnaire other than a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionnaire, shall be not less than 37 days from the

date of dispatch of the notice, and the time limit for the receipt of tenders not less than 40 days from the date of dispatch of the notice or the invitation to tender.

Article 17

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public works contracts which are not subject to the publication requirement laid down in this Directive.

TITLE IV

COMMON RULES ON PARTICIPATION

Chapter 1

General provisions

Article 18

Contracts shall be awarded on the basis of the criteria laid down in Chapter 3 of this Title, taking into account Article 19, after the suitability of the contractors not excluded under Article 24 has been checked by contracting authorities in accordance with the criteria of economic and financial standing and of technical knowledge or ability referred to in Articles 26 to 29.

Article 19

Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting authorities.

The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the tender notice if variants are not permitted.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 10 (2) or again by reference to national technical specifications referred to in Article 10 (5) (a) and (b).

Article 20

In the contract documents, the contracting authority may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's liability.

Article 21

Tenders may be submitted by groups of contractors. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.

Article 22

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the contractor's personal position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 24 to 29 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of undertakings which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be indicated in the contract notice. The range shall be determined in the light of the natural of the work to be carried out. The range must number at least 5 undertakings and may be up to 20.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 7 (2), the number of candidates admitted to negotiate may not be less than three provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discriminations to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

Article 23

1. The contracting authority may state in the contract documents, or be obliged by a Member State to do so, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the works are to be executed and which shall be applicable to the works carried out on site during the performance of the contract.

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when draving up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 30 (4) concerning the examination of abnormally low tenders.

Chapter 2

Criteria for qualitative selection

Article 24

Any contractor may be excluded from participation in the contract who:

(a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;

(b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;

(c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

(d) has been guilty of grave professional misconduct proved by any means which the contracting authorities can justify;

(e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Chapter.

Where the contracting authority requires of the contractor proof that none of the cases quoted in (a), (b), (c), (e) or (f) applies to him, it shall accept as sufficient evidence:

— for points (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin in the country whence that person comes showing that these requirements have been met;

— for points (e) or (f), a certificate issued by the competent authority in the Member State concerned.

Where the country concerned does not issue such documents or certificates, they may be replaced a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

Member States shall designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

Article 25

Any contractor wishing to take part in a public works contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the Member State in which he is established:

— in Belgium the 'Registre du Commerce - Handelsregister',

— in Denmark, the 'Handelsregistret, Aktieselskabesregistret' and the 'Erhvervsregistret',

— in Germany, the 'Handelsregister' and the 'Handwerksrolle',

— in Greece, the registrar of contractors' enterprises '(Μητρώο Εργοληπτικών Επιχειρήσεων)' of the Ministry for Environment, Town and Country Planning and Public Works,

— in Spain, the 'Registro Oficial de Contratistas del Ministerio de Industria, Comercio y Turismo',

— in France, the 'Registre du Commerce and the Répertoire des métiers',

— in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato',

— in Luxembourg, the 'Registre aux firmes and the Rôle de la Chambre des métiers',

— in the Netherlands, the 'Handelsregister',

— in Portugal, the 'Commissão de Alvarás de Empresas de Obras Públicas e Particulares (CAEOPP)',

— in the United Kingdom and Ireland, the contractor may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

Article 26

1. Evidence of the contractor's financial and economic standing may, as a general rule, be furnished by one or more of the following references:

(a) appropriate statements from bankers;

(b) the presentation of the firm's balance sheets or extracts from the balance sheets, where publication of the balance sheet is required under the law of the country in which the contractor is established;

(c) a statement of the firm's overall turnover and the turnover on construction works for the three previous financial years.

2. The contracting authorities shall specify in the notice or in the invitation to tender which reference or references they have chosen and what references other than those mentioned under paragraph 1 (a), (b) or (c) are to be produced.

3. If, for any valid reason, the contractor is unable to supply the references requested by the contracting authorities, he may prove his economic and financial standing by any other document which the contracting authorities consider appropriate.

Article 27

1. Evidence of the contractor's technical capability may be furnished by:

(a) the contractor's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for carrying out the works;

(b) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where necessary, the competent authority shall submit these certificates to the contracting authority direct;

(c) a statement of the tools, plant and technical equipment available to the contractor for carrying out the work;

(d) a statement of the firm's average annual manpower and the number of managerial staff for the last three years;

(e) a statement of the technicians or technical bodies which the contractor can call upon for carrying out the work, whether or not they belong to the firm.

2. The contracting authorities shall specify in the invitation to tender which of these references are to be produced.

Article 28

Within the limits of Articles 24 to 27, the contracting authority may invite the contractor to supplement the certificates and documents submitted or to clarify them.

Article 29

1. Member States who have official lists of recognized contractors must adapt them to the provisions of Article 24 (a) to (d) and (g) and of Articles 25, 26 and 27.

2. Contractors registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

3. Certified registration in the official lists by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability for works corresponding to the contractor's classification only as regards Articles 24 (a) to (d) and (g), 25, 26 (b) and (c) and 27 (b) and (d).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered contractor whenever a contract is offered.

The contracting authorities of other Member States shall apply the above provisions only in favour of contractors who are established in the country holding the official list.

4. For the registration of contractors of other Member States in an official list, no further proofs and statements may be required other than those requested of nationals and, in any event, only those provided for under Articles 24 to 27.

5. Member States holding an official list shall communicate to other Member States the address of the body to which requests for registration may be made.

Chapter 3

Criteria for the award of contracts

Article 30

1. The criteria on which the contracting authorities shall base the award of contracts shall be:

(a) either the lowest price only;

(b) or, when the award is made to the most economically advantageous tender, various criteria according to the contract: e. g. price, period for completion, running costs, profitability, technical merit.

2. In the case referred to in paragraph 1 (b), the contracting authority shall state in the contract documents or in the contract notice all the criteria it intends to apply to the award, where possible in descending order of importance.

3. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of the adoption of this Directive whose aim is to give preference to certain tenderers, on condition that the rules invoked are compatible with the EEC Treaty.

4. If, for a given contract, tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

The contracting authority may take into consideration explanations which are justified on objective grounds including the economy of the construction method, or the technical solution chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the work, or the originality of the work proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it consider to be too low.

However, until the end of 1992, if current national law so permits, the contracting authority may exceptionally, without any discrimination on grounds of nationality, reject tenders which are abnormally low in relation to the works, without being obliged to comply with the procedure provided for in the first subparagraph if the number of such tenders for a particular contract is so high that implementation of this procedure would lead to a considerable delay and jeopardize the public attaching to the execution of the contract in question. Recourse to this exceptional procedure shall be mentioned in the notice referred to in Article 11 (5).

Article 31

1. Until 31 December 1992, this Directive shall not prevent the application of existing national provisions on the award of public works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in regions whose development is lagging behind and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty, in particular with the principles of non-discrimination on grounds of nationality, freedom of establishment and freedom to provide services, and with the Community's international obligations.

2. Paragraph 1 shall be without prejudice to Article 30 (3).

Article 32

1. Member States shall inform the Commission of national covered by Article 30 (3) and Article 31 and of the rules for applying them.

2. Member States concerned shall forward to the Commission, every year, a report describing the practical application of the measures referred to in paragraph 1. The reports shall be submitted to the Advisory Committee for Public Contracts.

TITLE V

FINAL PROVISIONS

Article 33

The calculation of the time limit for receipt of tenders or requests to participate shall be made in accordance with

Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits [1].

Article 34

1. In order to permit assessment of the results of applying the Directive, Member States shall forward to the Commission a statistical report on the contracts award by contracting authorities by 31 October 1993 at the latest for the preceding year and thereafter by 31 October of every second year.

Nevertheless, for Greece, Spain and Portugal, the date of 31 October 1993 shall be replaced by 31 October 1995.

2. The statistical reports shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the threshold, subdivided as far as possible by procedure, category of work and the nationality of the contractor to whom the contract has been awarded, and in the case of negotiated procedures, subdivided in accordance with Article 7, listing the number and value of the contracts awarded to each Member State and to third countries.

3. The Commission shall determine in accordance with the procedure laid down in Article 35 (3) the nature of any additional statistical information, which is requested under the Directive.

Article 35

1. Annex I shall be amended by the Commission, in accordance with the procedure laid down in paragraph 3, when, in particular on the basis of the notifications from the Member States, it appears necessary:

(a) to remove from the said Annex bodies governed by public law which no longer fulfil the criteria laid down in Article 1 (b);

(b) to include in that Annex bodies governed by public law which meet those criteria.

2. The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Article 11 and of the statistical reports provided for in Article 34, the nomenclature provided for in Annex II, as well as the reference in the notices to particular positions of the nomenclature, may be modified in accordance with the procedure laid down in paragraph 3.

3. The chairman of the Advisory Committee for Public Contracts shall submit to the committee a draft of any measures to be taken. The committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time limit to be fixed by the chairman in light of the urgency of the matter.

The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to request that its position be recorded in the minutes.

The Commission shall take the fullest account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

4. Amended versions of Annexes I and II and of the conditions set out in paragraph 2 shall be published in the *Official Journal of the European Communities*.

Article 36

1. Directive 71/305/EEC [2] is hereby repealed, without prejudice to the obligations of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex VII.

2. References to the repealed Directive shall be construed as references to this Directive and should be read in accordance with the correlation table given in Annex VIII.

Article 37

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1993.

For the Council

The President

J. TRØJBORG

[1] OJ No L 124, 8. 6. 1971, p. 1.

[2] including the provisions which amended this Directive, namely:
- Directive 78/669/EEC (OJ No L 225, 16. 8. 1978, p. 41),
- Directive 89/440/EEC (OJ No L 210, 21. 7. 1989, p. 1),
- Commission Decision 90/380/EEC (OJ No L 187, 19. 7. 1990, p. 55,
- Article 35 (2) of Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1), and
- Directive 93/4/EEC (OJ No L 38, 16. 2. 1993, p. 31).

ANNEX I

LISTS OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW REFERRED TO IN ARTICLE 1 (b)

I. BELGIUM

Bodies

— Archives générales du Royaume et Archives de l'État dans les Provinces — Algemeen Rijksarchief en Rijksarchief in de Provinciën,

— Conseil autonome de l'enseignement communautaire — Autonome Raad van het Gemeenschapsonderwijs,

— Radio et télévision belges, émissions néerlandaises — Belgische Radio en Televisie, Nederlandse uitzendingen,

— Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft (Centre de radio et télévision belge de la Communauté de langue allemande — Centrum voor Belgische Radio en Televisie voor de Duitstalige Gemeenschap),

— Bibliothèque royale Albert Ier — Koninklijke Bibliotheek Albert I,

— Caisse auxiliaire de paiement des allocations de chômage — Hulpkas voor Werkloosheidsuitkeringen,

— Caisse auxiliaire d'assurance maladie-invalidité — Hulpkas voor Ziekte- en Invaliditeitsverzekeringen,

— Caisse nationale des pensions de retraite et de survie — Rijkskas voor Rust- en Overlevingspensioenen,

— Caisse de secours et de prévoyance en faveur des marins naviguant sous pavillon belge — Hulp- en Voorzorgskas voor Zeevarenden onder Belgische Vlag,

— Caisse nationale des calamités — Nationale Kas voor de Rampenschade,

— Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie diamantaire — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders der Diamantnijverheid,

— Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie du bois — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders in de Houtnijverheid,

— Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de batellerie — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders der Ondernemingen voor Binnenscheepvaart,

— Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de chargement, déchargement et manutention de marchandises dans les ports débarcadères, entrepôts et stations (appelée habituellement «Caisse spéciale de compensation pour allocations familiales des régiones maritimes») — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: „Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten"),

— Centre informatique pour la Région bruxelloise — Centrum voor Informatica voor het Brusselse Gewest,

— Commissariat général de la Communauté flamande pour la coopération internationale — Commissariaat-generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap,

— Commissariat général pour les relations internationales de la Communauté française de Belgique — Commissariaat-generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België,

— Conseil central de l'économie — Centrale Raad voor het Bedrijfsleven,

— Conseil économique et social de la Région wallonne — Sociaal-economische Raad van het Waals Gewest,

— Conseil national du travail — Nationale Arbeidsraad,

— Conseil supérieur des classes moyennes — Hoge Raad voor de Middenstand,

— Office pour les travaux d'infrastructure de l'enseignement subsidié — Dienst voor Infrastructuurwerken van het Gesubsidieerd Onderwijs,

— Fondation royale — Koninklijke Schenking,

— Fonds communautaire de garantie des bâtiments scolaires — Gemeenschappelijk Waarborgfonds voor Schoolgebouwen,

— Fonds d'aide médicale urgente — Fonds voor Dringende Geneeskundige Hulp,

— Fonds des accidents du travail — Fonds voor Arbeitsongevallen,

— Fonds des maladies professionnelles — Fonds voor Beroepsziekten,

— Fonds des routes — Wegenfonds,

— Fonds d'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises — Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen Ontslagen Werknemers,

— Fonds national de garantie pour la réparation des dégâts houillers — Nationaal Waarborgfonds inzake Kolenmijnschade,

— Fonds national de retraite des ouvriers mineurs — Nationaal Pensioenfonds voor Mijnwerkers,

— Fonds pour le financement des prêts à des États étrangers — Fonds voor Financiering van de Leningen aan Vreemde Staten,

— Fonds pour la rémunération des mousses enrôlés à bord des bâtiments de pêche — Fonds voor Scheepsjongens aan Boord van Vissersvaartuigen,

— Fonds wallon d'avances pour la réparation des dommages provoqués par des pompages et des prises d'eau souterraine — Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen,

— Institut d'aéronomie spatiale — Instituut voor Ruimte-aëronomie,

— Institut belge de normalisation — Belgisch Instituut voor Normalisatie,

— Institut bruxellois de l'environnement — Brussels Instituut voor Milieubeheer,

— Institut d'expertise vétérinaire — Instituut voor Veterinaire Keuring,

— Institut économique et social des classes moyennes — Economisch en Sociaal Instituut voor de Middenstand,

— Institut d'hygiène et d'épidémiologie — Instituut voor Hygiëne en Epidemiologie,

— Institut francophone pour la formation permanente des classes moyennes — Franstalig Instituut voor Permanente Vorming voor de Middenstand,

— Institut géographique national — Nationaal Geografisch Instituut,

— Institut géotechnique de l'État — Rijksinstituut voor Grondmechanica,

— Institut national d'assurance maladie-invalidité — Rijksinstituut voor Ziekte- en Invaliditeitsverzekering,

— Institut national d'assurances sociales pour travailleurs indépendants — Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen,

— Institut national des industries extractives — Nationaal Instituut voor de Extractiebedrijven,

— Institut national des invalides de guerre, anciens combattants et victimes de guerre — Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers,

— Institut pour l'amélioration des conditions de travail — Instituut voor Verbetering van de Arbeidsvoorwaarden,

— Institut pour l'encouragement de la recherche scientifique dans l'industrie et l'agriculture — Instituut tot Aanmoediging van het Wetenschappelijk Onderzoek in Nijverheid en Landbouw,

— Institut royal belge des sciences naturelles — Koninklijk Belgisch Instituut voor Natuurwetenschappen,

— Institut royal belge du patrimoine artistique — Koninklijk Belgisch Instituut voor het Kunstpatrimonium,

— Institut royal de météorologie — Koninklijk Meteorologisch Instituut,

— Enfance et famille — Kind en Gezin,

— Compagnie des installations maritimes de Bruges — Maatschappij der Brugse Zeevaartinrichtingen,

— Mémorial national du fort de Breendonck — Nationaal Gedenkteken van het Fort van Breendonck,

— Musée royal de l'Afrique centrale — Koninklijk Museum voor Midden-Afrika,

— Musées royaux d'art et d'histoire — Koninklijke Musea voor Kunst en Geschiedenis,

— Musées royaux des beaux-arts de Belgique — Koninklijke Musea voor Schone Kunsten van België,

— Observatoire royal de Belgique — Koninklijke Sterrenwacht van België,

— Office belge de l'économie et de l'agriculture — Belgische Dienst voor Bedrijfsleven en Landbouw,

— Office belge du commerce extérieur — Belgische Dienst voor Buitenlandse Handel,

— Office central d'action sociale et culturelle au profit des membres de la communauté militaire — Centrale Dienst voor Sociale en Culturele Actie ten behoeve van de Leden van de Militaire Gemeenschap,
— Office de la naissance et de l'enfance — Dienst voor Borelingen en Kinderen,
— Office de la navigation — Dienst voor de Scheepvaart,
— Office de promotion du tourisme de la Communauté française — Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap,
— Office de renseignements et d'aide aux familles des militaires — Hulp- en Informatiebureau voor Gezinnen van Militairen,
— Office de sécurité sociale d'outre-mer — Dienst voor Overzeese Sociale Zekerheid,
— Office national d'allocations familiales pour travailleurs salariés — Rijksdienst voor Kinderbijslag voor Werknemers,
— Office national de l'emploi — Rijksdienst voor de Arbeidsvoorziening,
— Office national des débouchés agricoles et horticoles — Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten,
— Office national de sécurité sociale — Rijksdienst voor Sociale Zekerheid,
— Office national de sécurité sociale des administrations provinciales et locales — Rijksdienst voor Sociale Zekerheid van de Provinciale en Plaatselijke Overheidsdiensten,
— Office national des pensions — Rijksdienst voor Pensioenen,
— Office national des vacances annuelles — Rijksdienst voor de Jaarlijkse Vakantie,
— Office national du lait — Nationale Zuiveldienst,
— Office régional bruxellois de l'emploi — Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling,
— Office régional et communautaire de l'emploi et de la formation — Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming,
— Office régulateur de la navigation intérieure — Dienst voor Regeling der Binnenvaart,
— Société publique des déchets pour la Région flamande — Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest,
— Orchestre national de Belgique — Nationaal Orkest van België,
— Organisme national des déchets radioactifs et des matières fissiles — Nationale Instelling voor Radioactief Afval en Splijtstoffen,
— Palais des beaux-arts — Paleis voor Schone Kunsten,
— Pool des marins de la marine marchande — Pool van de Zeelieden ter Koopvaardij,
— Port autonome de Charleroi — Autonome Haven van Charleroi,
— Port autonome de Liège — Autonome Haven van Luik,
— Port autonome de Namur — Autonome Haven van Namen,
— Radio et télévision belges de la Communauté française — Belgische Radio en Televisie van de Franse Gemeenschap,
— Régie des bâtiments — Regie der Gebouwen,
— Régie des voies aériennes — Regie der Luchtwegen,
— Régie des postes — Regie der Posterijen,
— Régie des télégraphes et des téléphones — Regie van Telegraaf en Telefoon,
— Conseil économique et social pour la Flandre — Sociaal-economische Raad voor Vlaanderen,
— Société anonyme du canal et des installations maritimes de Bruxelles — Naamloze Vennootschap „Zeekanaal en Haveninrichtingen van Brussel",
— Société du logement de la Région bruxelloise et sociétés agréées — Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen,
— Société nationale terrienne — Nationale Landmaatschappij,
— Théâtre royal de la Monnaie — De Koninklijke Muntschouwburg,
— Universités relevant de la Communauté flamande — Universiteiten afhangende van de Vlaamse Gemeenschap,
— universités relevant de la Communauté française — Universiteiten afhangende van de Franse Gemeenschap,
— Office flamand de l'emploi et de la formation professionnelle — Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding,
— Fonds flamand de construction d'institutions hospitalières et médico-sociales — Vlaams Fonds voor de Bouw van Ziekenhuizen en Medisch-Sociale Instellingen,
— Société flamande du logement et sociétés agréées — Vlaamse Huisvestingsmaatschappij en erkende maatschappijen,
— Société régionale wallonne du logement et sociétés agréées — Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen,
— Société flamande d'épuration des eaux — Vlaamse Maatschappij voor Waterzuivering,
— Fonds flamand du logement des familles nombreuses — Vlaams Woningfonds van de Grote Gezinnen.

Categories

— les centres publics d'aide sociale,

— les fabriques d'église (church councils).

II. DENMARK

Bodies

Københavns Havn,

— Danmarks Radio,

— TV 2/Danmark,

— TV2 Reklame A/S,

— Danmarks Nationalbank,

— A/S Storebæltsforbindelsen,

— A/S Øresundsforbindelsen (alene tilslutningsanlæg i Danmark),

— Københavns Lufthavn A/S,

— Byfornyelsesselskabet København,

— Tele Danmark A/S with subsidiaries:

— Fyns Telefon A/S,

— Jydsk Telefon Aktieselskab A/S,

— Kjøbenhavns Telefon Aktieselskab,

— Tele Sønderjylland A/S,

— Telecom A/S,

— Tele Danmark Mobil A/S.

Categories

— De kommunale havne (municipal ports),

— Andre Forvaltningssubjekter (other public administrative bodies).

III. GERMANY

1. **Legal persons governed by public law**

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:

1.1. *Authorities*

— Wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies),

— berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists),

— Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftmen's guilds, tradesmen's associations),

— Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds),

— kassenärztliche Vereinigungen (associations of panel doctors),

— Genossenschaften und Verbände (cooperatives and other associations).

1.2. *Establishments and foundations*

Non-industrial and non-commercial establishments subject to state control and operating in the general interest, particularly in the following fields:

— Rechtsfähige Bundesanstalten (federal institutions having legal capacity),

— Versorgungsanstalten und Studentenwerke (pension organizations and students' unions),

— Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations).

2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to State control and operating in the general interest (including 'kommunale Versorgungsunternehmen' — municipal utilities), particularly in the following fields:

— Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) (health: hospitals, health resort establishments, medical research institutes, testing and carcase-disposal establishments),

— Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) (culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens),

— Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless),

— Sport (Schwimmbäder, Sportanlagen und -einrichtungen) (sport: swimming baths, sports facilities),

— Sicherheit (Feuerwehren, Rettungsdienste) (safety: fire brigades, other emergency services),

— Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) (education: training, further training and retraining establishments, adult evening classes),

— Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) (science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science),

— Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage disposal services: street cleaning, waste and sewage disposal),

— Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung) (building, civil engineering and housing: town planning, urban development, housing enterprises, housing agency services),

— Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development),

— Friedhofs- und Bestattungswesen (cemeteries and burial services),

— Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with developing countries: financing, technical cooperation, development aid, training).

IV. GREECE

Categories

Other legal persons governed by public law whose public works contracts are subject to State control.

V. SPAIN

Categories

— Entidades Gestoras y Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services)

— Organismos Autónomos de la Administración del Estado (independent bodies of the national administration)

— Organismos Autónomos de las Comunidades Autónomas (independent bodies of the autonomous communities)

— Organismos Autónomos de las Entidades Locales (independent bodies of local authorities)

— Otras entidades sometidas a la legislación de contratos del Estado español (other entities subject to Spanish State legislation on procurement).

VI. FRANCE

Bodies

1. National public bodies:

1.1. with scientific, cultural and professional character:

— Collège de France,

— Conservatoire national des arts et métiers,

— Observatoire de Paris.

1.2. Scientific and technological:

— Centre national de la recherche scientifique (CNRS),

— Institut national de la recherche agronomique,

— Institut national de la santé et de la recherche médicale,

— Institut français de recherche scientifique pour le développement en coopération (ORSTOM).

1.3. with administrative character:

— Agence nationale pour l'emploi,

— Caisse nationale des allocations familiales,

— Caisse nationale d'assurance maladie des travailleurs salariés,

— Caisse nationale d'assurance vieillesse des travailleurs salariés,

— Office national des anciens combattants et victimes de la guerre,

— Agences financières de bassins.

Categories

1. National public bodies:

— universités (universities),

— écoles normales d'instituteurs (teacher training colleges).

2. Administrative public bodies at regional, departmental and local level:

— collèges (secondary schools),

— lycées (secondary schools),

— établissements publics hospitaliers (public hospitals),

— offices publics d'habitations à loyer modéré (OPHLM) (public offices for low-cost housing).

3. Groupings of territorial authorities:

— syndicats de communes (associations of local authorities),

— districts (districts),

— communautés urbaines (municipalities),

— institutions interdépartementales et interrégionales (institutions common to more than one Département and interregional institutions).

VII. IRELAND

Bodies

— Shannon Free Airport Development Company Ltd,

— Local Government Computer Services Board,

— Local Government Staff Negotiations Board,

— Córas Tráchtála (Irish Export Board),

— Industrial Development Authority,

— Irish Goods Council (Promotion of Irish Goods),

— Córas Beostoic agus Feola (CBF) (Irish Meat Board),

— Bord Fáilte Éireann (Irish Tourism Board),

— Údarás na Gaeltachta (Development Authority for Gaeltacht Regions),

— An Bord Pleanála (Irish Planning Board).

Categories

— Third level Educational Bodies of a Public Character,

— National Training, Cultural or Research Agencies,

— Hospital Boards of a Public Character,

— National Health & Social Agencies of a Public Character,

— Central & Regional Fishery Boards.

VIII. ITALY

Bodies

— Agenzia per la promozione dello sviluppo nel Mezzogiorno.

Categories

— Enti portuali e aeroportuali (port and airport authorities),

— Consorzi per le opere idrauliche (consortia for water engineering works),

— Le università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work),

— Gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological oberservatories),

— Enti di ricerca e sperimentazione (organizations conducting research and experimental work),

— Le istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions),

— Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes),

— Consorzi di bonifica (land reclamation consortia),

— Enti di sviluppo o di irrigazione (development or irrigation agencies),

— Consorzi per le aree industriali (associations for industrial areas),

— Comunità montane (groupings of municipalities in mountain areas),

— Enti preposti a servizi di pubblico interesse (organizations providing services in the public interest),

— Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities),

— Enti culturali e di promozione artistica (organizations promoting culture and artistic activities)

IX. LUXEMBOURG

Categories

— Les établissements publics de l'État placés sous la surveillance d'un membre du gouvernement (public establishments of the State placed under the supervision of a member of the Government),

— Les établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the communes),

— Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée par la suite (associations of communes created under the law of 14 February 1900 as subsequently modified).

X. THE NETHERLANDS

Bodies

— De Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties.

Categories

— De waterschappen (administration of water engineering works),

— De instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen (Institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985)) wet op het Wetenschappelijk Onderwijs (1985) (teaching hospitals).

XI. PORTUGAL

Categories

— Estabelecimentos públicos de ensino investigaçaço científica e saúde (public establishments for education, scientific research and health),

— Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character),

— Fundações públicas (public foundations),

— Administrações gerais e juntas autonómas (general administration bodies and independent councils).

XII. THE UNITED KINGDOM

Bodies

— Central Blood Laboratories Authority,
— Design Council,
— Health and Safety Executive,
— National Research Development Corporation,
— Public Health Laboratory Services Board,
— Advisory, Conciliation and Arbitration Service,
— Commission for the New Towns,
— Development Board For Rural Wales,
— English Industrial Estates Corporation,
— National Rivers Authority,
— Northern Ireland Housing Executive,
— Scottish Enterprise,
— Scottish Homes,
— Welsh Development Agency.

Categories

— Universities and polytechnics, maintained schools and colleges,
— National Museums and Galleries,
— Research Councils,
— Fire Authorities,
— National Health Service Authorities,
— Police Authorities,
— New Town Development Corporations,
— Urban Development Corporations.

ANNEX II

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES (NACE)

Classes	Groups	Subgroups and items	Description
50			BUILDING AND CIVIL ENGINEERING
	500		**General building and civil engineering work (without any particular specification) and demolition work**
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		**Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential**
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repointing, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		**Civil engineering: construction of roads, bridges, railways, etc.**
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		**Installation (fittings and fixtures)**
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		**Building completion work**
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

ANNEX III

DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive the following terms shall be defined as follows:

1. 'Technical specifications': the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended. by the contracting authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall also include rules relating to design and costing, the test, inspection and acceptances for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

2. 'Standard': a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;

3. 'European standard': a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations;

4. 'European technical approval': a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. The European agreement shall be issued by an approval body designated for this purpose by the Member State;

5. 'Common technical specification': a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.

6. 'Essential requirements': requirements regarding safety, health and certain other aspects in the general interest, that the construction works must meet.

ANNEX IV

MODEL CONTRACT NOTICES

A. Prior information

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.

2. (a) Site.

   (b) Nature and extent of the services to be provided and, where relevant, main characteristics of any lots by reference to the work.

   (c) If available, an estimate of the cost range of the proposed services.

3. (a) Estimated date for initiating the award procedures in respect of the contract or contracts.

   (b) If known, estimated date for the start of the work.

   (c) If known, estimated timetable for completion of the work.

4. If known, terms of financing of the work and of price revision and/or references to the provisions in which these are contained.

5. Other information.

6. Date of dispatch of the notice.

7. Date of receipt of the notice by the Office for Official Publication of the European Communities.

B. Open procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.

2. (a) Award procedure chosen.

   (b) Nature of the contract for which tenders are being requested:

3. (a) Site.

   (b) Nature and extent of the services to be provided and general nature of the work.

   (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.

   (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Any time limit for completion.

5. (a) Name and address of the service from which the contract documents and additional documents may be requested.

   (b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.

6. (a) Final date for receipt of tenders.

   (b) Address to which tenders must be sent.

   (c) Language or languages in which tenders must be drawn up.

7. (a) Where applicable, the persons authorized to be present at the opening of tenders.

   (b) Date, hour and place of opening of tenders.

8. Any deposit and guarantees required.

9. Main terms concerning financing and payment and/or references to the provisions in which these are contained.

10. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.

11. Minimum economic and technical standards required of the contractor to whom the contract is awarded.

12. Period during which the tenderer is bound to keep open his tender.

13. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

14. Where applicable, prohibition on variants.

15. Other information.

16. Date of publication of the prior information notice in the *Official Journal of the European Communities* or references to its non-publication.

17. Date of dispatch of the notice.

18. Date of receipt of the notice by the Office for Official Publications of the European Communities.

C. Restricted procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.

2. (a) Award procedure chosen.

   (b) Where applicable, justification for the use of the accelerated procedure.

   (c) Nature of the contract which tenders are being requested.

3. (a) Site.

   (b) Nature and extent of the services to be provided and general nature of the work.

   (c) If the work of the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.

   (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Any time limit for completion.

5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.

6. (a) Final date for receipt of requests to participate.

   (b) Address to which requests must be sent.

   (c) Language or languages in which requests must be drawn up.

7. Final date for dispatch of invitations to tender.

8. Any deposit and guarantees required.

9. Main terms concerning financing and payment and/or the provisions in which these are contained.

10. Information concerning the contractor's personal position and minimum economic and technical standards required of the contractor to whom the contract is awarded.

11. Criteria for the award of the contract where they are not mentioned in the invitation to tender.

12. Where applicable, prohibition on variants.

13. Other information.

14. Date of publication of the prior information notice in the *Official Journal of the European Communities* or reference to its non-publication.

15. Date of dispatch of the notice.

16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

D. Negotiated procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.

2. (a) Award procedure chosen.

   (b) Where applicable, justification for the use of the accelerated procedure.

   (c) Nature of the contract for which tenders are being requested.

3. (a) Site.

   (b) Nature and extent of the services to be provided and general nature of the work.

   (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.

   (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Any time limit.

5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.

6. (a) Final date for receipt of tenders.

   (b) Address to which tenders must be sent.

   (c) Language or languages in which tenders must be drawn up.

7. Any deposit and guarantees required.

8. Main terms concerning financing and payment and/or the provisions in which these are contained.

9. Information concerning the contractor's personal position and information and formalities necessary in order to evaluate the minimum economic and technical standards required of the contractor to whom the contract is awarded.

10. Where applicable, prohibition on variants.

11. Where applicable, name and address of suppliers already selected by the awarding authority.

12. Date(s) of previous publications in the *Official Journal of the European Communities*.

13. Other information.

14. Date of publication of the prior information notice in the *Official Journal of the European Communities*.

15. Date of dispatch of the notice.

16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

E. Contract awards

1. Name and address of awarding authority.
2. Award procedure chosen.
3. Date of award of contract.
4. Criteria for award of contract.
5. Number of offers received.
6. Name and address of successful contractor(s).
7. Nature and extent of the services provided, general characteristics of the finished structure.
8. Price or range of prices (minimum/maximum) paid.
9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
10. Other information.
11. Date of publication of the tender notice in the *Official Journal of the European Communities.*
12. Date of dispatch of the notice.
13. Date of receipt of the notice by the Office for Official Publications of the European Communities.

ANNEX V

MODEL NOTICE OF PUBLIC WORKS CONCESSION

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Site.
   (b) Subject of the concession, nature and extent of the services to be provided
3. (a) Final date for receipt of candidatures.
   (b) Address to which candidatures must be sent.
   (c) Language or languages in which candidatures must be drawn up.
4. Personal, technical and financial conditions to be fulfilled by the candidates.
5. Criteria for award of contract.
6. Where applicable, the minimum percentage of the works contracts awarded to third parties.
7. Other information.
8. Date of dispatch of the notice.
9. Date of receipt of the notice by the Office for Official Publications of the European Communities.

ANNEX VI

MODEL NOTICE OF WORKS CONTRACTS AWARDED BY THE CONCESSIONNAIRE

1. (a) Site.
   (b) Nature and extent of the services to be provided and the general nature of the work.
2. Any time limit for the completion of the works.
3. Name and address of the service from which the contract documents and additional documents may be requested.
4. (a) Final date for receipt of requests to participate and/or for receipt of tenders.
   (b) Address to which requests must be sent.
   (c) Language of languages in which requests must be drawn up.
5. Any deposit and guarantees required.
6. Economic and technical standards required of the contract.
7. Criteria for the award of the contract.
8. Other information.
9. Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.

ANNEX VII

DEADLINES FOR TRANSPOSITION AND FOR APPLICATION

Directive 71/305/EEC [1]	amended by Directives			amended by Act of Accession of		
	78/669/EEC [2]	89/440/EEC [3]	90/531/EEC [4]	DK, IRL, UK [5]	GR [6]	E, P [7]
Article 1		amended				
Article 1 a		amended				
Article 1 b		amended				
Article 2		amended				
Article 3 (1)		deleted				
Article 3 (2)		deleted				
Article 3 (3)		deleted				
Article 3 (4) and (5), subparagraphs (a) and (b)		deleted				
Article 3, (4) and (5) subparagraph (c)		amended				
Article 4		amended				
Article 4 a		amended				
Article 5		amended				
Article 5 a		amended				
Article 6		amended				
Article 7 (1)	amended	deleted				
Article 7 (2)		deleted				
Article 8		deleted				
Article 9		deleted				
Article 10		amended				
Article 11		deleted				
Article 12		amended				
Article 13		amended				
Article 14		amended				
Article 15		amended				
Article 15 a		amended				
Article 15 b		amended				
Article 16		deleted				
Article 17		deleted				
Article 18		deleted				
Article 19	amended	amended				
Article 20		amended				
Article 20 a		amended				
Article 20 b		amended				
Article 21						
Article 22		amended				
Article 22 a		amended				
Article 23						
Article 24		amended		amended	amended	amended
Article 25						
Article 26						
Article 27						
Article 28						
Article 29 (1)						
Article 29 (2)						
Article 29 (3)		deleted				
Article 29 (4)		amended				
Article 29 (5)		amended				
Article 29 a		amended				
Article 29 b		amended				
Article 30						
Article 30 a		amended				
Article 30 b		amended				
Article 31		deleted				
Article 32						
Article 33						
Article 34						
Annexes I to VI		I to VI		I	I	II

(1) EC-6: 30. 7. 1972.
DK, IRL, UK: 1. 1. 1973.
GR: 1. 1. 1981.
E, P: 1. 1. 1986.

(2) EC-9: 16. 2. 1979.
GR: 1. 1. 1981.
E, P: 1. 1. 1986.

(3) EC-9: 19. 7. 1990.
GR, E, P: 1. 3. 1992.

(4) EC-9: 1. 1. 1993.
E: 1. 1. 1996.
GR, P: 1. 1. 1998.

(5) EC-9: 1. 1. 1973.
(6) EC-10: 1. 1. 1981.
(7) EC-12: 1. 1. 1986.

ANNEX VIII

CORRELATION TABLE

Directive 71/305/EEC	This Directive
Article 1	Article 1
Article 1 a	Article 2
Article 1 b	Article 3
Article 2	—
Article 3 (1)	—
Article 3 (2)	—
Article 3 (3)	—
Article 3 (4) and (5), subparagraphs (a) and (b)	Article 4, subparagraph (a)
Article 3 (4) and (5), subparagraph (c)	Article 4, subparagraph (b)
Article 4	Article 5
Article 4 a	Article 6
Article 5	Article 7
Article 5 a	Article 8
Article 6	Article 9
Article 7	—
Article 8	—
Article 9	—
Article 10	Article 10
Article 11	—
Article 12	Article 11
Article 13	Article 12
Article 14	Article 13
Article 15	Article 14
Article 15 a	Article 15
Article 15 b	Article 16
Article 16	—
Article 17	—
Article 18	—
Article 19	Article 17
Article 20	Article 18
Article 20 a	Article 19
Article 20 b	Article 20
Article 21	Article 21
Article 22	Article 22
Article 22 a	Article 23
Article 23	Article 24
Article 24	Article 25
Article 25	Article 26
Article 26	Article 27
Article 27	Article 28
Article 28	Article 29
Article 29 (1)	Article 30 (1)
Article 29 (2)	Article 30 (2)
Article 29 (3)	—
Article 29 (4)	Article 30 (3)
Article 29 (5)	Article 30 (4)
Article 29 a	Article 31
Article 29 b	Article 32
Article 30	Article 33
Article 30 a	Article 34
Article 30 b	Article 35
Article 31	—
—	Article 36
Article 32	—
Article 33	—
—	Article 37
Article 34	Article 38
Annexes I to VI	Annexes I to VI
—	Annexes VII and VIII

COUNCIL DIRECTIVE 93/38/EEC

of 14 June 1993

coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Articles 57 (2), 66, 100a and 113 thereof,

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

In cooperation with the European Parliament (2),

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

1. Whereas the measures aimed at progressively establishing the internal market during the period up to 31 December 1992 need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;

2. Whereas restrictions on the free movement of goods and on freeedom to provide services in respect of supply and service contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the EEC Treaty;

3. Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community or to provide the relevant service in the Community;

4. Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;

5. Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (4), and Council Directive 77/62/EEC of 21 December 1976 coordinating procedure for the award of public supply contracts (5);

6. Whereas the White Paper on the completion of the internal market also contains an action programme and a timetable for opening up service contracts;

7. Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;

8. Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

9. Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;

10. Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, thus permitting them to be addressed in one instrument;

11. Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to,

(1) OJ No C 337, 31. 12. 1991, p. 1.
(2) OJ No C 176, 13. 7. 1992, p. 136 and OJ No C 150, 31. 5. 1993.
(3) OJ C 106, 27. 4. 1992, p. 6.
(4) OJ No L 185, 16. 8. 1971, p. 5. Directive as last amended by Directive 89/440/EEC (OJ No L 210, 21. 7. 1989, p. 1).
(5) OJ No L 13, 15. 1. 1977, p. 1. Directive as last amended by Directive 88/295/EEC (OJ No L 127, 20. 5. 1988, p. 1).

provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;

12. Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities administrative, managerial or supervisory bodies;

13. Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but are nevertheless directly exposed to competitive forces in markets to which entry is unrestricted;

14. Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;

15. Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;

16. Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;

17. Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;

18. Whereas Regulations (EEC) No 3975/87 [1] and (EEC) No 3976/87 [2], Directive 87/601/EEC [3] and Decision 87/602/EEC [4] are designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;

19. Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;

20. Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;

21. Whereas the rules on the award of service contracts should be as close as possible to the rules on the works and supply contracts referred to in this Directive;

22. Whereas obstacles to the free movement of services need to be avoided; whereas, therefore, service providers may be either natural or legal persons; whereas this Directive shall not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession provided that they are compatible with Community law;

23. Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing the services into categories corresponding to particular positions of a common classification; whereas Annexes XVI A and XVI B to this Directive refer to the United Nations CPC (Central Product Classification) nomenclature; whereas that nomenclature is likely to be replaced by a Community nomenclature in the future; whereas it is

(1) OJ No L 374, 31. 12. 1987, p. 1.
(2) OJ No L 374, 31. 12. 1987, p. 9.
(3) OJ No L 374, 31. 12. 1987, p. 12.
(4) OJ No L 374, 31. 12. 1987, p. 19.

necessary to make provision for the possibility of adapting the reference made to the CPC nomenclature in Annexes XVI A and XVI B accordingly;

24. Whereas the provision of services is covered by this Directive only in so far as it is based on contracts; whereas the provision of services on other bases, such as law, regulations or administrative provisions or employment contracts, is not covered;

25. Whereas, in accordance with Article 103f of the EEC Treaty, the encouragement of research and development is a means of strengthening the scientific and technological basis of European industry and the opening-up of public contracts will contribute to this end; whereas contributions to the financing of research programmes should not be subject to this Directive; whereas research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive;

26. Whereas contracts for the acquisition or rental of land, existing buildings or other immovable property have particular characteristics, which make the application of procurement rules inappropriate;

27. Whereas arbitration and conciliation services are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules;

28. Whereas the service contracts covered by this Directive do not include contracts for the issue, purchase sale or transfer of securities or other financial instruments;

29. Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;

30. Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;

31. Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;

32. Whereas it is appropriate to exclude certain service contracts awarded to an affiliated undertaking having as its principal activity, with respect to services, the provision of such services to the group of which it is part, rather than the offering of its services on the market;

33. Whereas full application of this Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before taking a decision on the full application of the said Directive; whereas the mechanism for such monitoring needs to be set up by this Directive and whereas it should at the same time enable those interested to share the relevant information;

34. Whereas the relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in an award procedure or a design contest;

35. Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;

36. Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;

37. Whereas Community undertakings should be granted access to the award of service contracts in third countries; whereas the Community should endeavour to remedy any situation whereby such access, in law or in fact, is found to be restricted and whereas it should be possible, under certain conditions, to take measures as regards access to service contracts covered by this Directive for undertakings of the third country concerned or for tenders originating in that country;

38. Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principles of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;

39. Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;

40. Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the EEC Treaty;

41. Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;

42. Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third-country origin;

43. Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;

44. Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third-country origin, pursuant to a Council Decision;

45. Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;

46. Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;

47. Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas, nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;

48. Whereas this Directive should be re-examined in the light of experience;

49. Whereas the opening-up of contracts in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purpose of this Directive:

1. 'public authorities' shall mean the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

   A body is considered to be governed by public law where it:

   — is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature,

   — has legal personality, and

   — is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;

2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on

the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

— hold the majority of the undertaking's subscribed capital, or

— control the majority of the votes attaching to shares issued by the undertaking, or

— can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

3. 'affiliated undertaking' shall mean any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the EEC Treaty on consolidated accounts [1] or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of paragraph 2, or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it;

4. 'supply, works and service contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2, and a supplier, a contractor or a service provider, having as their object:

(a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products;

(b) in the case of works contracts either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution;

(c) in the case of service contracts, any object other than those referred to in (a) and (b) and to the exclusion of:

(i) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

(ii) contracts for voice telephony, telex, radiotelephony, paging and satellite services;

(iii) contracts for arbitration and conciliation services;

(iv) contracts for the issue, sale, purchase or transfer of securities or other financial instruments;

(v) employment contracts;

(vi) research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

Contracts which include the provision of services and supplies shall be regarded as supply contracts if the total value of supplies is greater than the value of the services covered by the contract;

5. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers, contractors or service providers the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;

6. 'tenderer' shall mean a supplier, contractor or service provider who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure; service providers may be either natural or legal persons, including contracting entities within the meaning of Article 2;

7. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:

(a) in the case of open procedures, all interested suppliers, contractors or service providers may submit tenders;

(b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;

(c) in the case of negotiated procedures, the contracting entity consults suppliers, contractors or service providers of its choice and negotiates the terms of the contract with one or more of them;

[1] OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

8. *'technical specifications'* shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product, supply or service, and enabling a piece of work, a material, a product, a supply or a service to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical specifications may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, supply or service as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and techniques or methods of construction and all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

9. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated or continuous application, compliance with which is in principle not compulsory;

10. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';

11. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;

12. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [1]. European technical approval shall be issued by an approval body designated for this purpose by the Member State;

13. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;

14. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;

'network termination point' shall mean all physical connections and their technical access specification which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

15. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities;

'Telecommunications services' shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television;

16. 'design contests' shall mean the national procedures which enable the contracting entity to acquire, mainly in the fields of architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

Article 2

1. This Directive shall apply to contracting entities which:

(a) are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;

(b) when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2. Relevant activities for the purposes of this Directive shall be:

[1] OJ No L 40, 11. 2. 1989, p. 12.

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:

(i) drinking water; or

(ii) electricity; or

(iii) gas or heat;

or the supply of drinking water, electricity, gas or heat to such networks;

(b) the exploitation of a geographical area for the purpose of:

(i) exploring for or extracting oil, gas, coal or other solid fuels, or

(ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;

(c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;

(d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

3. For the purpose of applying paragraph 1 (b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.

A contracting entity shall be considered to enjoy special or exclusive rights in particular where:

(a) for the purpose of constructing the networks or the facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;

(b) in the case of paragraph 2 (a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.

4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2 (c) where other entities are free to provide those services, either in general or in a particular geographical area, under the same condition as the contracting entities.

5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraph 2 (a) where:

(a) in the case of drinking water or electricity:

— the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and

— supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;

(b) in the case of gas or heat:

— the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and

— supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 40.

Article 3

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

(a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;

(b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;

(c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out exploitation or extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;

(d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and

(e) contracting entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on a contracting entity's intended or actual sources of procurement, except at the request of national authorities with a view to the objectives mentioned in Article 36 of the EEC Treaty.

2. Member States which apply the provisions of paragraph 1 shall ensure, through the conditions of the authorization or other appropriate measures, that any entity:

(a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to undertakings concerning its procurement intentions;

(b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 40, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 45, paragraph 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

4. A Member State which wishes to apply paragraph 1 shall inform the Commission accordingly. In so doing, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in paragraphs 1 and 2.

The Commission shall take a decision in accordance with the procedure laid down in Article 40 (5) to (8). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 44.

Article 4

1. When awarding supply, works or service contracts, or organizing design contests, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Contracting entities shall ensure that there is no discrimination between different suppliers, contractors or service providers.

3. In the context of provision of technical specifications to interested suppliers, contractors or service providers, of qualification and selection of suppliers, contractors or service providers and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

4. This Directive shall not limit the right of suppliers, contractors or service providers to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

Article 5

1. Contracting entities may regard a framework agreement as a contract within a meaning of Article 1 (4) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 20 (2) (i) when awarding contracts based on that agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 20 (2) (i).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 6

1. This Directive shall not apply to contracts or design contests which the contracting entities award or organize for purposes other than the pursuit of their activities as described in Article 2 (2) or for the pursuit of such activities in a non-member country, in conditions not involving the physical use of a network or geographical area within the Community.

2. However, this Directive shall apply to contracts or design contests awarded or organized by the entities which exercise an activity referred to in Article 2 (2) (a) (i) and which:

(a) are connected whith hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation or drainage installations, or

(b) are connected with the disposal or treatment of sewage.

3. The contracting entities shall notify the Commission at its request of any activities they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 7

1. This Directive shall not apply to contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of products of activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information.

Article 8

1. This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2 (2) (d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

2. The contracting entities shall notify the Commission at its request of any services which they regard as excluded under paragraph 1. The Commission may periodically publish the list of services which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 9

1. This Directive shall not apply to:

(a) contracts which the contracting entities listed in Annex I award for the purchase of water;

(b) contracts which the contracting entities listed in Annexes II to V award for the supply of energy or of fuels for the production of energy.

2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

Article 10

This Directive shall not apply to contracts when they are declared to be secret by Member States, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic security interests of that State so requires.

Article 11

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within

the meaning of Article 1 (b) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts [1] on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the EEC Treaty.

Article 12

This Directive shall not apply to contracts governed by different procedural rules and awarded:

1. pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC [2] or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 39;

2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;

3. pursuant to the particular procedure of an international organization.

Article 13

1. This Directive shall not apply to service contracts which:

(a) a contracting entity awards to an affiliated undertaking;

(b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of Article 2 (2) to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities,

provided that at least 80 % of the average turnover of that undertaking with respect to services arising within the Community for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

2. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of the provisions of paragraph 1:

— the names of the undertakings concerned,

— the nature and value of the service contracts involved,

— such proof as may be deemed necessary by the Commission that the relationship between the undertaking to which the contracts are awarded and the contracting entity is in conformity with the requirements of this Article.

Article 14

1. This Directive shall apply to contracts the estimated value, not of VAT, for which is not less than:

(a) ECU 400 000 in the case of supply and service contracts awarded by entities exercising an activity defined in Article 2 (2) (a), (b) and (c);

(b) ECU 600 000 in the case of supply and service contracts awarded by entities carrying out an activity defined in Article 2 (2) (d);

(c) ECU 5 000 000 in the case of works contracts.

2. For the purposes of calculating the estimated amount of a service contract, the contracting entity shall include the total remuneration of the service provider, taking account of the elements specified in paragraphs 3 to 13.

3. For the purposes of calculating the estimated contract amount of financial services, the following amounts shall be taken into account:

— as regards insurance services, the premium payable,

— as regards banking and other financial services, fees, commissions, interest and other types of remuneration,

— as regards contracts which involve design, the fee or commission payable.

4. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:

[1] OJ No L 209, 24. 7. 1992, p. 1.
[2] OJ No L 185, 16. 8. 1971, p. 15. Decision as last amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

(a) in the case of fixed-term contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;

(b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

5. In the case of service contracts which do not indicate a total cost, the basis for calculating the estimated contract value shall be:

— for fixed-term contracts, where their term is 48 months or less, the total value for their whole duration,

— for contracts without a fixed term or for a term exceeding 48 months, the monthly value multiplied by 48.

6. Where a proposed supply or service contract expressly specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental or hire-purchase permissible, inclusive of the option clauses.

7. In the case of a procurement of supplies or services over a given period by means of a series of contracts to be awarded to one or more suppliers or service providers or of contracts which are to be renewed, the contract value shall be calculated on the basis of:

(a) the total value of contracts with similar characteristics which were awarded over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the subsequent twelve months; or

(b) the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.

8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective values. The calculation shall include the value of the siting and installation operations.

9. The basis for calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

10. The basis for calculating the value of a works contract for the purposes of paragraph 1 shall be the total value of the work. 'Work' shall mean the result of building and civil engineering activities, taken as a whole, which are intended to fulfil an economic and technical function by themselves.

In particular, where a supply, work or service is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraph 1. Where the aggregate value of the lots equals or exceeds the value laid down in paragraph 1, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraph 1 in respect of lots the estimated value net of VAT for which is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

11. For the purposes of paragraph 1, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor.

12. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract with the result of avoiding application of this Directive to the procurement of those supplies or services.

13. Contracting entities may not circumvent this Directive by splitting contracts or using special methods of calculating the value of contracts.

TITLE II

Two-tier application

Article 15

Supply and works contracts and contracts which have as their object services listed in Annex XVI A shall be awarded in accordance with the provisions of Titles III, IV and V.

Article 16

Contracts which have as their object services listed in Annex XVI B shall be awarded in accordance with Articles 18 and 24.

Article 17

Contracts which have as their object services listed in both Annexes XVI A and XVI B shall be awarded in accordance with the provisions of Titles III, IV and V where the value of the services listed in Annex XVI A is greater than the value of the services listed in Annex XVI B. Where this is not the case, they shall be awarded in accordance with Articles 18 and 24.

TITLE III

Technical specifications and standards

Article 18

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.

2. The technical specifications shall be defined by reference to European specifications, where these exist.

3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.

4. Contracting entities shall define such further requirements as are necessary to complete European specifications or other standards. In so doing, they shall prefer specifications which indicate performance requirements rather than design or description characteristics, unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

5. Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types, of specific origin or production shall be prohibited; however, such an indication accompanied by the works 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.

6. Contracting entities may derogate from paragraph 2 if:

(a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;

(b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment [1], or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications [2];

(c) in the context of adapting existing practice to take account of European specifications, use of those specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of clearly-defined and recorded strategy with a view to a changeover to European specifications;

(d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;

(e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

7. Notices published pursuant to Article 21 (1) (a) or Article 21 (2) (a) shall indicate any recourse to the derogations referred to in paragraph 6.

8. This Article shall be without prejudice to compulsory technical rules in so far as these are compatible with Community law.

Article 19

1. Contracting entities shall make available on request to suppliers, contractors or service providers interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 22.

2. Where such technical specifications are based on documents available to interested suppliers, contractors or service providers, a reference to those documents shall be sufficient.

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[1] OJ No L 217, 5. 8. 1986, p. 21.
[2] OJ No L 36, 7. 2. 1987, p. 31.

TITLE IV

Procedures for the award of contracts

Article 20

1. Contracting entities may choose any of the procedures described in Article 1 (7), provided that, subject to paragraph 2, a call for competition has been made in accordance with Article 21.

2. Contracting entities may use a procedure without prior call for competition in the following cases:

(a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;

(b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which have in particular these purposes;

(c) when, for technical or artistic reasons or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier, contractor or service provider;

(d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;

(e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor or service provider executing the original contract:

— when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,

— or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its later stages;

(g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 14;

(h) for supplies quoted and purchased on a commodity market;

(i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;

(j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;

(k) for purchases of goods under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;

(l) when the service contract concerned is part of the follow-up a design contest organized in conformity with the provisions of this Directive and must, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest. In the latter case, all the winners must be invited to participate in the negotiations.

Article 21

1. In the case of supplies, works or service contracts, the call for competition may be made:

(a) by means of a notice drawn up in accordance with Annex XII A, B or C; or

(b) by means of a periodic indicative notice drawn up in accordance with Annex XIV; or

(c) by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII.

2. When a call for competition is made by means of a periodic indicative notice:

(a) the notice must refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;

(b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;

(c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

2. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated prcedure shall be selected from the qualified candidates in accordance with such a system.

4. In the case of design contests, the call for competition shall be made by means of a notice drawn up in accordance with Annex XVII.

5. The notices referred to in this Article shall be published in the *Official Journal of the European Communities*.

Article 22

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

(a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000, and which they intend to award over the following twelve months;

(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than the threshold laid down in Article 14 (1).

(c) in the case of service contracts, the estimated total value of the service contracts in each of the categories of services listed in Annex XVI A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000.

2. The notice shall be drawn up in accordance with Annex XIV and published in the *Official Journal of the European Communities*.

3. Where the notice is used as a means of calling for competition in accordance with Article 21 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 21 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 26 (2).

4. Contracting entities may, in particular, publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly stated that such notices are additional notices.

Article 23

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract the estimated value net of VAT for which is not less than the value referred to in Article 14 (1).

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than ECU 400 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (a), (b) and (c) and ECU 600 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (d).

3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.

4. The admission of participants to design contests shall not be limited:

— by reference to the territory or part of the territory of a Member State,

— on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.

5. Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

6. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of its members must have the same qualification or its equivalent.

The jury shall be autonomous in its decisions or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice provided for in Annex XVII.

Article 24

1. Contracting entities which have awarded a contract or organized a design contest shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 40, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV or Annex XVIII.

2. Information provided under Section I of Annex XV or under Annex XVIII shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information in connection with points 6 and 9 of Annex XV.

3. Contracting entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) applies need mention, concerning point 3 of Annex XV, only the main title thereof within the meaning of the classification of Annex XVI. Contracting entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) does not apply may, on the grounds of commercial confidentiality, limit the information provided for in point 3 of Annex XV. However, they must ensure that any information published under this point is no less detailed than that contained in the notice of the call for competition published in accordance with Article 20 (1) or, where a qualification system is used, no less detailed than the category referred to in Article 30 (7). In the case listed in Annex XVI B, the contracting entites shall indicate in the notice whether they agree on its publication.

4. Information provided under Section II of Annex XV must not be published, except in aggregated form, for statistical purposes.

Article 25

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 20 to 24.

2. The notices shall be published in full in their original language in the *Official Journal of the European Communities* and in the TED data bank. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 21 (1) (a) within five days in response to a request by the contracting entity and provided that the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices is/are based.

4. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities.

5. Contracts or design contests in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 21 (1) or (4) shall not be published in any other way before that notice has been dispatched to the Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

Article 26

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 22 (1).

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

(a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21 (1) (a) or in response to an invitation from a

contracting entity in accordance with Artice 21 (2) (c), shall, as a general rule, be at least five weeks from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25 (3), plus 10 days;

(b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;

(c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28 (3).

Article 27

In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract which he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's responsibility.

Article 28

1. Provided that they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers, contractors or service providers by the contracting entities as a general rule within six days of receipt of the application.

2. Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.

3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account when the appropriate time limits are fixed.

4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

(a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods of payment of any sum to be paid for such documents;

(b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;

(c) a reference to any tender notice published;

(d) an indication of any document to be annexed;

(e) the criteria for the award of the contract if these are not given in the notice;

(f) any other special condition for participation in the contract.

5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26 (1) or of the time limit set by contracting entities pursuant to Article 26 (2).

Article 29

1. The contracting entity may state in the contract documents, or be obliged by a Member State so to do, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the works or services are to be executed or performed and which shall be applicable to the works carried out or the services performed on site during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work or the service is to be carried out or performed. This shall be without prejudice to the application of Article 34 (5) concerning the examination of abnormally low tenders.

TITLE V

Qualification, selection and award

Article 30

1. Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors or service providers.

2. The system, which may involve different qualification stages, shall operate on the basis of objective criteria and rules to be established by the contracting entity. The contracting entity shall use European standards as a reference where they are appropriate. The criteria and rules may be updated as required.

3. The criteria and rules for qualification shall be made available on request to interested suppliers, contractors or service providers. The updating of these criteria and rules shall be communicated to the interested suppliers, contractors and service providers. Where a contracting entity considers that the qualification system of certain third entities or bodies meets its requirements, it shall communicate to interested suppliers, contractors and service providers the names of such third entities or bodies.

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

5. In reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities may not:

— impose conditions of an administrative, technical or financial nature on some suppliers, contractors or service providers which are not imposed on others,

— require tests or proof which duplicate objective evidence already available.

6. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in paragraph 2.

7. A written record of qualified suppliers, contractors or service providers shall be kept and it may be divided into categories, according to the type of contract for which the qualification is valid.

8. Contracting entities may bring the qualification of a supplier, contractor or service provider to an end only for reasons based on the criteria referred to in paragraph 2. The intention to bring qualification to an end must be notified in writing to the supplier, contractor or service provider beforehand, together with the reason or reasons justifying the proposed action.

9. The qualification system shall be the subject of a notice drawn up in accordance with Annex XIII and published in the *Official Journal of the European Communities*, indicating the purpose of the qualification system and the availability of the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 31

1. Contracting entities which select candidates to tender in restricted procedures or to participate in negotiated procedures shall do so according to objective criteria and rules which they lay down and which they shall make available to interested suppliers, contractors or service providers.

2. The criteria used may include the criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC.

3. The criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract award procedure and the resources required to complete it. The number of candidates selected must, however, take account of the need to ensure adequate competition.

Article 32

Should contracting entities require the production of certificates drawn up by independent bodies for attesting conformity of the service provider to certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45 000 European standards series.

Entities shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates or no possibility of obtaining them within the relevant time limits.

Article 33

1. Groupings of suppliers, contractors or service providers shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

2. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity shall not be rejected on the sole ground that under the law of the Member State in which the contract is awarded they would have been required to be either a natural or a legal person.

3. However, legal persons may be required to indicate, in the tender or the request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

Article 34

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be:

(a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or

(b) the lowest price only.

2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria which they intend to apply to the award, where possible in descending order of importance.

3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

5. If, for a given contract, tenders appear abnormally low in relation to the provision of services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has been unable to show that the aid in question has been notified to the Commission pursuant to Article 93 (3) of the EEC Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Article 35

1. Article 27 (1) shall not apply where a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of adoption of this Directive, the aim of which is to give preference to certain tenderers, provided that the rules invoked are compatible with the Treaty.

2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of national provisions in force on the award of supply or works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in disadvantaged regions or those suffering from industrial decline, provided that the provisions concerned are compatible with the EEC Treaty and with the Community's international obligations.

Article 36

1. This Article shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June

1968 on the common definition of the concept of the origin of goods [1], exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 34, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of these tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

4. However, a tender shall not be preferred to another pursuant to paragraph 3 where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

5. For the purpose of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion referred to in paragraph 2 of products originating in third countries.

6. The Commission shall submit an annual report to the Council (for the first time in the second half of 1991) on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

Article 37

1. The Member States shall inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the Council before 31 December 1994 and periodically thereafter on the opening-up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the GATT framework.

3. Whenever the Commission establishes, on the basis of either the reports referred to in paragraph 2 or other information, that with regard to the award of service contracts a third country:

(a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country;

(b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third countries more favourable treatment than Community undertakings,

it must approach the third country concerned to try to remedy the situation.

4. Under the conditions referred to in paragraph 3, the Commission may at any time propose that the Council decide to suspend or restrict the award of service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their object services originating in the third country in question,

during a period to be determined in the decision. The Council shall act by qualified majority as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

5. This Article is without prejudice to the obligations of the Community in relation to third countries.

TITLE VI

Final provisions

Article 38

1. The value in national currencies of the thresholds specified in Article 14 shall, in principle, be revised every

[1] OJ No L 148, 28. 6. 1968, p. 1. Regulation as last amended by Regulation (EEC) No 3860/87 (OJ No L 363, 23. 12. 1987, p. 30).

two years with effect from the date provided for in Directive 77/62/EEC as far as the thresholds for supply and service contracts are concerned and from the date provided for in Directive 71/305/EEC as far as the thresholds for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

2. The method of calculation laid down in paragraph 1 shall be examined pursuant to the provisions of Directive 77/62/EEC.

Article 39

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity referred to in Article 2 (2) (d), by a Committee of an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

(a) amendments to Annex X;

(b) revision of the currency values of the thresholds;

(c) the rules concerning contracts awarded under international agreements;

(d) the review of the application of this Directive;

(e) the procedures described in Article 40 (2) relating to notices and statistical reports.

Article 40

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 4 to 8 with a view to ensuring that they fulfil the criteria of Article 2.

2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 21, 22 and 24 and of the statistical reports provided for in Article 42 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 4 to 8.

3. The nomenclature cited in Annexes XVI A and XVI B and the references in the notices to particular headings of the nomenclature may be amended in accordance with the procedure laid down in paragraphs 4 to 8.

4. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities.*

5. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 39 of this Directive.

6. The Commission representative shall submit to the Committee a draft of the decisions 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, if necessary by taking a vote.

7. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

8. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 41

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

(a) the qualification and selection of contractors, suppliers or service providers and award of contracts;

(b) recourse to derogations from the use of European specifications in accordance with Article 18 (6);

(c) use of procedures without prior call for competition in accordance with Article 21 (2);

(d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

Article 42

1. The Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 40 (4) to (8), that the Commission receives each year a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 14 which would, if they were not below those thresholds, be covered by this Directive.

2. Arrangements shall be fixed in accordance with the procedure referred to in Article 40 to ensure that:

(a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;

(b) the confidential nature of the information provided is respected.

Article 43

Article 2 (2) of Directive 77/62/EEC is hereby replaced by the following:

'2. This Directive shall not apply to:

(a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (1) or fulfilling the conditions in Article 6 (2) of the said Directive;

(b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires (1).

(1) OJ No L 297, 29. 10. 1990, p. 1.'

Article 44

Not later than four years after the application of this Directive, the Commission, acting in close cooperation with the Advisory Committee for Public Contracts, shall review the manner in which this Directive has operated and its field of application and, if necessary, shall make further proposals to adapt it, in the light of developments linked in particular with progress made in opening up contracts and the level of competition. In the case of entities exercising an activity defined in Article 2 (2) (d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

Article 45

1. Member States shall adopt the measures necessary to comply with the provisions of this Directive and shall apply them by 1 July 1994. They shall forthwith inform the Commission thereof.

2. Nevertheless, the Kingdom of Spain may provide that the measures referred to in paragraph 1 shall apply from 1 January 1997 only and the Hellenic Republic and the Portuguese Republic may provide that the measures referred to in paragraph 1 shall apply from 1 January 1998 only.

3. Directive 90/531/EEC shall cease to have effect as from the date on which this Directive is applied by the Member States and this shall be without prejudice to the obligations of the Member States concerning the deadlines laid down in Article 37 of that Directive.

4. References to Directive 90/531/EEC shall be construed as referring to this Directive.

Article 46

When Member States adopt the provisions referred to in Article 45, 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 the Member States.

Article 47

Member States shall communicate to the Commission the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field covered by this Directive.

Article 48

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1993.

For the Council

The President

J. TRØJBORG

LIST OF ANNEXES

ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the *décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.*

Entity set up pursuant to the *arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.*

Entity set up pursuant to the *arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.*

Entities producing or distributing water and set up pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

Entities producing or distributing water set up pursuant to the *code communal, article* 47 bis, ter *et* quater *sur les régies communales.*

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of *lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985.*

GERMANY

Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder (Kommunale Eigenbetriebe).*

Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder.*

Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937* and the *erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937.*

(Regiebetriebe) producing or distributing water pursuant to the *Kommunalgesetze* and notably with the *Gemeindeordnungen der Länder.*

Entities set up pursuant to the *Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985* or *GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai 1986,* or having the legal status of a *Kommanditgesellschaft,* producing or distributing water on the basis of a special contract with regional or local authorities.

GREECE

The Water Company of Athens / *Εταιρεία Υδρεύσεως — Αποχετεύσεως Πρωτευούσης* set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica / *Οργανισμός Υδρεύσεως Θεσσαλονίκης* operating pursuant to Presidential Decree 61/1988.

The Water Company of Volos / *Εταιρεία Υδρεύσεως Βόλου* operating pursuant to Law 890/1979.

Municipal companies / *Δημοτικές Επιχειρήσεις ύδρευσης — αποχέτευσης* producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities *(Σύνδεσμοι ύδευυσης)* operating pursuant to the Code of local authorities *(Κώδικας Δήμων και Κοινοτήτων)* implemented by Presidential Decree 76/1985.

SPAIN

— Entities producing or distributing water pursuant to *Ley n° 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real n° 781/1986 Texto Refundido Régimen local.*

— *Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.*

— *Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.*

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermages).

IRELAND

Entities producing or distributing water pursuant to the *Local Government (Sanitary Services) Act 1878 to 1964.*

ITALY

Entities producing or distributing water pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Ente Autonomo Acquedotto Pugliese set up pursuant to *RDL 19 ottobre 1919, n. 2060.*

Ente Acquedotti Siciliani set up pursuant to *leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.*

Ente Sardo Acquedotti e Fognature set up pursuant to *legge 5 luglio 1963 n. 9.*

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981* and pursuant to the *loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.*

NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957,* amended by the *wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.*

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the *Decreto-Lei nº 190/81 de 4 de Julho de 1981.*

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to the *Water Acts 1945 and 1989.*

The *Central Scotland Water Development Board* producing water and the *water authorities* producing or distributing water pursuant to the *Water (Scotland) Act 1980.*

The *Department of the Environment for Northern Ireland* responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973.*

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to *article 5: Des régies communales et intercommunales* of the *loi du 10 mars 1925 sur les distributions d'énergie électrique.*

Entities transporting or distributing electricity pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

EBES, Intercom, Unerg and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *article 8 — les concessions communales et intercommunales* of the *loi du 10 mars 1952 sur les distributions d'énergie électrique.*

The *Société publique de production d'électricité (SPÉ).*

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to § *3, stk. 1,* of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.*

Entities distributing electricity as defined in § *3, stk. 2,* of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the *lov om elektriske stærkstrømsanlæg, jf lovbekendtgørelse nr. 669 af 28. december 1977.*

GERMANY

Entities producing, transporting or distributing electricity as defined in § 2 *Absatz 2* of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935.* Last modified by the *Gesetz of 19 December 1977,* and auto-production of electricity so far as this is covered by the field of application of the Directive pursuant to Article 2, paragraph 5.

GREECE

Δημόσια Επιχείρηση Ηλεκτρισμού (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού,* and operating pursuant to the law 57/85: *Δομή, ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημόσιας Επιχείρησης Ηλεκτρισμού.*

SPAIN

Entities producing, transporting or distributing electricity pursuant to Article 1 of the *Decreto de 12 de marzo de 1954,* approving the *Reglamento de verificaciones eléctricas y regularidad en el suministro de energía* and pursuant to *Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia le instalaciones eléctricas.*

Red Eléctrica de España SA, set up pursuant to *Real Decreto 91/1985 de 23 de enero.*

FRANCE

Électricité de France, set up and operating pusuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities *(sociétés d'économie mixte* or *régies)* distributing electricity and referred to in article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie nationale du Rhône.

IRELAND

The Electricity Supply Board (ESB) set up and operating pursuant to the *Electricity Supply Act 1927.*

ITALY

Ente nazionale per l'energia elettrica set up pursuant to *legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965.*

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of *legge 6 dicembre 1962, n. 1643 — Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.*

Entities operating on the basis of concession pursuant to article 20 of *Decreto del Presidente delle Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'énergia elettrica.*

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to the *convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928.*

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

NETHERLANDS

Elektriciteitsproduktie Oost-Nederland.

Elektriciteitsbedrijf Utrecht—Noord-Holland—Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktiemaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence *(vergunning)* granted by the provincial authorities pursuant to the *Provinciewet.*

PORTUGAL

Electricidade de Portugal (EDP) , set up pursuant to the *Decreto-Lei nº 502/76 de 30 de Junho de 1976.*

Entities distributing electricity pursuant to *artigo 1º do Decreto-Lei nº 344-B/82 de 1 de Setembro de 1982,* amended by *Decreto-Lei nº 297/86 de 19 de Setembro de 1986.* Entities producing electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Independent producers of electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Empresa de Electricidade dos Açores — EDA, EP, created pursuant to the *Decreto Regional nº 16/80 de 21 de Agosto de 1980.*

Empresa de Electricidade da Madeira, EP, created pursuant to the *Decreto-Lei nº 12/74 de 17 de Janeiro de 1974* and regionalized pursuant to the *Decreto-Lei nº 31/79 de 24 de Fevereiro de 1979, Decreto-Lei nº 91/79 de 19 de Abril de 1979.*

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the *Electricity Act 1947* and the *Electricity Act 1957.*

The *North of Scotland Hydro-Electricity Board (NSHB),* producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The *South of Scotland Electricity Board (SSEB)* producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The *Northern Ireland Electricity Service (NIES),* set up pursuant to the *Electricity Supply (Northern Ireland) Order 1972.*

ANNEX III

TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

BELGIUM

Distrigaz SA operating pursuant to the *loi du 29 juillet 1983.*

Entities transporting gas on the basis of an authorization or concession pursuant to the *loi du 12 avril 1985* as amended by the *loi du 28 juillet 1987.*

Entities distributing gas and operating pursuant to the loi relative aux Intercommunales du 22 décembre 1986.

Local authorities, or associations of these local authorities supplying heat to the public.

DENMARK

Dansk Olie og Naturgas A/S operating on the basis of an exclusive right granted pursuant to *bekendtgørelse nr. 869 af 18. juni 1979 om eneretsbevilling til indførsel, forhandling, transport og oplagring af naturgas.*

Entities operating pursuant to *lov nr. 294 af 7. juni 1972 om naturgasforsyning.*

Entities distributing gas or heat on the basis of an approval pursuant to Chapter IV of *lov om varmeforsyning, jf. lovbekendtgørelse nr. 330 af 29. juni 1983.*

Entities transporting gas on the basis of an authorization pursuant to *bekendtgørelse nr. 141 af 13. marts 1974 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter* (installation of pipelines on the continental shelf for the transport of hydrocarbons).

GERMANY

Entities transporting or distributing gas as defined in § 2 Absatz 2 of the *Gesetz zur Förderung der Energiewirtschaft vom 13. Dezember 1935 (Energiewirtschaftsgesetz), as last amended by the law of 19 December 1977.*

Local authorities, or associations of these local authorities supplying heat to the public.

GREECE

DEP transporting or distributing gas pursuant to the Ministerial decision 2583/1987 *(Ανάθεση στη Δημόσια Επιχείρηση Πετρελαίου αρμοδιοτήτων σχετικών με το φυσικό σέριο) Σύσταση της ΔΕΠΑ ΑΕ (Δημόσια Επιχείρηση Αερίου, Ανώνυμος Εταιρεία).*

Athens Municipal Gasworks S.A. *DEFA* transporting or distributing gas.

SPAIN

Entities operating pursuant to *Ley nº 10 de 15 de junio de 1987.*

FRANCE

Société nationale des gaz du Sud-Ouest transporting gas.

Gaz de France, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities *(sociétés d'économie mixte* or *régies)* distributing electricity and referred to in Article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie française du méthane transporting gas.

Local authorities, or associations of, supplying heat to the public.

IRELAND

Irish Gas Board and operating pursuant to the *Gas Act 1976 to 1987* and other entities governed by *Statute.*

Dublin Corporation, supplying heat to the public.

ITALY

SNAM and *SGM e Montedison* transporting gas.

Entities distributing gas pursuant to the *Testo unico delle leggi sull'assunzione diretta del pubblici servizi da parte del comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Entities distributing heat to the public referred to in Article 10 of the *Legge 29 maggio 1982, n. 308 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi.*

Local authorities, or associations of, supplying heat to the public.

LUXEMBOURG

Société de transport de gaz SOTEG SA.

Gaswierk Esch-Uelzecht SA.

Service industriel de la commune de Dudelange.

Service industriel de la commune de Luxembourg.

Local authorities, or associations of these local authorities supplying heat to the public.

NETHERLANDS

NV Nederlandse Gasunie

Entities transporting or distributing gas on the basis of a licence *(vergunning)* granted by the local authorities pursuant to the *Gemeentewet.*

Local or provincial entities transporting or distributing gas to the public pursuant to the *Gemeentewet and the Provinciewet.*

Local authorities, or associations of these local authorities supplying heat to the public.

PORTUGAL

Petroquímica e Gás de Portugal, EP Decreto-Lei nº 346-A/88 de 29 de Setembro de 1988.

UNITED KINGDOM

British Gas plc and other entities operating pursuant to the *Gas Act 1986.*

Local authorities, or associations of, supplying heat to the public pursuant to the *Local Government (Miscellaneous Provisions) Act 1976.*

Electricity Boards distributing heat pursuant to the *Electricity Act 1947.*

ANNEX IV

EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

The entities granted an authorization, permit, licence or concession to explore for or extract oil and gas pursuant to the following legal provisions:

BELGIUM

Loi du 1 mai 1939 complétée par l'arrêté royal n° 83 du 28 novembre 1939 sur l'exploration et l'exploitation du pétrole et du gaz.

Arrêté royal du 15 novembre 1919.

Arrêté royal du 7 avril 1953.

Arrêté royal du 15 mars 1960 loi au sujet de la plate-forme continentale du 15 juin 1969.

Arrêté de l'exécutif régional wallon du 29 septembre 1982.

Arrêté de l'exécutif flamand du 30 mai 1984.

DENMARK

Lov nr. 293 af 10. juni 1981 om anvendelse af Danmarks undergrund.

Lov om kontinentalsoklen, jf. lovbekendtgørelse nr. 182 af 1. maj 1979.

GERMANY

Bundesberggesetz vom 13. August 1980, as last amended on 12 February 1990.

GREECE

Law 87/1975 setting up DEP-EKY *(Περί ιδρύσεως Δημοσίας Επιχειρήσεως Πετρελαίου).*

SPAIN

Ley sobre Investigación y Explotación de Hidrocarburos de 27 de Junio de 1974 and its implementing decrees.

FRANCE

Code minier (décret 56-838 du 16 août 1956) amended by the *loi 56-1327 du 29 décembre 1956, ordonnance 58-1186 du 10 décembre 1958, décret 60-800 du 2 août 1960, décret 61-359 du 7 avril 1961, loi 70-1 du 2 janvier 1970, loi 77-620 du 16 juin 1977, décret 80-204 du 11 mars 1980.*

IRELAND

Continental Shelf Act 1960.

Petroleum and Other Minerals Development Act 1960.

Ireland Exclusive Licensing Terms 1975.

Revised Licensing Terms 1987.

Petroleum (Production) Act (NI) 1964.

ITALY

Legge 10 febbraio 1953, n. 136.

Legge 11 gennaio 1957, n. 6, modificata dalla legge 21 luglio 1967, n. 613.

LUXEMBOURG

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NETHERLANDS

Mijnwet nr. 285 van 21 april 1810.

Wet opsporing delfstoffen nr. 258 van 3 mei 1967.

Mijnwet continentaal plat 1965, nr. 428 van 23 september 1965.

PORTUGAL

Decreto-Lei nº 543/74 de 16 de Outubro de 1974, nº 168/77 de 23 de Abril de 1977, nº 266/80 de 7 de Agosto de 1980, nº 174/85 de 21 de Maio de 1985 and *Despacho nº 22 de 15 de Março de 1979.*

Decreto-Lei nº 47973 de 30 de Setembro de 1967, nº 49369 de 11 de Novembro de 1969, nº 97/71 de 24 de Março de 1971, nº 96/74 de 13 de Março de 1974, nº 266/80 de 7 de Agosto de 1980, nº 2/81 de 7 de Janeiro de 1981 and *nº 245/82 de 22 de Junho de 1982.*

UNITED KINGDOM

Petroleum (Production) Act 1934 as extended by the Continental Shelf Act 1964.

Petroleum (Production) Act (Northern Ireland) 1964.

ANNEX V

EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

BELGIUM

Entities exploring or extracting coal or other solid fuels pursuant to the *arrêté du Régent du 22 août 1948* and the *loi du 22 avril 1980.*

DENMARK

Entities exploring or extracting coal or other solid fuels pursuant to the *lovbekendtgørelse nr. 531 af 10. oktober 1984.*

GERMANY

Entities exploring or extracting coal or other solid fuels pursuant to the *Bundesberggesetz vom 13. August 1980,* as last amended on 12 February 1990.

GREECE

Public Power Corporation *exploring or extracting* coal or other fuels pursuant to *the Mining code of 1973 as amended by the law of 27 April 1976. Δημόσια Επιχείρηση Ηλεκτρισμού.*

SPAIN

Entities exploring or extracting coal or other solid fuels pursuant to *Ley 22/1973, de 21 de julio, de Minas,* as amended by *Ley 54/1980 de 5 de noviembre* and by *Real Decreto Legislativo 1303/1986, de 28 de junio.*

FRANCE

Entities exploring extracting coal or other solid fuels pursuant to *code minier (décret 58-863 du 16 août 1956),* as amended by the *loi 77-620 du 16 juin 1977, décret 80-204* et *arrêté du 11 mars 1980.*

IRELAND

Bord na Mona.

Entities prospecting or extracting coal pursuant to the *Minerals Development Acts, 1940 to 1970.*

ITALY

Carbo Sulcis SpA

LUXEMBOURG

—

NETHERLANDS

—

PORTUGAL

Empresa Carbonífera do Douro.

Empresa Nacional de Urânio.

UNITED KINGDOM

British Coal Board (BCC) set up pursuant to the *Coal Industry Nationalization Act 1946.*

Entities benefiting from a licence granted by the BCC pursuant to the *Coal Industry Nationalization Act 1946.*

Entities exploring or extracting solid fuels pursuant to the Mineral Development Act (Northern Ireland) 1969.

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB)

Entities operating set up pursuant to *lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.*

GERMANY

Deutsche Bundesbahn

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of *Allgemeines Eisenbahngesetz of 29 March 1951.*

GREECE

Οργανισμός Σιδηροδρόμων Ελλάδος (ΟΣΕ). Organization of railways in Greece (OSE).

SPAIN

Red Nacional de Los Ferrocarriles Españoles.

Ferrocarriles de Vía Estrecha (FEVE).

Ferrocarrils de la Generalitat de Catalunya (FGC).

Eusko Trenbideak (Bilbao).

Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

Société nationale des chemins de fer français and other *réseaux ferroviaires ouverts au public* referred to in the *loi d'orientation des transports intérieurs du 30 décembre 1982, titre II, chapitre 1er du transport ferroviaire.*

IRELAND

Iarnrod Éireann (Irish Rail).

ITALY

Ferrovie dello Stato

Entities providing railway services on the basis of a concession pursuant to Article 10 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'Industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in *Titolo XI, Capo II, Sezione Ia del Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities providing railway services on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410 — Concorso dello Stato per la riattivazione del pubblici servizi di trasporto in concessione.*

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Railways Board.

Northern Ireland Railways.

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by *SNCV* pursuant to Articles 16 and 21 of the *arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars.*

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to the *loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer* of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with *STIB* pursuant to *Article 10* or with other transport entities pursuant to *Article 11* of the *arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications.*

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public *(almindelig rutekørsel)* on the basis of an authorization pursuant to *lov nr. 115 af 29. marts 1978 om buskørsel.*

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public *(Öffentlichen Personennahverkehr)* pursuant to the *Personenbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989.*

GREECE

Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς, (Electric buses of the Athens — Piraeus area) operating pursuant to *decree 768/1970 and law 588/1977).*

Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς. (Athen-Piraeus electric railways) operating pursuant to *laws 352/1976 and 588/1977.*

Επιχείρηση Αστικών Συγκοινωνιών. (Enterprise of urban transport) operating pursuant to *law 588/1977.*

Κοινό Ταμείο Εισπράζεως Λεωφορείων. (Joint receipts fund of buses) operating pursuant to *decree 102/1973.*

ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων. Ρόδου) Roda: Municipal bus enterprise in Rhodes.

Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης. (Urban transport organization of Thessaloniki) operating pursuant to decree 3721/1957 and law 716/1980.

SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen local.*

Corporación metropolitana de Madrid.
Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987.*

Entities providing bus services to the public, pursuant to Article 71 of the *Ley de Ordinación de Transportes Terrestres de 31 de julio de 1987.*

FEVE, RENFE (or *Empresa Nacional de Transportes de Viajeros por Carretera)* providing bus services to the public pursuant to the *Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.*

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957.*

FRANCE

Entities providing transport services to the public pursuant to *article 7-11 of the loi nº 82-1153 du 30 décembre 1982, transports intérieurs, orientation).*

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorization granted by the *syndicat des transports parisiens* pursuant to the *ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.*

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended *Road Transport Act 1932.*

ITALY

Entities providing transport services of a concession pursuant to *Legge 28 settembre 1939, n. 1822 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata)* — Article 1 as modified by Article 45 of *Decreto del Preisidente della Repubblica 28 giugno 1955, n. 771.*

Entities providing transport services to the public pursuant to Article 1 (15) of *Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del Testo unico della legge sull'assunzione diretta del pubblici servizi da parte dei comuni e delle province.*

Entities operating on the basis of a concession pursuant to Article 242 or 255 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities or local authorities operating on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.*

Entities operating on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the *règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.*

NETHERLANDS

Entities providing transport services to the public pursuant to Chapter II *(Openbaar vervoer)* of the *Wet Personenvervoer van 12 maart 1987.*

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the *London Regional Transport Act 1984.*

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the *arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes* amended by *arrêté royal du 5 octobre 1970 portant refonte du statut de la régle des voies aériennes.*

DENMARK

Airports operating on the basis of an authorization pursuant to *§ 55, stk. 1, lov om luftfart, jf. lovbekendtgørelse nr. 408 af 11. september 1985.*

GERMANY

Airports as defined in Article *38 Absatz 2 no* of the *Luftverkehrszulassungsordnung vom 19. März 1979,* as last amended by the *Verordnung vom 21. Juli 1986.*

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service *(Υπηρεσία Πολιτικής Αεροπορίας (ΥΠΑ)).*

International airports operating pursuant to presidential decree 647/981.

SPAIN

Airports managed by *Aeropuertos Nacionales* operating pursuant to the *Real Decreto 278/1982 de 15 de octubre de 1982.*

FRANCE

Aéroports de Paris operating pursuant to *titre V, articles L 251-1 à 252-1 du code de l'aviation civile.*

Aéroport de Bâle — Mulhouse, set up pursuant to the *convention franco-suisse du 4 juillet 1949.*

Airports as defined in *article L 270-1, code de l'aviation civile.*

Airports operating pursuant to the *cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955.*

Airports operating on the basis of a *convention d'exploitation* pursuant to *article L/221, code de l'aviation civile.*

IRELAND

Airports of *Dublin, Cork* and *Shannon* managed by *Aer Rianta — Irish Airports.*

Airports operating on the basis of a *Public use License* granted, pursuant to the *Air Navigation and Transport Act No 23 1936,* the *Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959)* and *the Air Navigation (Aerodromes and Visual Ground Aids)* Order 1970 (SI No 291 of 1970).

ITALY

Civil Stat. airports *(aerodroal civili istituiti dallo Stato* referred to in Article 692 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to Articles 18 and following of the *Luchtvaartwet* of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by *Aeroportos de Navegação Aérea (ANA), EP* pursuant to *Decreto-Lei nº 246/79.*

Aeroporto do Funchal and *Aeroporto de Porto Santo*, regionalized pursuant to the *Decreto-Lei nº 284/81.*

UNITED KINGDOM

Airports managed by *British Airports Authority plc.*

Airports which are *public limited companies (plc)* pursuant to the *Airports Act 1986.*

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER TERMINAL FACILITIES

BELGIUM

Société anonyme du canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges — Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut — Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuwport.

Port d'Ostende.

DENMARK

Ports as defined in Article 1, I to III of the *bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.*

GERMANY

Seaports owned totally or partially by territorial authorities *(Länder, Kreise, Gemeinden).*

Inland ports subject to the *Hafenordnung* pursuant to the *Wassergesetze der Länder.*

GREECE

Piraeus port *(Οργανισμός Λιμένος Πειραιώς)* set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port *(Οργανισμός Λιμένος Θεσσαλονίκης)* set up pursuant to decree N.A. 2251/1953.

Other ports governed by presidential decree 649/1977 (NA. 649/1977) Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων. (supervision, organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the *Decreto de 2 de octubre de 1969, nº 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

Puerto de Barcelona set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

Puerto de Bilbao set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

Puerto de Valencia set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

Juntas de Puertos operating pursuant to the *Lei 27/68 de 20 de junio de 1968; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, nº 1350/70. Juntas de Puertos. Reglamento.*

Ports managed by the *Comisión Administrativa de Grupos de Puertos,* operating pursuant to the *Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978* and *Decreto 571/81 de 6 de mayo de 1981.*

Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

FRANCE

Port autonome de Paris set up pursuant to *loi 68/917 du 24 octobre 1968 relative au port autonome de Paris.*

Port autonome de Strasbourg set up pursuant to the *convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port,* approved by the *loi du 26 avril 1924.*

Other inland waterway ports set up or managed pursuant to *article 6 (navigation intérieure)* of the *décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes.*

Ports autonomes operating pursuant to *articles L 111-1 et suivants* of the *code des ports maritimes.*

Ports non autonomes operating pursuant to *articles R 121-1 et suivants* of the *code des ports maritimes.*

Ports managed by regional authorities *(départements)* or operating pursuant to a concession granted by the regional authorities *(départements)* pursuant to *article 6* of the *loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État.*

IRELAND

Ports operating pursuant to the *Harbour Acts 1946 to 1976.*

Port of *Dun Laoghaire* operating pursuant to the *State Harbours Act 1924.*

Port of *Rosslare Harbour* operating pursuant to the *Finguard and Rosslare Railways and Harbours Act 1899.*

ITALY

State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32.*

Autonomous ports *(enti portuali)* set up by special laws pursuant to Article 19 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327.*

LUXEMBOURG

Port de Mertert set up and operating pursuant to *loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle.*

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the *Gemeentewet van 29 juni 1851.*

Havenschap Vlissingen, set up by the *wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen.*

Havenschap Terneuzen, set up by the *wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen.*

Havenschap Delfzijl, set up by the *wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl.*

Industrie- en havenschap Moerdijk, set up by *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970,* approved by *Koninklijke Besluit nr. 23 van 4 maart 1972.*

PORTUGAL

Porto do Lisboa set up pursuant to *Decreto Real do 18 de Fevereiro de 1907* and operating pursuant to *Decreto-Lei nº 36976 de 20 de Julho de 1948.*

Porto do Douro e Leixões set up pursuant to *Decreto-Lei nº 36977 de 20 de Julho de 1948.*

Porto de Sines set up pursuant to *Decreto-Lei nº 508/77 de 14 de Dezembro de 1977.*

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to the *Decreto-Lei nº 37754 de 18 de Fevereiro de 1950.*

UNITED KINGDOM

Harbour Authorities within the meaning of *Section 57 of the Harbours Act 1964* providing port facilities to carriers by sea or inland waterway.

ANNEX X

OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF TELECOMMUNICATIONS SERVICES

BELGIUM

Régie des télégraphes et des téléphones/Regie van Telegrafie en Telefonie.

DENMARK

Kjøbenhavns Telefon Aktieselskab.

Jydsk Telefon.

Fyns Telefon.

Statens Teletjeneste.

Tele Sønderjylland.

GERMANY

Deutsche Bundespost — Telekom.

Mannesmann — Mobilfunk GmbH.

GREECE

OTE/Hellenic Telecommunications Organization.

SPAIN

Compañía Telefónica Nacional de España.

FRANCE

Direction générale des télécommunications.

Transpac.

Telecom service mobile.

Société française de radiotéléphone.

IRELAND

Telecom Éireann.

ITALY

Amministrazione delle poste e delle telecommunicazioni.

Azienda di stato per i servizi telefonici.

Società italiana per l'esercizio telefonico SpA.

Italcable.

Telespazio SpA.

LUXEMBOURG

Administration des postes et télécommunications.

NETHERLANDS

Koninklijke PTT Nederland NV and subsidiaries [1].

[1] Except PTT Post BV.

PORTUGAL

Telefones de Lisboa e Porto, SA.

Companhia Portuguesa Rádio Marconi.

Correios e Telecomunicações de Portugal.

UNITED KINGDOM

British Telecommunications plc.

Mercury Communications Ltd.

City of Kingston upon Hull.

Racal Vodafone.

Telecoms Securicor Cellular Radio Ltd (Cellnet).

ANNEX XI

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES

Classes	Groups	Subgroups and items	Description
50			BUILDING AND CIVIL ENGINEERING
	500		**General building and civil engineering work (without any particular specification) and demolition work**
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		**Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential**
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repointing, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		**Civil engineering: construction of roads, bridges, railways, etc.**
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		**Installation (fittings and fixtures)**
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		**Building completion work**
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

ANNEX XII

A. OPEN PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).

   Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) nature and quantity of the goods to be supplied;

   or

   nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

5. For services:

   (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (b) reference of the law, regulation or administrative provision;

   (c) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;

   (d) indication whether suppliers can tender for a part of the services concerned.

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 13 (6).

8. Time limits for delivery or completion or duration of service contract.

9. (a) Address from which the contract documents and additional documents may be requested.

   (b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) Final date for receipt of tenders.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

11. (a) Where appropriate, the persons authorized to be present at the opening of tenders.

    (b) Date, hour and place of such opening.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the provisions in which they are contained.

14. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded.

15. Minimum economic and technical conditions required of the supplier, contractor or provider to whom the contract is awarded.

16. Period during which the tenderer is bound to keep open his tender.

17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

18. Other information.

19. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

20. Date of dispatch of the notice by the contracting entities.

21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. RESTRICTED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).

   Category of service within the sense of annex XVI A or XVI B and description (CPC classification).

3. Place of delivery, site or place of performance of service.

4. For supplies and works:

   (a) nature and quantity of the goods to be supplied;

   or

   nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

5. For services:

   (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (b) reference of the law, regulation or administrative provision;

   (c) indication whether legal persons should indicate the names and professional qualification of the staff to be reponsible for the execution of the services;

   (d) indication whether suppliers can tender for a part of the services concerned;

6. Authorization to submit variants.

7. Derogation from the use of European specifications, in accordance with Article 18 (6).

8. Time limits for delivery or completion or duration of service contract.

9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.

10. (a) Final date for receipt of requests to participate.

    (b) Address to which they must be sent.

    (c) Language or languages in which they must be drawn up.

11. Final date for dispatch of invitations to tender.

12. Where appropriate, any deposits and guarantees required.

13. Main terms concerning financing and payment and/or references to the texts in which these are contained.

14. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.

15. Criteria for the award of the contract where they are not mentioned in the invitation to tender.

16. Other information.

17. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.

18. Date of dispatch of the notice by the contacting entities.

19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. NEGOTIATED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity
2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).

   Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).
3. Place of delivery, site or place of performance of service.
4. For supplies and works:

   (a) nature and quantity of the goods to be supplied;

   or

   nature and extent of the services to be provided and general nature of the work;

   (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

   (c) for works contracts:

   Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:

   (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

   (b) reference of the law, regulation or administrative provision;

   (c) indication whether legal persons should indicate the names and professional qualification of the staff to be reponsible for the execution of the services;

   (d) indication whether suppliers can tender for a part of the services concerned.
6. Derogation from the use of European specifications, in accordance with Article 18 (6).
7. Time limits for delivery or completion or duration of service contract.
8. (a) Final date for receipt of tenders.

   (b) Address to which they must be sent.

   (c) Language or languages in which they must be drawn up.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the texts in which these are contained.
11. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
12. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.
13. Where appropriate, the names and addresses of suppliers, contractors or providers already selected by the contracting entity.
14. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities.*
15. Other information.
16. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
17. Date of dispatch of the notice by the contracting entities.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XIII

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.

2. Purpose of the qualification system.

3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1).

4. Where applicable, duration of the qualification system.

ANNEX XIV

PERIODIC INFORMATION NOTICE

A. *For supply contracts*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Nature and quantity or value of the services or products to be supplied.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).

   (b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. *For works contracts*

1. Name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) Site.

   (b) Nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.

   (c) An estimate of the cost of the service to be provided.
3. (a) Type of award procedure to be used.

   (b) Date scheduled for initiating the award procedures in respect of the contract or contracts.

   (c) Date scheduled for the start of the work.

   (d) Planned timetable for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information (for example, indicate if a call for competition will be published later).
6. Date of dispatch of the notice by the contracting entities.
7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. For service contracts

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Intended total procurement in each of the service categories listed in Annex XVI A.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).

   (b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispath of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. Information for publication in the *Official Journal of the European Communities*

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).
   (b) Reference of publication of the notice in the *Official Journal of the European Communities.*
   (c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20 (2), or Article 16.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 20 (2) (j).
9. Name and address of successful supplier(s), contractor(s) or service provider(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Optional information:
   — value and share of the contract which may be subcontracted to third parties,
   — award criteria,
   — price paid (or range of prices).

II. Information not intended for publication

12. Number of contracts awarded (where an award has been split between more than one supplier).
13. Value of each contract awarded.
14. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under Article 18 (6). If so, which?
16. Which award criteria was used (most economically advantageous; lowest price; criteria permitted pursuant to Article 35)?
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 34 (3)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 34 (5)?
19. Date of transmission of the notice by the contracting entities.
20. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 24 (3)).

ANNEX XVI A

SERVICES IN THE SENSE OF ARTICLE 15

Category	Subject	CPC reference No
1	Maintenance and repair services	6112, 6122, 633, 886
2	Land transport services (1), including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4	Transport of mail by land (1) and by air	71235, 7321
5	Telecommunications services (2)	752
6	Financial services (a) Insurance services (b) Banking and investment services (3)	ex 81 812, 814
7	Computer and related services	84
8	R&D services (4)	85
9	Accounting, auditing and book-keeping services	862
10	Market research and public opinion polling services	864
11	Management consulting services (5) and related services	865, 866
12	Architectural services; Engineering services and integrated engineering services; Urban planning and landscape architectural services; Related scientific and technical consulting services; Technical testing and analysis services	867
13	Advertising services	871
14	Building-cleaning services and property management services	874 82201, 82206
15	Publishing and printing services on a fee or contract basis	88442
16	Sewage and refuse disposal services; sanitation and similar services	94

(1) Except for rail transport services covered by category 18.
(2) Except voice telephony, telex, radiotelephony, paging and satellite services.
(3) Except contracts for the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.
(4) Except research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity.
(5) Except arbitration and conciliation services.

ANNEX XVI B

SERVICES IN THE SENSE OF ARTICLE 16

Category	Subject	CPC reference No
17	Hotel and restaurant services	64
18	Transport services by rail	711
19	Water transport services	72
20	Supporting and auxiliary transport services	74
21	Legal services	861
22	Personnel placement and supply services	872
23	Investigation and security services (except armoured car services)	873 (except 87304)
24	Education and vocational education services	92
25	Health and social services	93
26	Recreational, cultural and sporting services	96
27	Other services	

ANNEX XVII

DESIGN CONTEST NOTICES

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity and of the service from which the relevant documents may be obtained.
2. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
   (a) the envisaged number of participants, or range;
   (b) where applicable, names of already selected participants;.
   (c) the criteria to be applied in the selection of participants;
   (d) final date for receipt of requests to participate.
6. Where applicable, indication whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of selected members of the jury.
9. Indication whether the decision of the jury is binding for the authority.
10. Where applicable, the number and value of the prizes to be awarded.
11. Where applicable, details on payments to all participants.
12. Indication whether the prizewinners are entitled to be awarded any follow-up contracts.
13. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

ANNEX XVIII

RESULTS OF DESIGN CONTESTS

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity.
2. Project description.
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Where applicable, the prize(s).
7. Other information.
8. Reference of the design contest notice.
9 Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.

Chapter 2 — Solid fuels

Commission communication concerning the interpretation of the expressions 'hard coal' and 'run-of-mine brown coal' mentioned in Annex I of the Treaty estabilishing the European Coal and Steel Community

(86/C 254/02)

The Commission has been informed by a Member State (Spain) that in the geological formations of that country there exist deposits of solid fuels of varying degrees of carbonization which are exploited economically. These various solid fuels are usually referred to in Spain by the trade names 'anthracite', 'hard coal', 'black lignite' and 'brown lignite'.

In spite of the fact that the expressions 'hard coal' and 'run-of-mine brown coal' are not precisely defined in Annex I of the ECSC Treaty, there is no doubt, on the basis of the prevailing interpretation and practical application of the Treaty in other coal-producing Member States (Belgium, Germany, France, United Kingdom) that 'anthracite' and 'hard coal' in Spain correspond to the expression 'hard coal' in Annex I of the Treaty. In the same way, there is no doubt that the Spanish 'brown lignite' corresponds to the expression 'run-of-mine brown coal' in Annex I of the Treaty.

With the accession of Spain to the European Coal and Steel Community, however, the question arises of how Spanish 'black lignite' is to be classified. The question of coal classification also arises for other coal deposits in the Mediterranean basin, and concerns the l'Arc (France) and Sulcis (Italy) coalfields. Production in the Sulcis field will be re-opened within a few years.

In order to clarify the problems of coal classification the Commission has had a scientific study made. On the basis of this scientific study, the Commission classifies the coals in question from the three abovementioned Member States as follows:

— the fuel known to the trade in Spain as 'black lignite' form the Teruel, Mequinenza, Pirenaica and Baleares coalfields, together with the coal to be produced from the Italian Sulcis coalfield (Sardinia) are considered as hard coal in the sense of Annex I of the ESCS Treaty;

— the coal produced in the French l'Arc coalfield (Gardanne) is classified as run-of-mine brown coal in the sense of Annex I of the ECSC Treaty.

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING WITHIN THE COUNCIL

of 7 November 1977

concerning Community surveillance of imports of hard coal originating in third countries

(77/707/ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING WITHIN THE COUNCIL,

In agreement with the Commission,

HAVE DECIDED AS FOLLOWS:

Article 1

Without prejudice to the provisions of the Treaty establishing the European Coal and Steel Community, this Decision shall apply to imports of hard coal (Code No 3,100 in Annex I to the Treaty) into the Member States.

Article 2

Imports of hard coal originating in third countries into the Member States shall be subject to Community surveillance in order that the Commission may be able regularly and better to judge developments in all Community coal markets, with particular regard to imports of hard coal originating in third countries.

Article 3

1. Pursuant to Article 2 and in order to supplement the information which the Commission receives from Governments and undertakings concerning coking coal imports originating in third countries, Member States shall inform the Commission of the following for each quarter of the calendar year:

— hard coal imports in tonnes (units of mass, t = t) with indication, if possible precise, of the net lower calorific value as received (net lower calorific value as received) expressed as kilojoules per kilogram (kJ/kg), for use in electric power stations or installations for the combined production of heat and electricity,

— average quarterly cif free-at-frontier prices of these hard coal imports per tonne (t = t).

2. The information referred to in paragraph 1 shall be communicated to the Commission within 40 days of the end of each quarter broken down, as far as the tonnages referred to in the first indent of paragraph 1 are concerned, by country of origin, except where less than three enterprises are involved, and by length of contract (one year and longer or less than one year).

Article 4

All information supplied pursuant to Article 3 shall be confidential. This provision shall not, however, prevent general or summary information from being supplied to the Member States in terms which preclude the reconstruction of financial information about individual deliveries.

Article 5

Member States shall take all necessary measures for the application of this Decision.

Done at Brussels, 7 November 1977.

The President

A. HUMBLET

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING WITHIN THE COUNCIL

of 26 February 1985

amending Decision 77/707/ECSC concerning Community surveillance of imports of hard coal originating in third countries

(85/161/ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING WITHIN THE COUNCIL,

in agreement with the Commission,

HAVE DECIDED AS FOLLOWS:

Article 1

Decision 77/707/ECSC (1) is hereby amended as follows:

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

'2. The information referred to in paragraph 1 shall be communicated to the Commission within 80 days of the end of each quarter, broken down by the country of origin and by length of supply contract (one year and longer or less than one year).'

2. Article 4 is replaced by the following:

'Article 4

The Commission shall ensure that the information supplied pursuant to Article 3 remains confidential and is handled by officials who are bound by professional secrecy.

This provision shall not, however, prevent the Commission from publishing general or summary information, but at the earliest on the expiry of 80 days following the end of each quarter, in a form which, in respect of statistical secrecy, meets the following requirements:

— no financial data shall be published if less than four companies undertake more than 75 % of the imports from the country of origin in each quarter,

— publication of information must be in such terms as to preclude the reconstruction of financial information about individual deliveries.'

Article 2

Member States shall take the measures necessary to implement this Decision.

Done at Brussels, 26 February 1985.

The President

F. PANDOLFI

(1) OJ No L 292, 16. 11. 1977, p. 11.

COMMISSION DECISION No 3632/93/ECSC

of 28 December 1993

establishing Community rules for State aid to the coal industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95 (1) thereof,

Having consulted the Consultative Committee, the European Parliament and with the unanimous assent of the Council,

I

Whereas Article 4 (c) of the Treaty prohibits all State aid to the coal industry in any form whatsoever, whether specific or non-specific;

Whereas structural changes on the international and Community energy markets have been forcing the coal industry in the Community to make major modernization, rationalization and restructuring efforts since the early 1960s; whereas, added to the competition from crude oil and natural gas, there has been growing pressure from coal imported from outside the Community; whereas, as a result, many undertakings in the Community are in financial difficulties and require State aid;

Whereas since 1965 the High Authority/Commission has on a number of occasions laid down rules to reconcile State aid to the coal industry with the objectives of the Treaty; whereas each new set of aid rules has been tailored to developments in the economy in general, and in particular to developments in the energy market and the coal market in the Community;

Whereas all the Decisions in question laid down objectives and principles guaranteeing that State aid was in the common interest, was strictly necessary in terms of volume and duration, and in no way disturbed the functioning of the common market; whereas Member States also undertook to obtain prior authorization from the High Authority/Commission before granting aid;

II

Whereas although Commission Decision 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry [1] has enabled varying degress of further restructuring, modernization and rationalization to take place in the coal industry with a view to increasing competitiveness, most coal production in the Community remains uncompetitive *vis-à-vis* imports from outside the Community, despite a considerable increase in productivity and a major reduction in employee numbers in this sector;

Whereas the scope for rationalization in the coal industry in the Community is limited by unfavourable geological conditions; whereas, therefore, these rationalization measures must be backed up by restructuring measures in order to improve the competitive position of the Community coal industry;

Whereas, in order to attain this objective, more financial resources are needed than the undertakings themselves can provide; whereas the Community similarly does not have at its disposal the resources needed to finance this process; whereas continuation of a Community system of aid is proving indispensable;

Whereas the measures taken may, in accorance with the ECSC Treaty provisions, form part of a concept for the diversification of energy supply and suppliers, including national energy resources, in the context of existing energy concepts;

Whereas the world market in coal is stable with abundant supplies from a wide variety of geographical sources, with the result that even in the long term and with increased demand for coal the risk of persistent interruption of supply, although it cannot be ruled out totally, is nevertheless minimal;

Whereas most of the coal imported into the Community comes from the Community's partners in the International Energy Agency (IEA) or from States with which the Community and/or the Member States have signed trade agreements and which cannot be considered high-risk suppliers;

[1] OJ No L 177, 1. 7. 1986, p. 1.

Whereas, despite the inevitable restructuring and closures, care must be taken to minimize the social and regional impact of these changes, when continuing the Community's policy in this sector, which must take account of the precarious social situation of mining regions, in particular in the context of the principle of economic and social cohesion;

Whereas the Community is therefore confronted with a situation for which no provision is made in the Treaty but on which action must nevertheless be taken; whereas, under these circumstances, the first paragraph of Article 95 of the Treaty must be invoked in order to allow the Community to continue to pursue the objectives set out in the opening Articles of the Treaty and, to this end, to establish new Community rules for aid to the coal industry;

III

Whereas the Community must progressively bring about conditions which will of themselves ensure the most rational distribution of coal production;

Whereas, to this end, the Community must, *inter alia*, promote a policy of using natural resources rationally under conditions precluding all protection against competing industries;

Whereas the Community must promote the growth of international trade;

Whereas in order to perform its task the Community must ensure the establishment, maintenance and observance of normal competitive conditions;

Whereas, in the light of the abovementioned provisions, State aid must cause no distortion of competition and must not discriminate between coal producers, purchasers or consumers in the Community;

Whereas State aid must therefore be granted under transparent conditions to allow better evaluation of its impact on the conditions of competition;

Whereas inclusion of the aid in the budget or in exactly equivalent mechanisms, simplification of such aid and proper indication of the amounts received in the undertakings' annual accounts are the best guarantees of transparency in the aid systems;

Whereas, moreover, the upward trend in the amount of aid paid in recent years is incompatible with the exceptional, transitional nature of the Community aid arrangements; whereas the principle of reducing the coal industry's production costs and capacity is therefore necessary in order to achieve degression of aids;

Whereas, however, a policy of rational distribution of production requires reductions of costs and of capacity to be concentrated primarily on those areas of production receiving the highest level of aid;

Whereas for undertakings or production units in the Community which have no hope of making progress towards greater economic viability in view of coal prices on the world markets, aid arrangements should make it possible to mitigate the social and regional consequences of closures; whereas in the light of redevelopment experience in certain Community coal-producing regions it has been recognized that, in cases of early closure of installations with no prospect of future viability, aid should be granted, as deemed necessary by the Member State, for regional industrial redevelopment, to the extent compatible with the Treaties;

Whereas steps must be taken not only to create the conditions for healthier competition but also to bring about a long-term improvement in the competitiveness of this industry throughout the Community in relation to the world market;

Whereas Community coal industry undertakings must be able to count on a precise medium and long-term outlook to carry out structural changes;

Whereas, as a result of the steady decline in coal production in the Community in recent decades, some undertakings may be confronted with abnormal or exceptionally high costs; whereas State aid to offset all or part of such costs may be compatible with the common market provided that strict supervision of such aid by the Commission is guaranteed; whereas these inherited costs are not matched by hidden revenue from the past;

Whereas it is necessary to ensure equal access by the coal industry and other sectors to aid for research and development and to aid for environmental protection; whereas it is therefore desirable to evaluate the compatibility of such aid with the Community guidelines established to this end;

Whereas, in particular, the coal industry is characterized by ever-increasing recourse to advanced technology and therefore plays an important role in research, development and demonstration and the exploitation of the industrial potential of such technology;

IV

Whereas efforts to reduce production costs must form part of a restructuring, rationalization and modernization plan for the industry distinguishing between production units capable of contributing towards attainment of this objective and units which cannot attain it; whereas the latter will have to be the subject of an activity-reduction plan leading to the closure of installations when the present arrangements expire; whereas only exceptional social and regional reasons can justify any postponement of closure beyond the expiry date set;

Whereas the Commission's power of authorization must be implemented on the basis of precise and full knowledge of each measure planned by the governments and of their relationship to the objectives of this Decision; whereas, consequently, Member States should regularly provide the Commission with a consolidated report showing the full details of the direct or indirect aid which they plan to grant to the Community coal industry, specifying the reasons for and scope of the proposed aid and, where appropriate, its relationship with any modernization, rationalization and restructuring plan submitted;

Whereas it may be necessary, in view of the specific nature of certain existing aid arrangements, to allow a transitional period of three years so that such arrangements can be brought into line with the provisions of this Decision;

Whereas it is essential that no payment should be made, in whole or in part, before the Commission has given explicit authorization,

HAS ADOPTED THIS DECISION:

SECTION I

Framework and general objectives

Article 1

1. All aid to the coal industry, whether specific or general, granted by Member States or through State resources in any form whatsoever may be considered Community aid and hence compatible with the proper functioning of the common market only if it complies with Articles 2 to 9.

2. The term 'aid' covers any direct or indirect measure or support by public authorities linked to production, marketing and external trade which, even if it is not a burden on public budgets, gives an economic advantage to coal undertakings by reducing the costs which they would normally have to bear.

3. The term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid.

4. The term 'aid' also covers aid elements contained in financing measures taken by Member States in respect of coal undertakings which are not regarded as risk capital provided to a company under standard market-economy practice.

Article 2

1. Aid granted to the coal industry may be considered compatible with the proper functioning of the common market provided it helps to achieve at least one of the following objectives:

— to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids,

— to solve the social and regional problems created by total or partial reductions in the activity of production units,

— to help the coal industry adjust to environmental protection standards.

2. On expiry of a transitional period not exceeding three years starting at the entry into force of this Decision, with a view to increasing transparency, aid shall be authorized only if it is entered in Member States' national, regional or local public budgets or channelled through strictly equivalent mechanisms.

3. With effect from the first coal production year covered by this Decision, all aid received by undertakings shall be shown together with their profit-and-loss accounts as a separate item of revenue, distinct from turnover.

4. For the purposes of this Decision, 'production costs' means those costs, per tonne of coal equivalent, which are linked to current production.

5. All measures involving the granting of aid as referred to in Articles 3 to 7 shall also be appraised, without prejudice to the specific conditions defined for them by those Articles, so as to assess their compatibility with the objectives set out in paragraph 1 of this Article.

SECTION II

Aid granted by the Member States

Article 3

Operating aid

1. Operating aid to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market may be considered compatible with the common market only if it satisfies all the following conditions:

— the aid notified per tonne shall not exceed for each undertaking or production unit the difference between production costs and foreseeable revenue in the following coal production year,

— the aid actually paid shall be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted. Where the aid is granted within the framework of a multiannual financing ceiling, the final correction shall be made at the end of the year following the aforesaid multiannual financing exercise,

— the amount of operating aid per tonne may not cause delivered prices for Communiy coal to be lower than those for coal of a similar quality from third countries,

— without prejudice to Articles 8 and 9, Member States shall supply the Commission firstly with all details relevant to the calculation of the foreseeable production costs and revenue per tonne and secondly with all details relevant to the calculation of the correction based on actual production costs and revenue,

— aid must entail no distortion of competition between coal users.

2. Member States which intend to grant operating aid as referred to in paragraph 1 in the course of the 1994 to 2002 coal production years to coal undertakings shall submit to the Commission in advance a modernization, rationalization and restructuring plan designated to improve the economic viability of the undertakings concerned by reducing production costs.

The plan will provide for appropriate measures and sustained efforts to generate a trend towards a reduction in production costs at 1992 prices, during the period 1994 to 2002.

Implementation of this plan shall be monitored regularly and the situation reviewed by the Commission in 1997.

3. If some production units in an undertaking receive aid for the reduction of activity provided for by Article 4 while others in the same undertaking receive operating aid, the production costs of the units whose activity is reduced shall not be included in the calculation of the average production costs with a view to evaluating attainment by the undertaking of the objective set in paragraph 2 of this Article.

Article 4

Aid for the reduction of activity

Aid to cover the production costs of undertakings or production units which will be unable to attain the conditions laid down by Article 3 (2) may be considered compatible with the common market provided that it satisfies the conditions laid down in Article 3 (1) and is the subject of a closure plan with a deadline occurring before expiry of this Decision.

Should such closure come about after the expiry of this Decision, aid to cover production costs will be authorized only if it is justified on exceptional social and regional grounds and is the subject of a progressive and continuous activity-reduction plan entailing a significant reduction in capacity before the expiry of this Decision.

Article 5

Aid to cover exceptional costs

1. State aid to coal undertakings to cover the costs arising from or having arisen from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities) may be considered compatible with the common market provided that the amount paid does not exceed such costs. Such aid may be used to cover:

— the costs incurred only by undertakings which are carrying out or have carried out restructuring,

— the costs incurred by several undertakings.

The categories of costs resulting from modernization, rationalization and restructuring of the coal industry are defined in the Annex to this Decision.

2. State aid to finance social-welfare schemes specifically for the coal industry may be considered compatible with the common market provided that it brings the ratio between the cost per mineworker in employment and the benefits per person in receipt of benefit for coal undertakings into line with the corresponding ratio in other industries. Without prejudice to Article 9, Member States' Governments shall submit to the Commission the necessary basic data and details of the calculation of the ratios between the burdens and benefits referred to above.

Article 6

Aid for research and development

Aid to cover expenditure by coal undertakings on research and development projects may be considered compatible with the common market provided that it complies with the rules laid down in the Community framework for State aid for research and development.

Article 7

Aid for environmental protection

Aid to facilitate the adjustment to new environmental protection standards of installations in operation at least two years before the entry into force of those standards may be considered compatible with the common market, provided that it complies with rules laid down in the Community framework for State aid for such purposes.

SECTION III

Notification, appraisal and authorization procedures

Article 8

1. Member States which intend to grant operating aid as referred to in Article 3 (2) or aid for the reduction of activity as referred to in Article 4 for the 1994 to 2002 coal production years shall submit to the Commission, by 31 March 1994 at the latest, a modernization, rationalization and restructuring plan for the industry in accordance with Article 3 (2) and/or an activity-reduction plan in accordance with Article 4.

2. The Commission shall consider whether the plan or plans are in conformity with the general objectives set by Article 2 (1) and with the specific objectives and criteria set by Articles 3 and 4.

3. Within three months of notification of the plans, the Commission shall give its opinion on whether they are in conformity with the general and specific objectives, without prejudging the ability of the measures planned to attain these objectives. If the information in the plans proves insufficient, the Commission may, within one month, request further information, in which case a new three-month period will start on the date of submission of such further information.

4. If a Member State decides to make amendments to the plan which alter its general tendency in respect of the objectives pursued by this Decision, it must inform the Commission so that the latter may rule on the amendments in accordance with the procedures set out in this Article.

Article 9

1. By 30 September each year (or three months before the measures enter into force) at the latest, Member States shall send notification of all the financial support which they intend to grant to the coal industry in the following year, specifying the nature of the support with reference to the general objectives and criteria set out in Article 2 and the various forms of aid provided for in Articles 3 to 7 and its relationship to the plans submitted to the Commission in accordance with Article 8.

2. By 30 September each year at the latest, Member States shall send notification of the amount of aid actually paid in the preceding coal production year and shall declare any corrections made to the amounts originally notified.

3. When notifying aid as referred to in Articles 3 and 4 and making the annual statement of aid actually paid, Member States shall supply all the information necessary for verification of the criteria set out in the relevant Articles.

4. Member States may not put into effect planned aid until it has been approved by the Commission on the basis, in particular, of the general criteria and objectives laid down in Article 2 and of the specific criteria established by Articles 3 to 7. If the Commission has taken no decision within three months of receipt of notification of the measures planned, the measures may be implemented 15 working days after transmission to the Commission of notice of intent to implement them. Any request made by the Commission for further information shall cause that three-month period to run afresh from the date on which the Commission receives the information.

5. In the event of refusal, any payment made in anticipation of authorization from the Commission shall be repaid in full by the undertaking that received it and shall invariably be considered an unfair advantage in the form of an unjustified cash advance and, as such, shall be liable to charges at the market rate payable by the recipient.

6. In its assessment of the measures notified, the Commission shall check whether the measures proposed are in conformity with the plans submitted in accordance with Article 8 and with the objectives set out in Article 2. It may request Member States to explain any deviation from the plans originally submitted and to propose the necessary corrective measures.

7. The arrangements existing at 31 December 1993, under which aid was granted in conformity with the provisions of Decision 2064/86/ECSC and which are linked to agreements between producers and consumers, exempted under Article 85 (3) of the EC Treaty and/or authorized under Article 65 of the ECSC Treaty, must be modified by 31 December 1996 to bring them into line with the provisions of this Decision.

The preceding subparagraph in no way affects either the application of Article 2 of this Decision or the Member States' notification requirement in accordance with the procedures laid down in Articles 8 and 9 of this Decision. All changes made in the aforementioned arrangements must also be notified to the Commission.

SECTION IV

General and financial provisions

Article 10

1. The Commission shall report annually to the Council, the European Parliament and the Consultative Committee on the application of this Decision.

2. The Commission shall submit to the Council, by 30 June 1997 at the latest, a report on experience and problems in applying this Decision. It may propose any appropriate amendments in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty.

Article 11

After consulting the Community, the Commission shall take all the measures necessary to implement this Decision.

Article 12

This Decision shall enter into force on 1 January 1994 and shall expire on 23 July 2002.

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

Done at Brussels, 28 December 1993.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX

DEFINITION OF THE COSTS REFERRED TO IN ARTICLE 5 (1) OF DECISION No 3632/93/ECSC

I. Costs incurred only by undertakings which are carrying out or have carried out restructuring and rationalization

Exclusively :

(a) the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age ;

(b) other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization ;

(c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring ;

(d) the supply of free coal to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such supply before the restructuring ;

(e) residual costs resulting from administrative, legal or tax provisions ;

(f) additional underground safety work resulting from restructuring ;

(g) mining damage provided that it has been caused by pits previously in service ;

(h) residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water ;

(i) other residual costs resulting from water supplies and the removal of waste water ;

(j) residual costs to cover former miners' health insurance ;

(k) exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation) ;

(l) costs in connection with maintaining access to coal reserves after mining has stopped.

II. Costs incurred by several undertakings

(a) increase in the contributions, outside the statutory system, to cover social-security costs as a result of the drop, following restructuring, in the number of contributors ;

(b) expenditure, resulting from restructuring, on the supply of water and the removal of waste water ;

(c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following restructuring, in the coal production subject to levy.

3728/66 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 29.11.66

DECISION No 22-66

of 16 November 1966

on information to be furnished by undertakings about their investments

THE HIGH AUTHORITY,

Having regard to Articles 46, 47 and 54 of the Treaty;

Having regard to Decision No 27-55 of 20 July 1955 on information to be furnished by undertakings about their investments *(Official Journal of the ECSC* of 26 July 1955, p. 872) and Decision No 26-56 of 11 July 1956 amending Decision No 27-55 *(Official Journal of the* ECSC of 19 July 1956, p. 209);

Whereas Article 54 of the Treaty entrusts the High Authority with the task of encouraging co-ordinated development of investment; whereas it must therefore be able to form an opinion, within the framework of the general objectives laid down in Article 46, on the investment programmes of undertakings; whereas, to form an opinion, an accurate picture is needed of the capacities of production plant in operation, under construction or being planned;

Whereas investment programmes must be notified in accordance with Decisions No 27-55 of 20 July 1955 and No 26-56 of 11 July 1956; whereas the scope of this obligation has been found satisfactory as regards new plant to be built, and it is not therefore necessary to alter it;

Whereas the rapid development of production techniques in recent years frequently leads to the closure of industrial plants before their complete technical amortisation; whereas such measures have an influence on the level of production capacity in operation and therefore must be notified in advance in the same way as new programmes;

Whereas, owing in particular to such rapid development, undertakings are often led to introduce substantial changes to their programmes of investment or capacity reduction while in the process of carrying them out; whereas the High Authority is not able to give a well-founded opinion on new programmes if it is not kept informed of the way in which programmes of investment or capacity reduction as originally notified are actually carried out; whereas it must therefore receive reports on those matters;

Whereas notifications and reports concerning the main production capacities already in operation or to be built cannot give a sufficiently full picture of foreseeable developments; whereas, on the one hand, certain capacities are too small to justify separate notification while their total importance should not be underestimated; whereas, on the other hand, it is in the common interest to co-ordinate investment on the basis not only of capacities in operation or under construction, but also of those which may be still at the planning stage; whereas an overall annual survey of investments and of the capacities in operation, under construction or in the planning stage is likely to complement usefully the information obtained by means of notifications and reports;

Whereas this Decision shall be substituted for the existing rules governing information to be furnished by undertakings about their investments; whereas Decisions No 27-55 of 20 July 1955 and No 26-56 of 11 July 1956 must therefore be repealed;

DECIDES:

SECTION I

Prior notification of investment programmes

Article 1

The coal and steel undertakings of the Community shall notify the High Authority of investment programmes relating to their production activities in respect of one or more of the products listed in Annex I to the Treaty.

Article 2

Such notification shall cover investment programmes concerning:

— new plant, where the estimated total expenditure exceeds 500 000 EMA units of account; or

— replacement or conversion work, where the estimated total expenditure exceeds 1 000 000 EMA units of account.

However, investment programmes for steel furnaces and converters for steel production must be notified whatever the amount of the estimated expenditure.

The estimated total expenditure shall include all expenditure resulting directly from implementation of the programme in question, and shall be calculated by combining in a single programme all elements constituting a technically indivisible whole, even if implementation covers several distinct stages in time.

Article 3

Notifications shall contain:

— an exact description of the investment programme;

— the approximate estimated expenditure;

— all relevant information as to:

  — the purpose and technical nature of the work;

  — the time required for its completion;

  — the results expected, particularly as regards production and production capacity;

  — the supply of raw materials;

  — the effects on manpower.

Article 4

Notifications concerning investment programmes shall be sent to the High Authority as early as possible, and not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking itself, three months before the work is put in hand.

The High Authority shall acknowledge receipt of notifications sent to it and may request any information thereon that it considers necessary, particularly as regards financing of programmes.

Article 5

Information in respect of any major changes in investment programmes not notified to the High Authority shall be forwarded in an amending notification in the form and within the time limits laid down in Articles 3 and 4.

Any decision likely to delay the implementation of the programme by at least one year or to double the estimated cost or to reduce it by half or to increase or decrease estimated production capacity by at least 20% shall be considered as involving major changes.

SECTION II

Prior notification of programmes to reduce production capacity

Article 6

The coal and steel undertakings of the Community shall notify the High Authority of programmes involving a reduction in production capacity in respect of one or more of the products listed in Annex I to the Treaty.

Article 7

Such notification shall cover withdrawal of investments, disposal, permanent or temporary closure and in general all reductions in production capacity leading to an appreciable change in the production structure of an undertaking or which may lead to major changes in the use of manpower within the undertaking.

Apart from the repercussions referred to in the preceding paragraph, the following shall in any event be notified in advance:

— decisions concerning the closure of plant with replacement value of at least one million EMA units of account;

— any reduction in capacity involving steel furnaces or converters used for steel production.

Article 8

Notifications shall contain:

— an exact description of the plant to be withdrawn from service;

— the approximate liquidation and replacement value of such plant;

— the immediate future of the plant (demolition, sale, temporary closure, etc.);

— the time required to put the proposed measures into effect;

— the actual production recorded during the twelve months preceding notification;

— the results expected, especially as regards production and production capacity;

— effects on manpower, with an indication of future possibilities, if any, of re-employment in the same undertaking.

Article 9

Notifications concerning reduction of capacity shall be sent to the High Authority as early as possible, and not later than three months before the plant concerned ceases to operate (beginning of demolition work, date of entry into force of the contract of sale, temporary closure, etc.).

The High Authority shall acknowledge receipt of notifications sent to it and may request any information thereon that it considers necessary, particularly as regards financing of programmes.

Article 10

Where a plant which was the subject of a notification within the meaning of this Section is brought into operation again, this shall be notified to the High Authority in accordance with Section I, whatever the amount of the estimated expenditure.

SECTION III

Reports on the implementation of programmes of investment or capacity reduction

Article 11

The coal and steel undertakings of the Community shall send to the High Authority a report on the actual manner of implementation of the programmes of investment or capacity reduction referred to in Sections I and II of this Decision, and of any other investment programmes the cost of which has, contrary to estimates, exceeded the limits given in Article 2.

Article 12

Reports shall contain:

— an exact description of the investment programme carried out, with specific reference to any changes made to the original programme;

— the date of completion of the programme of investment or capacity reduction (if the programme was carried out in a number of stages, the dates of completion of these stages);

— the expenditure incurred;

— all relevant information as to:

  — the purpose and technical nature of the work done;

  — the results already obtained or foreseen as a result of the implementation of the programme, particularly as regards production and production capacity, with specific mention of any divergence from the estimated results;

  — the supply of raw materials;

  — the effects on manpower.

Article 13

The reports referred to in Article 12 shall be sent to the High Authority as early as possible and not later than three months after the plant to which they refer starts or ceases to operate.

The High Authority shall acknowledge receipt of reports sent to it and may request any information thereon that it considers necessary, particularly as regards financing of programmes.

SECTION IV

Annual Survey

Article 14

Apart from the notifications and reports referred to above, the coal and steel undertakings of the Community shall reply to the High Authority's annual survey on investments or reductions in

capacity carried out, being carried out, or planned for the future.

Replies shall in particular describe the investments or reductions in capacity still at the planning stage. Such replies shall not exempt undertakings from submitting, in due course, a notification in accordance with Sections I and II.

Article 15

This Decision shall be published in the *Official Journal of the European Communities*. It shall enter into force on 1 January 1967. Decisions No 27-55 of 20 July 1955 and No 26-56 of 11 July 1956 shall cease to be in force on the same date.

This Decision was considered and adopted by the High Authority at its meeting on 16 November 1966.

For the High Authority

The President

Dino DEL BO

DECISION No 2237/73 (ECSC) OF THE COMMISSION
of 20 July 1973
amending High Authority Decision No 22-66 of 16 November 1966 relating to the information to be supplied by undertakings regarding their investments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 54;

Whereas High Authority Decision No 22-66 of 16 November 1966 [1] laid down the minimum amounts of capital investment requiring prior notification; whereas owing to technological development, the unit sizes of production plants tend to increase and unit capital investment costs increase not only as a result of the increased size of these plants, but also because of the quality requirements and the rise in the cost of equipment;

Whereas the effect of any increase in a company's production facilities would, at least in the case of the iron and steel industry, be less marked today than in 1966, in view of the increase in the overall production facilities of the enlarged Community;

Whereas, therefore, the sums fixed by Article 2 (500 000 EMA units of account) for notificating new plant and 1 000 000 EMA units of account for replacements or conversions) and by Article 7 (1 000 000 EMA units of account for the replacement value of plant closed) of Decision No 22-66 no longer correspond to current economic and technological facts;

Whereas, nevertheless, the provisions of Decision No 22-66 must remain unaltered apart from these amendments;

Whereas the capital investment programmes concerning steel production installations, even if in many cases they do not involve considerable foreseeable expenditure, are so numerous as to have a noticeable effect on the Community's production capacity, and hence still remain subject to prior notification, whatever the total foreseeable expenditure;

Whereas it is necessary for the Commission to be notified of the closure of large plants linked with the coal, iron and steel industries, such as collieries and coking plants, and the declarations to be made by the undertakings are still based on the replacement value of the plants concerned and not on their residual book value;

Whereas the theoretical cost of replacing such plants frequently exceeds the sum specified of 5 000 000 EMA units of account and thus there will be little change in the undertakings' obligations as regards the closure of plants of Community interest;

Whereas the major alterations which have been made to the investment programmes notified must be described in amending notifications in accordance with the procedure and within the time limits stated in Articles 3 and 4 of Decision No 22-66; whereas any decision shall be held to involve major alterations if it is likely either to cause a delay of not less than one year in the completion of the programme, or to double the estimated cost, or to reduce it by half, or, alternatively, to increase or reduce the estimated production capacity by at least 20 %;

HAS ADOPTED THIS DECISION:

Article 1

The amounts specified in Article 2 of Decision No 22-66 ie 500 000 EMA units of account for notification of investment programmes concerning new plants and 1 000 000 EMA units of account concerning replacements or conversion, are replaced by 5 000 000 EMA units of account in both cases.

Article 2

The amount of one million EMA units of account referred to in Article 7 of Decision No 22-66 relating to the replacement value of plants closed, is replaced by the amount of 5 000 000 EMA units of account.

Article 3

This Decision shall come into force on 1 September 1973.

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

Done at Brussels, 20 July 1973.

For the Commission
The President
François-Xavier ORTOLI

[1] OJ Special Edition 1965/66.

DECISION No 30-53

of 2 May 1953

on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

THE HIGH AUTHORITY,

Having regard to Article 60 and Article 63 (2) of the Treaty;

Whereas compliance with the obligations of non-discrimination involves uniform application by undertakings of the conditions shown in their price lists with no other increases or reductions and no evasion of those obligations by allowing longer periods for settlement without a corresponding increase in price;

Whereas the exception to this rule, namely the option of aligning a quotation on a competitor's price list,

must not cause that quotation to work out lower than the delivered price calculable from the conditions of the price list on which it is aligned;

Whereas inclusion, in the price, of taxes or charges which ultimately are not chargeable in respect of the transaction constitutes an increase as compared with the conditions applicable by the seller to a similar transaction which is in fact taxable;

Whereas, apart from differences related to the value or volume of procurements by the purchaser from the seller himself, the application of dissimilar conditions to comparably placed purchases is incompatible with the unity of the Community.

Whereas the effective operation of the common market requires that the rules of non-discrimination be applied alike to resale in an unaltered state and to sales by producers;

After consulting the Consultative Committee and the Council;

DECIDES:

Article 1

This Decision shall apply to Community undertakings in respect of their transactions within the common market in the products specified in Annex I to the Treaty, with the exception of scrap.

Article 2

1. It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to apply increases or reductions on the terms calculable, for the transaction concerned, for his published price list and conditions of sale.

2. This Article shall be no bar to the application of Article 60 (2) (b) of the Treaty or of Article 4 below, nor to the granting by undertakings in the coal industry of quantity or loyalty bonuses not shown in price lists pursuant to Article 2 (3) of Decision No 4-53 of 12 February 1953.

Article 3

1. Where a seller aligns his quotation on a competitor's price list under Article 60 (2) (b) of the Treaty, it shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for him to apply terms affording the purchaser actual delivered prices at destination lower than those calculable from the price list and conditions of sale of such competitor.

2. Such delivered prices at destination shall be calculated as the sum of the price list terms plus transport costs, surcharges or taxes borne by the purchaser less rebates or drawbacks allowed him.

3. This Article shall be no bar to the application in the coal industry of Decision No 3-53 of 12 February 1953, and in the steel industry of the last subparagraph of Article 60 of the Treaty and Article 30 (2) of the Convention.

Article 4

1. It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to allow more favourable periods for payment than those calculable from the price list and conditions of sale on which he bases his quotation, unless offset by a corresponding increase in price.

2. The increase must be in accordance with regular commercial practice as to credit in the area where the seller is established or, if the quotation is aligned on a competitor's price list, in the area where that competitor is established.

Article 5

It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty to include in the price charged to the purchaser the amount of any taxes or charges in respect of which the seller is entitled to exemption or drawback.

Article 6

1. It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for conditions of sale to be in any way differentiated as between purchasers established within the Community according to the nationality or the location of the place of establishment of such purchasers.

2. Furthermore, where conditions of sale vary according to the total volume or value of a purchaser's procurements from a number of suppliers of the product or class of products concerned over a given period, it shall be prohibited under Article 60 (1) of the Treaty for those conditions of sale to be in any way differentiated as between the suppliers from whom the purchaser has obtained his procurements within the common market, or according to the market in which he has resold.

3. The foregoing paragraph shall be no bar to the differentiation of conditions of sale according to the value or volume of procurements by the purchaser from the seller himself or from a predecessor of that seller.

Article 7

1. Undertakings shall frame their conditions of sale in such a way that their customers, selling agencies and commission agents, in reselling in the unaltered state other than by sale from stock in the case of steel and by retail in the case of coal, are under an obligation to comply with the rules set out in Articles 2 to 6.

2. Undertakings shall be held responsible for infringements of this obligation by their direct agents, selling agencies or commission agents.

Article 8

This Decision shall enter into force within the Community on 4 May 1953.

This Decision was considered and adopted by the High Authority at its meeting on 2 May 1953.

For the High Authority

The President

Jean MONNET

DECISION No 1-54

of 7 January 1954

amending Decision No 30-53 of 2 May 1963 concerning practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

THE HIGH AUTHORITY,

Having regard to Article 60 of the Treaty;

Having regard to Decision No 30-53 of 2 May 1953 concerning practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel (*Official Journal* of 4 May 1953, p. 109);

Whereas the rules on publication of prices afford scope *inter alia* for checking that the rules on non-discrimination are complied with although they do not mutually coincide;

Whereas, therefore, breaches of the price publication rules are not necessarily in themselves breaches of the non-discrimination rules;

After consulting the Consultative Committee and the Council;

DECIDES:

Article 1

The following shall be substituted for Article 2 of Decision No 30-53:

'It shall be a prohibited practice within the meaning of Article 60 (1) for a seller to apply prices or conditions departing from those shown in his price list unless he can show either that the transaction in question does not fall within the categories of transactions covered by this price list, or that the prices or conditions have been departed from uniformly in all comparable transactions. The limits applicable under the price publication rules shall continue to apply to any such exceptions or differences.

The foregoing paragraph shall be no bar to the application of Article 60 (2) (b) of the Treaty or the decisions taken by the High Authority in implementation thereof.'

Article 2

This Decision shall enter into force within the Community on 1 February 1954.

This Decision was considered and adopted by the High Authority at its meeting on 7 January 1954.

For the High Authority

The President

Jean MONNET

24.12.63 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 2969/63

DECISION No 19-63

of 11 December 1963

amending Decision No 30-53 of 2 May 1953 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

THE HIGH AUTHORITY,

Having regard to Articles 4, 60 and 63 (2) of the Treaty;

Having regard to Decision No 30-53 of 2 May 1953 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel *(Official Journal of the ECSC* of 4 May 1953, p. 109 *et seq.)*, as amended by Decision No 1-54 of 7 January 1954 *(Official Journal of the ECSC* of 13 January 1954, p. 217);

I

Whereas experience has shown that Decision No 30-53, in which the High Authority specified the practices that are prohibited by Article 60 (1) of the Treaty, did not accurately and fully define the obligations of undertakings with regard to their selling agencies and to middlemen acting on their behalf; whereas it is therefore necessary to amend and supplement those provisions;

Whereas undertakings producing coal and steel (producer undertakings) are required in selling their products to observe the prohibition on discriminatory practices as defined in Article 60 (1) of the Treaty, and also in Decisions Nos 30-53 and 1-54;

Whereas producer undertakings are also subject to this requirement where they do not sell their products themselves but employ selling agencies to do so; whereas, if it were not so, such separation between production and distribution operations would in so far as it exists have the effect of nullifying the prohibition on discrimination by producer undertakings;

Whereas the selling agencies referred to above are:

— joint selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings;

— distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertaking's products.

Whereas, therefore, producer undertakings may not sell their products through their selling agencies at prices and on conditions departing from those in their own price lists;

Whereas producer undertakings would be in breach of the prohibition on price discrimination if they were to charge different prices to comparably-placed customers depending on whether the transactions were effected by those undertakings themselves or on their behalf by middlemen such as employees, agents, representatives, commission agents acting on behalf of those undertakings but in their own names, or agents for goods on consignment (allowance being made for remuneration paid to such middlemen); whereas, accordingly, undertakings must ensure that middlemen acting on their behalf apply in their transactions the price lists and conditions of sale of the undertakings or of their selling agencies;

Whereas under Article 63 (2) (b) of the Treaty undertakings are held responsible for infringements committed by their direct agents and commission agents acting on their behalf; whereas the High Authority can only hold undertakings responsible for such infringements under that provision if it can also investigate the activities of middlemen; whereas it is therefore necessary to require undertakings to furnish the High Authority, at its request, with particulars of the operations of such middlemen, where they are acting on behalf of the undertakings or their selling agencies, and to enable the High Authority to consult their business records for this purpose;

II

Whereas under Article 60 (2) (b) of the Treaty, Community undertakings are authorised to grant rebates on their list prices for comparable

transactions in so far as this enables them to align their quotation on whatever price list established on different basing point offers the customer the most advantageous delivered terms; whereas, furthermore, undertakings may align their quotations on the terms of undertakings outside the Community;

Whereas these concessions are derogations from the provisions of Article 60 (1) and (2) of the Treaty which prohibit undertakings from applying dissimilar conditions to comparable transactions and departing from their price lists in comparable transactions;

Whereas if the conditions required to benefit from such derogations are not fulfilled the charging of prices departing from the list prices is a prohibited practice within the meaning of Article 60 (1);

Whereas the High Authority has already decided, in the case of the exceptions and departures specified in Article 1 (1) of Decision No 1-54, that undertakings must furnish evidence in support of the application of prices or conditions departing from their price list;

Whereas in the case of alignment on the price list of a Community undertaking evidence must be furnished that the conditions for alignment are fulfilled, in particular as regards the lower delivered price of the competitor and the correct calculation of the aligned price;

Whereas alignment on the terms of undertakings outside the Community presupposes that undertakings in their quotations to customers in the common market actually are in competition with foreign sellers; whereas accordingly Community undertakings must show in any given case that this actual competition from undertakings outside the Community did in fact exist;

After consulting the Consultative Committee and the Council;

DECIDES:

PART ONE

Obligations of undertakings towards selling agencies and middlemen and dealers acting on their behalf

Article 1

Article 1 of Decision No 30-53 shall be amended to read as follows:

'(1) This Decision shall apply to Community undertakings in respect of their transactions within the common market in the products specified in Annex I to the Treaty, with the exception of scrap.

(2) Where Community undertakings sell such goods within the common market through selling agencies, the obligations created by this Decision shall apply to transactions by such selling agencies.

For the purposes of this Decision, "selling agencies" means:

— joint selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings;

— distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertaking's products.'

Article 2

The following Articles 7, 8 and 9 shall be substituted for Article 7 of Decision No 30-53:

'*Article 7*

It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for an undertaking to sell the products specified in Annex I, with the exception of scrap, through its selling agencies (Article 1 (2)) at prices and on conditions which do not correspond to its own prices and conditions of sale.

Article 8

(1) Undertakings and their selling agencies shall require middlemen selling the products specified in Annex I, with the exception of scrap:

— either in the name and on behalf of the undertakings or their selling agencies (e.g. employees, agents, representatives); or

— in their own name but on behalf of the undertakings or their selling agencies (e.g. commission agents, agents for goods on consignment),

to apply in their transactions the price lists and conditions of sale of the undertakings or of their selling agencies and to observe the provisions of Articles 2 to 6 of this Decision.

(2) Undertakings shall be held responsible for infringements of the above obligations by such middlemen.

(3) Undertakings and their selling agencies shall furnish the High Authority, at its request, with all particulars of the commercial operations of the middlemen referred to in paragraph (1) and enable it to consult any of their records which could help it to assess the nature of such transactions.

Article 9

Undertakings and their selling agencies shall frame their conditions of sale in such a way that their customers (dealers), in reselling their products in the unaltered state other than by sale from stock in the case of steel and by retail in the case of coal, are under an obligation to comply with the rules set out in Articles 2 to 6 of this Decision.'

PART TWO

Obligations of undertakings with respect to sales by alignment

Article 3

1. Article 2 (2) of Decision No 30-53, as amended by Decision No 1-54, is hereby repealed.

2. Article 2 of Decision No 30-53, as amended by Decision No 1-54 shall be supplemented by the following paragraphs (2) and (3):

'(2) It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to align his quotation on the price list of a competitor in the common market under Article 60 (2) (b) of the Treaty, where the seller cannot show that the conditions for alignment were fulfilled and that as regards the mode of quotation he has observed the requirements of Article 3 (1) and (2) of this Decision.

(3) It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to align his quotation on the terms offered by undertakings outside the Community under the last subparagraph of Article 60 (2) (b) of the Treaty, where the seller cannot show that alignment was necessitated by actual competition from the undertaking outside the Community and that as regards the mode of quotation he has observed the requirements of Article 3 (3) of this Decision.'

Article 4

The following shall be substituted for Article 3 (3) of Decision No 30-53:

'(3) Where a seller aligns his quotation on the terms of an undertaking outside the Community under the last subparagraph of Article 60 (2) (b) of the Treaty, the provisions of paragraphs (1) and (2) of this Article shall apply.'

PART THREE

Final provisions

Article 5

Article 8 of Decision No 30-53, as adopted on 2 May 1953, is hereby repealed.

Article 6

This Decision shall be published in the *Official Journal of the European Communities*.

It shall enter into force on 20 January 1964.

The text of Decision No 30-53 as in force following this Decision shall be published in the form of a Communication in the *Official Journal of the European Communities*.

This Decision was considered and adopted by the High Authority at its meeting on 11 December 1963.

For the High Authority

The President

Dino DEL BO

COMMISSION DECISION No 1834/81/ECSC

of 3 July 1981

amending Decision No 30/53 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 60 (1) thereof,

Whereas Decision No 30/53 (1), as last amended by Decision 72/440/ECSC (2), defined the practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel;

Whereas Article 1 of Decision No 30/53 was amended by Decision No 19/63 in order to specify that when Community undertakings sell within the common market products listed in Annex I to the Treaty, with the exception of scrap, through selling agencies the obligations to which undertakings are subject under the terms of Decision No 30/53 apply to transactions by these selling agencies;

Whereas under the terms of Article 1 of Decision No 30/53 the selling agencies are:

— joint-selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings,

— distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertakings's products;

Whereas over the last few years, in order to widen the distribution of their products, a large number of producer undertakings have taken over, directly or indirectly, control of distributor undertakings which do not necessarily distribute primarily the production of the undertakings which control them; whereas experience has shown that producer undertakings can avoid the prohibitions of discrimination concerning them simply by involving in their direct sales the distributor undertakings which they control;

Whereas producer undertakings should be subject to the obligations deriving from Decision No 30/53 in respect of direct sales in all cases when they involve the distributor undertakings which they control;

Whereas the elements constituting direct or indirect control of an undertaking pursuant to Article 66 (1) of the Treaty were defined in Decision No 24/54 (4); whereas it is appropriate to use this definition of control for the purposes of this Decision;

After consulting the Consultative Committee and the Council,

HAS DECIDED AS FOLLOWS:

Article 1

The following third indent is hereby added to paragraph 2 of Article 1 of Decision No 30/53:

'— distributor undertakings which are directly or indirectly controlled by a producer undertaking, within the meaning of Decision No 24/54, where they effect "direct sales" of products manufactured by the producer undertaking in question. A sale is "direct" when, under contracts of sale concluded between the producer undertaking and the distributor undertaking on the one hand and between the distributor undertaking and its

(1) OJ of the ECSC, 4. 5. 1953, p. 109.
(2) OJ No L 297, 30. 12. 1972, p. 39.
(3) OJ of 24. 12. 1963, p. 2969/63.

(4) OJ of the ECSC, 11. 5. 1954, p. 345 and p. 346.

customer purchasing the products on the other, the products are shipped directly from the producer undertaking to the customer of the distributor undertaking or in accordance with the instructions of the customer'.

Article 2

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

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

Done at Brussels, 3 July 1981.

For the Commission
Étienne DAVIGNON
Vice-President

30.12.72 Official Journal of the European Communities No L 297/39

COMMISSION DECISION

of 22 December 1972

amending Decision No 30-53 of 2 May 1953 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

(72/440/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5, 60 and 63 (2) thereof;

Having regard to High Authority Decision No 30-53 as amended by Decision No 19/63 of 11 December 1963[1];

After consulting the Consultative Committee and the Council;

Whereas Article 60 (1) prohibits discriminatory practices involving, within the common market, the application by one and the same seller of dissimilar conditions to comparable transactions; whereas that provision specifies that the practices which are prohibited may further be defined; whereas the High Authority of the European Coal and Steel Community has in Decision No 30-53 defined the practices which are prohibited under Article 60 (1);

Whereas Article 2 of Decision No 30-53, as amended by Decision No 1-54,[2] provides that any departure from the price lists constitutes a discriminatory practice, unless the seller shows either that the transaction in question does not fall within the categories of transactions covered by the price list or that the prices or conditions have been departed from uniformly in all comparable transactions;

Whereas experience has shown that under this definition of what constitutes a prohibited discriminatory practice certain essential aspects of the prohibition are not covered; whereas it therefore appears necessary to specify further when transactions are to be considered comparable and in what circumstances conditions are to be considered dissimilar;

Whereas in defining comparable transactions full account must be taken of the protective aim of the prohibition against discrimination; whereas prohibition of discriminatory practices is intended mainly to protect purchasers against disadvantages which may result from the application of different prices and conditions; whereas for the purpose of determining whether transactions are comparable, it is necessary to establish whether the position of the purchasers is comparable; whereas this is the case when they compete with one another in distributing their products or when they produce the same or similar goods or carry out similar functions in distribution; whereas, moreover, the prerequisite as regards comparability of transactions is that they involve the same or similar products and that such of their commercial features as may be considered of importance do not essentially differ; whereas transactions concluded at different moments of time are not to be considered comparable when the seller has, in the meantime, altered his prices and conditions generally and not merely on a temporary basis;

Whereas as regards dissimilarity of conditions, if the conditions only make appropriate allowance for differences in the services rendered or in the carrying out of transactions, those conditions are not to be considered dissimilar; whereas where a seller allows periods for payment more favourable than those which he applies generally, this constitutes a dissimilar condition if the advantage so allowed is not offset by an increase in price;

Whereas the facts or circumstances which go to show that transactions are not comparable, or which are of importance in determining whether conditions are to be considered similar, are within the knowledge of the undertakings; whereas the undertakings must therefore be required to produce the relevant evidence;

[1] OJ No 187, 24.12.1963, p. 2969/63.
[2] OJ No 1, 13.1.1954, p. 217.

Whereas the rules on alignment on the lower delivered prices of other undertakings in the common market should be supplemented; whereas in cases where in accordance with the rules on publication of prices, there exists no obligation to publish prices, in respect of certain products or individual groups of purchasers for example, the prices and conditions effectively applied by the competitor are to be taken as the basis for alignment;

HAS ADOPTED THIS DECISION:

Article 1

The following Articles shall be substituted for Article 2 of Decision No 30-53:

'*Article 2*

1. It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to apply in the common market dissimilar conditions (Article 4) to comparable transactions (Article 3).

2. The preceding paragraph shall be without prejudice to the application of Article 60 (2) (b) of the Treaty and of decisions adopted in connection therewith.

Article 3

1. Transactions shall be considered comparable within the meaning of Article 60 (1) if

(a) they are concluded with purchasers,
- — who compete with one another, or
- — who produce the same or similar goods, or
- — who carry out similar functions in distribution,

(b) they involve the same or similar products,

(c) in addition, their other relevant commercial features do not essentially differ.

2. Transactions shall not be considered comparable within the meaning of Article 60 (1) if between the dates of their being agreed upon a lasting change occurred in the seller's prices and conditions of sale.

Article 4

1. Conditions shall not be considered dissimilar within the meaning of Article 60 (1) of the Treaty if different conditions, which make appropriate allowance for differences in the services rendered, or in the carrying out of transactions, are applied by a seller to comparable transactions.

2. Conditions shall be considered dissimilar if, without a corresponding increase in price, a seller allows periods for payment more favourable than those generally applied to comparable transactions.

Article 5

Undertakings which allege that transactions are not comparable (Article 3) or that conditions are not to be considered dissimilar (Article 4) shall, at the request of the Commission, set out the facts and circumstances which may justify this.'

Article 2

The following shall be substituted for Article 3 of Decision No 30-53:

'*Article 6*

1. Where, under Article 60 (2) (b) of the Treaty, a seller aligns his quotation on a competitor's price list or, in so far as there exists no obligation or there exists only a limited obligation to publish prices, on the prices and conditions actually applied by a competitor, it shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for him to apply conditions affording the purchaser a delivered price lower than that at which the purchaser could obtain the goods from the competitor.

2. In calculating delivered prices account shall be taken of transport costs, surcharges or taxes borne by the purchaser, less rebates or drawbacks allowed him, in addition to the prices and conditions.

3. Where, under the last subparagraph Article 60 (2) (b) of the Treaty, the seller aligns his quotation on the conditions quoted by undertakings outside the Community, the provisions of paragraphs 1 and 2 shall apply correspondingly.

4. Undertakings which allege that pursuant to Article 60 (2) (b) they have aligned their quotation on a lower delivered price of a competitor in the common market or an undertaking outside the common market, shall, at the request of the Commission, show that the conditions for alignment had been obtained and that they had complied

with the provisions of paragraphs 1 to 3 of this Article in calculating the price.

The condition for alignment under the last subparagraph of Article 60 (2) (b) is that alignment has been imposed by the effective competition of the undertaking outside the Community.'

Article 3

Articles 4 and 6 of Decision No 30-53 shall be deleted; Article 5 shall be renumbered 7; Article 7 shall be renumbered 8.

Article 4

1. In Article 8 of Decision No 3-53:

— in the last sentence of paragraph 1 the words 'or the prices' shall be inserted after 'the price lists' and the words 'Articles 2 to 7' shall be substituted for 'Articles 2 to 6',

— in paragraph 3 the words 'the Commission' shall be substituted for 'the High Authority'.

2. Article 8 as so amended shall be renumbered 9.

Article 5

1. In Article 9 of Decision No 30-53 the words 'Articles 2 to 7' shall be substituted for 'Articles 2 to 6'.

2. Article 9 as so amended shall be renumbered 10.

Article 6

This Decision shall enter into force on 1 January 1973.

The text of Decision No 30-53 as amended by this Decision shall be published under information in the *Official Journal of the European Communities*.

Done at Brussels, 22 December 1972.

For the Commission

The President

S. L. MANSHOLT

28.7.64 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 1967/64

DECISION No 14-64

of 8 July 1964

on business books and accounting documents which undertakings must produce for inspection by officials or agents of the High Authority carrying out checks or verifications as regards prices

THE HIGH AUTHORITY,

Having regard to Articles 8, 47, 60 to 64, 80, 82 and 86 of the Treaty establishing the European Coal and Steel Community;

Whereas it is the task of the High Authority to ensure that the objectives set out in the Treaty are attained and in particular that undertakings fulfil the obligations imposed on them by the provisions of the Treaty and the Decisions taken in application thereof;

Whereas the fulfilment of that task, in particular as regards prices, entails checks and verification in undertakings of their records;

Whereas such checks and verifications can be effective only if the facts and transactions which constitute the necessary source of information for the High Authority can be ascertained from business books and accounting documents;

Whereas, therefore, undertakings must be able to produce for inspection to officials or agents of the High Authority business books and accounting documents which contain the information needed to check effectively that the rules relating to prices have been complied with;

Whereas such checks and verifications must also enable the officials or agents of the High Authority to determine the value of sales which, under Article 64 of the Treaty, are irregular and also where necessary the turnover of the undertaking within the meaning of Article 82 of the Treaty;

Whereas Member States have enacted laws and regulations imposing on undertakings the obligation to keep regular accounts; whereas, however, such laws and regulations do not provide for the imposition of penalties corresponding to the requirements of the High Authority;

Whereas, without prejudice to the obligation on undertakings to make available to the High Authority for the purposes of checks and verifications all such business books and accounting documents as may be needed by the High Authority to fulfil its tasks, it is necessary in particular to prevent undertakings from evading an effective verification by alleging that they do not possess accounts or business records;

Whereas, having regard to Article 47 of the Treaty, it is necessary to make it obligatory for undertakings to keep business books and all supporting documents so that these can be made available to the persons entrusted by the High Authority with carrying out checks or verifications;

Whereas, notwithstanding the obligations imposed on undertakings by national law in respect of their accounts, it is necessary to specify by a decision binding on all undertakings the items which must be shown in their accounts;

Whereas it is also necessary for undertakings to make out for each sale an invoice or other document containing the requisite information for purposes of effective verification;

Whereas a limit should be set to the length of time for which undertakings must retain their business records, bearing in mind that the tasks of the High Authority may necessitate investigations to be made as regards prices;

DECIDES:

Article 1

Undertakings shall keep, and make available to the officials or agents of the High Authority carrying out checks or verifications as regards prices, business

books and accounting documents including at least the following:

(a) Records of orders with related correspondence filed in such a way as to permit checking;

(b) In respect of each sale a copy of the invoice or any other written record established for accounting purposes which contains at least the following items of information:

— name and address of the purchaser;

— nature, quality and quantity of the product sold;

— date of invoice and of delivery;

— price and all other conditions of sale;

such documents being filed in such a way as to enable the entries in the accounts to be checked;

(c) A sales journal or any other accounting document in which all sales are entered in chronological order, showing at least the date of the contract for sale, the name of the customer or the invoice number, and the amounts payable;

(d) A cash book recording in chronological order all receipts and payments with dates, names of purchasers and amounts, kept in such a way as to enable the cash balance to be checked at any time;

(e) Statements of account and other documents relating to bank accounts and postal cheque accounts, separately for each financial establishment and in chronological order, kept in such a way as to enable the balance to be checked at any time;

(f) Statements, receipts, bills and abstracts of account relating to payments and receipts, filed in such a way as to enable the cash book mentioned in subparagraph (d) to be verified;

(g) Accounts for individual customers recording with dates all amounts due from and paid by customers; separate accounts for customers need not be kept if such amounts with dates are recorded in the sales journal or other document mentioned in subparagraph (c).

Article 2

Undertakings must be able to produce, for inspection by officials and agents of the High Authority entrusted with the task of checking or verification, their business books and accounting documents for the current calendar year and for not less than the five preceding calendar years.

Article 3

Undertakings which evade their obligations under this Decision shall be liable to the penalties provided for in the third paragraph of Article 47 of the Treaty.

Article 4

This Decision shall be published in the *Official Journal of the European Communities*. It shall enter into force on 1 November 1964.

This Decision was considered and adopted by the High Authority at its meeting on 8 July 1964.

For the High Authority

The President

Dino DEL BO

30.12.72 Official Journal of the European Communities No L 297/45

COMMISSION DECISION

of 22 December 1972

on alignment of prices for sales of coal in the common market

(72/443/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 60 (2) (b) and 47 thereof;

Having regard to Decision No 30-53[1] of 2 May 1953 concerning practices prohibited in the common market for coal and steel under Article 60 (1) of the Treaty;

Having regard to Decision No 3-58[2] of 18 March 1958 on alignment of prices for sales of coal in the common market;

Having regard to the Decision of the Council of the European Communities of 22 January 1972 concerning the accession of new Member States to the European Coal and Steel Community, and in particular Article 153 of the Act annexed thereto;

After consulting the Consultative Committee;

Whereas, to avoid disturbances of the common market, Decision No 3-58 restricted the right of undertakings to align prices on a price list established on another basing point and securing for the buyer the most advantageous conditions at the place of delivery;

Whereas since 1958 changes have occurred in the common market for coal; whereas the restrictions on the right of alignment must be adapted to changed circumstances; whereas the accession of the United Kingdom, Denmark and Ireland and its consequences for the coal market must be borne in mind;

Whereas the rules laid down by Decision No 3-58 must consequently be replaced by new provisions; whereas, under Article 30 of the Act, this must be done in conformity with the guidelines set out in Annex II thereto;

Whereas the right to align must to this end be confined to the price lists of undertakings and selling agencies which, because of the volume and nature of production, are influential in the formation of prices in the common market; whereas experience since 1958 has shown that this means undertakings which sell on the common market more than one million tons annually of hard coal or products obtained from hard or brown coal of their own production; whereas, moreover, undertakings who are soon to cease production should be taken into consideration;

Whereas, furthermore, the tonnages which undertakings may supply under alignment should be limited; whereas to avoid perceptible alterations to traditional supply channels such limitations should be defined in geographical terms and for the principal groups of products; Whereas the exercise of the right to align presupposes that the fuels to be supplied are comparable to those in the price list on which alignment is effected;

Whereas in order to prevent illicit underquotation, undertakings are required under Article 3 of Decision No 30-53 to have regard to all the terms of the competitor's price list when calculating the delivered price;

Whereas, in order that delivered prices may be calculated accurately, undertakings must be required to know the exact amount of the transport costs;

Whereas, to facilitate the verification of authorised alignments where shipping costs are involved, undertakings must supply the Commission with information on the costs taken into account; whereas the Commission may publish the shipping costs used in an appropriate manner for the information of all concerned;

[1] OJ No 6, 4.5.1953, p. 109.
[2] OJ No 11, 29.3.1958, p. 157/58.

Whereas so that the scale of the transactions carried out by undertakings as a result of alignment may be assessed and so that a check may be kept as to whether this Decision is applied correctly, undertakings must be required to notify the Commission at regular intervals of the character and amount of the transactions that they carry out under alignment;

HAS ADOPTED THIS DECISION:

Article 1

1. Undertakings in the coal industry may use their right to align their prices on a price list established on another basing point and securing for the buyer more advantageous conditions at the place of delivery only in accordance with the provisions of the following Articles of this Decision.

2. This Decision shall also apply to the selling agencies of undertakings in the coal industry within the meaning of Article 1 (2) of Decision No 30-53.

Article 2

Undertakings in the coal industry shall align their prices on the price lists of none other than the undertakings and selling agencies listed below:

— Aachener Kohlenverkauf GmbH, Aachen,

— Comptoir belge des charbons, Bruxelles,

— Gewerkschaft Auguste-Viktoria, Marl i.W.,

— Houillères du Bassin du Centre et du Midi, Saint-Etienne,

— Houillères du Bassin de Lorraine, Metz,

— Houillères du Bassin du Nord et du Pas-de-Calais, Douai,

— Maatschappij Laura & Vereeniging, Eygelshoven,

— Maatschappij Oranje-Nassau, Heerlen,

— National Coal Board, London,

— Niedersächsischer Kohlen-Verkauf GmbH, Hannover,

— Rheinischer Braunkohlenbrikett-Verkauf GmbH, Köln,

— Ruhrkohle AG, Essen,

— Saarbergwerke AG, Saarbrücken,

— Sophia-Jacoba Handelsgesellschaft m.b.H., Hückelhoven,

— Verkoopkantoor der Staatsmijnen, Den Haag.

Article 3

1. In each of the sales areas listed below the undertakings listed in Article 2 may align only up to the tonnage marketed by them in that area during the preceding calendar year.

The sales areas for the purposes of this provision shall be the following:

(a) Great Britain and Northern Ireland;

(b) In the Federal Republic of Germany:

— Lower Saxony, Schleswig-Holstein, Hamburg and Bremen,

— North-Rhineland-Westphalia, Rhineland-Pfalz and Saarland,

— Hessen, Baden-Württemberg and Bayern;

(c) Belgium and Luxemburg;

(d) In France:

— the region to the east of and including the departments of Aisne, Seine-et-Marne, Loiret, Loir-et-Cher, Indre, Haute-Vienne, Dordogne, Lot-et-Garonne, Gers, Hautes-Pyrénées,

— all other French departments;

(e) Italy;

(f) The Netherlands;

(g) Denmark;

(h) Ireland.

2. The tonnages referred to in paragraph 1 shall apply separately to each of the following products:

(a) Hard coal for coke production;

(b) Hard coal for domestic and small-scale consumption;

(c) Other hard coals;

(d) Furnace coke;

(e) Foundry coke;

(f) Other coke;

(g) Hard coal briquettes;

(h) Brown coal briquettes.

3. Upon receipt of an application setting out the reasons therefor the Commission may, in favour of certain undertakings or selling agencies, increase the maximum tonnages indicated in paragraphs 1 and 2.

Article 4

1. Alignment shall be permitted only if the undertaking is able to ascertain exactly the amount of the transport costs to the place of destination.

2. Where transport costs are not published, the undertaking which is aligning shall, where necessary, ascertain by examining the actual vouchers that the details supplied by the purchaser or carrier concerning the amount of transport costs are accurate.

Article 5

In calculating the delivery price at the point of destination, undertakings effecting alignment shall take account of all costs to be borne by the consumer such as trade surcharges, price correctives for ash or water content, quality surcharges, and other significant factors (e.g. graining, volatile matter content, heating power, sulphur content, coke-producing capacity).

Article 6

1. Coal industry undertakings shall notify alignments within the common market in which shipping costs are involved. The notification shall specify the level of costs serving as a basis for the reduction caused by alignment.

2. The notification shall be made when the contract is concluded. It shall contain details of the calculation of the aligned price, distinguishing between loading and freight costs (included port fees, insurance and all other costs charged by the loader).

3. The Commission shall communicate on demand to all undertakings concerned the shipping costs notified to it; it may publish them in an appropriate manner.

Article 7

Undertakings exercising the right to align prices must, on 15 August and 15 February of each year, inform the Commission of the following:

(a) The tonnages of fuel and the agreed delivery terms for which supply contracts have been concluded under alignment;

(b) The tonnages of fuel supplied under alignment and on the basis of their own price list in each of the sales areas listed in Article 3 (1).

Such information shall be communicated in printed form in a manner to be determined by the Commission.

Article 8

This Decision shall not prevent undertakings from aligning their prices in accordance with the last subparagraph of Article 60 (2) on conditions offered by undertakings outside the Community.

Article 9

This Decision shall enter into force on 1 January 1973. Decision No 3-58 is hereby repealed with effect from the same date.

Done at Brussels, 22 December 1972.

For the Commission

The President

S. L. MANSHOLT

COMMISSION DECISION No 2177/84/ECSC

of 27 July 1984

on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 74 and 86 thereof,

Whereas by virtue of Article 74 of the Treaty the Commission is empowered, in cases of dumping or subsidization by countries which are not members of the Community, to take any measures which are in accordance with the Treaty and to make any necessary recommendations to Member States;

Whereas by virtue of Article 86 of the Treaty the Member States have undertaken to facilitate the performance of the Community's tasks;

Whereas, in view of the existence of a common market in coal and steel, the taking of national measures would not in general, and even in the case of mutual cooperation, constitute an effective and adequate protection against dumping or subsidies but would, on the contrary, entail a risk of hindering the working of the common market and of compromising its achievements, and in particular the unified customs tariff applicable to third countries;

Whereas, therefore, the Commission will normally use the powers given to it under Article 74 and will, in suitable cases, take Community defensive measures;

Whereas to enable the Commission to exercise its powers rapidly and effectively it is necessary to establish certain rules of procedure and to organize the cooperation with the Member States;

Whereas with a view both to avoiding contradictions between the actions of the Commission and those of the Member States and to ensuring that, in cases where there is no Community interest involved, Member States can take appropriate measures to protect a national industry, it is necessary to provide that, in the absence of Community action, national investigations and protective measures may be initiated, after consultation;

Whereas for these reasons, the Commission, by recommendation No 3018/79/ECSC [1], as last amended by recommendation No 3025/82/ECSC [2], adopted common rules for protection against dumped or subsidized imports from countries which are not members of the European Coal and Steel Community;

Whereas these rules were adopted in accordance with existing international obligations, in particular those arising from Article VI of the General Agreement on tariffs and trade (hereinafter referred to as GATT), from the Agreement on Implementation of Article VI of the GATT (1979 Anti-Dumping Code) and from the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, (Code on Subsidies and Countervailing Duties);

Whereas in applying these rules it is essential, in order to maintain the balance of rights and obligations which these Agreements sought to establish, that the Community take account of their interpretation by the Community's major trading partners, as reflected in legislation or established practice;

Whereas it is desirable that the rules for determining normal value should be presented clearly and in sufficient detail; whereas it should be specifically provided that where sales on the domestic market of the country of export or origin do not for any reason form a proper basis for determining the existence of dumping recourse may be had to a constructed normal value; whereas it is appropriate to give examples of situations which may be considered as not representing the ordinary course of trade, in particular where a product is sold at prices which are less than the costs of production, or where transactions take place between parties which are associated or which have a compensatory arrangement; whereas it is appropriate to list the possible methods of determining normal value in such circumstances;

Whereas it is expedient to define the export price and to enumerate the necessary adjustments to be made in

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[1] OL No L 339, 31. 12. 1979, p. 15.
[2] OJ No L 317, 13. 11. 1982, p. 17.

those cases where reconstruction of this price from the first open-market price is deemed appropriate;

Whereas for the purpose of ensuring a fair comparison between export price and normal value, it is advisable to establish guidelines for determining the adjustments to be made in respect of differences in physical characteristics, in quantities, in conditions and terms of sale and to draw attention to the fact that the burden of proof falls on any person claiming such adjustments;

Whereas the term 'dumping margin' should be clearly defined and the Community's established practice for methods of calculation where prices or margins vary codified;

Whereas it seems advisable to lay down in adequate detail the manner in which the amount of any subsidy is to be determined;

Whereas it seems appropriate to set out certain factors which may be relevant for the determination of injury;

Whereas it is necessary to lay down the procedures for anyone acting on behalf of a Community industry which considers itself injured or threatened by dumped or subsidized imports to lodge a complaint; whereas it seems appropriate to make it clear that in the case of withdrawal of a complaint, proceedings may, but need not necessarily, be terminated;

Whereas there should be cooperation between the Member States and the Commission both as regards information about the existence of dumping or subsidization and injury resulting therefrom, and as regards the subsequent examination of the matter at Community level; whereas, to this end, consultations should take place within an advisory committee;

Whereas it is appropriate to lay down clearly the rules of procedure to be followed during the investigation, in particular the rights and obligations of the Community authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations on the basis of which it is intended to take definitive measures;

Whereas, in order to discourage dumping, it is appropriate to provide, in cases where the facts as finally established show that there is dumping and injury, for the possibility of definitive collection of provisional duties even if the imposition of a definitive anti-dumping duty is not decided on, on particular grounds;

Whereas it is essential, in order to ensure that anti-dumping and countervailing duties are levied in a correct and uniform manner, that common rules for the application of such duties be laid down; whereas, by reason of the nature of the said duties, such rules may differ from the rules for the levying of normal import duties;

Whereas it is appropriate to provide for open and fair procedures for the review of measures taken, and for the investigation to be reopened when the circumstances so require;

Whereas, in order to avoid abuse of Community procedures and resources, it is appropriate to lay down a minimum period which must elapse after the conclusion of a proceeding before such a review may be conducted, and to ensure that there is evidence of a change in circumstances sufficient to justify a review;

Whereas appropriate procedures should be established for examining applications for refunds of anti-dumping duties;

Whereas this Decision should not prevent the adoption of special measures where this does not run counter to the Community's obligations under the GATT;

Whereas, in addition to the above considerations which led to the adoption of Commission recommendation No 3018/79/ECSC, as last amended by Commission recommendation No 3025/82/ECSC, experience has shown that this act should be further modified;

Whereas in this context it is appropriate to bring the terminology into line with the provisions of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt [1] and of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation [2], as last amended by Directive 81/853/EEC [3], and to take account of the replacement of Council Regulation (EEC) No 2532/78 of 16 October 1978 on common rules for

[1] OJ No L 179, 17. 7. 1979, p. 31.
[2] OJ No L 205, 13. 8. 1979, p. 19.
[3] OJ No L 319, 7. 11. 1981, p. 1.

imports from the People's Republic of China [1] by Council Regulation (EEC) No 1766/82 [2], and of the replacement of Council Regulation (EEC) No 925/79 of 8 May 1979 on common rules for imports from non-market economy countries [3] by Council Regulation (EEC) No 1765/82 [4];

Whereas it is appropriate to define more precisely the cost to be taken into consideration for the determination of constructed value and of sales below cost on the domestic market;

Whereas it is also appropriate to ensure consistency of the rules concerning parties which are associated or have a compensatory arrangement with each other;

Whereas it is necessary to clarify the provisions relating to the grant of allowances for differences in conditions and terms of sale including, in particular, those relating to the level of trade, and for import charges and indirect taxes;

Whereas, in order to take account of the Community's interpretation of the GATT rules on subsidies and countervailing duties, it is appropriate to amend the provisions of the said recommendation concerning the calculation of the amount of subsidies;

Whereas the procedures for cooperation and consultation with Member States should be simplified;

Whereas it is desirable to state explicitly that the investigation of dumping or subsidization should normally cover a period of not less than six months immediately prior to the initiation of the proceeding and that final determinations must be based on the facts established in respect of the investigation period;

Whereas to avoid confusion, the use of the terms 'investigation' and 'proceeding' should be clarified;

Whereas it is necessary to require that when information is to be considered as being confidential, a request to this effect must be made by the supplier, and to make clear that confidential information which could be summarized but of which no non-confidential summary has been submitted may be disregarded;

Whereas, in order to avoid undue delays and for administrative convenience, it is advisable to introduce time limits within which undertakings may be offered;

Whereas it is necessary to lay down more explicit rules concerning the procedure to be followed after withdrawal or violation of undertakings;

Whereas provision should be made for the review of recommendations and decisions to be carried out, where appropriate, in part only;

Whereas it is necessary to provide that, after a certain period of time, anti-dumping and countervailing measures will lapse unless the need for their continued existence can be shown;

Whereas there is a need to ensure that refund procedures apply only in respect of definitive duties or amounts of any provisional duty which have been definitively collected, and to streamline the existing procedures for refunds;

Whereas it is appropriate to ensure that the legislation governing external trade should be as homogeneous as possible in the two Communities; whereas, therefore, it is appropriate to provide for analogous application to coal and steel products of the principles and definitions contained in Regulation (EEC) No 2176/84 [5];

Whereas with regard to the decision-making process account must be taken of the different conceptions of the two Treaties, while remaining as close as possible to the provisions of Regulation (EEC) No 2176/84;

Whereas it is appropriate to take advantage of this occasion to proceed to a consolidation of the rules in question and to publish the consolidated text in the form of a Decision,

HAS ADOPTED THIS DECISION:

Article 1

Applicability

This Decision lays down provisions for protection against dumped or subsidized imports from countries

(1) OJ No L 306, 31. 10. 1978, p. 1
(2) OJ No L 195, 5. 7. 1982, p. 21.
(3) OJ No L 131, 29. 5. 1979, p. 1.
(4) OJ No L 195, 5. 7. 1982, p. 1.

(5) See page 1 of this Official Journal.

which are not members of the European Coal and Steel Community.

Article 2

Dumping

A. PRINCIPLE

1. An anti-dumping duty may be applied to any dumped product whose release for free circulation in the Community causes injury.

2. A product shall be considered to have been dumped if its export price to the Community is less than the normal value of the like product.

B. NORMAL VALUE

3. For the purposes of this Decision the normal value shall be:

(a) the comparable price actually paid or payable in the ordinary course of trade for the like product intended for consumption in the exporting country or country of origin; or

(b) when there are no sales of the like product in the ordinary course of trade on the domestic market of the exporting country or country of origin, or when such sales do not permit a proper comparison:

(i) the comparable price of the like product when exported to any third country, which may be the highest such export price but should be a representative price, or

(ii) the constructed value, determined by adding cost of production and a reasonable margin of profit. The cost of production shall be computed on the basis of all costs, in the ordinary course of trade, both fixed and variable, in the country of origin, of materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses. As a general rule, and provided that a profit is normally realized on sales of products of the same general category on the domestic market of the country of origin, the addition for profit shall not exceed such normal profit. In other cases, the addition shall be determined on any reasonable basis, using available information.

4. Whenever there are reasonable grounds for believing or suspecting that the price at which a product is actually sold for consumption in the country of origin is less than the cost of production as defined in paragraph 3 (b) (ii), sales at such prices may be considered as not having been made in the ordinary course of trade if they:

(a) have been made over an extended period of time and in substantial quantities; and

(b) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In such circumstances, the normal value may be determined on the basis of the remaining sales on the domestic market made at a price which is not less than the cost of production or on the basis of export sales to third countries or on the basis of the constructed value or by adjusting the sub-production-cost price referred to above in order to eliminate loss and provide for a reasonable profit. Such normal-value calculations shall be based on available information.

5. In the case of imports from non-market economy countries and, in particular, those to which Regulations (EEC) No 1765/82 and (EEC) No 1766/82 apply, normal value shall be determined in an appropriate and not unreasonable manner on the basis of one of the following criteria:

(a) the price at which the like product of a market economy third country is actually sold:

(i) for consumption on the domestic market of that country, or

(ii) to other countries, including the Community; or

(b) the constructed value of the like product in a market economy third country; or

(c) if neither price nor constructed value as established under (a) or (b) above provides an adequate basis, the price actually paid or payable in the Community for the like product, duly adjusted, if necessary, to include a reasonable profit margin.

6. (a) Where a product is not imported directly from the country of origin but is exported to the Community from an intermediate country, the

normal value shall be the comparable price actually paid or payable for the like product on the domestic market of either the country of export or the country of origin. The latter basis might be appropriate *inter alia*, where the product is merely trans-shipped through the country of export, where such products are not produced in the country of export or where no comparable price for it exists in the country of export.

(b) Where several suppliers from one or more countries are involved and it is deemed appropriate to establish a basic price system the normal value may be derived from the basic price; however normal value shall be determined in accordance with the preceding provisions of this Article where it becomes apparent that such method of determination would produce a significantly different result.

7. For the purpose of determining normal value, transactions between parties which appear to be associated or to have a compensatory agreement with each other may be considered as not being in the ordinary course of trade unless the Commission is satisfied that the prices and costs involved are comparable to those involved in transactions between parties which have no such link.

C. EXPORT PRICE

8. (a) The export price shall be the price actually paid or payable for the product sold for export to the Community.

(b) In cases where there is no export price or where it appears that there is an association or a compensatory arrangement between the exporter and the importer or a third party, or that for other reasons the price actually paid or payable for the product sold for export to the Community is unreliable, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis. In such cases, allowance shall be made for all costs incurred between importation and resale, including all duties and taxes, and for a reasonable profit margin.

Such allowances shall include, in particular, the following:

(i) usual transport, insurance, handling, loading and ancillary costs;

(ii) customs duties, any anti-dumping duties and other taxes payable in the importing country by reason of the importation or sale of the goods;

(iii) a reasonable margin for overheads and profit and/or any commission usually paid or agreed.

D. COMPARISON

9. For the purposes of a fair comparison, the export price and the normal value shall be on a comparable basis as regards physical characteristics of the product, quantities, and conditions and terms of sale. They shall normally be compared at the same level of trade, preferably at the ex-factory level, and as nearly as possible at the same time.

10. If the export price and the normal value are not on a comparable basis in respect of the factors mentioned in paragraph 9, due allowance shall be made in each case, on its merits, for differences affecting price comparability. Where an interested party claims such an allowance, it must prove that its claim is justified. The following guidelines shall apply in determining these allowances:

(a) differences in physical characteristics of the product: allowance for such differences shall normally be based on the effect on the market value in the country of origin or export; however, where domestic pricing data in that country are not available or do not permit a fair comparison, the calculation shall be based on those production costs accounting for such differences;

(b) differences in quantities: allowances shall be made when the amount of any price differential is wholly or partly due to either:

(i) price discounts for quantity sales which have been made freely available in the normal course of trade over a representative preceding period of time, usually not less than six months, and in respect of a substantial proportion, usually not less than 20 % of the total sales of the product under consideration made on the domestic market or, where applicable, on a third-country market; deferred discounts may be recognized if they are based on consistent practice in prior periods, or on an undertaking to comply with the conditions required to qualify for the deferred discount, or

(ii) savings in the cost of producing different quantities.

However, when the export price is based on quantities which are less than the smallest quantity sold on the domestic market, or if applicable, to third countries, then the allowance shall be determined in such a manner as to reflect the higher price for which the smaller quantity would be sold on the domestic market, or, if applicable, on a third-country market;

(c) differences in conditions and terms of sale: allowances shall be limited to those differences which bear a direct relationship to the sales under consideration and include, for example, differences in credit terms, guarantees, warranties, technical assistance, servicing, commissions or salaries paid to salesmen, packing, transport, insurance, handling, loading and ancillary costs and, in so far as no account has been taken of them otherwise, differences in the level of trade; allowances generally will not be made for differences in overheads and general expenses, including research and development or advertising costs; the amount of these allowances shall normally be determined by the cost of such differences to the seller, though consideration may also be given to their effect on the value of the product;

(d) differences in import charges and indirect taxes: an allowance shall be made by reason of the exemption of a product exported to the Community from any import charges or indirect taxes, as defined in the notes to the Annex, borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or by reason of the refund of such charges or taxes;

E. ALLOCATION OF COSTS

11. In general, all cost calculations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration.

F. LIKE PRODUCT

12. For the purpose of this Decision, 'like product' means a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product, which has characteristics closely resembling those of the product under consideration.

G. DUMPING MARGIN

13. (a) 'Dumping margin' means the amount by which the normal value exceeds the export price.

(b) Where prices vary, the dumping margin may be established on a transaction-by-transaction basis or by reference to the most frequently occurring, representative or weighted average prices.

(c) Where dumping margins vary, weighted averages may be established.

Article 3

Subsidies

1. A countervailing duty may be imposed for the purpose of offsetting any subsidy bestowed, directly or indirectly, in the country of origin or export, upon the manufacture, production, export or transport of any product whose release for free circulation in the Community causes injury.

2. Subsidies bestowed on exports include, but are not limited to, the practices listed in the Annex.

3. The exemption of a product from import charges or indirect taxes, as defined in the notes to the Annex, effectively borne by the like product and by materials physically incorporated therein, when destined for consumption in the country of origin or export, or the refund of such charges or taxes, shall not be considered as a subsidy for the purposes of this Decision.

4. (a) The amount of the subsidy shall be determined per unit of the subsidized product exported to the Community.

(b) In establishing the amount of any subsidy the following elements shall be deducted from the total subsidy:

(i) any application fee, or other costs necessarily incurred in order to qualify for, or receive benefit of, the subsidy;

(ii) export taxes, duties or other charges levied on the export of the product to the

Community specifically intended to offset the subsidy.

Where an interested party claims a deduction, it must prove that the claim is justified.

(c) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount shall be determined by allocating the value of the subsidy as appropriate over the level of production or exports of the product concerned during a suitable period. Normally this period shall be the accounting year of the beneficiary. Where the subsidy is based upon the acquisition or future acquisition of fixed assets, the value of the subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan.

(d) In the case of imports from non-market economy countries and in particular those to which Regulations (EEC) No 1765/82 and (EEC) No 1766/82 apply, the amount of any subsidy may be determined in an appropriate and not unreasonable manner, by comparing the export price as calculated in accordance with Article 2 (8) with the normal value as determined in accordance with Article 2 (5). Article 2 (10) shall apply to such a comparison.

(e) Where the amount of subsidization varies, weighted averages may be established.

Article 4

Injury

1. A determination of injury shall be made only if the dumped or subsidized imports are, through the effects of dumping or subsidization, causing injury, i.e. causing or threatening to cause material injury to an established Community industry or materially retarding the establishment of such an industry. Injuries caused by other factors, such as volume and prices of imports which are not dumped or subsidized, or contraction in demand, which, individually or in combination, also adversely affect the Community industry must not be attributed to the dumped or subsidized imports.

2. An examination of injury shall involve the following factors, no one or several of which can necessarily give decisive guidance:

(a) volume of dumped or subsidized imports, in particular whether there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the prices of dumped or subsidized imports, in particular whether there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on the industry concerned as indicated by actual or potential trends in the relevant economic factors such as:

— production,

— utilization of capacity,

— stocks,

— sales,

— market share,

— prices (i.e., depression of prices or prevention of price increases which otherwise would have occurred),

— profits,

— return on investment,

— cash flow,

— employment.

3. A determination of threat of injury may only be made where a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) rate of increase of the dumped or subsidized exports to the Community;

(b) export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community;

(c) the nature of any subsidy and the trade effects likely to arise therefrom.

4. The effect of the dumped or subsidized imports shall be assessed in relation to the Community production of the like product when available data permit its separate identification. When the Community production of the like product has no separate identity, the effect of the dumped or subsidized imports shall be assessed in relation to the production of the narrowest group or range of production which includes the like

product for which the necessary information can be found.

5. The term 'Community industry' shall be interpreted as referring to the Community producers as a whole of the like product or to those of them whose collective output of the products constitutes a major proportion of the total Community production of those products except that:

— when producers are related to the exporters of importers or are themselves importers of the allegedly dumped or subsidized product the term 'Community industry' may be interpreted as referring to the rest of the producers;

— in exceptional circumstances the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market regarded as a Community industry if:

(a) the producers within such market sell all or almost all their production of the product in question in that market, and

(b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community.

In such circumstances injury may be found to exist even where a major proportion of the total Community industry is not injured provided there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the dumped or subsidized imports are causing injury to the producers of all or almost all of the production within such markets.

Article 5

Complaint

1. Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers itself injured or threatened by dumped or subsidized imports may lodge a written complaint.

2. The complaint shall contain sufficient evidence of the existence of dumping or subsidization and the injury resulting therefrom.

3. The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives.

4. The complaint may be withdrawn, in which case proceedings may be terminated unless such termination would not be in the interest of the Community.

5. Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

6. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of dumping or subsidization and of injury resulting therefrom for a Community industry, it shall immediately communicate such evidence to the Commission.

Article 6

Consultations

1. Any consultations provided for in this decision shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.

4. Consultation shall in particular cover:

(a) the existence of dumping or of a subsidy and the methods of establishing the dumping margin or the amount of the subsidy;

(b) the existence and extent of injury;

(c) the causal link between the dumped or subsidized imports and injury;

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping or the subsidy and the ways and means for putting such measures into effect.

Article 7

Initiation and subsequent investigation

1. Where, after consultation it is apparent that there is sufficient evidence to justify initiating a proceeding the Commission shall immediately:

(a) announce the initiation of a proceeding in the *Official Journal of the European Communities;* such announcements shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) so advise the exporters and importers known to the Commission to be concerned as well as representatives of the exporting country and the complainants;

(c) commence the investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both dumping or subsidization and injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of dumping or subsidization shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

2. (a) The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, examine and verify the records of importers, exporters, traders, agents, producers, trade associations and organizations.

(b) Where necessary the Commission shall carry out investigations in third countries, provided that the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States who so request.

3. (a) The Commission may request Member States:

— to supply information,

— to carry out all necessary checks and inspections, particularly amongst importers, traders and Community producers,

— to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection.

(b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

(d) Officials of the Commission shall be authorized, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

4. (a) The complainant and the importers and exporters known to be concerned, as well as the representatives of the exporting country, may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission, indicating the information required.

(b) Exporters and importers of the product subject to investigation and, in the case of subsidization, the representatives of the country of origin, may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.

(c) (i) requests for information pursuant to (b) shall:

(aa) be addressed to the Commission in writing,

(bb) specify the particular issues on which information is sought,

(cc) be received, in cases where a provisional duty has been applied, not

later than one month after publication of the imposition of that duty;

(ii) the information may be given either orally or in writing, as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission. Confidential information shall be treated in accordance with Article 8;

(iii) information shall normally be given no later than 15 days prior to any decision by the Commission on final action pursuant to Article 12. Representations made after the information is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

5. The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard orally.

6. Furthermore, the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any rebuttal argument put forward. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

7. (a) This Article shall not preclude the Commission from reaching preliminary determinations or from applying provisional measures expeditiously.

(b) In cases in which any interested party or third country refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available.

8. Anti-dumping or countervailing proceedings shall not constitute a bar to customs clearance of the product concerned.

9. (a) An investigation shall be concluded either by its termination or by definitive action. Conclusion should normally take place within one year of the initiation of the proceeding.

(b) A proceeding shall be concluded either by the termination of the investigation without the imposition of duties and without the acceptance of undertakings or by the expiry or repeal of such duties or by the termination of undertakings in accordance with Article 14 or 15.

10. Where there is no proceeding at Community level, a Member State may, after consultation, examine the matter at national level; it shall so inform the Commission, send to it the results of such examination and consult before taking any action.

Article 8

Confidentiality

1. Information received in pursuance of this Decision shall be used only for the purpose for which is was requested.

2. (a) Neither the Commission, nor Member States, nor the officials of any of these, shall reveal any information received in pursuance of this Decision for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

3. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form,

the information in question may be disregarded. The information may also be disregarded where such request is warranted and where the supplier is unwilling to submit a non-confidential summary, provided that the information is susceptible of such summary.

5. This Article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken in pursuance of this Decision are based, nor disclosure of the evidence relied on by the Community authorities in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the interested parties that their business secrets should not be divulged.

Article 9

Termination of proceeding where protective measures are unnecessary

1. If it becomes apparent after consultation that protective measures are unnecessary, the proceeding shall be terminated by the Commission.

2. The Commission shall inform any representatives of the country of origin or export and the parties known to be concerned and shall announce the termination in the *Official Journal of the European Communities* setting forth its basic conclusions and a summary of the reasons therefor.

Article 10

Undertakings

1. Where, during the course of an investigation, undertakings are offered which the Commission, after consultation, considers acceptable, the investigation may be terminated without the imposition of provisional or definitive duties. Except in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 7 (4) (c) (iii). Information shall be given and notice published in accordance with Article 9 (2). Such termination does not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 12 (2).

2. The undertakings referred to under paragraph 1 are those under which:

(a) the subsidy is eliminated or limited, or other measures concerning its injurious effects taken, by the government of the country of origin or export; or

(b) prices are revised or exports cease to the extent that the Commission is satisfied that either the dumping margin or the amount of the subsidy, or the injurious effects thereof, are eliminated. In case of subsidization the consent of the country of origin or export shall be obtained.

3. Undertakings may be suggested by the Commission, but the fact that such undertakings are not offered or an invitation to do so is not accepted shall not prejudice consideration of the case. However, the continuation of dumped or subsidized imports may be taken as evidence that a threat of injury is more likely to be realized.

4. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the Commission, after consultation, so decides or if request is made, in the case of dumping, by exports representing a significant percentage of the trade involved or, in the case of subsidization, by the country of origin or export. In such a case, if the Commission, after consultation, makes a determination of no injury, the undertaking shall automatically lapse. However, where a determination of no threat of injury is due mainly to the existence of an undertaking, the Commission may require that the undertaking be maintained.

5. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

6. Where an undertaking has been withdrawn or where the Commission has reason to believe that it has been violated and where Community interests call for such intervention, it may, after consultations and after having offered the exporter concerned an opportunity to comment, apply provisional anti-dumping or

countervailing duties forthwith on the basis of the facts established before the acceptance of the undertaking.

Article 11

Provisional duties

1. Where preliminary examination shows that dumping or a subsidy exists and that there is sufficient evidence of injury caused thereby and the interests of the Community call for intervention to prevent injury being caused during the proceeding, the Commission, acting at the request of a Member State or on its own initiative, shall impose a provisional anti-dumping or countervailing duty. In such cases, release of the products concerned for free circulation in the Community shall be conditional upon the provision of security for the amount of the provisional duty, definitive collection of which shall be determined by the subsequent decision of the Commission under Article 12 (2).

2. The Commission shall take such provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days at the latest after notification to the Member States of the action taken by the Commission.

3. Where a Member State requests immediate intervention by the Commission, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional anti-dumping or countervailing duty should be imposed.

4. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a Member State, if new factors arise, or on the initiative of the Commission.

5. Provisional duties shall have a maximum period of validity of four months. However, where exporters representing a significant percentage of the trade involved so request or, pursuant to a notice of intention from the Commission, do not object, provisional anti-dumping duties may be extended for a further period of two months.

6. After expiration of the period of validity of provisional duties, the security shall be released as promptly as possible to the extent that the Commission has not decided to collect it definitively.

Article 12

Definitive action

1. Where the facts as finally established show that there is dumping or subsidization during the period under investigation, and injury caused thereby, and the interests of the Community call for Community intervention, the Commission, after consultation, shall impose a definitive anti-dumping or countervailing duty.

2. (a) Where a provisional duty has been applied, the Commission shall decide irrespective of whether a definitive anti-dumping or countervailing duty is to be imposed, what proportion of the provisional duty is to be definitively collected.

(b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been dumping or subsidization and injury. For this purpose, 'injury' shall not include material retardation of the establishment of a Community industry, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury.

Article 13

General provisions on duties

1. Anti-dumping or countervailing duties, whether provisional or definitive, shall be imposed by a Commission Decision or any other appropriate measure.

2. Such measures shall indicate in particular the amount and type of duty imposed, the product covered, the country of origin or export, the name of the supplier, if practicable, and the reasons on which the measures are based.

3. The amount of such duties shall not exceed the dumping margin provisionally estimated or finally established or the amount of the subsidy provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury.

4. (a) Anti-dumping and countervailing duties shall be neither imposed nor increased with retroactive effect. The obligation to pay the amount of these duties is incurred in accordance with Directive 79/623/EEC.

(b) However, where the Commission determines:

(i) for dumped products:

— that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

— that the injury is caused by sporadic dumping, i.e. massive dumped imports of a product in a relatively short period, to such an extent that, in order to preclude it recurring, it appears necessary to impose an anti-dumping duty retroactively on those imports; or

(ii) for subsidized products:

— in critical circumstances that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from export subsidies paid or bestowed inconsistently with the provisions of the GATT and of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT, and

— that it is necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on these imports; or

(iii) for dumped or subsidized products:

— that an undertaking has been violated,

the definitive anti-dumping or countervailing duties may be imposed on products in relation to which the obligation to pay import duties under the terms of Directive 79/623/EEC has been or would have been incurred not more than 90 days prior to the date of application of provisional duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to imports which were released for free circulation in the Community before the violation.

5. Where a product is imported into the Community from more than one country, duty shall be levied at an appropriate amount or a non-discriminatory basis on all imports of such product found to be dumped or subsidized and causing injury, other than imports from those sources in respect of which undertakings have been accepted.

6. Where the Community industry has been interpreted as referring to the producers in a certain region, the Commission shall give exporters an opportunity to offer undertakings pursuant to Article 10 in respect of the region concerned. If an adequate undertaking is not given promptly or is not fulfilled, a provisional or definitive duty may be imposed in respect of the Community as a whole.

7. In the absence of any special provisions to the contrary adopted when a definitive or provisional anti-dumping or countervailing duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

8. Anti-dumping or countervailing duties shall be collected by Member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports.

9. No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from the granting of any subsidy.

Article 14

Review

1. Recommendations and Decisions imposing anti-dumping or countervailing duties and decisions to accept undertakings shall be subject to review, in whole or in part, where warranted. Such review may be held either at the request of a Member State or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since the conclusion of the investigation. Such requests shall be addressed to the Commission which shall inform the Member States.

2. Where, after consultation, it becomes apparent that review is warranted, the investigation shall be re-opened in accordance with Article 7, where the circumstances so require. Such re-opening shall not *per se* affect the measures in operation.

3. Where warranted by the review, carried out either with or without re-opening of the investigation, the

measures shall be amended, repealed or annulled by the Commission.

Article 15

1. Subject to the provisions of paragraph 2, anti-dumping or countervailing duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

2. The Commission shall normally, after consultation and within six months prior to the end of the five year period, publish in the *Official Journal of the European Communities* a notice of the impending expiry of the measure in question and inform the Community industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with Article 7 (5). Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury the Commission shall carry out a review of the measure. The measure shall remain in force pending the outcome of this review.

Where anti-dumping or countervailing duties and undertakings lapse under this Article the Commission shall publish a notice to that effect in the *Official Journal of the European Communities.*

3. Existing anti-dumping or countervailing duties and undertakings shall not lapse under this Article before 1 July 1985.

Article 16

Refund

1. Where an importer can show that the duty collected exceeds the actual dumping margin or the amount of the subsidy, consideration being given to any application of weighted averages, the excess amount shall be reimbursed.

2. In order to request the reimbursement referred to in paragraph 1, the importer shall submit an application to the Commission. The application shall be submitted via the Member State in the territory of which the products were released for free circulation and within three months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty. The Member State shall forward the application to the Commission as soon as possible, either with or without an opinion on its merits. The Commission shall examine the merits of the application and, after consultation, decide whether and to what extent the application should be granted.

Article 17

Final provisions

This Decision shall not preclude the application of:

1. any special rules laid down in agreements concluded between the Community and third countries;

2. special measures, provided that such action does not run counter to obligations under the GATT.

Article 18

Repeal of existing legislation

Recommendation No 3018/79/ECSC is hereby repealed.

References to the repealed recommendation shall be construed as references to this Decision.

Article 19

Entry into force

This Decision shall enter into force on 1 August 1984.

It shall apply to proceedings already initiated.

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

Done at Brussels, 27 July 1984.

For the Commission

Étienne DAVIGNON

Vice-President

COUNCIL

COUNCIL DECISION

of 21 February 1983

adding a number of products to the list in Annex I to the ECSC Treaty

(83/83/ECSC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Whereas the list given in Annex I to the Treaty should be supplemented in order to enable the objectives of the Treaty, in particular those referred to in Article 60 thereof, to be achieved and so as to ensure greater effectiveness of the measures taken by the Community in application of the Treaty,

HAS DECIDED AS FOLLOWS:

Sole Article

The following products shall be added to the list set out in Annex I to the Treaty establishing the European Coal and Steel Community:

'Cold-rolled plate, in coil and in strips, of a thickness of 3 mm or more.'

Done at Brussels, 21 February 1983.

For the Council

The President

H. W. LAUTENSCHLAGER

Chapter 3 — Gas and oil and electricity

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1243/86

of 28 April 1986

amending Regulations (EEC) No 288/82, (EEC) No 1765/82 and (EEC) No 1766/82 on common rules for imports

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 288/82 [1], (EEC) No 1765/82 [2] and (EEC) No 1766/82 [3] provide for regular adjustments of the transitional provisions, in particular to give greater uniformity to the common rules for imports;

Whereas experience has shown that a number of provisions are now redundant, while others need to be adjusted to take account of progress in bringing uniformity to the common commercial policy;

Whereas the Commission and the Member States need to be kept informed of national measures in the fields covered by Articles 19 and 21 of Regulation (EEC) No 288/82 and Article 16 of Regulations (EEC) No 1765/82 and (EEC) No 1766/82,

HAS ADOPTED THIS REGULATION:

Article 1

Articles 19, 20 and 21 of Regulation (EEC) No 288/82 shall be replaced by the following:

'Article 19

1. By 31 December 1988 at the latest, the Council shall decide on the adjustments to be made to this Regulation for the purpose of greater uniformity of rules for imports. The Council shall act by a qualified majority on a proposal from the Commission and with due regard to the progress of the common commercial policy.

2. Pending such adjustments:

(a) as regards the products to which Regulation (EEC) No 3420/83 [1] applies, Member States may make imports subject to the requirement that not only the origin of the products concerned, but also the country of purchase or the country of provenance shall be among the countries to which this Regulation applies;

(b) import documents required for Community surveillance under Article 11 shall be valid only in the Member States which have issued or endorsed them;

(c) the Benelux countries and the Italian Republic may retain the automatic licence or import-declaration formalities currently applied by them to imports originating in Japan and Hong Kong;

(d) until 30 June 1987, the Benelux countries and Ireland may retain, for textile products not covered by any specific common import rules, national surveillance over the imports of such products, including imports under automatic licences. The same applies to Ireland in respect of footwear imports under headings 64.01-11 to 19, 64.02-21 to 99, 64.03-00 and 64.04-10, 90 of the NIMEXE code;

(e) this Regulation shall not preclude the continuance until 30 June 1988 of measures taken by the Italian Republic — pursuant to the Ministerial Decree of 6 May 1976, including the list annexed thereto and the subsequent amendments to it — making subject to special authorization the importation of articles, machinery and equipment, whether used or new but in poorly maintained condition, falling within Chapters 84, 85, headings Nos 86.01 to 86.04 and Chapters 87 and 93 of the Common Customs Tariff.

3. Member States shall notify the Commission, at its request, of any rules and other particulars concerning the procedures for the submission of requests for

[1] OJ No L 35, 9. 2. 1982, p. 1.
[2] OJ No L 195, 5. 7. 1982, p. 1.
[3] OJ No L 195, 5. 7. 1982, p. 21.

licences, including the conditions relating to admissibility of persons, enterprises or institutions who submit such requests. Any intended changes to these rules shall also be notified to the Commission.

(1) OJ No L 346, 8. 12. 1983, p. 6.

Article 20

1. Where a Member State which applies an import restriction referred to in the last indent of Article 1 (2) intends to change it, it shall inform the Commission and the other Member States thereof.

2. (a) At the request of the Commission or a Member State, the measures referred to in paragraph 1 shall be the subject of prior consultation within the Committee.

(b) If the Commission does not request, on its own initiative, consultations within five working days of receiving the information referred to in paragraph 1, nor at the request of a Member State received sufficiently early before the end of the said period, the Member State concerned may put the proposed measure into effect.

(c) In other cases, the consultation procedure shall commence within five working days of expiry of the period provided for in (b).

3. (a) If, after consultation, no objection has been raised by the other Member States or by the Commission, the Commission shall forthwith inform the Member State concerned, which may put the proposed measure into effect immediately.

(b) In other cases, the Member State concerned may not put the proposed measure into effect until two weeks after the opening of the consultation.

(c) If, within this period, the Commission submits to the Council, under Article 113 of the Treaty, a proposal meeting the objections raised, the proposed measure may not be put into effect until the Council has acted.

4. In cases of extreme urgency and until 30 June 1988, the following proovisions shall apply:

(a) when a quota has been exhausted and the economic requirements of a Member State call for additional imports from the non-member country or countries benefiting from the quota, the Member State concerned may, without prior notification, open additional import facilities up to a maximum of 20 % of the quantity or value of the exhausted quota; it shall forthwith inform the Commission and the other Member States thereof. The emergency procedure laid down in this paragraph shall not apply once the opening of negotiations with the non-member country concerned has been authorized;

(b) at the request of any Member State or of the Commission, subsequent consultation under the terms of paragraph 3 shall be held on measures taken by a Member State under this paragraph.

5. Where a Member State intends to make a unilateral change to its import arrangements for a petroleum product which is entered in Annex I and referred to in Article 3 of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (1), it shall inform the Commission and the other Member States thereof. The procedure laid down in paragraphs 2, 3 and 4 shall be applicable in this case; the other provisions of this Regulation shall not apply.

(1) OJ No L 148, 28. 6. 1968, p. 1.

Article 21

1. This Regulation shall not preclude the fulfilment of obligations based on special provisions of agreements between the Community and non-member countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or aplication by Member States:

(i) of prohibitions, quantitative restrictions or measures of surveillance on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;

(ii) of special formalities concerning foreign exchange;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty;

(b) Member States shall inform the Commission of the measures or formalities to be introduced or amended pursuant to this paragraph. In cases of extreme urgency, the national measures or formalities in question shall be communicated to the Commission as soon as they are adopted.'

Article 2

Articles 15 and 16 of Regulation (EEC) No 1765/82 and No 1766/82 shall be replaced by the following:

'Article 15

1. By 31 December 1988 at the latest, the Council shall, acting by a qualified majority on a proposal from the Commission, decide on the adjustments to be made to this Regulation for the purpose in particular of introducing a Community import document valid throughout the Community.

2. Until such time :

— any Member State may refuse to issue or endorse import documents within the meaning of Article 10 (1) (b) in respect of persons not established in its territory ; this provision shall be without prejudice to obligations arising under the Directives concerning freedom of establishment and freedom to provide services,

— import documents within the meaning of Article 10 (1) (b) shall be valid only in the Member State which issued or endorsed them.

Article 16

1. This Regulation shall not preclude the fulfilment of obligations based on special provisions of agreements between the Community and non-member countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of prohibitions or quantitative restrictions on imports on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

(b) Member States shall inform the Commission of the measures or formalities to be introduced or amended pursuant to this paragraph. In cases of extreme urgency, the national measures or formalities in question shall be communicated to the Commission as soon as they are adopted.'

Article 3

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

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

Done at Luxembourg, 28 April 1986.

For the Council

The President

H. RUDING

COUNCIL REGULATION (EC) No 518/94

of 7 March 1994

on common rules for imports and repealing Regulation (EEC) No 288/82

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the instruments establishing common organization of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that all quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments,

Having regard to the proposal from the Commission,

Whereas the common commercial policy should be based on uniform principles; whereas, while the common rules for imports established by Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports [1], constitute an important part of the policy, they still allow exceptions and derogations enabling Member States to continue applying national measures to imports of certain products, so that the policy needs to be completed;

Whereas under Article 7 a of the Treaty, the internal market comprises since 1 January 1993 an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas completion of the common commercial policy as it pertains to rules for imports is a necessary complement to the completion of the internal market and is the only means of ensuring that the rules applying to the Community's trade with third countries correctly reflect the integration of the markets;

Whereas in order to achieve greater uniformity in the rules for imports it is necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures and in particular the quantitative restrictions maintained by Member States under Regulation (EEC) No 288/82; whereas the economic and industrial repercussions of their elimination have been or can be taken into account in the Community's horizontal policies for the market concerned;

Whereas the liberalization of imports, namely the absence of any quantitative restrictions, should therefore form the starting point for the Community rules;

Whereas the Commission should be informed by the Member States of any danger created by trends in imports which might call for protective measures;

Whereas, in such a case, the Commisison should examine import terms and conditions, import trends, the various aspects of the economic and commercial situation, and the measures, if any, to be taken;

Whereas it may become apparent that there should be Community surveillance over certain of these imports;

Whereas surveillance or safeguard measures confined to one or more regions of the Community may nevertheless prove more suitable than measures appliyng to the whole Community; whereas, however, such measures should be authorized only exceptionally and where no alternative exists; whereas it is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market;

Whereas if Community surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of an import document meeting uniform criteria; whereas that document should, on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import; whereas the document should therefore be valid only during such period as the import rules remain unchanged;

Whereas it is in the interests of the Community that the Member States and the Commission should make as full as possible an exchange of information resulting from Community surveillance;

Whereas it is for the Commission and the Council to adopt the safeguard measures called for by the interests of the Community with due regard for existing international obligations; whereas, therefore, safeguard measures against a country whichis a contracting party to GATT may be considered only if the product in question

[1] OJ No L 35, 9. 2. 1982, p. 1, as last amended by Regulation (EEC) No 2875/92 (OJ No L 287, 2. 10. 1992, p. 1).

is imported into the Community in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, unless international obligations permit derogation from this rule;

Whereas experience has shown that it is necessary to adopt more precise criteria for assessing possible injury and to introduce an investigation while still allowing the Commission to introduce appropriate measures in urgent cases;

Whereas, to this end, more detailed provisions should be introduced on the opening of investigations, on the checks and inspections required, on the hearing of those concerned, the treatment of information obtained and the criteria for assessing injury;

Whereas the provisions on the investigations introduced by this Regulation do not prejudice Community or national rules concerning professional secrecy;

Whereas it is also necessary to set time limits for the initiation of investigations and for determinations as to whether, or not, measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economy operators concerned;

Whereas in the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simplified and must be identical regardless of the place where the goods clear customs; whereas it is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to the Regulation;

Whereas import documents issued in connection with Community surveillance measures should be valid throughout the Community irrespective of the Member State of issue;

Whereas the textile products falling under Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (1) are subject treatment at Community and international level; whereas they should therefore be completely excluded from the scope of this Regulation;

Whereas the provisions of this Regulation are applicable without prejudice to Articles 77, 81, 244, 249 and 280 of the Act of Accession of Spain and Portugal;

Whereas Regulation (EEC) No 288/92 should consequently be repealed,

HAS ADOPTED THIS REGULATION:

TITLE I

General principles

Article 1

1. This Regulation applies to imports of products covered by the Treaty originating in third countries, except for:

— textile products covered by Regulation (EC) No 517/94,

— the products originating in certain third countries listed in Regulation (EC) No 519/94 on common rules for imports from certain third countries,

2. Imports into the Community of the products referred to in paragraph 1 shall take place freely and so shall not be subject to any quantitative restrictions, without prejudice to the measures which may be taken under Title V.

TITLE II

Community information and consultation procedure

Article 2

The Commission shall be informed by the Member States should trends in imports appear to call for surveillance or safeguard measures. This information shall contain the available evidence on the basis of the criteria laid down in Article 8. The Commission shall pass on this information to all the Member States forthwith.

Article 3

Consultations may be held, either at the request of a Member State or on the initiative of the Commission. They shall take place within eight working days following receipt by the Commission of the information provided for in Article 2 and, in any event, before the introduction of any Community surveillance or safeguard measure.

Article 4

1. Consultation shall take place within an advisory committee, hereinafter called 'the Committee', made up of representatives of each Member State with a representative of the Commission as chairman.

2. The Commission shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

(1) See page 1 of this Official Journal.

3. Consultations shall cover in particular:

(a) terms and conditions of importation, import trends, and the various aspects of the economic and commercial situation as regards the product in question;

(b) the measures, if any, to be taken.

4. Consultations may be in writing if necessary. The Commission shall in this event inform the Member States, which may express their opinion or request oral consultations within a period of five to eight working days to be decided by the Commission.

TITLE III

Community investigation procedure

Article 5

1. Where after consultation, it is apparent to the Commission that there is sufficient edvidence to justify an investigation, the Commission shall:

(a) initiate an investigation within one month of receipt of information from a Member State and publish a notice in the *Official Journal of the European Communities;* such notice shall give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and submit information, it such views and information are to be taken into account during the investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4;

(b) commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided this Member State so wishes.

Interested parties which have made themselves known in accordance with paragraph (1) (a), as well as the representatives of the exporting country, may inspect all information made available to the Commission within the framework of the investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 7 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have applied in writing within the period laid down in the notice published in the *Official Journal of the European Communities,* showing that they are actually likely to be affected by the outcome of the investigations and that there are special reasons for them to be heard orally.

5. When information is not supplied within the time limits set by this Regulation or by the Commission under this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it which false or misleading information, it shall disregard the information and may make use of facts available.

6. Where it appears to the Commission, after the consultation referred to in paragraph 1, that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of receipt of the information from the Member States.

Article 6

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2. Where, within nine months of the initiation of the investigation, the Commission considers that no Community surveillance or safeguard measures are necessary, the investigation shall be terminated, within one month, after consulting the Committee. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, shall be published in the *Official Journal of the European Communities.*

3. If the Commission considers that Community surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Titles IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the *Official Journal of the European Communities* setting forth the duration of the extension and a summary of the reasons therefor.

4. The provisions of this Title shall not preclude the taking, at any time, of surveillance measures in accordance with Articles 9 to 13 or, where a critical situation, in which any delay would cause injury which it would be difficult to remedy, calls for immediate intervention, safeguard measures in accordance with Articles 14 to 16.

The Commission shall immediately take the investigation measures it considers to be still necessary. The results of the investigation shall be used to re-examine the measures taken.

Article 7

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor the Member States, nor the officials of any of these, shall reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

(b) Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorize its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

3. Information will in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. The preceding paragraphs shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. These authorities must, however, take into account the legitimate interest of the legal and natural persons concerned that their business secrets should not be divulged.

Article 8

1. The examination of the trend of imports, of the conditions in which they take place and of the serious injury or threat of serious injury to Community producers resulting from such imports, shall cover in particular the following factors:

(a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the price of the imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on the Community producers of similar or directly competitive products as indicated by trends in certain economic factors such as:

— production,

— utilization of capacity,

— stocks,

— sales,

— market share,

— prices (i.e. depression of prices or prevention of price increases which would normally have occurred),

— profits,

— return on capital employed,

— cash flow,

— employment.

2. Where a threat of serious injury is alleged the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) the rate of increase of the exports to the Community;

(b) the export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community.

TITLE IV

Surveillance

Article 9

1. Where developments on the market in respect of a product originating in a third country covered by this Regulation threaten to cause injury to Community producers of like or directly competing products and where the interests of the Community so require, importation of that product may be subject, as the case may be, to:

(a) retrospective Community surveillance carried out according to the provisions laid down in the decision referred to in paragraph 2,

or

(b) prior Community surveillance carried out according to Article 10.

2. The decision to impose surveillance shall be taken by the Commission according to the procedure laid down in Article 14 (5) and (6).

3. The surveillance measures shall have a limited period of validity. Unless otherwise stipulated, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

Article 10

1. Products under prior Community surveillance may be put into free circulation only on production of an import document. Such a document shall be endorsed by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. A form corresponding to the model given in the Annex shall be used for the import document and the declaration by the importer.

Additional information to that provided in the aforementioned form may be required. Such information shall be set out in the decision to impose surveillance.

3. The import document shall be valid throughout the Community, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 % or that the total value or quantity of the products presented for importation exceeds the value or quantity given in the import document by less than 5 % shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Import documents may be used only for such time as arrangements for the liberalization of imports remain in force in respect of the transactions concerned. The said import documents may not in any event be used beyond the expiry of the period which will be laid down at the same time and by means of the same procedure as the imposition of surveillance, and which will take account of the nature of the products and other special features of the transactions.

6. Where the decision taken under Article 9 so requires, the origin of products under Community surveillance must be proved by a certificate of origin. This paragraph shall not prejudice other provisions concerning the production of any such certificate.

7. Where the product under prior Community surveillance is subject to regional safeguard measures in a Member State, the import authorization granted by that Member State may replace the import document.

Article 11

Where importation of a product has not been made subject to prior Community surveillance within a period of eight working days following the end of consultations, the Commission may introduce, in accordance with Article 16, surveillance confined to imports to one or more regions of the Community.

Article 12

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of an import document. Such document shall be endorsed by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise. Import documents may be used only for such time as arrangements for the liberalization of imports remain in force in respect of the transactions concerned.

2. A form corresponding to the model given in the Annex shall be used for the import document and the declaration by the importer.

Additional information to that provided in the aforementioned form may be required. Such information shall be set out in the decision to impose surveillance.

Article 13

1. Member States shall communicate to the Commission within the first ten days of each month in the case of Community or regional surveillance :

(a) in the case of prior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which import documents were issued or endorsed during the preceding period ;

(b) in every case, details of imports during the period preceding the period referred to in subparagraph (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States.

TITLE V

Safeguard measures

Article 14

1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, the Commission, in order to safeguard the interests of the Community, may, acting at the request of a Member State or on its own initiative:

(a) limit the period of validity of import documents within the meaning of Article 10 to be endorsed after the entry into force of this measure;

(b) alter the import rules for the product in question by providing that it may be put into free circulation only on production of an import authorization, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in (a) and (b) shall take effect immediately.

2. When establishing a quota, account shall be taken in particular of:

— the desirability of maintaining, as far as possible, traditional trade flows,

— the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Title, where such contracts have been notified to the Commission by the Member State concerned,

— the need to avoid jeopardizing achievement of the aim pursued in establishing the quota.

3. (a) The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 16 they may be confined to one or more regions of the Community.

(b) However, such measures shall not prevent the release for free circulation of products already on their way to the Community provided that the destination of such products cannot be changed and that those products which, under Articles 9 and 10, may be put into free circulation only on production of an import document are in fact accompanied by such a document.

4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such a request.

5. Any decision taken by the Commission under this Article shall be communicated to the Council and to the Member States. Any Member State may, within one month following the day of communication, refer such decision to the Council.

6. If a Member State refers the decision taken by the Commission to the Council, the Council may acting by a qualified majority, confirm, amend or revoke the decision of the Commission.

If within three months of the referral of the matter to the Council, the latter has not taken a decision, the measure taken by the Commission shall be deemed revoked.

Article 15

1. Where the interests of the Community so require, the Council may, acting by a qualified majority on a proposal from the Commission, adopt appropriate measures:

(a) to prevent a product being imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products;

(b) to allow the rights and obligations of the Community or of all its Member States to be exercised and fulfilled at international level, in particular those relating to trade in primary products.

2. Article 14 (2) and (3) shall apply.

Article 16

Where, on the basis, in particular, of the factors referred to in Article 8, it emerges that the conditions laid down for the adoption of measures under Articles 9 and 14 are met in one or more regions of the Community, the Commission, after having examined alternative solutions, may exceptionally authorize the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community.

These measures must be temporary and must disrupt the operation of the internal market as little as possible.

These measures shall be adopted in accordance with the provisions laid down in Articles 9 and 14 respectively.

Article 17

1. While any surveillance or safeguard measure applied in accordance with Titles IV and V is in operation, consultations within the Committee shall be held, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be :

(a) to examine the effects of the measure ;

(b) to ascertain whether its application is still necessary.

2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any surveillance or safeguard measure referred to in Articles 9, 11, 14, 15 and 16 should be revoked or amended, it shall proceed as follows :

(a) where the Council has acted on a measure, the Commission shall propose to the Council that the measures be revoked or amended. The Council shall act by a qualified majority.

(b) in all other cases, the Commission shall amend or revoke Community safeguard measures and measures of surveillance.

Where this decision concerns regional measures of surveillance, it shall apply as from the sixth day following that of its publication in the *Official Journal of the European Communities.*

TITLE VI

Final provisions

Article 18

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Community and third countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States :

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security ; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property ;

(ii) of special formalities concerning foreign exchange ;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty.

(b) The Member States shall inform the Commission of the measures or formalities to be introduced or amended in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 19

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organization of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments adopted under Article 235 of the Treaty applicable to goods resulting from the processing of agricultural products ; it shall operate by way of complement to those instruments.

2. However, in the case of products covered by the instruments referred to in paragraph 1, Articles 9 to 13 and 17 shall not apply to those in respect of which the Community rules on trade with third countries require the production of a licence or other import document.

Articles 14, 16 and 17 shall not apply to those products in respect of which such rules make provision for the application of quantitative import restrictions.

Article 20

Until 31 December 1995, Spain and Portugal may maintain the quantitative restrictions on agricultural products referred to in Articles 77, 81, 244, 249 and 280 of the Act of Accession.

Article 21

Regulation (EEC) No 288/82 is hereby repealed. References to the repealed Regulation shall be understood as referring to this Regulation.

Article 22

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

It shall apply from 15 March 1994.

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

Done at Brussels, 7 March 1994.

For the Council

The President

Th. PANGALOS

ANNEX

List of particulars to be given in the boxes of the surveillance document

SURVEILLANCE DOCUMENT

1. Applicant
   (name, full address, country)
2. Registration No
3. Consignor (name, address, country)
4. Competent authorities of issue
   (name and address)
5. Declarant (name and address)
6. Last day of validity
7. Country of origin
8. Country of consignment
9. Proposed place and date of importation
10. Reference to Regulation (EC) which imposed surveillance
11. Description of goods, marks and numbers, number and kind of packages
12. Goods code (CN)
13. Gross mass (kg)
14. Net mass (kg)
15. Additional units
16. cif value EC frontier in ecu
17. Further particulars
18. Certification by the applicant:
    I, the undersigned, certify that the information provided in this application is true and given in good faith.

    Date and place
    (signature) (stamp)
19. Stamp of the competent authorities
    Date

    (signature) (stamp)

Original for the applicant

Copy for the competent authorities

EUROPEAN COMMUNITIES **SURVEILLANCE DOCUMENT**

1

Original for the applicant

1. Applicant (name, full address, country)

2. Registration No

3. Consignor (name, address, country)

4. Competent authorities of issue (name and address)

5. Declarant (name and address)

6. Last day of validity

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19. Stamp of the competent authorities

Date :

(signature) (stamp)

Place and date

(signature) (stamp)

COUNCIL REGULATION (EC) No 3285/94

of 22 December 1994

on the common rules for imports and repealing Regulation (EC) No 518/94

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the instruments establishing the common organization of agricultural markets and the instruments concerning processed agricultural products, in particular in so far as they provide for derogation from the general principle that quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in the said instruments,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament, [1]

Whereas the common commercial policy should be based on uniform principles; whereas Council Regulation (EC) No 518/94 of 7 March 1994 on common rules for imports and repealing Regulation (EEC) No 288/82 [2] is an important part of the policy;

Whereas due account was taken when Regulation (EC) No 518/94 was adopted from the Community's international obligations, particularly those deriving from Article XIX of the General Agreement on Tariffs and Trade (GATT);

Whereas the completion of the Uruguay Round has led to the foundation of the World Trade Organization (WTO); whereas Annex 1A to the Agreement establishing the WTO contains *inter alia* the General Agreement on Tariffs and Trade 1994 (GATT 1994) and an Agreement on Safeguards;

Whereas the Agreement on Safeguard meets the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of Article XIX; whereas that Agreement requires the elimination of safeguard measures which escape those rules, such as voluntary export restraints, orderly marketing arrangements and any other similar import or export arrangements;

Whereas the Agreement on Safeguards also covers ECSC products; whereas the common rules for imports, especially as regards safeguard measures, therefore also applies to those products without prejudice to any possible measures to apply an agreement specifically concerning ECSC products;

Whereas in the light of these new multilateral rules the common rules for imports should be made clearer and if necessary amended, particularly where the application of safeguard measures is concerned;

Whereas the starting point for the common rules for imports is liberalization of imports, namely the absence of any quantitative restrictions;

Whereas the Commission should be informed by the Member States of any danger created by trends in imports which might call for Community surveillance or the application of safeguard measures;

Whereas in such instances the Commission should examine the terms and conditions under which imports occur, the trend in imports, the various aspects of the economic and trade situations and, where appropriate, the measures to be applied;

Whereas if Community surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of an import document meeting uniform criteria; whereas that document should, on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import; whereas the document should therefore be valid only during such period as the import rules remain unchanged;

Whereas the Member States and the Commission should exchange the information resulting from Community surveillance as fully as possible;

Whereas it falls to the Commission and the Council to adopt the safeguard measures required by the interests of the Community; whereas those interests should be considered as a whole and should in particular encompass the interest of Community producers, users and consumers;

Whereas safeguard measures against a Member of the WTO may be considered only if the product in question

[1] Opinion delivered on 14 December 1994 (not yet published in the Official Journal).

[2] OJ No L 67, 10. 3. 1994, p. 77.

is imported into the Community in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, unless international obligations permit derogation from this rule;

Whereas the terms 'serious injury', 'threat of serious injury' and 'Community producers' should be defined and more precise criteria for determining injury be established;

Whereas an investigation must precede the application of any safeguard measure, subject to the reservation that the Commission be allowed in urgent cases to apply provisional measures;

Whereas there should be more detailed provisions on the opening of investigations, the checks and inspections required, access by exporter countries and interested parties to the information gathered, hearings for the parties involved and the opportunities for those parties to submit their views;

Whereas the provisions on investigations introduced by this Regulation are without prejudice to Community or national rules concerning professional secrecy;

Whereas it is also necessary to set time limits for the initiation of investigations and for determinations as to whether or not measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned;

Whereas in cases in which safeguard measures take the form of a quota the level of the latter should be set in principle no lower than the average level of imports over a representative period of at least three years;

Whereas in cases in which a quota is allocated among supplier countries each country's quota may be determined by agreement with the countries themselves or by taking as a reference the level of imports over a representative period; whereas derogations from these rules should nevertheless be possible where there is serious injury and a disproportionate increase in imports, provided that due consultation under the auspices of the WTO Committee on Safeguards takes place;

Whereas the maximum duration of safeguard measures should be determined and specific provisions regarding extension, progressive liberalization and reviews of such measures be laid down;

Whereas the circumstances in which products originating in a developing country Member of the WTO should be exempt from safeguard measures should be established;

Whereas surveillance or safeguard measures confined to one or more regions of the Community may prove more suitable than measures applying to the whole Community; whereas, however, such measures should be authorized only exceptionally and where no alternative exists; whereas it is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market;

Whereas in the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simplified and made identical regardless of the place where the goods clear customs; whereas it is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to the Regulation;

Whereas import documents issued in connection with Community surveillance measures should be valid throughout the Community irrespective of the Member State of issue;

Whereas the textile products covered by Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules [1] are subject to special treatment at Community and international level, except for the products listed in Annex II which are integrated into GATT 1994; whereas they should therefore be excluded from the scope of this Regulation;

Whereas the provisions of this Regulation are applicable without prejudice to Articles 77, 81, 244, 249 and 280 of the Act of Accession of Spain and Portugal;

Whereas national restrictions with respect to products falling under the ECSC Treaty will be progressively dismantled in accordance with the provisions of the WTO;

Whereas Regulation (EC) No 518/94 should consequently be repealed,

HAS ADOPTED THIS REGULATION

TITLE I

General principles

Article 1

1. This Regulation applies to imports of products originating in third countries, except for:

[1] OJ No L 67, 10. 3. 1994, p. 1.

— textile products covered by Regulation (EC) No 517/94, other than the products listed in Annex II in so far as those products originate in a country which is a member of the WTO,

— the products originating in certain third countries listed in Council Regulation (EC) No 519/94 on common rules for imports from certain third countries [1].

2. The products referred to in paragraph 1 shall be freely imported into the Community and accordingly, without prejudice to the safeguard measures which may be taken under Title V, shall not be subject to any quantitative restrictions.

TITLE II

Community information and consultation procedure

Article 2

The Commission shall be informed by the Member States should trends in imports appear to call for surveillance or safeguard measures. This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 10. The Commission shall immediately pass this information on to all the Member States.

Article 3

Consultations may be held either at the request of a Member State or on the initiative of the Commission. They shall take place within eight working days of the Commission receiving the information provided for in Article 2 and, in any event, before the introduction of any Community surveillance or safeguard measure.

Article 4

1. Consultation shall take place within an Advisory Committee, hereinafter called 'the Committee', made up of representatives of each Member State with a representative of the Commission as chairman.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States with all relevant information as promptly as possible.

3. Consultations shall cover in particular:

— terms and conditions of import, import trends and the various aspects of the economic and commercial situation with regard to the product in question,

— the measures, if any, to be taken.

4. Consultations may be conducted in writing if necessary. The Commission shall in this event inform the Member States, which may express their opinion or request oral consultations within a period of five to eight working days, to be decided by the Commission.

TITLE III

Community investigation procedure

Article 5

1. Without prejudice to Article 8, the Community investigation procedure shall be implemented before any safeguard measure is applied.

2. Using as a basis the factors described in Article 10, the investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the Community producers concerned.

3. The following definitions shall apply:

(a) 'serious injury' means a significant overall impairment in the position of Community producers,

(b) 'threat of serious injury' means serious injury that is clearly imminent;

(c) 'Community producers' means the producers as a whole of the like or directly competing products operating within the territory of the Community, or those whose collective output of the like or directly competing products constitutes a major proportion of the total Community production of those products.

Article 6

1. Where after consultations referred to in Article 3, it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation, the Commission shall:

(a) initiate an investigation within one month of receipt of information from a Member State and publish a notice in the *Official Journal of the European Communities*; such notice shall give a summary of the information received, and stipulate that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the

[1] OJ No L 67, 10. 3. 1994, p. 89.

investigation; it shall also state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4;

(b) commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided that Member State so wishes.

Interested parties which have come forward pursuant to paragraph 1 (a) and representatives of the exporting country may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Community or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 and that it is used by the Commission in the investigation.

Interested parties which have come forward may communicate their views on the information in question to the Commission; those views may be taken into consideration where they are backed by sufficient evidence.

3. The Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Communities*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

5. When information is not supplied within the time limits set by this Regulation or by the Commission pursuant to this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.

6. Where it appears to the Commission, after the consultation referred to in Article 3, that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of receipt of the information from the Member States.

Article 7

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2. Where the Commission considers, within nine months of the initiation of the investigation, that no Community surveillance or safeguard measures are necessary, the investigation shall be terminated within a month, the Committee having first been consulted. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, shall be published in the *Official Journal of the European Communities*.

3. If the Commission considers that Community surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Titles IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time limit may be extended by a further maximum period of two months; the Commission shall then publish a notice in the *Official Journal of the European Communities* setting forth the duration of the extension and a summary of the reasons therefor.

Article 8

1. The provisions of this Title shall not preclude the use, at any time, of surveillance measures in accordance with Articles 11 to 15 or provisional safeguard measures in accordance with Articles 16, 17 and 18.

Provisional safeguard measures shall be applied:

— in critical circumstances where delay would cause damage which it would be difficult to repair, making immediate action necessary, and

— where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

2. The duration of such measures shall not exceed 200 days.

3. Provisional safeguard measures should take the form of an increase in the existing level of customs duty (whether the latter is zero or higher) if such action is likely to prevent or repair the serious injury.

4. The Commission shall immediately conduct whatever investigation measures are still necessary.

5. Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible. The procedure laid down in Article 235 *et seq* of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1] shall apply.

Article 9

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. (a) Neither the Council, nor the Commission, nor the Member States, nor the officials of any of these shall reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis without specific permission from the supplier of such information.

(b) Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorize its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

3. Information shall in any case by considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. The preceding paragraphs shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. The said authorities shall, however, take into account the legitimate interest of legal and natural persons concerned that their business secrets should not be divulged.

Article 10

1. Examination of the trend of imports, of the conditions in which they take place and of serious injury or threat of serious injury to Community producers resulting from such imports shall cover in particular the following factors:

(a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;

(b) the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;

(c) the consequent impact on Community producers as indicated by trends in certain economic factors such as:

— production,

— capacity utilization,

— stocks,

— sales,

— market share,

— prices (i. e. depression of prices or prevention of price increases which would normally have occurred),

— profits,

— return on capital employed,

— cash flow,

— employment;

(d) factors other than trends in imports which are causing or may have caused injury to the Community producers concerned.

2. Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

(a) the rate of increase of the exports to the Community;

(b) export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to the Community.

TITLE IV

Surveillance

Article 11

1. Where the trend in imports of a product originating in a third country covered by this Regulation threatens to cause injury to Community producers, and where the

[1] OJ No L 302, 19. 10. 1992, p. 1.

interests of the Community so require, import of that product may be subject, as appropriate, to:

(a) retrospective Community surveillance carried out in accordance with the provisions laid down in the decision referred to in paragraph 2,

(b) prior Community surveillance carried out in accordance with Article 12.

2. The decision to impose surveillance shall be taken by the Commission according to the procedure laid down in Article 16 (7) and (8).

3. The surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

Article 12

1. Products under prior Community surveillance may be put into free circulation only on production of an import document. Such document shall be endorsed by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. The import document and the declaration by the importer shall be made out on a form corresponding to the model in Annex I.

Additional information to that provided for in the aforementioned form may be required. Such information shall be specified in the decision to impose surveillance.

3. The import document shall be valid throughout the Community, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 % or that the total value or quantity of the products presented for import exceeds the value or quantity given in the import document by less than 5 % shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Import documents may be used only for such time as arrangements for liberalization of imports remain in force in respect of the transactions concerned. Such import documents may not in any event be used beyond the expiry of a period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance, and shall take account of the nature of the products and other special features of the transactions.

6. Where the decision taken pursuant to Article 11 so requires, the origin of products under Community surveillance must be proved by a certificate of origin. This paragraph shall not affect other provisions concerning the production of any such certificate.

7. Where the product under prior Community surveillance is subject to regional safeguard measures in a Member State, the import authorization granted by that Member State may replace the import document.

Article 13

Where import of a product has not been made subject to prior Community surveillance within eight working days of the end of consultations, the Commission, in accordance with Article 18, may introduce surveillance confined to imports into one or more regions of the Community.

Article 14

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of an import document. Such document shall be endorsed by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of a declaration by any Community importer, regardless of his place of business in the Community. This declaration shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proven otherwise. Import documents may be used only for such time as arrangements for imports remain liberalized in respect of the transactions concerned.

2. The import document and the declaration by the importer shall be made out on a form corresponding to the model in Annex I.

Additional information to that provided in the aforementioned form may be required. Such particulars shall be specified in the decision to impose surveillance.

Article 15

1. Member States shall communicate to the Commission within the first 10 days of each month in the case of Community or regional surveillance:

(a) in the case of prior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which import documents were issued or endorsed during the preceding period;

(b) in every case, details of imports during the period preceding the period referred to in subparagraph (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commmission shall inform the Member States accordingly.

TITLE V

Safeguard measures

Article 16

1. Where a product is imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers, the Commission, in order to safeguard the interests of the Community, may, acting at the request of a Member State or on its own initiative:

(a) limit the period of validity of import documents within the meaning of Article 12 to be endorsed after the entry into force of this measure;

(b) alter the import rules for the product in question by making its release for free circulation conditional on production of an import authorization, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in (a) and (b) shall take effect immediately.

2. As regards Members of the WTO, the measures referred to in paragraph 1 shall be taken only when the two conditions indicated in the first subparagraph of that paragraph are met.

3. (a) If establishing a quota, account shall be taken in particular of:

— the desirability of maintaining, as far as possible, traditional trade flows,

— the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure within the meaning of this Title, where such contracts have been notified to the Commission by the Member State concerned,

— the need to avoid jeopardizing achievement of the aim pursued in establishing the quota.

(b) Any quota shall not be set lower than the average level of imports over the last three representative years for which statistics are available unless a different level is necessary to prevent or remedy serious injury.

4. (a) In cases in which a quota is allocated among supplier countries, allocation may be agreed with those of them having a substantial interest in supplying the product concerned for import into the Community.

Failing this, the quota shall be allocated among the supplier countries in proportion to their share of imports into the Community of the product concerned during a previous representative period, due account being taken of any specific factors which may have affected or may be affecting the trade in the product.

(b) Provided that its obligation to see that consultations are conducted under the auspices of the WTO Committee on Safeguards is not disregarded, the Community may nevertheless depart from this method of allocation in case of serious injury if imports originating in one or more supplier countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned over a previous representative period.

5. (a) The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 18 they may be confined to one or more regions of the Community.

(b) However, such measures shall not prevent the release for free circulation of products already on their way to the Community provided that the destination of such products cannot be changed and that those products which, pursuant to Articles 11 and 12, may be put into free circulation only in production of an import document are in fact accompanied by such a document.

6. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such a request.

7. Any decision taken by the Commission pursuant to this Article shall be communicated to the Council and to the Member States. Any Member State may, within one month following the day of such communication, refer the decision to the Council.

8. If a Member State refers the Commission's decision to the Council, the Council, acting by a qualified majority, may confirm, amend or revoke that decision.

If, within three months of the referral of the matter to the Council, the Council has not taken a decision, the decision taken by the Commission shall be deemed revoked.

Article 17

Where the interests of the Community so require, the Council, acting by a qualified majority on a proposal from the Commission drawn up in accordance with the terms of Title III, may adopt appropriate measures to prevent a product being imported into the Community in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products.

Article 16 (2), (3), (4) and (5) shall apply.

Article 18

Where it emerges, primarily on the basis of the factors referred to in Article 10, that the conditions laid down for the adoption of measures pursuant to Articles 11 and 16 are met in one or more regions of the Community, the Commission, after having examined alternative solutions, may exceptionally authorize the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community.

These measures must be temporary and must disrupt the operation of the internal market as little as possible.

The measures shall be adopted in accordance with the provisions laid down in Articles 11 and 16 respectively.

Article 19

No safeguard measure may be applied to a product originating in a developing country Member of the WTO as long as that country's share of Community imports of the product concerned does not exceed 3 %, provided that developing country Members with less than a 3 % import share collectively account for not more than 9 % of total Community imports of the product concerned.

Article 20

1. The duration of safeguard measures must be limited to the period of time necessary to prevent or remedy serious injury and to facilitate adjustment on the part of Community producers. The period should not exceed four years, including the duration of any provisional measure.

2. Such initial period may be extended, except in the case of the measures referred to in Article 16 (4) (b), provided it is determined that:

— the safeguard measure continues to be necessary to prevent or remedy serious injury,

— and there is evidence that Community producers are adjusting.

3. Extensions shall be adopted in accordance with the terms of Title III and using the same producers as the initial measures. A measure so extended shall not be more restrictive than it was at the end of the initial period.

4. If the duration of the measure exceeds one year, the measure must be progressively liberalized at regular intervals during the period of application, including the period of extension.

5. The total period of application of a safeguard measure, including the period of application of any provisional measures, the initial period of application and any prorogation thereof, may not exceed eight years.

Article 21

1. While any surveillance or safeguard measure applied in accordance with Titles IV and V is in operation, consultations shall be held within the Committee, either at the request of a Member State or on the initiative of the Commission. If the duration of a safeguard measure exceeds three years, the Commission shall seek such consultations no later than the mid-point of the period of application of that measure. The purpose of such consultations shall be:

(a) to examine the effects of the measure;

(b) to determine whether and in what manner it is appropriate to accelerate the pace of liberalization;

(c) to ascertain whether its application is still necessary.

2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any surveillance or safeguard measure referred to in Articles 11, 13, 16, 17 and 18 should be revoked or amended, it shall proceed as follows:

(a) where the measure was enacted by the Council, the Commission shall propose to the Council that it be revoked or amended. The Council shall act by a qualified majority;

(b) in all other cases, the Commission shall amend or revoke Community safeguard and surveillance measures.

Where the decision relates to regional surveillance measures, it shall apply from the sixth day following that of its publication in the *Official Journal of the European Communities*.

Article 22

1. Where imports of a product have already been subject to a safeguard measure no further such measure shall be applied to that product until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than two years.

2. Notwithstanding paragraph 1, a safeguard measure of 180 days or less may be reimposed for a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

TITLE VI

Final provisions

Article 23

Where the interests of the Community so require, the Council, acting by a qualified majority on a proposal from the Commission, may adopt appropriate measures to allow the rights and obligations of the Community or of all its Member States, in particular those relating to trade in commodities, to be exercised and fulfilled at international level.

Article 24

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Community and third countries.

2. (a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States:

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;

(ii) of special formalities concerning foreign exchange;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty.

(b) The Member States shall inform the Commission of the measures or formalities they intend to introduce or amend in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 25

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organization of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments applicable to goods resulting from the processing of agricultural products; it shall operate by way of complement to those instruments.

2. However, in the case of products covered by the instruments referred to in paragraph 1, Articles 11 to 15 and 22 shall not apply to those in respect of which the Community rules on trade with third countries require the production of a licence or other import document.

Articles 16, 18 and 21 to 24 shall not apply to those products in respect of which such rules provide for the application of quantitative import restrictions.

Article 26

1. Residual national restrictions relating to products covered by the ECSC Treaty shall be progressively dismantled in accordance with the provisions of the WTO.

2. Until 31 December 1995, Spain and Portugal may maintain the quantitative restrictions on agricultural products referred to in Articles 77, 81, 244, 249 and 280 of the Act of Accession.

Article 27

Regulation (EC) No 518/94 is hereby repealed. References to the repealed Regulation shall be understood as referring to this Regulation.

Article 28

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

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For the Council

The President

H. SEEHOFER

ANNEX I

List of particulars to be given in the boxes of the surveillance document

SURVEILLANCE DOCUMENT

1. Applicant
(name, full address, country)
2. Registration No
3. Consignor (name, address, country)
4. Competent authorities of issue
(name and address)
5. Declarant (name and address)
6. Last day of validity
7. Country of origin
8. Country of consignment
9. Proposed place and date of importation
10. Reference to Regulation (EC) which imposed surveillance
11. Description of goods, marks and numbers, number and kind of packages
12. Goods code (CN)
13. Gross mass (kg)
14. Net mass (kg)
15. Additional units
16. Cif value EC frontier in ecu
17. Further particulars
18. Certification by the applicant:
I, the undersigned, certify that the information provided in this application is true and given in good faith.
Date and place
(signature) (stamp)
19. Stamp of the competent authorities
Date
(signature) (stamp)

Original for the applicant

Copy for the competent authorities

EUROPEAN COMMUNITIES **SURVEILLANCE DOCUMENT**

1

Original for the applicant

1. Applicant (name, full address, country)

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3. Consignor (name, address, country)

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1. the undersigned, certify that the information provided in this application is true and given in good faith

19. Stamp of the competent authorities

Date:

(signature) (stamp)

Place and date

(signature) (stamp)

27.12.69 Official Journal of the European Communities No L 324/25

REGULATION (EEC) No 2603/69 OF THE COUNCIL

of 20 December 1969

establishing common rules for exports

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 111 and 113 thereof;

Having regard to the instruments establishing common organisation of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments;

Having regard to the proposal from the Commission;

Whereas, after the transitional period has ended, the common commercial policy must be based on uniform principles, *inter alia* as regards exports; and whereas implementation of this policy necessarily involves its progressive standardisation during the transitional period;

Whereas common rules should therefore be established for exports from the EEC;

Whereas exports are almost completely liberalised in all the Member States; whereas it is therefore possible to accept as a Community principle that exports to third countries are not subject to any quantitative restriction, subject to the exceptions provided for in this Regulation and without prejudice to such measures as Member States may take in conformity with the Treaty;

Whereas the Commission must be informed if, as a result of unusual developments on the market, a Member State considers that protective measures might be necessary;

Whereas it is essential that examination should take place at Community level, in particular on the basis of any such information and within an advisory committee, of export terms and conditions, of export trends, of the various aspects of the economic and commercial situation, and of the measures, if any, to be taken;

Whereas it may become apparent from this examination that the Community should exercise surveillance over certain exports, or that interim protective measures should be introduced as a safeguard against unforeseen practices; whereas the need for rapid and effective action makes it justifiable for the Commission to be empowered to decide upon such measures, but without prejudice to the subsequent position of the Council, whose responsibility it is to adopt a policy consistent with the interests of the Community;

Whereas any protective measures necessitated by the interests of the Community should be adopted with due regard for existing international obligations;

Whereas it is desirable that Member States be impowered, in certain circumstances and provided that their actions are on an interim basis only, to take protective measures individually;

Whereas it is desirable that while such protective measures are in operation there should be an opportunity for consultation for the purpose of examining the effects of the measures and of ascertaining whether the conditions for their application are still satisfied;

Whereas certain products should be provisionally excluded from Community liberalisation until the Council shall have acted to establish common rules in respect of those products;

Whereas this Regulation is to apply to all products, whether industrial or agricultural; whereas its operation should be complementary to that of the instruments establishing common organisation of agricultural markets, and to that of the special instruments adopted under Article 235 of the Treaty

for processed agricultural products; whereas any overlap between the provisions of this Regulation and the provisions of those instruments, particularly the protective clauses thereof, must however be avoided;

HAS ADOPTED THIS REGULATION:

TITLE I

Basic principle

Article 1

The exportation of products from the European Economic Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation.

TITLE II

Community information and consultation procedure

Article 2

If, as a result of any unusual developments on the market, a Member State considers that protective measures within the meaning of Title III might be necessary, it shall so notify the Commission, which shall advise the other Member States.

Article 3

1. Consultations may be held at any time, either at the request of a Member State or on the initiative of the Commission.

2. Consultations shall take place within four working days following receipt by the Commission of the notification provided for in Article 2, and in all cases before the introduction of any measure pursuant to Articles 5 to 7.

Article 4

1. Consultation shall take place within an advisory committee (hereinafter called 'the Committee'), which shall consist of representatives of each Member State with a representative of the Commission as Chairman.

2. The Committee shall meet when convened by its Chairman. He shall provide all the Member States, as promptly as possible, with all relevant information.

3. Consultation shall in particular cover:

(a) terms and conditions of export, export trends, and the various aspects of the economic and commercial situation as regards the product in question;

(b) the measures, if any, to be adopted.

Article 5

For the purpose of assessing the economic and commercial situation as regards a particular product, the Commission may request Member States to supply statistical data on market trends in that product and, to this end, acting in accordance with their national legislation and with a procedure to be specified by the Commission, to exercise surveillance over exports of such product. Member States shall take whatever steps are necessary in order to give effect to requests from the Commission and shall forward to the Commission the data requested. The Commission shall inform the other Member States.

TITLE III

Protective measures

Article 6

1. In order to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation, and where Community interests call for immediate intervention, the Commission, acting at the request of a Member State or on its own initiative, and taking account of the nature of the products and of the other particular features of the transactions in question, may make the export of a product subject to the production of an export authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down pending subsequent action by the Council under Article 7.

2. The Council and the Member States shall be notified of the measures taken. Such measures shall take effect immediately.

3. The measures may be limited to exports to certain countries or to exports from certain regions of the Community. They shall not affect products already on their way to the Community frontier.

4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such request. Should the Commission refuse to give effect to the request, it

shall forthwith communicate its decision to the Council, which may, acting by a qualified majority, decide differently.

5. Any Member State may, within twelve working days of the day of their communication to the Member States, refer the measures taken to the Council. The Council may, acting by a qualified majority, decide that different action be taken.

6. Where the Commission has acted pursuant to paragraph 1, it shall, not later than twelve working days following the entry into force of the measure which it has taken, make a proposal to the Council on appropriate measures as provided for in Article 7. If, at the end of six weeks following the entry into force of the measure, taken by the Commission, the Council has taken no decision on this proposal, the measure in question shall be deemed revoked.

Article 7

1. Where the interests of the Community so require, the Council may, acting by a qualified majority on a proposal from the Commission, adopt appropriate measures:

— to prevent a critical situation from arising owing to a shortage of essential products, or to remedy such a situation;

— to allow international undertakings entered into by the Community or all the Member States to be fulfilled, in particular those relating to trade in primary products.

2. Such measures may be limited to exports to certain countries or to exports from certain regions of the Community. They shall not affect products already on their way to the Community frontier.

3. When quantitative restrictions on exports are introduced, account shall be taken in particular of:

— the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a protective measure within the meaning of this Title and notified by the Member State concerned to the Commission in conformity with its national laws; and

— the need to avoid jeopardising achievement of the aim pursued in introducing quantitative restrictions.

Article 8

1. Where a Member State considers that there exists in its territory a situation such as that defined as regards the Community in Article 6 (1), it may, as an interim protective measure, make the export of a product subject to the production of an export authorisation, the granting of which shall be governed by such provisions and subject to such limits as that Member State shall lay down.

2. The Member State shall take such a measure after hearing the opinions expressed in the Committee or, where urgency precludes such a procedure, after notifying the Commission. The latter shall advise the other Member States.

3. The Commission shall be notified by telex of the measure immediately following its adoption; such notification shall be equivalent to a request within the meaning of Article 6 (4). The measure shall operate only until the coming into operation of the decision taken by the Commission.

4. The provisions of this Article shall apply until 31 December 1972. Before that date the Council shall, by a qualified majority on a proposal from the Commission, decide on the adjustments to be made thereto.

Article 9

1. While any measure referred to in Articles 6 to 8 is in operation, consultations within the Committee shall be held, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be:

(a) to examine the effects of the measures;

(b) to ascertain whether the conditions for its application are still satisfied.

2. Where the Commission considers that any measure provided for in Article 6 or in Article 7 should be revoked or amended, it shall proceed as follows:

(a) where the Council has taken no decision on a measure taken by the Commission, the latter shall amend or revoke such measure forthwith and shall immediately deliver a report to the Council;

(b) in all other cases, the Commission shall propose to the Council that the measures adopted by the Council be revoked or amended. The Council shall act by a qualified majority.

TITLE IV

Transitional and final provisions

Article 10

Until such time as the Council, acting by a qualified majority on a proposal from the Commission, shall have introduced common rules in respect of the products listed in the Annex to this Regulation, the principle of freedom of export from the Community as laid down in Article 1 shall not apply to those products.

Article 11

Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

Article 12

1. This Regulation shall be without prejudice to the operation of the instruments establishing common organisation of agricultural markets, or of the special instruments adopted under Article 235 of the Treaty for processed agricultural products; it shall operate by way of complement to those instruments.

2. However, in the case of products covered by such instruments, the provisions of Articles 6 and 8 shall not apply to those in respect of which the Community rules on trade with third countries make provision for the application of quantitative export restrictions. The provisions of Article 5 shall not apply to those products in respect of which such rules require the production of a licence or other export document.

Article 13

This Regulation shall enter into force on 31 December 1969.

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

Done at Brussels, 20 December 1969.

For the Council

The President

H. J. DE KOSTER

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1934/82
of 12 July 1982
amending Regulation (EEC) No 2603/69 establishing common rules for exports

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the instruments establishing common organization of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 235 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments,

Having regard to the proposal from the Commission,

Whereas, pursuant to Regulation (EEC) No 2603/69 (1), the exportation of products from the Community to third countries is free, that is to say, not subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of that Regulation and are listed in the Annex thereto;

Whereas, since the adoption of that Regulation, a number of Member States have abolished the restrictions which they applied to exports of certain products set out in the said Annex;

Whereas this trend towards greater liberalization of exports should be taken into account by updating the said Regulation;

Whereas it should also be specified more clearly that the restrictions maintained in force under Articles 1 and 10 of Regulation (EEC) No 2603/69 are applied only by the Member States indicated in respect of the products listed in the Annex, with the exception of certain products of the energy sector which it seems advisable for all Member States to exclude from the liberalization of exports at Community level in view in particular of the international commitments entered into by certain Member States;

Whereas, moreover, products traditionally subject to quota restrictions in Greece whose unlimited export could, because of the decline in domestic production and the difference between prices in Greece and on the world market, cause serious supply difficulties for the processing industries in Greece, should be added to the list of goods to which Member States apply export restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

Article 10 of Regulation (EEC) No 2603/69 is hereby replaced by the following:

'Article 10

Until the Council, acting by a qualified majority on a proposal from the Commission, has introduced common rules in respect of the products listed in the Annex to this Regulation, the principle of freedom of export from the Community as laid down in Article 1 shall not apply to those products for the Member States mentioned in the Annex or to the following products for all Member States:

27.09	Petroleum oils and oils obtained from bituminous minerals, crude
27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing not less than 70 % by weight of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations:
A	Light oils
B	Medium oils

(1) OJ No L 324, 27. 12. 1969, p. 25.

ex C		Heavy oils except lubricating oils used in clocks and watches and the like presented in small receptacles containing not more than 250 g net of oil
27.11		Petroleum gases and other gaseous hydrocarbons :
	A	Propane of a purity not less than 99 %
	B	Other :
	I	Commercial propane and commercial butane'

Article 2

The Annex to Regulation (EEC) No 2603/69 shall be replaced by the Annex hereto.

Article 3

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

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

Done at Brussels, 12 July 1982.

For the Council

The President

I. NØRGAARD

ANNEX

CCT heading No (1982)	Description	Member State applying restriction
1	2	3
12.08	Chicory roots, fresh or dried, whole or cut, unroasted; locust beans, fresh or dried, whether or not kibbled or ground, but not further prepared; fruit kernels and other vegetable products of a kind used primarily for human food, not falling within any other heading:	
A	— Chicory roots	Belgium
13.02	Shellac, seed lac, stick lac and other lacs; natural gums, resins, gum-resins and balsams:	
A	— Conifer resins	Greece
23.04	Oil-cake and other residues (except dregs) resulting from the extraction of vegetable oils:	
ex B	— Cotton oil-cake	Greece
ex 35.07	Enzymes; prepared enzymes not elsewhere specified or included:	
	— Rennet of sheep or goats	Italy
41.01	Raw hides and skins (fresh, salted, dried, pickled or limed), whether or not split, including sheepskins in the wool	Greece, France, Ireland, Italy
41.02	Bovine cattle leather (including buffalo leather) and equine leather, except leather falling within heading No 41.06 or 41.08:	
ex B	— Bovine leather, not further prepared than tanned	Greece, France
ex 43.01	Raw furskins:	
	— Of rabbit and badgers	Italy
ex 44.01	Fuel wood, in logs, in billets, in twigs or in faggots; wood waste, including sawdust:	
	— Fuel wood, of coniferous wood and pine and fir shavings	Ireland
44.03	Wood in the rough, whether or not stripped of its bark or merely roughed down:	
B	— Other	Ireland
ex B	— Other: not including poplar and tropical wood	Italy
44.04	Wood, roughly squared or half-squared, but not further manufactured:	
ex B	— Other, not including poplar	Ireland
ex B	— Other, not including poplar and tropical wood	Italy
44.05	Wood sawn lengthwise, sliced or peeled, but not further prepared, of a thickness exceeding 5 mm:	
ex B	— Of coniferous wood, not including small boards for the manufacture of boxes, sieves or riddles and the like	Ireland, Italy
44.07	Railway or tramway sleepers of wood	Italy
47.02	Waste paper and paperboard; scrap articles of paper or of paperboard, fit only for use in paper-making	Italy

CCT heading No (1982)		Description	Member State applying restriction
1		2	3
ex 70.10		Carboys, bottles, jars, pots, tubular containers and similar containers, of glass, of a kind commonly used for the conveyance or packing of goods ; stoppers and other closures, of glass :	
		— Carboys and flasks, of glass, of a capacity not exceeding 5 litres	Italy
ex 71.01		Pearls, unworked or worked, but not mounted, set or strung (except ungraded pearls temporarily strung for convenience of transport) :	
		— Pearls unworked	Italy
71.02		Precious and semi-precious stones, unworked, cut or otherwise worked, but not mounted, set or strung (except ungraded stones temporarily strung for convenience of transport) :	
	B I	— Other, for industrial uses	France, Italy
71.07		Gold, including platinum-plated gold, unwrought or semi-manufactured	Denmark, Italy
71.09		Platinum and other metals of the platinum group, unwrought or semi-manufactured	France, Italy
71.11		Goldsmiths', silversmiths' and jewellers' sweepings, residues, lemels, and other waste and scrap, of precious metal	Italy
ex 72.01		Coin : which is not legal tender	France, Italy
ex 74.01		Copper matte ; unwrought copper (refined or not) ; excluding copper waste and scrap	France
75.01		Nickel matte, nickel speiss and other intermediate products of nickel metallurgy ; unwrought nickel (excluding electro-plating anodes) ; nickel waste and scrap	France
ex 75.02		Wrought bars, rods, angles, shapes and sections, of nickel ; nickel wire not including metal thread or strip of the kind used for the manufacture of lamé cloth, ornamental trimmings, galloons and adornments :	France
		— Of nickel alloy containing more than 10 % but not more than 50 % of nickel	
		— Of nickel alloy containing not less than 50 % of nickel	
75.03		Wrought plates, sheets and strip, of nickel ; nickel foil ; nickel powders and flakes :	
	ex A	— Plates, sheets, strip and foil not including metal thread or strip of the kind used for the manufacture of lamé cloth, ornamental trimmings, galloons and adornments :	France
		— Of nickel alloy containing more than 10 % but not more than 50 % of nickel	
		— Of nickel alloy containing not less than 50 % of nickel	
	ex B	— Nickel flakes	France

CCT heading No (1982)	Description	Member State applying restriction
1	2	3
75.04	Tubes and pipes and blanks therefor, of nickel ; hollow bars, and tube and pipe fittings (for example, joints, elbows, sockets and flanges), of nickel :	
A	— Tubes and pipes and blanks therefor ; hollow bars	France
75.05	Electro-plating anodes, wrought or unwrought, including those produced by electrolysis	France, Italy
79.01	Unwrought zinc ; zinc waste and scrap :	
B	— Waste and scrap	France
ex 80.01	Unwrought tin ; tin waste and scrap	
	— Waste and scrap	France
88.02	Flying machines, gliders and kites ; rotochutes :	
ex B	— Flying machines, used	Belgium
ex 89.01	Ships, boats and other vessels not falling within heading Nos 89.02 to 89.05 :	
ex B I	— *Sea-going vessels*	France, Ireland
ex 91.01	Pocket-watches, wrist-watches and other watches, including stop-watches :	
	— Pocket-watches with lever escapement	France
ex 91.07	Watch movements (including stop-watch movements), assembled :	
	— With lever escapement	France
92.10	Parts and accessories of musical instruments including perforated music rolls and mechanisms for musical boxes ; metronomes, tuning forks and pitch pipes of all kinds :	
ex C	— Reeds, tuning forks, tongues, diaphragms and parts and accessories thereof, for accordions	Italy

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 649/80

of 17 March 1980

laying down the rules for carrying out the registration of petroleum product imports in the European Community provided for by Regulation (EEC) No 1893/79

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Whereas in Regulation (EEC) No 1893/79 [1] the Council introduced registration for crude oil and/or petroleum product imports in the Community; whereas it reserved the right to lay down, after closer examination, in a supplementary Regulation, rules for carrying out such registration; whereas these rules should therefore be laid down;

Whereas in Regulation (EEC) No 2592/79 [2] the Council laid down the rules for registering crude oil;

Whereas it is necessary to harmonize the arrangements for the implementation of this Regulation with those to be adopted by other industrialized countries,

HAS ADOPTED THIS REGULATION:

Article 1

1. The data which all persons or undertakings are obliged to communicate to a Member State pursuant to Article 1 of Regulation (EEC) No 1893/79 shall relate to each import of at least 2 000 tonnes of any one of the petroleum products listed in Article 3 of this Regulation.

Any import broken down into separate consignments for transport purposes shall be regarded as a single import if a single price is charged.

Where an import of a single product is declared as having been broken down into separate consignments corresponding to different prices, each consignment shall be the subject of a separate declaration.

2. 'Imports' shall mean any quantity of the petroleum products listed in Article 3 which enters the customs territory of a Member State from either a third country or another Member State of the Community for purposes other than transit.

Article 2

For the purposes of Article 1 of Regulation (EEC) No 1893/79, the characteristics of each import of petroleum products into a Member State shall include:

— the designation of the petroleum product,

— the point of customs clearance,

— the date of import,

— the origin or the earliest known point of loading,

— the quantity,

— the cif prices actually paid,

— the type of transaction (i.e. whether subject to a continuing supply arrangement or not and whether between associate companies or not).

Article 3

The list of petroleum products to be declared is as follows:

— naphtha,

— premium petrol,

— regular petrol,

— gas oil (heating oil/automative diesel oil),

— regular sulphur fuel oil > 1 %,

— regular sulphur fuel oil ≤ 1 %,

— kerosene/kerosene turbo fuel.

[1] OJ No L 220, 30. 8. 1979, p. 1.
[2] OJ No L 297, 24. 11. 1979, p. 1.

Article 4

The data referred to in Articles 1, 2 and 3 shall be forwarded to the Member State concerned in respect of each period not exceeding one month.

Article 5

The information which Member States are obliged to communicate to the Commission pursuant to Article 2 of Regulation (EEC) No 1893/79 shall be forwarded within one month of the end of each month referred to in Article 4 of this Regulation. This information shall consist, for each type of petroleum product, of an aggregation of the data which the Member States receive from persons and undertakings. For each type of petroleum product, the information shall comprise in respect of the quantities referred to in Article 1 (1):

— the designation of the petroleum product,
— the classification of types of petroleum products according to origin or to the earliest known point of loading, distinguishing between the European Community as a whole and third countries as a whole only,
— the quantity,
— the average prices,
— the maximum and minimum prices,
— the type of transaction whether between associate companies or not,
— the number of persons or undertakings.

Article 6

1. The Commission shall analyze and communicate to the Member States each month the information gathered pursuant to Article 5.

2. The Member States and the Commission shall consult at regular intervals at the request of a Member State or on the initiative of the Commission. These consultations shall relate in particular to the Commission communications referred to in paragraph 1. Consultations may be organized with international organizations and third countries which have set up similar information systems.

Article 7

1. The data communicated pursuant to Article 1 and the information provided for in Article 5 shall be confidential.

This provision shall not, however, prevent the distribution of data in terms which do not disclose details relating to individual undertakings (i.e. in terms which refer to at least three undertakings).

2. The information forwarded to the Commission on the basis of Article 5 and the communications referred to in Article 6 (1) may be used only for the purposes of Article 6 (2).

3. The Member States shall also send the Commission a list of the persons and undertakings who communicate to them the data referred to in Articles 1 and 2.

4. If the Commission notes, in the information communicated to it by the Member States in accordance with Article 5, the existence of anomalies or inconsistencies which prevent it from obtaining a true picture of developments in the conditions under which imports have taken place, it may ask the Member States to permit it to acquaint itself with the appropriate unaggregated data supplied by the undertakings and with the calculation and assessment procedures used to arrive at the aggregated data.

Article 8

The Commission shall, after consulting the Member States, adopt the arrangements for implementing this Regulation.

Article 9

This Regulation shall expire on 31 December 1980.

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

Done at Brussels, 17 March 1980.

For the Council

The President

J. SANTER

COMMISSION REGULATION (EEC) No 713/80

of 26 March 1980

implementing Regulation (EEC) No 649/80 laying down rules for the registration of petroleum product imports in the Community in accordance with Regulation (EEC) No 1893/79

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1893/79 of 28 August 1979 introducing registration for crude oil and/or petroleum product imports in the Community [1], and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 649/80 of 17 March 1980 laying down rules for the registration of crude oil imports in the Community provided for in Regulation (EEC) No 1893/79 [2], and in particular Article 8 thereof,

Whereas Article 1 of Regulation (EEC) No 1893/79 provides that any person or undertaking importing petroleum products from third countries or from another Member State is obliged to notify the Member State concerned of such imports;

Whereas Article 2 of Regulation (EEC) No 1893/79 provides that Member States shall supply the information to the Commission;

Whereas, in order to simplify the information system and to obtain comparable data, it is necessary to harmonize the information to be supplied by the Member States and undertakings by providing for the use of standard questionnaires for the presentation and content of the data concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. The notifications provided for in Articles 1, 2, 3 and 5 of Council Regulation (EEC) No 649/80 shall include the data shown in the models which appear in the Annex to this Regulation.

2. The first reference period, in accordance with Article 4 of Council Regulation (EEC) No 649/80, shall commence on 1 April 1980.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities* and shall expire on 31 December 1980.

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

Done at Brussels, 26 March 1980.

For the Commission

Guido BRUNNER

Member of the Commission

[1] OJ No L 220, 30. 8. 1979, p. 1.
[2] OJ No L 73, 19. 3. 1980, p. 1.

ANNEX

EXPLANATORY NOTE TO TABLE 1 A

Undertaking

Enter the name of the person or company reporting.

Reporting scope

All imports of 2 000 tonnes or more of the petroleum products listed are to be reported.

Any import divided into several consignments for transport purposes is to be regarded as a single import if only one price is involved.

Where an import consisting of one product is reported as being divided into several consignments involving different prices, each consignment is to be reported separately.

'Import' means any quantity of the petroleum products listed which enters the customs territory of a Member State either from third countries or from another Member State of the Community for purposes other than transit.

Period and time limit

Enter the dates (day, month, year) determining the reporting period. The period concerned should not exceed one calendar month.

Member States are to indicate to the reporting individuals and undertakings the reporting period foreseen and the time limit for the submission of returns.

Import number

Enter the serial number of the import.

Type of petroleum product

Enter the type of petroleum product imported, giving its usual trade name and national specifications. Use one table for each petroleum product listed.

List of petroleum products to be reported

The list of petroleum products for which information is to be reported separately is as follows :

1. straight run naphtha,
2. premium Mogas,
3. regular Mogas,
4. kerosene/kerosene turbo fuel,
5. gas oil (heating/automotive diesel oil),
6. heavy fuel oil, >1 % sulphur,
7. heavy fuel oil, ≤ 1 % sulphur.

National specifications

The national specifications and the trade descriptions normally used in the country.

Origin or loading point

Enter the country of origin of the imported petroleum product. If the country of origin is unknown, indicate the first known country where the petroleum product was loaded before being imported.

Import date

Enter the day, month and year of customs clearance of the imported petroleum product.

Point of customs clearance

Enter the terminal or other place or installation where the imported petroleum product was customs cleared. If the point of customs clearance is not the same as the point taken as the basis for determining the cif price (border price) explanatory notes should be given in the remarks column.

Quantity

Enter the total quantity unloaded at the point of unloading expressed in tonnes, rounded off to the nearest tonne, for each import of petroleum products exceeding 2 000 tonnes.

Cif price

(a) Enter the cif price actually invoiced.

The cif price includes the fob price, the cost of transport, insurance and certain charges connected with crude oil transfer operations (loading duties or charges, lighterage). Customs duties, demurrage, port dues and all other charges borne in the reporting country are to be excluded from the cif price.

The cif prices are those actually paid by the undertakings or those which they expect to have to pay after deduction of rebates.

(b) Prices are to be expressed in dollars, and exchange rates are to be indicated where appropriate.

Type of transaction

Enter the type of transaction in the appropriate column, i.e. :

'CSA' if it is an importation subject to a continuing supply arrangement ;

'NCSA' if it is an importation which is not subject to a continuing supply arrangement ;

'AFF' if it is a transaction between affiliated companies ;

'NAFF' if it is a transaction between non-affiliated companies.

Remarks

Indicate any factors, remarks or comments regarded as useful for the correct understanding of the data, e.g. exchanges of petroleum products between companies.

COMMISSION OF THE EUROPEAN COMMUNITIES

TABLE 1 A

CONFIDENTIAL

Page : .....

COMPANY REPORTING TO MEMBER STATES ON PETROLEUM PRODUCTS IMPORTED FROM THIRD COUNTRIES AND FROM MEMBER STATES OF THE COMMUNITY

(Detailed information)

Person or undertaking :
Date submitted :

Type of petroleum product :
Period : from to

Import No	Import information				Price information	Type of transaction		Remarks
	Origin / Loading point	Quantity in tonnes	Point of customs clearance	Import date	Cif ($/tonne)	Affiliated/ non-affiliated	CSA/NCSA	

Remarks :

EXPLANATORY NOTE TO TABLE 1 B

Table 1 B is to be used to report summary information concerning quantities, average prices and extreme prices, for each type of petroleum product imported.

Undertaking

Enter the name of the reporting individual or company.

Reporting scope

Undertakings are to report to the Member States a summary of all the basic information for each petroleum product covered and each type of transaction (between affiliated companies, or between non-affiliated companies).

Use the column AFF or NAFF, as appropriate, to report :

— the details of imports which are transactions between affiliated companies,

— the details of imports which are transactions between non-affiliated companies.

Period and time limit

Enter the dates (day, month, year) defining the reporting period. The period concerned should not exceed one calendar month.

Member States are to indicate to the reporting individuals or undertakings the reporting period foreseen and the time limit for submission.

List of petroleum products to be reported

The list of petroleum products to be reported is as follows :

1. straight run naphtha,
2. premium Mogas,
3. regular Mogas,
4. kerosene/kerosene turbo fuel,
5. gas oil (heating/automotive diesel oil),
6. heavy fuel oil, > 1 % sulphur,
7. heavy fuel oil, ≤ 1 % sulphur.

Origin or loading point

Enter for each petroleum product the total quantities imported from other EEC countries separately from those imported from third countries.

Quantity

Enter the total quantity in tonnes, rounded off to the nearest tonne, for each type of petroleum product imported.

Number of import operations

Enter the number of import operations carried out for each type of petroleum product covered.

Average cif prices

(a) Indicate the average cif price for each petroleum product covered weighted by the quantities registered during the period in question.

The cif price includes the fob price, the cost of transport, insurance and certain charges connected with crude oil transfer operations (loading duties or charges, lighterage). Customs duties, port dues and any other expenditure borne in the reporting country are to be excluded from the cif prices.

The cif prices are those actually paid by the undertakings or those which they expect to have to pay after deduction of rebates.

(b) Prices are to be expressed in dollars, and exchange rates are to be indicated, where appropriate.

Extreme (lowest and highest) cif prices

Enter the lowest and highest cif prices paid for each type of petroleum product during the reference period.

Remarks

Indicate any other factors, remarks or comments regarded as useful for the correct understanding of the data. Indicate in particular whether, as far as the Member State is concerned, the information is confidential because of the number or distribution of boats or barges.

COMMISSION OF THE
EUROPEAN COMMUNITIES

TABLE 1 B

CONFIDENTIAL

COMPANY REPORTING TO MEMBER STATES ON PETROLEUM PRODUCTS IMPORTED FROM THIRD COUNTRIES AND MEMBER STATES

(Summary information)

Individual or undertaking :
Date submitted :

Period from :
to :

Name of petroleum product	Origin / Loading point	Quantity in tonnes		Number of import operations		Cif price information ($/tonne)						Remarks
						Weighted average		Lowest		Highest		
		AFF	NAFF	AFF	NAFF	AFF	NAFF	AFF	NAFF	AFF	NAFF	
Straight run naphtha	EEC											
	Non-EEC											
	Total											
Premium Mogas	EEC											
	Non-EEC											
	Total											
Regular Mogas	EEC											
	Non-EEC											
	Total											
Kerosene/kerosene turbo fuel	EEC											
	Non-EEC											
	Total											
Gas oil (heating/automotive diesel oil)	EEC											
	Non-EEC											
	Total											
Heavy fuel oil, > 1 % sulphur	EEC											
	Non-EEC											
	Total											
Heavy fuel oil, ≤ 1 % sulphur	EEC											
	Non-EEC											
	Total											

Remarks :

EXPLANATORY NOTE TO TABLE 2

Table 2 is to be used to report basic information concerning quantities, average prices and extreme prices for each type of petroleum product imported.

Member State

Enter the reporting Member State.

Reporting scope

Member States are to report the basic information which they receive from the reporting individuals and undertakings in an aggregated form and the information on extreme prices in a non-aggregated form. Aggregation is to be carried out for each petroleum product covered and each type of transaction (between affiliated companies and between non-affiliated companies).

Use separate tables to report :

(a) all import operations which are transactions between affiliated companies ;

(b) all import operations which are transactions between non-affiliated companies ;

(c) the total imports registered during the period (a + b).

Period

Enter the month and year for the reporting period.

Reporting time limit

Information is to be reported to the Commission no later than one month after the end of the preceding month.

List of petroleum products to be reported

The list of petroleum products is as follows :

1. straight run naphtha,
2. premium Mogas,
3. regular Mogas,
4. kerosene/kerosene turbo fuel,
5. gas oil (heating/automotive diesel oil),
6. heavy fuel oil, > 1 % sulphur,
7. heavy fuel oil, ≤ 1 % sulphur.

Origin or loading point

Enter for each petroleum product the total quantities imported from other EEC countries separately from those imported from third countries.

Quantity

Enter the total quantity, rounded off to the nearest 1 000 tonnes, for each type of petroleum product imported.

Number of undertakings

Enter the number of oil companies concerned, for each type of petroleum product covered.

Average cif prices

(a) Indicate the average cif price for each petroleum product covered weighted by the quantities registered during the period in question.

The cif price includes the fob price, the cost of transport, insurance and certain expenditure connected with crude oil transfer operations (loading duties or charges, lighterage). Customs duties, port dues and any other expenditure borne in the reporting country are to be excluded from the cif prices.

The cif prices are those actually paid by the undertakings or those which they expect to have to pay after deduction of rebates.

(b) Prices are to be expressed in dollars, and exchange rates are to be indicated where appropriate.

Extreme (lowest and highest) cif prices

Enter the lowest and highest cif prices, rounded up to the nearest five dollars, paid for each type of petroleum product in the reference period.

Remarks

Enter any other factors, remarks or comments regarded as useful for the correct understanding of the data. Indicate in particular whether, as far as the Member State is concerned, the information is confidential because of the number or distribution of boats or barges.

COMMISSION OF THE EUROPEAN COMMUNITIES

TABLE 2

CONFIDENTIAL

GOVERNMENT REPORTING TO THE COMMISSION ON PETROLEUM PRODUCTS IMPORTED FROM THIRD COUNTRIES AND MEMBER STATES

Member State :
Date submitted :

Type of transaction :
Period: from to

Name of petroleum product	Origin / Loading point	Quantity in tonnes	Number of undertakings	Cif price information ($ tonne)			Remarks
				Weighted average	Lowest	Highest	
Straight run naphtha	EEC						
	Non-EEC						
	Total						
Premium Mogas	EEC						
	Non-EEC						
	Total						
Regular Mogas	EEC						
	Non-EEC						
	Total						
Kerosene/kerosene turbo fuel	EEC						
	Non-EEC						
	Total						
Gas oil (heating/automotive diesel oil)	EEC						
	Non-EEC						
	Total						
Heavy fuel oil, > 1 % sulphur	EEC						
	Non-EEC						
	Total						
Heavy fuel oil, ≤ 1 % sulphur	EEC						
	Non-EEC						
	Total						

Remarks :

DIRECTIVE 94/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 1994

on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 57 (2), first and third sentences, Articles 66 and 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

Whereas the internal market comprises an area without internal frontiers in which the free movement of goods, services, persons and capital is ensured; whereas the necessary measures must be adopted for its operation;

Whereas in its resolution of 16 September 1986 [4], the Council identified as an objective of the energy policy of the Community and the Member States the greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness;

Whereas the Community largely depends on imports for its hydrocarbon supply; whereas it is consequently advisable to encourage the best possible prospection, exploration and production of the resources located in the Community;

Whereas Member States have sovereignty and sovereign rights over hydrocarbon resources on their territories;

Whereas the Community is a signatory to the United Nations Convention on the Law of the Sea;

Whereas steps must be taken to ensure the non-discriminatory access to and pursuit of activities relating to the prospection, exploration and production of hydrocarbons under conditions which encourage greater competition in this sector and thereby to favour the best prospection, exploration and production of resources in Member States and to reinforce the integration of the internal energy market;

Whereas, for this purpose, it is necessary to set up common rules for ensuring that the procedures for granting authorizations for the prospection, exploration and production of hydrocarbons must be open to all entities possessing the necessary capabilities; whereas authorizations must be granted on the basis of objective, published criteria; whereas the conditions under which authorizations are granted must likewise be known in advance by all entities taking part in the procedure;

Whereas Member States must retain the options to limit the access to and the exercise of these activities for reasons justified by public interest and to subject to the payment of a financial contribution or a contribution in hydrocarbons, the detailed arrangements of the said contribution having to be fixed in such a way as not to interfere in the management of entities; whereas these options must be used in a non-discriminatory way; whereas, with the exception of the obligations related to the use of this option, steps must be taken to avoid imposing on entities, conditions and obligations which are not justified by the need to perform this activity properly; whereas the activities of entities must be monitored only to the extent necessary to ensure their compliance with these obligations and conditions;

Whereas the extent of the areas covered by an authorization and the duration of the authorization must be limited with a view to preventing the reservation to a single entity of an exclusive right over an area which can be prospected, explored and brought into production more efficiently by several entities;

Whereas Member States' entities should enjoy in third countries a treatment comparable to that enjoyed by third countries' entities in the Community by virtue of this Directive; whereas it is necessary to lay down a procedure to this end;

Whereas this Directive should apply to authorizations issued after the date by which Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive;

Whereas Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications

[1] OJ No C 139, 2. 6. 1992, p. 12.
[2] OJ No C 19, 25. 1. 1993, p. 128.
[3] Opinion of the European Parliament of 18 November 1992 (OJ No C 337, 21. 12. 1992, p. 145). Council common position of 22 December 1993 (OJ No C 101, 9. 4. 1994, p. 14) and Decision of the European Parliament of 9 March 1994 (not yet published in the Official Journal).
[4] OJ No C 241, 25. 9. 1986, p. 1.

sectors (1) and Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (2) apply to the entities in the energy sector as regards their procurement of supplies, of works and of services; whereas the application of the alternative arrangements provided for under Article 3 of Directive 90/531/EEC is subject in particular to the condition that, in the Member State requesting the application of these arrangements, authorizations be granted in a non-discriminatory and transparent manner; whereas a Member State fulfils this condition from the moment when and for as long as it complies with the requirements of this Directive; whereas it is consequently necessary to amend Directive 90/531/EEC;

Whereas Article 36 of Directive 90/531/EEC provides for a review within four years, in the light of developments concerning in particular progress in market opening and the level of competition, of the field of application of that Directive. This review of the field of application includes hydrocarbon exploration and extraction;

Whereas Denmark is in a special situation, due to the fact that it is obliged to enter into negotiations on a possible continuation of the activities after the expiry of the concession, issued on 8 July 1962, concerning the areas which are relinquished on 8 July 2012 and that Denmark will thus be accorded a derogation concerning these areas,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. *'competent authorities'* means the public authorities, as defined in Article 1 (1) of Directive 90/531/EEC, which are responsible for granting authorization and/or monitoring use thereof;

2. *'entity'* means any natural or legal person or any group of such persons which applies for, is likely to apply for or holds an authorization;

3. *'authorization'* means any law, regulation, administrative or contractual provision or instrument issued thereunder by which the competent authorities of a Member State entitle an entity to exercise, on its own behalf and at its own risk, the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area. An authorization may be granted for each activity separately or for several activities at a time;

4. *'public entity'* means a public undertaking as defined in Article 1 (2) of Directive 90/531/EEC.

Article 2

1. Member States retain the right to determine the areas within their territory to be made available for the exercise of the activities of prospecting, exploring for and producing hydrocarbons.

2. Whenever an area is made available for the exercise of the activities set out in paragraph 1, Member States shall ensure that there is no discrimination between entities as regards access to and exercise of these activities.

However, Member States may refuse, on grounds of national security, to allow access to and exercise of these activities to any entity which is effectively controlled by third countries or third country nationals.

Article 3

1. Member States shall take the necessary measures to ensure that authorizations are granted following a procedure in which all interested entities may submit applications in accordance either with paragraph 2 or 3.

2. This procedure shall be initiated:

(a) either at the initiative of the competent authorities by means of a notice inviting applications, to be published in the *Official Journal of the European Communities* at least 90 days before the closing date for applications;

(b) or by means of a notice inviting applications, to be published in the *Official Journal of the European Communities* following submission of an application by an entity without prejudice to Article 2 (1). Other interested entities shall have a period of at least 90 days after the date of publication in which to submit an application.

Notices shall specify the type of authorization, the geographical area or areas in part or all of which an application has been or may be made and the proposed date or time limit for granting authorization.

Where preference is given to applications by entities which are single natural or legal persons, the notice shall so specify.

3. Member States may grant authorizations without initiating a procedure under paragraph 2 where the area for which authorization is requested:

(a) is available on a permanent basis; or

(1) OJ No L 297, 29. 10. 1990, p. 1.
(2) OJ No L 199, 9. 8. 1993, p. 84.

(b) has been the subject of a previous procedure according to paragraph 2 which has not resulted in the grant of an authorization; or

(c) has been relinquished by an entity and does not fall automatically under (a).

A Member State wishing to apply this paragraph shall within three months of the adoption of this Directive or, in case of Member States who have not yet introduced such procedures, without delay arrange for the publication in the *Official Journal of the European Communities* of a notice indicating the areas within its territory which are available under this paragraph and where detailed information in this regard can be obtained. Any significant change in this information shall be the subject of an additional notice. However, no application for an authorization under this paragraph can be considered until after the publication of the relevant notice under this text.

4. A Member State may decide not to apply the provisions of paragraph 1 if and to the extent that geological or production considerations justify the granting of the authorization for an area to the holder of an authorization for a contiguous area. The Member State concerned shall ensure that the holders of authorizations for any other contiguous areas are able to submit applications in such a case and are given sufficient time to do so.

5. The following shall not be considererd as the grant of an authorization within the meaning of paragraph 1:

(a) the grant of an authorization solely by reason of a change of name or ownership of an entity holding an existing authorization, a change in the composition of such an entity or a transfer of an authorization;

(b) the grant of an authorization to an entity having another form of authorization where the possession of the latter authorization implies a right to the grant of the former authorization;

(c) the decision of the competent authorities taken within the framework of an authorization (whether or not such authorization was granted before the date fixed in Article 14) and relating to the commencement, interruption, prolongation or cessation of the activities or to the prolongation of the authorization itself.

6. Notwithstanding the initiation of the procedures mentioned in paragraph 2, Member States retain the option to refuse the granting of authorizations, whilst ensuring that this option does not give rise to discrimination between entities.

Article 4

Member States shall take the necessary measures to ensure that:

(a) if the geographical areas are not delimited on the basis of a prior geometric division of the territory, the extent of each area is determined in such a way that it does not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view. In the case of authorizations granted following the procedures laid down in Article 3 (2), objective criteria shall be established to this end and shall be made available to the entities prior to the submission of applications;

(b) the duration of an authorization does not exceed the period necessary to carry out the activities for which the authorization is granted. However, the competent authorities may prolong the authorization where the stipulated duration is insufficient to complete the activity in question and where the activity has been performed in accordance with the authorization;

(c) entities do not retain exclusive rights in the geographical area for which they have received an authorization for longer than is necessary for the proper performance of the authorized activities.

Article 5

Member States shall take the necessary measures to ensure that:

1. authorizations are granted on the basis of criteria concerning, in all cases:

   (a) the technical and financial capability of the entities; and

   (b) the way in which they propose to prospect, to explore and/or to bring into production the geographical area in question;

   and, where applicable:

   (c) if the authorization is put up for sale, the price which the entity is prepared to pay in order to obtain the authorizations;

   (d) if, following evaluation under the criteria (a), (b) and, where applicable, (c), two or more applications have equal merit, other relevant objective and non-discriminatory criteria, in order to make a final choice among these applications.

   The competent authorities may also take account, when appraising applications, of any lack of efficiency and responsibility displayed by the applicants in operations under previous authorizations.

Where the competent authorities determine the composition of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.

Where the competent authorities determine the operator of an entity to which they may grant an authorization, they shall make that determination on the basis of objective and non-discriminatory criteria.

The criteria shall be drawn up and published in the *Official Journal of the European Communities* before the start of the period for submission of applications. Member States which have already published the criteria in their official journals may limit the publication in the *Official Journal of the European Communities* to a reference to the publication in their official journals. However, any change in criteria shall be published in full in the *Official Journal of the European Communities;*

2. the conditions and requirements concerning the exercise or termination of the activity which apply to each type of authorizations by virtue of the laws, regulations and administrative provisions in force at the time of submission of the applications, whether contained in the authorization or being one of the conditions to be accepted prior to the grant of such authorization, are established and made available to interested entities at all times. In the case provided for in Article 3 (2) (a), they may be made available only from the date starting from which applications for authorization may be submitted;

3. any changes made to the conditions and requirements in the course of the procedure are notified to all interested entities;

4. the criteria, conditions and requirements referred to in this Article are applied in a non-discriminatory manner;

5. any entity whose application for an authorization is unsuccessful is, if the entity so wishes, informed of the reasons for the decision.

Article 6

1. Member States shall ensure that the conditions and requirements referred to in Article 5 (2) and the detailed obligations for use of a specific authorization are justified exclusively by the need to ensure the proper performance of the activities in the area for which an authorization is requested, by the application of paragraph 2 or by the payment of a financial contribution or a contribution in hydrocarbons.

2. Member States may, to the extent justified by national security, public safety, public health, security of transport, protection of the environment, protection of biological resources and of national treasures possessing artistic, historic or archaeological value, safety of installations and of workers, planned management of hydrocarbon resources (for example the rate at which hydrocarbons are depleted or the optimization of their recovery) or the need to secure tax revenues, impose conditions and requirements on the exercise of the activities set out in Article 2 (1).

3. The rules for payment of contributions referred to in paragraph 1, including any requirement for State participation, shall be fixed by Member States in such a way as to ensure that the independence of management of entities is maintained.

However, where the grant of authorizations is subject to the State's participation in the activities and where a legal person has been entrusted with the management of this participation or where the State itself manages the participation, neither the legal person nor the State shall be prevented from assuming the rights and obligations associated with such participation, equivalent to the importance of the participation provided that the legal person or the State shall not be party to information nor exercise any voting rights on decisions regarding sources of procurement for entities, that the legal person or the State in combination with any public entity or entities shall not exercise a majority voting right on other decisions and that any vote by the State or the legal person shall be based exclusively on transparent, objective and non-discriminatory principles, and shall not prevent the management decisions of the entity from being based on normal commercial principles.

However, the provisions of the preceding sub-paragraph shall not prevent the legal person or the State from opposing a decision by the holders of an authorization which would not respect the conditions and requirements, specified in the authorization, regarding depletion policy and protection of the financial interests of the State.

The option to oppose a decision shall be exercised in a non-discriminatory manner, particularly regarding investment decisions and sources of supply of entities. Where the State's participation in the activities is managed by a legal person which also holds the authorizations, the Member State shall put in place arrangements requiring that legal person to keep separate accounts for its commercial role and its role as manager of the State's participation and guaranteeing that there is no flow of information from the part of the legal person responsible for the management of the State's participation to the part of the legal person which holds authorizations in its own right. However, where the part of the legal person responsible for the management of the State's participation engages the part of the legal person which holds authorization as a consultant, the former may make available any information which is necessary for the consultancy work to be carried out. The holders

of all authorizations to which the information relates shall be informed in advance of what information will be given in this way and shall be given sufficient time to raise objections.

4. Member States shall ensure that the monitoring of entities under an authorization is limited to that necessary to ensure compliance with the conditions, requirements and obligations referred to in paragraph 1. In particular, they shall take the measures necessary to ensure that no entity is required, by any law, regulation or administrative requirement, or by any agreement or undertaking, to provide information on its intended or actual sources of procurement, except at the request of the competent authorities and exclusively with a view to the objectives set out in Article 36 of the Treaty.

Article 7

Without prejudice to the provisions concerning or contained in individual authorizations and to the provisions of Article 3 (5) (b) legal, regulatory and administrative provisions which reserve to a single entity the right to obtain authorizations in a specific geographical area within the territory of a Member State shall be abolished by the Member States concerned before 1 January 1997.

Article 8

1. Member States shall inform the Commission of any general difficulty encountered, *de jure* or *de facto,* by entities in access to or exercise of the activities of prospecting, exploring for and producing hydrocarbons in third countries, which have been brought to their attention. Member States and the Commission shall ensure that commercial confidentiality is respected.

2. The Commission shall report to the European Parliament and the Council before 31 December 1994, and periodically thereafter, on the situation of entities in third countries and on the state of any negotiations undertaken pursuant to paragraph 3 with those countries or in the framework of international organizations.

3. Whenever the Commission establishes, either on the basis of the reports referred to in paragraph 2 or on the basis of other information, that a third country is not granting Community entities, as regards access to or exercise of the activities referred to in paragraph 1, treatment comparable to that which the Community grants entities from that third country, the Commission may submit proposals to the Community for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community entities. The Council shall decide by qualified majority.

4. In the circumstances described in paragraph 3, the Commission may at any time propose that the Council authorize one or more Member States to refuse an authorization to an entity which is effectively controlled by the third country concerned and/or by nationals of that third country.

The Commission may make such a proposal on its own initiative or at the request of a Member State.

The Council shall act by qualified majority as soon as possible.

5. Measures taken pursuant to this Article shall be without prejudice to the Community's obligations under any international agreement governing access to an exercise of the activities of prospecting, exploring for and producing hydrocarbons.

Article 9

Each Member State shall publish and communicate to the Commission an annual report which shall include information on the geographical areas which have been opened for prospecting, exploration and production, authorizations granted, entities holding authorizations and the composition thereof and the estimated reserves contained in its territory.

This provision does not imply any obligation for Member States to publish information of a commercially confidential nature.

Article 10

Member States shall notify the Commission, no later than 1 May 1995, of the competent authorities. Member States shall notify the Commission without delay of any subsequent changes. The Commission shall publish the list of competent authorities and any changes thereto in the *Official Journal of the European Communities.*

Article 11

This Directive applies to authorizations granted from the date laid down in Article 14.

Article 12

The following paragraph shall be added to Article 3 of Directive 90/531/EEC:

'5. As regards the exploitation of geographical areas for the purpose of prospecting for or extracting oil or gas, paragraphs 1 to 4 shall apply as follows from the date on which the Member State concerned has complied with the provisions of the European

Parliament and Council Directive 94/22/EC of 30 May on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (*):

(a) the conditions laid down in paragraph 1 shall be considered to be satisfied with effect from that date without prejudice to paragraph 3;

(b) with effect from that date, the Member State referred to in paragraph 4 shall be required to communicate only the provisions relating to compliance with the conditions referred to in paragraphs 2 and 3.

(*) OJ No L 164, 30. 6. 1994, p. 3.'

Article 13

The provisions of Articles 3 and 5 shall not apply to new authorizations granted by Denmark before 31 December 2012, in respect of the areas which are relinquished on 8 July 2012 upon expiry of the authorization issued on 8 July 1962. The new authorizations shall be granted on the basis of objective and non-discriminatory principles.

Consequently, this Article shall not create any precedent for Member States.

Article 14

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 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 at the time of their official publication. The methods of making such reference shall be laid down by Member States..

Article 15

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

Article 16

This Directive is addressed to the Member States.

Done at Brussels, 30 May 1994.

For the European Parliament	*For the Council*
The President	*The President*
E. KLEPSCH	C. SIMITIS

No L 308/14 Official Journal of the European Communities 23.12.68

COUNCIL DIRECTIVE

of 20 December 1968

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

(68/414/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament[1];

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

Whereas a crisis in obtaining supplies could occur unexpectedly and whereas it is therefore essential to establish forthwith the necessary means to make good a possible shortage;

Whereas, to this end, it is necessary to increase the security of supply for crude oil and petroleum products in Member States by establishing and maintaining minimum stocks of the most important petroleum products;

Whereas national production contributes in itself to the security of supply; whereas the conditions of Community production and the greater security of supply inherent in such production justify making it possible for Member States to place the burden of maintaining stocks on imports;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to maintain at all times, subject to the provisions of Articles 2 and 7, their stocks of petroleum products at a level corresponding, for each of the categories of petroleum products listed in Article 3, to at least 65 days' average daily internal consumption in the preceding calendar year.

That part of internal consumption met by derivatives of petroleum produced indigenously by the Member State concerned may be deducted up to a maximum of 15% of the said consumption.

Bunker supplies for sea-going vessels shall not be included in the calculation of internal consumption.

Article 2

Without prejudice to Article 1, Member States may exempt undertakings from the obligation to maintain stops in respect of an amount not exceeding the quantity of products which those undertakings manufacture from indigenously produced crude oil.

Article 3

The following categories of product shall be taken into account in calculating internal consumption:

— motor spirit and aviation fuel (aviation spirit and jet-fuel of the gasoline type);
— gas oil, diesel oil, kerosine and jet-fuel of the kerosine type;
— fuel oils.

Article 4

Member States shall submit to the Commission a statistical summary showing stocks existing at the end of each quarter, drawn up in accordance with Articles 5 and 6 and specifying the number of days of average consumption in the preceding calendar year which those stocks represent. This summary must be submitted within ninety days of the end of the quarter.

Article 5

In the statistical summary of stocks provided for in Article 4, finished products shall be accounted for

[1] OJ No 20, 6.2.1965, p. 330/65.

according to their actual tonnage; crude oil and intermediate products shall be accounted for:

— in the proportions of the quantities for each category of product obtained during the preceding calendar year from the refineries of the State concerned; or

— on the basis of the production programmes of the refineries of the State concerned for the current year; or

— on the basis of the ratio between the total quantity manufactured during the preceding calendar year in the State concerned of products covered by the obligation to maintain stocks and the total amount of crude oil used during that year; the foregoing shall apply to not more than 10% of the total obligation for the first and second categories (petrol and gas oils), and to not more than 50% for the third category (fuel oils):

Blending components, when intended for processing into the finished products listed in Article 3, may be substituted for the products for which they are intended.

Article 6

1. When calculating the level of minimum stocks provided for in Article 1, only those quantities which would be fully at the disposal of a Member State should difficulties arise in obtaining oil supplies shall be included in the statistical summary.

Subject to the provisions of paragraph 2, those stocks must be located within the territory of the State concerned.

2. For the purposes of implementing this Directive, stocks may be established, under individual agreements between Governments, within the territory of a Member State for the account of undertakings established in another Member State.

In such cases, the Member State in whose territory the stocks are held may not oppose their transfer to the other Member States; it shall as far as possible keep a check on such stocks but shall not include them in its statistical summary. The Member State on whose behalf the stocks are held may include them in its statistical summary.

Drafts of the agreements mentioned in the first subparagraph shall be sent to the Commission, which may make its comments known to the Governments concerned. The agreements, once concluded, shall be notified to the Commission, which shall make them known to the other Member States.

Agreements shall satisfy the following conditions:

— they must relate to crude oil and to all petroleum products covered by this Directive;

— they must specify the procedures for checking and identifying the stocks provided for;

— they must as a general rule be concluded for an unlimited period;

— they must state that, where provision is made for unilateral termination, the latter shall not operate in the event of a supply crisis and that, in any event, the Commission shall receive prior information of any termination.

3. Subject to the provisions of paragraph 1, the following may be included in the stocks:

— supplies on board oil tankers in port for the purpose of discharging, once the port formalities have been completed;

— supplies held in ports of discharge;

— supplies held in tanks at the entry to oil pipelines;

— supplies held in refinery tanks, excluding those supplies in pipes and refining plant;

— supplies held in storage by refineries and by importing, storage or wholesale distribution firms;

— supplies held in storage by large-scale consumers in compliance with the provisions of national law concerning the obligation to maintain permanent stocks;

— supplies held in barges and coasting-vessels engaging in transport within national frontiers, in so far as it is possible for the competent authorities to keep a check on such supplies and provided that the supplies could be made available immediately;

Consequently the following shall, in particular, be excluded from the statistical summary: indigenous crude oil not yet extracted; supplies intended for the bunkers of sea-going vessels; supplies in direct transit apart from the stocks referred to in paragraph 2; supplies in pipelines, in road tankers and rail tank-wagons, in the storage tanks of distributing stations, and those held by small consumers. Quantities held by the armed forces and those held for them by the oil companies shall also be excluded from the statistical summary.

Article 7

If difficulties arise with regard to Community oil supplies, the Commission shall, at the request of any Member State or on its own initiative, arrange a consultation between the Member States.

Save in cases of particular urgency or in order to meet minor local needs, Member States shall refrain, prior to the consultation provided for above, from drawing on their stocks to any extent which would reduce those stocks to below the compulsory minimum level.

Member States shall inform the Commission of any withdrawals from their reserve stocks and shall communicate as soon as possible:

— the date upon which stocks fell below the compulsory minimum;

— the reasons for such withdrawals;

— the measures, if any, taken to replenish stocks;

— an appraisal, if possible, of the probable development of the situation with regard to the stocks while they remain below the compulsory minimum.

Article 8

The establishment of stocks as required by this Directive shall be offered as soon as possible after notification thereof and not later than 1 January 1971.

Member States shall inform the Commission of measures taken to this effect.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1968.

For the Council

The President

V. LATTANZIO

No L 291/154 Official Journal of the European Communities 28.12.72

COUNCIL DIRECTIVE

of 19 December 1972

amending the Council Directive of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products

(72/425/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

Whereas the substantial growth in the oil requirements of the Community entails an increasing dependence on supplies imported from third countries;

Whereas, owing to changes in the pattern of oil supplies in Western Europe during recent years, stocks should be increased in order to make good the deficit in supplies following a break in certain lines of supply, to establish a reserve capacity for production, and to enable all other necessary measures to be taken;

Whereas an increase in stocks to a minimum of 90 days is, under these circumstances, essential;

HAS ADOPTED THIS DIRECTIVE:

Article 1

The representative period of 65 days cited in the first paragraph of Article 1 of the Council Directive of 20 December 1968,[1] imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products shall be increased to 90 days.

Article 2

The increase in stocks cited in Article 1, paragraph 1 of the Directive referred to in Article 1 must be carried out as soon as possible with effect from the date of notification of this Directive, and not later than 1 January 1975. The Member States shall be obliged to maintain minimum stocks of crude oil and/or petroleum products for 65 days until such time as they have effected this increase.

The Member States shall inform the Commission of the measures taken to this effect.

The Commission shall submit an annual report to the Council on the implementation of this Directive and on any problems arising from the build-up of stocks.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1972.

For the Council

The President

T. WESTERTERP

[1] OJ No L 308, 23.12.1968, p. 14.

23.12.68 Official Journal of the European Communities No L 308/19

COUNCIL DECISION

of 20 December 1968

on the conclusion and implementation of individual agreements between Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products

(68/416/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Whereas the Council has adopted the Directive of 20 December 1968[1] imposing an obligation on Member States of the European Economic Community to maintain minimum stocks of crude oil and/or petroleum products;

Whereas Article 6 (2) of that Directive makes provision for the establishment, under individual agreements between Governments, of stocks within the territory of a Member State for the account of undertakings established in another Member State;

Whereas it seems appropriate to lay down a procedure to be applied in the event of such agreements not being reached within a reasonable time or not being complied with;

HAS ADOPTED THIS DECISION:

Article 1

Where an agreement between Governments as provided for in Article 6 (2) of the Council Directive of 20 December 1968 has not been reached by the Governments concerned within a period of eight months following notification of that Directive or where such an agreement has not been complied with, the Governments concerned shall inform the Commission.

The Commission may propose to the Governments concerned appropriate measures for overcoming their difficulties.

Article 2

Where an agreement between Governments has not been reached within three months following the proposal by the Commission of appropriate measures for overcoming the difficulties, the Commission shall lay a proposal for a Directive, or for any other appropriate measure, before the Council.

This proposal shall provide in particular for a procedure whereby the registration, supervision, and transport of the stocks held in the other Member State may be ensured and shall take account of the principles set out in Article 6 (2) of the aforementioned Directive.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 December 1968.

For the Council

The President

V. LATTANZIO

[1] OJ No L 308, 23.12.1968, p. 14.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 20 May 1975

obliging the Member States to maintain minimum stocks of fossil fuel at thermal power stations

(75/339/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (1);

Having regard to the Opinion of the Economic and Social Committee (2);

Whereas the implementation of a Community energy policy is one of the objectives that the Communities have set themselves;

Whereas a regular and adequate supply of electricity is a fundamental condition for the existence and development of modern society, and whereas interruptions in electricity supplies would cause serious disruption to the vital activities of the Community;

Whereas in order to guarantee such supplies, it must be possible to produce electricity as and when the demand arises;

Whereas the fundamental condition for the continuous operation of power stations is the possession of sufficient quantities of primary energy;

Whereas crises of supply may occur unexpectedly in the case of certain types of primary energy and it is therefore essential to take the necessary measures to alleviate the effects of such shortages;

Whereas it is necessary to reinforce security of supplies to power stations by building up and maintaining a minimum level of stocks on their premises;

Whereas the development of security of fuel supplies to power stations may necessitate a review of the minimum level of stocks in several years time,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take all appropriate measures by way of law, regulation or administrative action to oblige electricity producers to maintain, permanently, a minimum level of stocks of fossil fuel at their thermal power stations, which level shall be sufficient to ensure at all times the continuation of electricity supplies for a period of at least 30 days.

The level of stocks specified in the first paragraph may be reduced by an amount corresponding to 25 % of the stocks of petroleum products built up at power stations pursuant to the rules laid down in Directive No 68/414/EEC (3), Decision No 68/416/EEC (4) and Directive No 72/425/EEC (5), and which are reserved for the exclusive use of such power stations.

(1) OJ No C 85, 18. 7. 1974, p. 28.
(2) OJ No C 125, 16. 10. 1974, p. 14.
(3) OJ No L 308, 23. 12. 1968, p. 14.
(4) OJ No L 308, 23. 12. 1968, p. 19.
(5) OJ No L 291, 28. 12. 1972, p. 154.

Article 2

1. The obligation to maintain stocks shall apply to power stations including private industrial generators.

2. This obligation shall not apply to power stations fired by manufactured gases, industrial waste and other fuel derived from waste, nor to private industrial generators with a total capacity of less than 100 MWe.

Governments of Member States may, depending on their domestic situation, fix a threshold lower than that referred to above.

3. When the obligation to maintain stocks is such to create difficulties of a particularly serious nature for any power station, the competent authority in the Member State concerned may exempt it in full or in part from this obligation. The Member State shall inform the Commission of its decision immediately, stating the reasons for it.

4. Stocks shall be held on the premises of the power station or at a place directly linked thereto. Stocks may be held at a place further removed, provided that they can be conveyed to the power station at all times.

In the case of power stations fired by natural gas, lignite or peat, the deposit which supplies the station may be considered as station stock, provided there is a guarantee that sufficient quantities can be delivered to ensure the continuation of electricity supplies for the period laid down in Article 1, even in the event of difficulties in maintaining fuel supplies to thermal power stations. This shall also apply to power stations fired by coal, provided they are located near the mines which supply them.

5. The quantities of fuel to be held at each thermal power station shall be determined by the electricity producers in the light of the possibilities offered by the transmission and interconnection network.

Electricity producers may form themselves into groups in order to apportion fuel stocks among their power stations, provided they can guarantee the continuation of electricity supplies for the period laid down in Article 1.

Article 3

1. Each electricity producer shall furnish the competent authority in the Member State concerned with a statement, drawn up on 1 January, 1 April, 1 July and 1 October each year at least, of the stocks held at its thermal power stations specifying the quantities necessary to ensure the continuation of electricity supplies for the period laid down in Article 1. These statements shall be forwarded within 30 days of each of the abovementioned dates. Member States shall take the necessary steps to check the accuracy of these statements.

2. Member States shall submit to the Commission the statement of the stocks held on 1 April and 1 October of each year at these power stations, specifying the quantities necessary to ensure the continuation of electricity supplies for the period laid down in Article 1. These statements must be forwarded not later than 1 June and 1 December of each year.

3. At the request of the Commission, the statements referred to in paragraph 2 shall be made for periods and on dates other than those laid down in that paragraph.

Article 4

If Community thermal power stations experience fuel supply difficulties, electricity producers may, after authorization by the competent authority of the Member State concerned, draw on the minimum stocks built up pursuant to the rules laid down in Article 1.

Member States shall inform the Commission of all drawings on stocks and shall make known, as soon as possible :

— the quantities drawn from the stocks and the date on which the stocks fall below the mandatory minimum ;

— the urgent reasons justifying such drawings ;

— any measures taken to build up these stocks again ;

— if possible, probable changes in stock levels during the period in which they remain below the mandatory minimum.

Article 5

Stocks conforming to the provisions of this Directive shall be built up as soon as possible after the date of notification of this Directive and at the latest by 1 January 1978. Member States shall inform the Commission of the measures taken to this end.

Article 6

Any information forwarded pursuant to this Directive shall be confidential. This provision shall not hinder the publication of general information or summaries

which do not include specific details concerning undertakings.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 20 May 1975.

For the Council

The President

R. RYAN

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 24 July 1973

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

(73/238/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

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

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

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

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

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

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

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

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

(1) OJ No L 308, 23. 12. 1968, p. 14.

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

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

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

Article 2

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

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

Article 3

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

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

Article 4

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

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

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1973.

For the Council

The President

I. NØRGAARD

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 7 November 1977

on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products

(77/706/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 103 (4) thereof,

Having regard to the proposal from the Commission,

Whereas the establishment of a common energy policy is one of the objectives which the Community has set itself; whereas the Commission should propose the measures to be taken to this end;

Whereas the establishment of genuine solidarity between the Member States in the event of supply difficulties is one of the basic requirements for a Community energy policy;

Whereas the Council passed Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products [1];

Whereas the Council passed Directive 68/414/EEC of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products [2], as amended by Directive 72/425/EEC [3];

Whereas in the event of supply difficulties, consumption of energy in the Community should be reduced in accordance with the foreseeable trend of availability and with possible drawings on the emergency stocks;

Whereas it is necessary to set a common target in order to safeguard the unity of the market and to ensure that all users of energy within the Community bear a fair share of the difficulties arising from the crisis;

Whereas, in taking measures to meet the Community target for a reduction in energy consumption, Member States will have regard to the structure of their particular markets,

HAS DECIDED AS FOLLOWS:

Article 1

1. Where difficulties arise in the supply of crude oil or petroleum products in one or more Member States, the Commission, acting at the request of a Member State or on its own initiative and after consulting the group provided for in Directive 73/238/EEC, may set a target for reducing consumption of petroleum products in the Community as a whole by up to 10 % of normal consumption. This decision shall be applicable for a maximum of two months.

[1] OJ No L 228, 16. 9. 1973, p. 1.
[2] OJ No L 308, 23. 12. 1968, p. 14.
[3] OJ No L 291, 28. 12. 1972, p. 154.

2. To safeguard the unity of the market and to ensure that all energy consumers in the Community bear their fair share of the difficulties arising from the crisis, the Commission :

(a) shall on the expiry of the two month period and within the limits laid down in paragraph 1, propose to the Council a fresh target for :
   — non-substitutable petroleum products, expressed as a percentage of consumption of these products,
   — substitutable petroleum products, expressed as a percentage of consumption of all substitutable energy sources ;

(b) in the event of a larger shortfall, may propose to the Council that the target for reducing consumption exceed 10 % and be extended to other forms of energy.

3. The quantities of petroleum products saved as a result of the differentiated reduction of consumption provided for in paragraph 2 shall be shared out between the Member States.

4. The Council shall within 10 days decide by a qualified majority on any proposals from the Commission referred to in paragraph 2.

5. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within five working days from receipt of such request.

6. Any Member State may refer to the Council any Commission Decision setting a target for reducing consumption. The Council, acting by a qualified majority within 10 days of the matter being referred to it, may repeal or amend such decision.

7. Decisions taken by the Commission shall apply as soon as the Member States have been notified thereof.

Article 2

Member States shall without delay take all appropriate measures to reduce their consumption of petroleum products and/or energy consumption as a whole by at least their share of the reduction target pursuant to Article 1.

Article 3

The Member States shall inform the Commission of all measures taken pursuant to Article 2 as soon as they enter into force.

Article 4

1. If, after consulting the group provided for in Directive 73/238/EEC or on the basis of information communicated by a Member State, the Commission finds that the situation regarding supplies of oil and petroleum products in one or more Member States no longer justifies the continued application of measures to reduce consumption :

(a) it shall decide to amend or repeal them if the measures were introduced by means of a Commission Decision ;

(b) it shall propose that the Council amend or repeal them if the measures were introduced by means of a Council Decision.

2. Commission Decisions taken pursuant to paragraph 1 (a) shall take effect as soon as the Member States have been notified thereof. Any Member State may refer to the Council any Commission Decision amending or repealing the measures to reduce consumption.

3. The Council shall act by a qualified majority within 10 days of the matter being referred to it.

Article 5

After consulting the Member States, the Commission shall determine the detailed rules for the application of this Decision.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 7 November 1977.

For the Council

The President

A. HUMBLET

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 June 1979

laying down detailed rules for the implementation of Council Decision 77/706/EEC

(79/639/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Decision 77/706/EEC of 7 November 1977 on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products [1], and in particular Article 5 thereof,

Having consulted the Member States in accordance with Article 5 of the said Decision,

Whereas the Council has adopted Regulation (EEC) No 1729/76 of 21 June 1976 concerning the communication of information on the state of the Community's energy supplies [2];

Whereas the Commission has adopted Decision 78/890/EEC of 28 September 1978 applying Council Decision 77/186/EEC on the exporting of crude oil and petroleum products from one Member State to another in the event of supply difficulties [3];

Whereas Article 1 (1) of Decision 77/706/EEC provides that where difficulties arise in the supply of crude oil or petroleum products in one or more Member State, the Commission, acting at the request of a Member State or on its own initiative, and after consulting the group provided for in Directive 73/238/EEC, may set a target for reducing consumption of petroleum products in the Community as a whole by up to 10 % of normal consumption;

Whereas Article 1 (2) of Decision 77/706/EEC provides that, in order to safeguard the unity of the market and to ensure that all energy consumers in the Community bear their fair share of the difficulties arising from the crisis, the Commission shall, on the expiry of a period of two months following the application of Article 1 (1), propose to the Council a new target for reducing consumption by up to 10 % of normal consumption and differentiated according to Member State, following which the quantities saved are to be shared among the Member States;

Whereas Article 1 (2) of Decision 77/706/EEC provides that in the event of a larger shortfall the Commission may propose to the Council that the target for reducing consumption exceeds 10% and be extended to other forms of energy;

Whereas the sharing-out among Member States of the quantities saved following the application of Article 1 (3) of Decision 77/706/EEC may entail additional costs, the evaluation and settlement of which are within the competence of the parties involved; whereas, however, the Commission must be able, at the request

(1) OJ No L 292, 16. 11. 1977, p. 9.
(2) OJ No L 198, 23. 7. 1976, p. 1.
(3) OJ No L 311, 4. 11. 1978, p. 13.

of a Member State, to make recommendations and deliver opinions to the Member States concerned to enable agreement to be reached between Member States as regards additional costs;

Whereas, in order to perform these tasks the Commission must have accurate knowledge of the energy situation in the Member States, their supplies of crude oil and petroleum products, the possibilites for substitution between the various forms of energy, and national measures which have been taken to reduce energy consumption in the Member States; whereas the Member States must accordingly provide the Commission with the necessary information,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purposes of this Decision the definitions contained in Article 1 (a), (b), (c) and (d) respectively of Commission Decision 78/890/EEC shall apply in respect of:

(a) 'normal consumption of crude oil and petroleum products',

(b) 'base period',

(c) 'supply shortfall', and

(d) 'normal supply'.

2. For the purposes of this Decision:

(a) 'normal energy consumption' means the average daily consumption recorded over a base period, i.e.:

domestic production of primary fuels,

plus imports,

plus deliveries from Community countries,

minus exports,

minus deliveries to Community countries,

plus or minus variations in stocks.

Seagoing ships' bunkers shall be regarded as exports;

(b) 'substitutable petroleum products' means all fuel oil consumed in electricity generation, and, as appropriate, in other sectors of industry, including autoproducers, as calculated pursuant to Article 2 (2);

(c) 'substitutable energy' means all energy consumed in electricity generation and, where appropriate, in other sectors of industry, including autoproducers, as calculated pursuant to Article 2 (2).

Article 2

1. The amount of any differential cut in substitutable petroleum products as indicated in Article 1 (2) (a) of Decision 77/706/EEC shall not exceed the actual capacity for substitution, the level of which is established pursuant to paragraph 2 below, existing when supply difficulties arise.

2. The group set up by Directive 73/238/EEC shall examine annually and, in case of supply difficulties, on the basis of information supplied to the Commission by the Member States, calculated pursuant to Article 10, the capacity for substitution in the Member States of petroleum products defined as covering primarily fuel oil requirements for electricity generation, but also having regard to any possibilities of substitution of fuel oil in industry, including autoproducers. Following upon this examination, the Commission shall take note of the possibilities of substitution thus established.

Article 3

1. Where, pursuant to Article 1 (1) of Decision 77/706/EEC, the Commission sets a target for reducing consumption of petroleum products by up to 10% of normal consumption, it shall in particular take the following into account:

— the overall petroleum products supply situation,

— the supply situation in each Member State,

— measures to reduce consumption taken by Member States,

— international obligations entered into by Member States.

2. Where, pursuant to Article 1 (2) (a) of Decision 77/706/EEC, the Commission proposes to the Council different targets for reducing consumption of non-substitutable petroleum products and of substitutable petroleum products, it shall take into account the factors listed in paragraph 1 and, in particular, the limitations imposed on each Member State by the real possibilities for substitution in electricity generation and, as appropriate, other sectors of industry including autoproducers, as established pursuant to Article 2.

3. Where, pursuant to Article 1 (2) (b) of Decision 77/706/EEC, the Commission proposes to the Council

that the target for reducing consumption should exceed 10% and be extended to other forms of energy, it shall in particular take into account the factors listed in paragraph 1 and, in addition, the following:

— the overall energy supply situation,

— the expected duration of difficulties in the supply of crude oil and petroleum products,

— the extent to which the obligatory stocks of crude oil, and/or petroleum products held by Member States have already been drawn on.

Article 4

Where Article 1 of Decision 77/706/EEC is applied, a Member State may, instead of restricting consumption, draw on that portion of its stocks of crude oil and/or petroleum products in excess of its obligations under Directives 68/414/EEC and 72/425/EEC.

Article 5

1. The quantities which are saved and are to be shared out among the Member States pursuant to Article 1 (3) of Decision 77/706/EEC shall be calculated by applying the different rates of reduction in the consumption of the petroleum products for each Member State provided for in Article 1 (2) of the said Decision.

2. A Member State whose rate of reduction in consumption exceeds the Community average shall be required to reallocate a quantity equal to the difference between the level of consumption it could have maintained if a uniform rate of reduction for the Community as a whole had been applied and its consumption as reduced pursuant to Article 1 (2) of Decision 77/706/EEC.

3. A Member State whose rate of reduction in consumption is below the Community average shall be entitled to a reallocation of a quantity equal to the difference between its consumption as reduced pursuant to Article 1 (2) of Decision 77/706/EEC and the level of consumption it could have maintained if a uniform rate of reduction for the Community as a whole had been applied.

Article 6

1. Any additional costs which may be entailed by the sharing-out among Member States of the quantities saved following the application of Article 1 (3) of Decision 77/706/EEC shall be borne by the parties benefiting from such sharing-out. The evaluation of these additional costs shall be within the competence of the parties involved.

2. In the event of disagreement regarding these additional costs, the Commission may, at the request of a Member State, make recommendations or deliver opinions to the Member States concerned.

Article 7

1. The Commission may consult the companies supplying the Community with crude oil and petroleum products in order to obtain general information and, if necessary, appropriate technical assistance in particular in implementing Article 1 (3) of Decision 77/706/EEC as provided for by Article 4 of Decision 78/890/EEC.

2. The Commission shall notify Member States of their allocation rights or allocation obligations pursuant to Article 1 (3) of Decision 77/706/EEC, and Member States shall take appropriate action.

Article 8

Information on energy consumption broken down by major products and sectors of consumption shall be obtained from the replies sent to the Commission by the Member States in accordance with Regulation (EEC) No 1729/76.

Article 9

1. Information on normal consumption of crude oil and petroleum products shall be obtained from the replies sent to the Commission by the Member States pursuant to Article 5 of Decision 78/890/EEC.

2. Where difficulties arise in the supply of crude oil and petroleum products, the Commission may request this information to be supplied in the form of estimates in accordance with a procedure which it shall establish on the basis of the models set out in the Annex.

3. In order to gain a better understanding of the supply situation, with respect in particular to the application of Article 1 (3) of Decision 77/706/EEC, the Commission may, after consulting the group set up by Directive 73/238/EEC, invite Member States to provide the information required in paragraphs 1 and 2 broken down undertaking by undertaking.

Article 10

1. Pursuant to Article 2, the Member States shall, by 31 December each year, communicate to the

Commission, on the basis of a common model established by it, the information needed to determine the possibilities of substitution as they exist on 1 October of that year.

2. When Article 1 of Decision 77/706/EEC is applied, the Member States shall forthwith communicate to the Commission the information needed to determine the actual possibilities of substitution as they exist at that date.

Article 11

Where Article 1 of Council Decision 77/706/EEC is applied, Member States shall inform the Commission of any measure taken to reduce the consumption of petroleum products as soon as it is adopted.

Article 12

The Commission shall, on receipt of the information gathered in accordance with Articles 9, 10 and 11, supply a summary thereof to the group set up by Article 3 of Directive 73/238/EEC.

Article 13

Information supplied pursuant to this Decision shall be confidential. This provision shall not prevent the distribution of general information or of summaries which do not contain particulars concerning individual undertakings.

Article 14

The Commission shall, at the request of a Member State, after consulting the group set up by Directive 73/238/EEC, examine problems which may arise from the implementation of this Decision in order to introduce the necessary amendments to the text on the basis of past experience or in the light of any significant changes in the structure of energy supplies, notably to power stations in one or more Member State.

Article 15

This Decision is addressed to the Member States.

Done at Brussels, 15 June 1979.

For the Commission

Guido BRUNNER

Member of the Commission

ANNEX

MONTHLY QUESTIONNAIRE ON THE OIL SUPPLY SITUATION IN THE COMMUNITY

I. EXPLANATORY NOTES

A. **Units and conversion factors**

(a) *Units*

All data should be expressed in thousands of tonnes rounded up or down to the nearest thousand tonnes.

(b) *Oil products and 'crude oil equivalent'*

All oil products should be converted into their crude oil equivalent by multiplying the quantities expressed in tonnes by the conversion factor 1·065.

(c) *Converting barrels into tonnes*

To obtain tonnes the number of barrels should be divided by the conversion factor corresponding to actual density. Where the conversion was based on barrels/day, the units obtained are multiplied by the number of days in the month in question.

(d) *Converting cubic metres (kilolitres) into tonnes*

For converting cubic metres into tonnes use the conversion factors corresponding to actual densities.

B. Geographical notes

— Faroe Islands' production should be included in Denmark's production,

— the production of Surinam and the Dutch Antilles should not be included in the production of the Netherlands,

— the production of the Canary Islands should be included in Spain's production,

— the production of the Caribbean refineries in Table III C includes imports from the Dutch Antilles, the Bahamas, Trinidad and Tobago.

II. DEFINITIONS AND EXPLANATORY NOTES RELATING TO THE VARIOUS TABLES

1. National production of crude oil and natural gas condensates (Table I)

Give the amounts of crude oil and natural gas condensates (i.e. all liquids separated from the gas in natural gas processing plants [1]) produced on national territory including the Continental shelf (offshore). These amounts should include the condensates recovered from gaseous hydrocarbons.

2. Imports and exports of crude oil, natural gas condensates and feedstocks (originating in/exported to Community and non-Community countries) (Tables I, II and IV)

Imports and exports should be regarded as having been effected on the date on which they physically arrive, whether the consignment was customs cleared or not. However, any quantities in transit via an ocean terminal or crossing national territory in any manner whatever (e.g. pipelines) should not be included (this also applies to imports and exports of oil products). On the other hand, imports must include oil imported into customs bonded areas for treatment and re-export. Re-exports of oil imported for processing within bonded areas must be included in the export figures.

'Feedstocks' should be taken to mean any product or combination of products other than blending, derived from crude oil and destined for further processing. It is transferred into one or more components and/or finished products.

3. Imports/exports of oil products (originating in/for export to Community and non-Community countries) (Tables I, III and V)

— See point 2.

— The following are the oil products concerned:
liquefied petroleum gas (LPG), naphthas, motor spirit, jet fuels, kerosenes, gas/diesel oil, residual fuel oil, lubricants and bitumen [2].

Maritime bunkers should not be shown in Table I, point 5, but be given separately under point 9.

4. Level of stocks (Table I)

The level of stocks means all oil stored within the frontiers of the declaring country, with the exception of oil in pipelines, oil held by retailers and in filling stations, stocks held by end-consumers and not subject to administrative supervision, and stocks held for military consumption.

5. Variations in stocks (Table I)

These variations correspond to the difference between the level of stocks at the beginning and at the end of a period.

The variation in stocks for the month before last (Table I) is the difference between the final data (month before last) of the present communication and the final data (month before last) of the preceding communication.

[1] Ethane included.

[2] For definitions see the supplement to the Quarterly Bulletin of Energy Statistics, 3/1976, published by the Statistical Office of the European Communities.

MONTHLY QUESTIONNAIRE ON THE PETROLEUM SUPPLY SITUATION OF THE COMMUNITY

TABLE I

CONSUMPTION OF CRUDE OIL (1) AND EQUIVALENT (2)

Country:

Current month:

(1 000 tonnes)

	Month before last (M−2)	Last month (M−1)	Current month (M)	Next month (M+1)	Month after next (M+2)
	Realization	Provisional	Estimated	Scheduled	Scheduled
1. Indigenous production (1)					
2. Imports of crude (1)					
3. Imports of oil products (2)					
4. Exports of crude (1)					
5. Exports of oil products (2)					
6. Stocks levels (3)					
of which:					
(a) Crude oil (1)					
(b) Oil products (2)					
7. Stocks changes (4)					
of which:					
(a) Crude oil (1)					
(b) Oil products (2)					
8. Total (5)					
9. Bunkers (6) (2)					

(1) Including natural gas liquids and feedstocks.

(2) Oil products are converted in crude oil equivalent by the factor 1·065.

(3) End of month.

(4) Difference between stocks level at the end of the month and the level at the end of the month before.

(5) 8 = 1 + 2 + 3 − 4 − 5 − 7.

(6) Marine bunkers.

TABLE II

IMPORTS OF CRUDE OIL (1)

Country:

Current month:

(1 000 tonnes)

Country of origin	Month before last (M−2)	Last month (M−1)	Current month (M)	Next month (M+1)	Month after next (M+2)
	Realization	Provisional	Estimated	Scheduled	Scheduled
Abu Dhabi					
Algeria					
Ecuador					
Indonesia					
Iran					
Iraq					
Kuwait					
Lybia					
Nigeria					
Qatar					
Saudi Arabia					
United Arab Emirates (2)					
Venezuela					
Norway					
United Kingdom					
USSR					
Other countries of Eastern Europe					
China					
Other					
Total imports					

(1) Including NGL and feedstocks.
(2) Excluding Abu Dhabi.

TABLE III

IMPORTS OF OIL PRODUCTS (1)

Country:

Current month:

(1 000 tonnes (1))

Country of origin	Month before last (M−2)	Last month (M−1)	Current month (M)	Next month (M+1)	Month after next (M+2)
	Realization	Provisional	Estimated	Scheduled	Scheduled
Belgium					
Denmark					
Germany					
France					
Ireland					
Italy					
Luxembourg					
Netherlands					
United Kingdom					
Greece					
Spain					
Portugal					
Norway					
Sweden					
USA					
Bahrein					
Indonesia					
Iran					
Kuwait					
Saudi Arabia					
Venezuela					
USSR					
Other countries of Eastern Europe					
Other					
Total imports					

(1) Oil products are converted into crude oil by multiplying quantities in tonnes by 1·065.

TABLE IV

EXPORTS OF CRUDE OIL (1)

Country:

Current month:

(1 000 tonnes)

Country of destination	Month before last (M−2)	Last month (M−1)	Current month (M)	Next month (M+1)	Month after next (M+2)
	Realization	Provisional	Estimated	Scheduled	Scheduled
Belgium					
Denmark					
Germany					
France					
Ireland					
Italy					
Luxembourg					
Netherlands					
United Kingdom					
Greece					
Spain					
Portugal					
Austria					
Sweden					
Switzerland					
USA					
Other countries					
Total exports					

(1) Including NGL and feedstocks.

TABLE V

EXPORTS OF OIL PRODUCTS (1)

Country:

Current month:

(1 000 tonnes(1))

Country of destination	Month before last (M−2)	Last month (M−1)	Current month (M)	Next month (M+1)	Month after next (M+2)
	Realization	Provisional	Estimated	Scheduled	Scheduled
Belgium					
Denmark					
Germany					
France					
Ireland					
Italy					
Luxembourg					
Netherlands					
United Kingdom					
Greece					
Spain					
Portugal					
Austria					
Norway					
Sweden					
Switzerland					
Turkey					
USA					
Others					
Total exports (2)					

(1) Oil products are converted into crude oil by multiplying quantities in tonnes by 1·065.

(2) Excluding marine bunkers.

25.5.72 Official Journal of the European Communities No L 120/7

REGULATION (EEC) No 1056/72 OF THE COUNCIL

of 18 May 1972

on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 5 and 213 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

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

Whereas the introduction of a common energy policy is one of the objectives of the Communities; whereas it is the task of the Commission to propose the measures to be taken for this purpose;

Whereas, after studying the communication made to it by the Commission on 18 December 1968 on initial guidelines for a Community energy policy, the Council, during its 88th session held on 13 November 1969:

— approved the basic principles of that communication in the light of the report from the Committee of Permanent Representatives;

— requested the Commission to put before it as soon as possible the most urgent concrete proposals in this field;

— agreed to study these proposals as soon as possible in order to establish a Community energy policy;

Whereas obtaining an overall picture of the development of investments in the Community is one feature of such a policy; whereas this will, in particular, enable the Community to make the necessary comparisons;

Whereas the accomplishment of that task requires the most accurate information possible on investments; whereas, with regard to coal and atomic energy, undertakings are under an obligation, pursuant to the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, to notify their investment projects; whereas it is desirable to supplement such information with particulars relating to petroleum, natural gas and electricity; whereas to this end the Commission should be informed of investment projects which are of interest to the Community in the sectors concerned;

Whereas, so that the Commission may carry out its task, it should be informed in good time of any fundamental alteration in such projects, in particular as regards the period required for carrying them out and the planned capacity; whereas in consequence communication of such particulars is similarly indispensable;

Whereas Member States should for this purpose communicate to the Commission, with any comments they may have, particulars of investment projects concerning production, storage and distribution of petroleum, natural gas or electric power planned in their territory; whereas to this end the persons and undertakings concerned must be under an obligation to communicate to the Member States the information in question;

Whereas it is desirable to enable the Commission to prescribe, if need be, certain practical details, such as the form and content of the notifications to be made;

Whereas observance of the obligations provided for in this Regulation and the confidential nature of the information collected should be ensured;

HAS ADOPTED THIS REGULATION:

Article 1

1. Member States shall, before 15 February of each year, communicate to the Commission the

information they have obtained on the basis of the provisions of paragraph 2 concerning investment projects listed in the Annex which relate to the production, transport, storage or distribution of petroleum, natural gas or electric power and which are scheduled to start within three years from 1 January of the current year.

Member States shall add to their notifications any comments they may have.

2. In order to fulfil the obligation laid down in paragraph 1, the persons and undertakings concerned shall, before 15 January of each year, communicate details of investment projects referred to in paragraph 1 to the Member States in whose territory they are planning to carry them out.

3. The notifications provided for in paragraphs 1 and 2 shall, moreover, indicate the volume of capacities in commission or under construction or which are scheduled to be taken out of commission within three years.

4. When calculating capacities or dimensions mentioned in the Annex, the Member States, persons or undertakings concerned shall take into account all parts of a project in so far as they together constitute a technically indivisible whole, even where the project is carried out in several successive stages.

Article 2

1. With regard to investment projects planned or in progress, any notifications as referred to in Article 1 shall indicate the following:

— the name, and address or seat of the person or undertaking planning to make the investments;

— the precise purpose and nature of such investments;

— the planned capacity or power;

— the date when work is due to begin and the probable date of commissioning;

— the type of raw materials used.

As regards any proposed withdrawal from service, notifications shall indicate the following:

— the character and the capacity or power of the installations concerned;

— the probable date when the installations will be withdrawn from service.

2. Within the limits laid down by this Regulation and the Annex thereto, the Commission is authorized to adopt implementing provisions concerning the form, content and other details of the notifications provided for in Article 1.

Article 3

The Commission shall place before the Council a summary of the information obtained pursuant to this Regulation.

Article 4

Information forwarded pursuant to this Regulation shall be treated as confidential. This provision shall not prevent the publication of general information or of summaries not containing particulars concerning individual undertakings.

Article 5

Member States shall take appropriate measures to ensure observance of the obligations arising under Articles 1 (2) and 4.

Article 6

This Regulation shall enter into force one month after 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, 18 May 1972.

For the Council

The President

M. MART

ANNEX

INVESTMENT PROJECTS

1. PETROLEUM

1.1 Refining

— distillation plants with a capacity of not less than 1 000 000 metric tons a year;

— extension of distilling capacity beyond 1 000 000 metric tons a year;

— reforming/cracking plants with a minimum capacity of 500 metric tons a day;

Chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded.

1.2 Transport

— crude oil pipelines with an installed or planned capacity of not less than 3 000 000 metric tons a year, which are not less than 30 kilometres long;

— petroleum product pipelines with an installed or planned capacity of not less than 1 500 000 metric tons a year which are not less than 30 kilometres long;

— extension or lengthening by not less than 30 kilometres of pipelines coming within the categories mentioned above.

Pipelines for military purposes and those supplying plants outside the scope of item 1.1 are excluded.

1.3 Supply/distribution

— tanks for storing crude oil and petroleum products with a capacity of not less than 100 000 m³.

Tanks intended for military purposes and those supplying plants outside the scope of item 1.1 are excluded.

2. NATURAL GAS

2.1 Transport

— gas pipelines with an installed or planned capacity of not less than 1000 million m³ per year;

— extension or lengthening by not less than 30 kilometres of such gas pipelines;

— terminals for the importation of liquefied natural gas.

Gas pipelines and terminals for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

2.2 Distribution

— underground storage installations with a capacity of not less than 150 000 000 m³.

Installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

3. ELECTRICITY

3.1 **Production**

— conventional thermal power stations (generators with a unit capacity of 200 MW or more);

— hydro-electric power stations (power stations having a capacity of 50 MW or more).

3.2 **Transport**

— transmission lines, if they have been designed for a voltage of 345 kV or more.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1215/76

of 4 May 1976

amending Regulation (EEC) No 1056/72 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 5 and 213 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 187 and 192 thereof,

Having regard to the draft from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Regulation (EEC) No 1056/72 (3) provides that Member States shall communicate to the Commission at the beginning of each year information concerning investment projects relating to the production, transport, storage or distribution of petroleum, natural gas or electric power which are scheduled to start within three years from 1 January of the current year;

Whereas experience has shown that, because of the technical, financial, industrial and social aspects of investment projects in the electricity sector, there is a growing tendency to formulate such projects at least five years before the expected commencement of work;

Whereas it is therefore necessary to ensure that the Commission is notified of investment projects in the electricity sector on which work is expected to commence within five years from 1 January of the current year;

Whereas experience has shown that the Commission was not notified of some investment projects because one or more of their major features was subject to further review;

Whereas Article 2 (1) of Regulation (EEC) No 1056/72 provides that certain features of investment projects communicated to the Commission shall be indicated;

Whereas experience has shown that in order to assess the significance of an investment project the Commission needs to know what stage decisions on it have reached and its place in national plans;

Whereas experience has shown that the list of investment projects set out in the Annex to Regulation (EEC) No 1056/72 is not sufficiently comprehensive to ensure that the Commission has adequate information for carrying out its task in connection with the Community's common energy policy, particularly in the petroleum refining and electric power generation and transmission sectors;

Whereas, in the case of petroleum refining, investment in desulphurization plants for residues, gas oil and feedstock is of increasing importance in view of the strict quality standards to be adopted within the Community in order to control pollution;

Whereas Council Regulation (EEC) No 1056/72 does not extend to investment in the electricity sector relating to nuclear electricity generating plants;

(1) OJ No C 280, 8. 12. 1975, p. 58.
(2) OJ No C 35, 16. 2. 1976, p. 22.
(3) OJ No L 120, 25. 5. 1972, p. 7.

Whereas Articles 41 and 42 of the Treaty establishing the European Atomic Energy Community provide that the Commission must receive notification of any kind of nuclear investment project not later than three months before the first contracts are concluded with the suppliers or three months before the work begins; whereas this means that notification of projects is given when they are at a very advanced stage and then only at the initiative of and on the date chosen by the person or undertaking making the investment;

Whereas the establishment of a common energy policy is one of the agreed objectives of the Community and the Commission has been instructed to propose measures for the attainment of this objective; whereas, if the objectives set out in the Council resolution of 17 December 1974 concerning Community energy policy objectives for 1985 [1], the Council resolution of 17 December 1974 on a Community action programme on the rational utilization of energy [2] and the Council resolution of 13 February 1975 concerning measures to be implemented to achieve the Community energy policy objectives adopted by the Council on 17 December 1974 [3] are to be achieved, greater use must be made of the Community's industrial potential, particularly in the nuclear sector;

Whereas in order to assist manufacturing industry in undertaking the investment and adjustments necessary for the supply of heavy plant under the investment programmes relating to electric power supplies, the Commission must be informed of the projects involved in these programmes sufficiently far in advance of their implementation to be able to provide industry with information — the exact form varying according to the degree of final commitment reached with regard to the construction plans — which will enable an accurate assessment to be made of the technical, financial and social risks involved;

Whereas, in the electricity sector, investment projects relating to underground and sub-marine transmission cables, which constitute essential links in national or international interconnecting networks, are of interest to the Community; whereas the Commission needs information on such projects to enable it to carry out its task in the electricity sector; whereas provision should be made to ensure that such projects are communicated to the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be substituted for Article 1 (1) of Regulation (EEC) No 1056/72:

'1. Member States shall, before 15 February of each year, communicate to the Commission the information they have obtained on the basis of the provisions of paragraph 2 concerning investment projects listed in the Annex which relate to the production, transport, storage or distribution of petroleum, natural gas or electric power and on which work is scheduled to start within three years, in the case of projects in the petroleum and natural gas sectors, or within five years, in the case of projects in the electricity sector; the notifications must take account of the latest developments in the situation.

Member States shall add to their notifications any comments they may have.'

Article 2

The following paragraph shall be added to Article 1 of Regulation (EEC) No 1056/72:

'5. The notifications provided for in paragraphs 1 and 2 shall also cover investment projects of which the major features (location, contractor, undertaking, technical features, etc.) may, in whole or in part, be subject to further review or to final authorization by a competent authority.'

Article 3

The following shall be added to Article 2 (1) of Regulation (EEC) No 1056/72 after the fifth indent:

'In the case of investment projects which are at the planning stage, the notifications shall include the following information on the stage reached in the decisions on each project:

— whether or not firm decisions have been taken concerning all the major features of the project (location, contractor, undertaking, technical features, etc.),

— what the place of the project is in national plans.'

[1] OJ No C 153, 9. 7. 1975, p. 2.
[2] OJ No C 153, 9. 7. 1975, p. 5.
[3] OJ No C 153, 9. 7. 1975, p. 6.

Article 4

The following shall be added to point 1.1 of the Annex to Regulation (EEC) No 1056/72 after the third indent:

'— desulphurization plants for residual fuel oils/gas oil/feedstock.'

Article 5

The following shall be substituted for point 3.1, first indent, of the Annex to Regulation (EEC) No 1056/72:

'— thermal power stations (generators with a unit capacity of 200 MW or more).'

Article 6

The following shall be substituted for point 3.2 of the Annex to Regulation (EEC) No 1056/72:

'3.2 **Transport**

— overhead transmission lines, if they have been designed for a voltage of 345 kV or more;

— underground and sub-marine transmission cables, if they have been designed for a voltage of 100 kV or more and constitute essential links in national or international interconnecting networks.'

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

Done at Brussels, 4 May 1976.

For the Council

The President

G. THORN

COMMISSION REGULATION (EEC) No 3025/77

of 23 December 1977

applying Regulation (EEC) No 1056/72 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1056/72 of 18 May 1972 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors (1), as amended by Regulation (EEC) No 1215/76 (2), and in particular Article 2 (2) thereof,

Whereas Article 2 (2) of Regulation (EEC) No 1056/72 provides that the Commission may, within the limits laid down by that Regulation and the Annexes thereto, adopt implementing provisions concerning the form, content and other details of the notifications provided for in Article 1 thereof;

Whereas such provisions were made by the Commission in Regulation (EEC) No 1069/73 of 16 March 1973 (3);

Whereas, to simplify the transmission of information and to ensure that statistics are comparable, notifications to be made by Member States and undertakings should be standardized by the use of questionnaires which would serve as a guide for the presentation and content of such notifications;

Whereas the implementation of Regulation (EEC) No 1215/76 requires certain amendments to the implementing provisions set out in Regulation (EEC) No 1069/73; whereas it is therefore necessary to adopt new implementing provisions,

HAS ADOPTED THIS REGULATION:

Article 1

The notifications referred to in Article 1 of Regulation (EEC) No 1056/72 shall be drawn up as shown in the Annex hereto.

Article 2

Regulation (EEC) No 1069/73 is hereby repealed.

Article 3

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

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

Done at Brussels, 23 December 1977.

For the Commission
Guido BRUNNER
Member of the Commission

(1) OJ No L 120, 25. 5. 1972, p. 7.
(2) OJ No L 140, 28. 5. 1976, p. 1.
(3) OJ No L 113, 28. 4. 1973, p. 14.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 4 May 1976

regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community

(76/491/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the draft from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the establishment of a common energy policy is one of the objectives which the Community has set itself, and it is the task of the Commission to propose measures for this purpose;

Whereas knowledge of supply and market conditions is one of the basic elements of such a common energy policy;

Whereas transparency of the costs and prices of petroleum products is a necessary condition for the satisfactory operation of the market, and particularly for the free movement of goods within the Community;

Whereas the Council, in paragraph 3 (III) of its resolution of 13 February 1975 concerning measures to be implemented to achieve the Community energy policy objectives adopted by the Council on 17 December 1974 (3), approved the principle of a consumer price policy based on transparency of the costs and prices of hydrocarbons;

Whereas it is therefore necessary to set up a Community procedure for information and consultation on the prices of crude oil and petroleum products;

Whereas the achievement of this objective requires the acquisition, at regular intervals, of certain information regarding the prices of crude oil and the principal petroleum products, at least in aggregate form at Member State level;

Whereas the information regarding the prices of crude oil and the principal petroleum products should be supplied by the oil undertakings, and the Member States should, by reference to objective criteria, designate the individuals and undertakings who will provide the Member States with such information;

Whereas within one year at most of the first application of this Directive consideration should be given to the advisability of the Member States' communicating to the Commission the information supplied to them by the undertakings;

(1) OJ No C 28, 9. 2. 1976, p. 9.
(2) OJ No C 50, 4. 3. 1976, p. 2.
(3) OJ No C 153, 9. 12. 1975, p. 6.

Whereas the trends of oil costs and prices obtaining in the Community should be compared on the basis of the information collected;

Whereas, if this comparison is to take account of differences of structure between markets, it should cover price levels net and inclusive of duties and taxes for the principal petroleum products and ex-refinery realizations;

Whereas the trend, in each Member State and in the Community as a whole, in the average ex-refinery value per metric ton of crude oil processed should be analyzed on the basis of the information collected;

Whereas the information collected and the results of the study carried out by the Commission should be communicated at Community level to the Member States and be the subject of consultation between them and the Commission;

Whereas the information collected shall be confidential and the results of the study carried out by the Commission may be used only for the information of the Member States and for consultation between them and the Commission;

Whereas if the Commission finds anomalies or inconsistencies in the figures communicated to it, it should be able to obtain a breakdown of the requisite information supplied by the undertakings;

Whereas the Commission should be able to specify, where necessary, details such as the form and content of the communications to be made,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Within the first 45 days of each quarter, the Member States shall communicate to the Commission information based on the information supplied to them by the undertakings designated in accordance with Article 2. Such information, submitted as laid down in Article 3, shall indicate:

(a) For the principal types of crude oil:

— fob and/or cif prices for each type of crude oil imported from third countries during the preceding quarter;

— prices free at the refinery gate or port of discharge for the principal types of crude oil produced in the Community traded between different undertakings or between producer undertakings and their subsidiaries and refined in the Member State concerned during the preceding quarter.

(b) For the principal types of petroleum products:

— fob and/or cif prices for each type of petroleum product imported from third countries and from the Member States of the Community respectively during the preceding quarter;

— consumer prices at the beginning of the current quarter for each of the principal petroleum products, both net and inclusive of duty and tax;

— the estimated average gross ex-refinery realization during the preceding quarter for each of the principal petroleum products disposed of on the domestic market of the Member State in question.

2. Those Member States which have systems of maximum consumer prices shall also inform the Commission of the maximum consumer prices in force on the first day of the current quarter for each of the principal petroleum products, both net and inclusive of duty and tax.

Lists of the principal types of crude oil imported from third countries and of petroleum products are given in the Annex to this Directive. The Annex to this Directive also gives definitions of the form in which information is to be communicated and of imports, crude oil produced in the Community, consumer prices, estimated average gross ex-refinery realization and maximum consumer prices.

Article 2

1. The Member States shall take all necessary steps to ensure that the undertakings whose activities fall within their jurisdiction provide the information necessary to enable them to fulfil their obligations pusuant to Article 1.

2. Within the first 45 days of each quarter, the Member States shall communicate to the Commission a list of the individuals and undertakings supplying the information referred to in paragraph 1. The list of individuals and undertakings shall be drawn up so as to cover a significant part of the operations carried out on their territories, namely:

— for import prices: at least 85% of the total quantity of imported crude oil and approximately 75% of imported petroleum products;

— for consumer prices: approximately 70% of the domestic consumption of all petroleum products.

On this list, the Member States shall name all the individuals and undertakings in descending order of importance for each type of activity indicated above.

Article 3

1. The information which the Member States are obliged to communicate to the Commission pursuant to Article 1 shall be obtained by aggregating the information received from the undertakings referred to in Article 2 (2). This information shall be presented in such a way as to give as representative a picture as possible of each Member State's oil market.

2. Within one year of the date fixed in Article 10, the Council shall consider whether the information supplied by undertakings to the Member States should be communicated to the Commission, as a means of obtaining a clearer picture of conditions on the Community oil market.

Article 4

On the basis of the information collected pursuant to Article 1 the Commission shall prepare and communicate quarterly to the Member States *inter alia:*

— summary information on the prices of crude oil and of petroleum products;

— a comparison of the price levels for petroleum products in the Community;

— developments, for each Member State and for the Community, in the average ex-refinery value per metric ton of crude oil processed. Average ex-refinery value per metric ton of crude oil processed is defined in the Annex to this Directive;

— a comparison of the developments in the terms of supply of crude oil and petroleum products and the average ex-refinery value per metric ton of crude oil processed.

Article 5

1. The Member States and the Commission shall consult together quarterly, or, at the request of a Member State or on the initiative of the Commission, at shorter intervals.

2. These consultations will relate particularly to the Commission communications referred to in Article 4. Following such consultations the Commission will, if necessary, make proposals to the Council for such measures as may appear to be necessary.

Article 6

1. All information communicated pursuant to Article 1 (1) and the list forwarded pursuant to Article 2 (2) shall be confidential. This provision shall not however prevent the distribution of general or summary information in terms which do not disclose details relating to individual undertakings, i.e. in terms which refer to at least three undertakings.

2. Information communicated to the Commission pursuant to Article 1 and the general or summary information obtained pursuant to Article 4 may be used only for the purposes laid down in Article 5.

3. If the Commission establishes the existence of anomalies or inconsistencies in the figures communicated, it may ask the Member States to permit it to acquaint itself with the appropriate unaggregated information supplied by the undertakings and the calculation and assessment procedures used to arrive at the aggregated information.

Article 7

Within the limits laid down by this Directive, the Commission shall adopt implementing provisions regarding the confidential nature, the form, the content, and all other aspects of the communications provided for in Article 1.

Article 8

In the event of significant changes in supply conditions, and in order to allow it to assess the market situation, the Commission may require the communications provided for in Articles 1 and 2 to be made within amended time limits or for other periods.

Article 9

For each of the first three years following the date laid down in Article 10, the Commission shall

submit to the Council and to the European Parliament a report on the results of the implementation of this Directive.

Article 10

The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than 1 January 1977.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 4 May 1976.

For the Council

The President

G. THORN

ANNEX

1. **List of the principal types of crude oil**

(a) *Imported from third countries*

1. Arabian light, 34°
2. Arabian medium, 31°
3. Arabian heavy and Khafji, 27°
4. Iranian light, 34°
5. Iranian heavy, 31°
6. Murban and Zakum, 39°
7. Iraq — Basrah, 35°
8. Iraq — Kirkuk, 36°
9. Kuwait, 31°
10. Libya, 40°
11. Algeria, 44°
12. Nigeria, 34°
13. Venezuelan light, 34°
14. Venezuelan medium, 26°
15. Venezuelan heavy, 17°
16. Indonesia, 34°
17. Other crude oils.

(b) *Produced in the Community*

2. **List of petroleum products**

(a) *As regards the cif price of petroleum products imported from third countries and from the Member States of the Community respectively*

— Motor fuels:	— premium petrol
	— regular petrol
	— gas oil
— Domestic fuels:	— gas oil
	— domestic fuel oil
	— paraffin
— Industrial fuels:	— heavy fuel oil (sulphur content more than 1% but not more than 3·5%)
	— heavy fuel oil (sulphur content not more than 1%)

(b) *As regards prices actually charged consumers and maximum prices*

— Fuels for domestic heating purposes:	
— pump price:	— premium petrol
	— regular petrol
	— gas oil
— Fuels for road transport purposes:	
— for small consumers:	— gas oil
	— domestic fuel oil
	— paraffin

— Industrial fuels:
  — for wholesale deliveries:
    — heavy fuel oil (sulphur content more than 1·5 % but not more than 3·5 %)
    — heavy fuel oil (sulphur content not more than 1·5 %)

(c) *As regards gross ex-refinery realizations*

— Motor fuels:
  — premium petrol
  — regular petrol
— Gas oil
— Fuels for domestic heating purposes:
  — gas oil
  — domestic fuel oil
  — paraffin
— Industrial fuels:
  — residual fuels

3. Definitions

(a) *Nature of the information*

The aggregated information on prices to be communicated by the Member States to the Commission will be compiled in such a way as to provide the most representative indicators of market conditions in each Member State. In order to take account of the differences between undertakings operating on the different markets, prices will be communicated in the form of ranges, with an indication of the most representative intermediate price in each case.

(b) *Imports*

For the purposes of Article 1 (1), imports shall be taken to mean all imports of crude oil and petroleum products which enter the customs territory of the Community, for purposes other than transit or inward processing en route to third countries, and are destined for the Member State concerned and not in transit to other Member States.

(c) *Crude oil produced in the Community*

For the purposes of Article 1 (1) (a), crude oil produced in the Community shall be taken to mean all crude oils produced, refined and disposed of in the Community. Such crude oils may be refined and disposed of in Member States other than the producing Member State.

(d) *Consumer prices*

— For the purposes of Article 1 (1) (b), the consumer price in respect of a given oil undertaking shall be taken to mean the most representative average of the delivered prices which that undertaking actually charges consumers in a particular category.

— For the purposes of Article 1 (1) (b), the consumer price in respect of a given Member State shall be taken to mean the price level most representative of the delivered prices which all undertakings actually charge consumers in a particular category in the Member State in question.

(e) *Estimated average gross ex-refinery realization*

For the purposes of Article 1 (1) (b), the estimated average gross ex-refinery realization in respect of a given Member State shall be taken to mean the estimated average proceeds received at the refinery gate by all the refineries in the Member State concerned, for each of the main petroleum products disposed of on that Member State's domestic market.

These estimated average proceeds shall be obtained by aggregation, by means of weighting, of the average proceeds realized through the various channels of distribution after deduction of the corresponding costs; they shall cover all sales whether made at the refinery gate, to retailers or directly to consumers.

(f) *Maximum consumer prices*

For the purposes of Article 1 (2), maximum consumer prices shall be taken to mean the maximum selling prices, both net and inclusive of duty and tax, whether published or not, for a product intended for a specified category of consumer, and fixed by the authorities or by agreements concluded between the authorities and the undertakings.

(g) *Average ex-refinery value per metric ton of crude oil processed*

For the purposes of Article 4, the average ex-refiney value per metric ton of crude oil processed for a given Member State shall be taken to mean the estimated average total proceeds at the refinery gate for the petroleum products derived from one metric ton of crude oil.

COMMISSION

COMMISSION DECISION

of 26 January 1977

implementing Directive 76/491/EEC regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community

(77/190/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community (1), and in particular Article 7 thereof,

Whereas under the said Article 7 the Commission shall adopt implementing provisions regarding *inter alia* the form, the content, and all other aspects of the communications provided for in Article 1;

Whereas Article 2 (2) thereof provides that within the first 45 days of each quarter, the Member States shall communicate to the Commission a list of the individuals and undertakings supplying them with the information necessary to enable them to fulfil their obligations pursuant to Article 1;

Whereas Article 3 thereof provides that the information shall be presented in such a way as to give as representative a picture as possible of each Member State's oil market;

Whereas it is necessary to standardize the technical aspects of the information system and to obtain comparable and consistent data, and therefore identical model questionnaires should be used and the content of the communications to be made should be standardized,

HAS ADOPTED THIS DECISION:

Article 1

The information to be communicated by the Member States to the Commission, in accordance with Article 1 of Directive 76/491/EEC, shall be drawn up according to the model questionnaires set out in the Annex hereto.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 26 January 1977.

For the Commission

Guido BRUNNER

Member of the Commission

(1) OJ No L 140, 28. 5. 1976, p. 4.

COMMISSION DECISION

of 14 October 1981

amending Decision 77/190/EEC as regards the information to be provided as to the prices of crude oil and petroleum products in the Community

(81/883/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community (1), and in particular Article 7 thereof,

Having regard to Commission Decision 77/190/EEC of 26 January 1977 implementing Directive 76/491/EEC (2),

Whereas the changes which have taken place in the structure of the market necessitate alterations to questionnaire No 3 in the Annex to Decision 77/190/EEC;

Whereas changes in supply conditions may require that communications of imports of petroleum products into the Member States be made according to EEC or non-EEC origin,

HAS ADOPTED THIS DECISION:

Article 1

Table 3 in the Annex to Decision 77/190/EEC is hereby replaced by the table in the Annex hereto.

Article 2

In the event of changes in supply conditions, and in order to allow it to assess the market situation, the Commission may require the information provided for in Table 3 to be made according to EEC or non-EEC origin.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 14 October 1981.

For the Commission

Étienne DAVIGNON

Vice-President

(1) OJ No L 140, 28. 5. 1976, p. 4.
(2) OJ No L 61, 5. 3. 1977, p. 34.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 29 June 1990

concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users

(90/377/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Commission's proposal (1),

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

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

Whereas energy price transparency, to the extent that it reinforces the conditions ensuring that competition is not distorted in the common market, is essential to the achievement and smooth functioning of the internal energy market;

Whereas transparency can help to obviate discrimination against users by increasing their freedom to choose between different energy sources and different suppliers;

Whereas, at present, the degree of transparency varies from one energy source and one Community country or region to another, thus calling into question the achievement of an internal energy market;

Whereas, however, the price paid by industry in the Community for the energy which it uses is one of the factors which influence its competitiveness and should therefore remain confidential;

Whereas the system of standard consumers used by the Statistical Office of the European Communities (SOEC) in its price publications and the system of market prices due to be introduced for major industrial electricity users will ensure that transparency is not an obstacle to confidentiality;

Whereas it is necessary to extend the consumer categories used by the SOEC up to the limits at which the consumers remain representative;

Whereas in this way end-users price transparency would be achieved without endangering the necessary confidentiality of contracts; whereas in order to respect confidentiality there must be at least three consumers in a given consumption category for a price to be published;

Whereas this information which concerns gas and electricity consumed by industry for energy end-users, will also enable comparisons to be drawn with other energy sources (oil, coal, fossil and renewable energy sources) and other consumers;

Whereas undertakings which supply gas and electricity as well as industrial gas and electricity consumers remain, independently of the application of this Directive, subject to the Treaty's competition rules and whereas consequently the Commission can require communication of prices and conditions of sale;

Whereas knowledge of the price systems in force forms part of price transparency;

(1) OJ No C 257, 10. 10. 1989, p. 7.
(2) OJ No C 149, 18. 6. 1990.
(3) OJ No C 75, 26. 3. 1990, p. 18.

Whereas knowledge of the breakdown of consumers by category and their respective market shares also forms part of price transparency;

Whereas the communication to the SOEC of prices and conditions of sale to consumers and price systems in operation as well as the breakdown of consumers by consumption category should inform the Commission sufficiently for it to decide, as necessary, on apropriate action or proposals in the light of the situation of the internal energy market;

Whereas the data supplied to the SOEC will be more reliable if the undertakings themselves compile these data;

Whereas familiarity with the taxation and parafiscal charges existing in each Member State is important to ensure price transparency;

Whereas it must be possible to check the reliability of the data supplied to the SOEC;

Whereas the achievement of transparency presupposes the publication and circulation of prices and price systems as widely as possible among consumers;

Whereas to implement energy price transparency the system should be based on the proven expertise and methods developed and applied by the SOEC regarding the processing, checking and publication of data;

Whereas, with the prospect of the achievement of the internal market in energy, the system of price transparency should be rendered operational as soon as possible;

Whereas the uniform implementation of this Directive can only take place in all the Member States when the natural gas market, in particular with regard to infrastructure, has reached a sufficient level of development,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take the steps necessary to ensure that undertakings which supply gas or electricity to industrial end-users, as defined in Annexes I and II, communicate to the SOEC in the form provided for in Article 3:

1. the prices and terms of sale of gas and electricity to industrial end-users;
2. the price systems in use;
3. the breakdown of consumers and the corresponding volumes by category of consumption to ensure the representativeness of these categories at national level.

Article 2

1. The undertakings referred to in Article 1 shall assemble the data provided for in Article 1 (1) and (2), on 1 January and 1 July of each year. These data, drawn up in conformity with the provisions referred to in Article 3, shall be sent to the SOEC and the competent authorities of the Member States within two months.

2. On the basis of the data referred to in paragraph 1, the SOEC shall publish each May and each November, in an appropriate form, the prices of gas and electricity for industrial users in the Member States and the pricing systems used to that end.

3. The information provided for in Article 1 (3) shall be sent every two years to the SOEC and to the Member States' competent authorities. The first communication shall concern the situation as at 1 January 1991. This information shall not be published.

Article 3

The implementing provisions concerning the form, content and all other features of the information provided for in Article 1 are set out in Annexes I and II.

Article 4

The SOEC shall not disclose data supplied to it pursuant to Article 1 which might, by their nature, be subject to commercial confidentiality. Such confidential statistical data transmitted to the SOEC shall be accessible only to officials of the SOEC and may be used only for statistical purposes.

This provision shall not, however, prevent the publication of such data in an aggregated form which does not enable individual commercial transactions to be identified.

Article 5

Where the SOEC notes statistically significant anomalies or inconsistencies in data transmitted under this Directive, it may ask the national bodies to allow it to inspect the appropriate disaggregated data as well as the methods of calculation or evaluation upon which the aggregated data are based, in order to assess, or even amend, any information deemed irregular.

Article 6

Where appropriate, the Commission shall make the necessary changes to the Annexes to this Directive in the light of specific problems identified. Such changes may, however, cover only the technical features of the Annexes and may not be of a nature such as to alter the general structure of the system.

Article 7

In the case of any changes to the Annexes, as referred to in Article 6, the Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 8

Once a year the Commission shall present a summary report on the operation of this Directive to the European Parliament, the Council and the Economic and Social Committee.

Article 9

Member States shall adopt the laws, regulations and administrative provisions needed to comply with this Directive no later than 1 July 1991. They shall forthwith inform the Commission thereof.

In the case of natural gas, the Directive will not be implemented in a Member State until five years after the introduction of that form of energy on the market in question. The date of introduction of that energy source on a national market is to be explicitly reported to the Commission by the Member State concerned without delay.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 29 June 1990.

For the Council

The President

M. SMITH

ANNEX I

SPECIFIC PROVISIONS ON GAS

1. Two types of gas are concerned:

   (a) natural gas;

   (b) manufactured gas (1).

2. Where both types of gas are distributed in the same urban area or region, data on both must be reported except where consumption is less than 10 % of the total consumption of natural gas and manufactured gas in the places or regions referred to in point 11 below.

3. Only piped distribution is considered.

4. Prices to be reported are prices paid by the end-consumer.

5. Uses considered are all industrial uses.

6. Excluded from the system are consumers who use gas:

   (a) for electricity generation in public power plants;

   (b) in non-energy uses (e. g. in the chemical industry);

   (c) above 4 186 000 GJ/year (= 1 163 GWh/year).

7. Prices recorded are to be based on a system of standard consumers defined basically by the level and modulation (or load factor) (2) of gas consumption.

8. Other characteristics which could play a part in price setting (e. g. interruptibility) will be determined in each case, always adopting the solution which is most frequent in practice.

9. Prices must include meter rental, the standing charge and the commodity rate. They should not include the initial installation charge to the consumer.

10. The following industrial standard consumers, coded I_1 to I_5, have been chosen:

	Annual consumption					Modulation
I_1	418,60	GJ	or	116 300	KWh	No load factor laid down (*)
I_2	4 186	GJ	or	1 163 000	KWh	200 days
I_{3-1}	41 860	GJ	or	11,63	GWh)	200 days 1 600 hours
I_{3-2}	41 860	GJ	or	11,63	GWh	250 days 4 000 hours
I_{4-1}	418 600	GJ	or	116,3	GWh	250 days 4 000 hours
I_{4-2}	418 600	GJ	or	116,3	GWh	330 days 8 000 hours
I_{5-4}	4 186 000	GJ	or	1 163	GWh	330 days 8 000 hours

(*) If necessary 115-200 days.

(1) 'Manufactured gas' means a derived energy, manufactured from coal, petroleum products or cracked, reformed or blended natural gas.

The scope of this Directive does not extend to liquefied petroleum gas (butane, propane), coke-oven gas or blast-furnace gas.

(2) The daily load factor is the number of days which would be required to take the entire annual consumption at the maximum daily offtake rate:

$$nd = \frac{Qa}{Qd_{max}}$$

The hourly load factor is the number of hours which would be required to take the entire annual consumption at the maximum hourly offtake rate:

$$nh = \frac{Qa}{Qh_{max}}$$

In the above formulae:

Qa = annual volume consumed.
Qd_{max} = maximum daily offtake.
Qh_{max} = maximum hourly offtake.

11. Prices are to be recorded in the following places or regions:

— Belgium:	Brussels,
— Denmark:	Copenhagen,
— Federal Republic of Germany:	Hamburg, Hanover, Weser-Ems, Dortmund, Düsseldorf, Frankfurt am Main, Stuttgart, Munich,
— Spain:	Madrid, Barcelona, Valencia, the Nord and East,
— France:	Lille, Paris, Strasbourg, Marseilles, Lyons, Toulouse,
— Ireland:	Dublin,
— Italy:	Milan, Turin, Genoa, Rome, Naples,
— Luxembourg:	City of Luxembourg,
— Netherlands:	Rotterdam,
— Portugal:	Lisbon,
— United Kingdom:	London, Leeds, Birmingham.

12. Prices recorded are to be based on the tariffs, contracts, conditions and rules in force at the beginning of each six-month period (January and July), including any rebates.

13. If there are several possible tariffs, it is the tariff which is most advantageous to the consumer that is taken into account, after eliminating tariffs which are not used in practice or which apply only to a negligible number of users.

14. When there are only quasi-tariffs, special contracts or freely negotiated prices, the most commonly found price (most representative of the given supply conditions) must be recorded.

15. Prices must be expressed in national currency by physical unit of gas (1). The unit of energy used is measured on the basis of the gross calorific value (GCV), as is the practice in the gas industry.

16. Two price levels are to be shown (2):

— with all taxes excluded,

— with all taxes included (except recoverable VAT).

17. The rates and method of calculating taxes, which should include any tax whether national, regional or local, levied on gas sales to the consumer, should also be reported.

18. An explanation as detailed as is necessary to reflect the price system accurately must be annexed. Special heed must be given to any changes introduced since the previous survey.

19. In Member States where one gas company covers all the industrial sales for that country, the information should be communicated by that company. In other Member States where one or more regions are served by more than one gas company, the information should be communicated by an independent statistical body.

20. In the interests of confidentiality, data relating to prices will be communicated only where there are, in the Member State of region concerned, at least three consumers in each of the categories referred to in paragraph 10.

(1) Where the cubic metre is used, its energy content should be defined in GJ, kWh or, up to 1999, in therms.

(2) The price excluding tax is obtained directly from tariffs or contracts. The price excluding recoverable VAT includes, where payable, other specific taxes.

ANNEX II

SPECIFC PROVISIONS ON ELECTRICITY

Data on electricity communicated pursuant to this Directive must contain the following information:

I. **The 'typical reference consumer' survey (for consumers with up to 10 MW maximum demand (net)).**

1. The existing survey of electricity prices for typical reference consumers in the Community carried out by the Commission will be extended to include two categories of reference industrial consumer with a maximum demand (net) of 10 MW, and will be incorporated in this Directive.

2. Electricity prices in Member States with a single national tariff will be surveyed in one location only; for Member States with tariffs which vary across the country, prices will be surveyed in a representative sample of locations, as follows:

— Belgium	the country as a whole,
— Federal Republic of Germany	Hamburg, Hanover, Düsseldorf, Frankfurt am Main, Stuttgart, Munich, Western Zone, Southern Zone,
— Denmark	the country as a whole,
— Spain	Madrid,
— France	Lille, Paris, Marseilles, Lyons, Toulouse, Strasbourg,
— Greece	Athens,
— Ireland	Dublin,
— Italy	Northern and Central Italy, Southern Italy and the islands,
— Luxembourg	the country as a whole,
— Netherlands	Rotterdam (GEB), North Holland (PEN), North Brabant (PNEM),
— Portugal	Lisbon, Ponta Delgada (autonomous region of the Azores),
— United Kingdom	London, Glasgow, Leeds, Birmingham.

3. Electricity prices will be surveyed for the following nine categories of typical reference industrial consumer:

Reference consumer	Annual consumption kWh	Maximum demand kW	Annual utilization in hours
I_a	30 000	30	1 000
I_b	50 000	50	1 000
I_c	160 000	100	1 600
I_d	1 250 000	500	2 500
I_e	2 000 000	500	4 000
I_f	10 000 000	2 500	4 000
I_g	24 000 000	4 000	6 000
I_h	50 000 000	10 000	5 000
I_i	70 000 000	10 000	7 000

The maximum demand (net) is the maximum offtake in any quarter of an hour recorded in one year, expressed in kW. The price of supply is calculated for cos φ = 0,90. In the case of tariffs based on half-hourly demand, the maximum demand of the reference consumer is multiplied by a coefficient of 0,98. In the case of tariffs based on demand expressed in kVA an adjustment is made by dividing the reference consumer's maximum demand (net) in kW by the coefficient cos φ = 0,90.

4. In the case of tariffs based on maximum demand readings more frequent than once a year, the capacity charge is multiplied by the following coefficients:

TABLE OF POWER CORRECTION COEFFICIENTS

Utilization (hours)	Monthly maximum demand	Two-monthly maximum demand	Quarterly maximum demand	Average of three highest monthly maximum demands	Average of two highest monthly maximum demands	Annual maximum demand
1 000	0,81	0,83	0,86	0,94	0,96	1,0
1 600	0,83	0,85	0,88	0,95	0,97	1,0
2 500	0,85	0,87	0,90	0,96	0,98	1,0
4 000	0,90	0,91	0,95	0,98	0,99	1,0
5 000	0,90	0,91	0,95	0,98	0,99	1,0
6 000	0,96	0,97	0,98	0,99	0,995	1,0
7 000	0,96	0,97	0,98	0,99	0,995	1,0

5. For tariffs with reductions for 'off-peak' periods, the following 'off-peak' consumptions should be assumed in calculating the average price per kWh:

Standard consumer	Annual utilization	Annual consumption	Annual consumption (in 1 000 kWh) charged at off-peak rates according to the average daily duration of off-peak periods in each 24 hours					
	hours	1 000 kWh	7 h	8 h	9 h	10 h	11 h	12 h
I_a	1 000	30	0	0	0	0	0	0
I_b	1 000	50	0	0	0	0	0	0
I_c	1 600	160	11	13	16	19	22	25
I_d	2 500	1 250	197	225	262	300	338	375
I_e	4 000	2 000	438	500	580	660	740	820
I_f	4 000	10 000	2 190	2 500	2 900	3 300	3 700	4 100
I_g	6 000	24 000	7 140	8 160	9 120	10 080	11 040	12 000
I_h	5 000	50 000	13 100	15 000	17 000	19 000	21 000	23 000
I_i	7 000	70 000	23 300	26 600	29 400	32 200	35 000	37 800

For off-peak periods of durations between those shown above, the annual consumption of off-peak kWhs should be estimated by extrapolation.

For any further off-peak periods, for example all day Sunday, only half of the extra hours should be taken into account and these hours averaged across all days of the year, and the result added to the normal off-peak period, before using the table above.

6. Wherever possible, the price reported should be based on a publisher tariff applicable to the reference consumer category in question. If there are several possible tariffs, the tariff which is the most advantageous to the consumer, after the elimination of any tariffs which are not used in practice or which apply only to a marginal of negligible number of users, should be applied. Where there are only quasi-tariffs, special contracts, or freely negotiated prices, the most commonly found price (most respresentative) for the given supply conditions should be reported.

7. Where electricity for a given reference consumer category may be supplied at a variety of voltages, that voltage should be assumed which is the most representative for the reference consumer category in question. This principle should be applied to other parameters not specified in this Directive.

8. The price per kWh should be calculated so as to include all fixed charges payable (e.g. meter rental, fixed charges or capacity charges, etc.), as well as the charges for the kWh consumed. It is therefore the total amount payable after any premiums or rebates, for the consumption pattern in question, divided by the total consumption. Initial connection charges, however, should not be included. Although information is to be provided twice yearly, the calculation should be based on annual consumption figures, to avoid seasonal variations.

9. Prices should be given in national currency per kWh (1):

   — with all taxes excluded,

   — with all taxes included (except recoverable VAT).

   The rates and method of calculating taxes, which should include any tax whether national, regional or local, levied on electricity sales to the consumer, should also be reported.

10. An explanation, as detailed as is necessary to describe the price system accurately and how it is applied, should be given. Special emphasis must be given to any changes introduced since the previous survey.

11. In Member States where one company covers all the industrial sales for that country, the information should be communicated by that company. In other Member States where one or more regions are served by more than one company, the information should be communicated by an independent statistical body.

II. The 'marker price' survey (for consumers above 10 MW maximum demand)

12. To survey industrial consumers with maximum demands above 10 MW, a new system based on 'marker prices', as defined below shall be introduced.

13. In all Member States except the Federal Republic of Germany and the United Kingdom, variations in the structure of charges and prices charged for large industrial consumers across the country are relatively small, and marker prices and associated information should be collected and published for the Member State as a whole. However, in the Federal Republic of Germany and the United Kindgom there may be significant geographical variations and so information for these two Member States should be communicated and published for three zones in each case, as follows:

Member State	*Zones*
Federal Republic of Germany (2):	— North/Central, — West, — South;
United Kingdom:	— England and Wales, — Scotland, — Northern Ireland.

14. Marker prices and associated information must be reported for each Member State as described in paragraph 13 above for three categories of large industrial consumer, i.e. those industrial consumers with maximum demands in the region of:

   — 25 MW, covering consumers with maximum demands (net) of between 17,5 and 37,5 MW,

   — 50 MW, covering consumers with maximum demands (net) of between 37,5 and 62,5 MW, and

   — 75 MW, covering consumers with maximum demands (net) of between 62,5 and 75 MW.

   These categories include any industrial consumers which also produce a part of their own electricity themselves, although only information relating to their electricity consumption from public utilities is required to be reported.

15. The marker price for a given MW categoriy (e.g. 25 MW) is the average price payable per kWh for a notional or 'marker price' industrial consumer with a normal demand of about 25 MW, but before any reductions for 'special factors', which should be reported separately (see paragraph 16 below). The demand characteristics of this 'marker price' industrial consumer should be as representative as possible (ignoring 'special factors') of all the industrial consumers in the category in question.

   In order to achieve a measure of homogeneity, the Commission will define demand characteristics for 'marker price' consumers for each category, (i.e. 25 MW, 50 MW and 75 MW), which should be used by utilities where appropriate. If such demand characteristics are not appropriate, a utility may

(1) The price excluding all taxes is the direct result of the application of tariffs or contracts. The price excluding recoverable VAT includes any other specific taxes.

(2) The Länder will be divided into three zones, namely:
   — North/Central: Schleswig-Holstein, Hamburg, Bremen, Berlin, Lower Saxony, North Hessen,
   — West: North-Rhine-Westphalia, Rhineland-Palatinate, South Hessen, Saarland,
   — South: Baden-Württemberg, Bavaria.

define its own 'marker price' consumer demand characteristics, subject to the approval of the Commission. These demand characteristics concern, for example, the load factor, (e.g. '7 000 hours', where 7 000 is the number of hours for which demand would have to remain at maximum to obtain the annual consumption), and the distribution of consumption by the different time-of-day charge bands (e.g. peak, off-peak, etc.).

16. The marker prices given should be calculated so as to include all fixed charges payable (e.g. meter, rental, fixed charges or capacity charges etc.), as well as the charges for the kWh consumed. Initial connection charges, however, should not be included. Although information is to be provided twice yearly, annual consumption figures should be used in order to avoid seasonal variations. The way in which the marker price is calculated, including the inclusion of any fixed charges, should be explained.

17. For each marker price a range of 'special factors' which may be applied to reduce the price of electricity (e.g. interruptibility clauses), should be described and the amount of reduction (e.g. 6, 8, 10%) indicated. These special factors should be representative of factors which are applicable to the consumers supplied by the reporting utility in the MW category being surveyed.

18. In Member States where there is more than one electricity utility, these utilities shall each provide marker prices and related information (on the demand characteristics of the notional consumer (paragraph 15), and on special factors and price reductions (paragraph 17)), to an independent statistical body. These bodies shall then pass on the highest and the lowest marker price for the Member State (or for each region if applicable) for each MW category, together with the related information on those marker prices, to the national administration and to the SOEC. For the other Member States, where one national utility covers the whole country, the information must be reported directly and simultaneously to the national administration and to the SOEC.

19. In the interests of confidentiality, marker prices and related information will be reported by the national utility or the independent statistical body as appropriate (see paragraph 18 above) only where there are at least three consumers in the appropriate MW category in the Member State or region concerned.

20. Marker prices should be expressed as indicated in paragraph 9.

21. Supply utilities should also provide data, once every two years, on the number of its consumers in each MW range (i.e. 17,5 to 37,5 MW, 37,5 to 62,5 MW and 62,5 to 75,0 MW), and the total annual consumption of these consumers for each range (in GWh). The information required under paragraph 18 should be communicated either via the independent statistical body, which shall collate information for the Member State as a whole, or directly and simultaneously to the national administration and to the SOEC. The information required under this paragraph will be provided on a confidential basis and will not be published.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE 93/87/EEC

of 22 October 1993

amending Directive 90/377/EEC with regard to the survey locations and regions in the Federal Republic of Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (1),

Having regard to Council Directive 90/653/EEC of 4 December 1990 laying down amendments for the purpose of implementing in Germany certain Community Directives relating to statistics on the carriage of goods and statistics on gas and electricity prices (2),

Whereas Germany has defined the locations in the territory of the former German Democratic Republic in order to extend the breakdown by region and location for statistics on gas and electricity prices;

Whereas the Advisory Committee established by Article 7 of Council Directive 90/377/EEC has been consulted on the measures laid down in the present Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annexes to Directive 90/377/EEC shall be amended in order to add the following locations and regions for the collection of gas and electricity prices in the Federal Republic of Germany:

(a) in Annex I, point 11 — Federal Republic of Germany:

— 'Dresden and Berlin';

(b) in Annex II, point 2 — Federal Republic of Germany:

— 'Erfurt, Leipzig and Rostock';

(c) in Annex II, point 13 — Federal Republic of Germany:

— 'East';

(d) footnote 2 to Annex II, point 13 shall be replaced by the following:

'The *Länder* will be divided into four zones, namely:

— North/Central: Schleswig-Holstein, Hamburg, Bremen, Berlin, Lower Saxony, North Hessen,

— West: North-Rhine-Westphalia, Rineland-Palatinate, South Hessen, Saarland,

— South: Baden-Wurttemberg, Bavaria,

— East: all the *Länder* not included in the other regions.'

Article 2

This Directive is addressed to the Member States.

Done at Brussels, 22 October 1993.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

(1) OJ No L 185, 17. 7. 1990, p. 16.
(2) OJ No L 353, 17. 12. 1990, p. 46.

COUNCIL DIRECTIVE

of 4 December 1990

laying down amendments for the purpose of implementing in Germany certain Community Directives relating to statistics on the carriage of goods and statistics on gas and electricity prices

(90/653/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the 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 the Council has adopted Directive 78/546/EEC (4), as last amended by Directives 89/462/EEC (5), 80/1119/EEC (6) and 80/1177/EEC (7), as both amended by the Act of Accession of Spain and Portugal, on statistics on the carriage of goods;

Whereas the Council has adopted Directive 90/377/EEC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (8);

Whereas from the date of German unification onwards Community law will be fully applicable to the territory of the former German Democratic Republic;

Whereas the regional breakdown for carriage statistics should be extended to include the territory of the former German Democratic Republic;

Whereas the list of administrations managing the main railway networks should be amended for the purpose of statistics on the carriage of goods by rail;

Whereas the breakdown by region and locality of statistics on gas and electricity prices should be extended to include those of the territory of the former German Democratic Republic;

Whereas the current situation does not allow the regions and localities in question to be defined precisely,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the regional breakdown of statistics on the carriage of goods covered by Directives 78/546/EEC, 80/1177/EEC and 80/1119/EEC, the Federal Republic of Germany shall define the regions in the territory of the former German Democratic Republic and communicate them to the Commission prior to the date at which the interim measures tabled pursuant to Directive 90/476/EEC are replaced by transitional measures and at any rate not later than 31 December 1990. This information will be communicated for information to the European Parliament and the Council.

2. For the regional statistics on the carriage of goods by rail covered by Directive 80/1177/EEC, the Federal Republic of Germany shall communicate the names of the administrations managing railway lines and installations in Germany prior to the date at which the interim measures tabled pursuant to Directive 90/476/EEC are replaced by transitional measures and at any rate not later than 31 December 1990. This information will be communicated for information to the European Parliament and the Council.

Article 2

For the breakdown by region and locality of statistics on gas and electricity prices covered by Directive 90/377/EEC, Germany shall define no later than 1 July 1992 the regions and localities in the territory of the former German Democratic Republic and communicate them to the Commission. This information will be communicated for information to the Council and the Parliament.

(1) OJ No C 248, 2. 10. 1990, p. 7.
(2) Opinion delivered on 21 November 1990 (not yet published in the Official Journal).
(3) Opinion delivered on 20 November 1990 (not yet published in the Official Journal).
(4) OJ No L 168, 26. 6. 1978, p. 29.
(5) OJ No L 226, 3. 8. 1989, p. 8.
(6) OJ No L 339, 15. 12. 1980, p. 30.
(7) OJ No L 350, 23. 12. 1980, p. 23.
(8) OJ No L 185, 17. 7. 1990, p. 16.

Article 3

The Commission shall be authorized to amend the following:

— Annex II to the Directives referred to in Article 1 (1);

— Article 1 (2) (a) to Directive 80/1177/EEC;

— Annexes I and II to Directive 90/377/EEC, after consulting the competent committee in accordance with the procedure laid down in Article 7 of that Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 4 December 1990.

For the Council

The President

G. DE MICHELIS

COUNCIL DIRECTIVE

of 14 April 1975

concerning the restriction of the use of petroleum products in power stations

(75/405/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (1);

Having regard to the Opinion of the Economic and Social Committee (2);

Whereas the implementation of a Community energy policy is one of the objectives that the Communities have set themselves; whereas security of supply is a priority of Community energy policy;

Whereas electricity is a form of energy vital to modern society and its contribution to the Community's total energy requirements is on the increase;

Whereas the security of electricity supplies in the Member States of the Community can be improved by limiting the use of petroleum products in power stations;

Whereas the construction and the conversion of power stations using exclusively or mainly oil products should therefore be subject to an authorization by the authorities of the Member States;

Whereas electricity can be produced economically from various sources of primary energy;

Whereas conventional power stations can be equipped with multi-firing boilers using two or more fuels, including coal,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The contruction of new power stations which will use oil fuels exclusively or mainly as well as the conversion of existing power stations to burn such fuels exclusively or mainly shall be subject to prior authorization by the authorities of the Member State responsible for this power station.

2. Authorization may be granted only in the following cases:

— if the power station has a capacity of less than 10 MWe or is intended exclusively for the production of peak or reserve energy;

— if the petroleum products are used solely to ignite and to maintain the combustion of other products and if their total energy contribution remains small;

— if the petroleum fuel is a residual product that cannot be more efficiently employed for other purposes;

— if supplies of other fuels cannot be ensured or if their use cannot be considered for economic, technical or safety reasons;

— if special reasons relating to the protection of the environment necessitate the use of petroleum products in a power station.

3. Before granting authorization, the authorities of the Member States shall determine whether it is advisable, with a view to security of fuel supply, to equip the power station concerned for dual-firing, allowing the use of coal as a substitute fuel.

Article 2

Any authorization granted by a Member State pursuant to Article 1 shall be notified to the Commission, accompanied by a detailed statement of the reasons justifying the action taken.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1975 and shall inform the Commission thereof.

(1) OJ No C 125, 16. 10. 1974, p. 59.
(2) OJ No C 93, 7. 8. 1974, p. 79.

Article 4

More stringent national measures restricting the use of petroleum products in power stations and conforming with the provisions of the Directive may be maintained or adopted.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 14 April 1975.

For the Council

The President

G. FITZGERALD

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 5 December 1985

on crude-oil savings through the use of substitute fuel components in petrol

(85/536/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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, pursuant to Article 2 of the Treaty, the Community has as its task to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion and an increase in stability;

Whereas, in the present energy situation, a reduction in the Community's dependence upon imported crude oil will contribute effectively to the attainment of these objectives;

Whereas the reduction and elimination of lead in petrol may be partly offset by the use of substitute fuel components in petrol and whereas such components may also help to reduce over-consumption of crude oil necessary in refining to produce lead-free petrol;

Whereas petrol used for the propulsion of vehicles powered by internal combustion spark-ignited engines is an important sector of oil consumption in the Community;

Whereas the use of crude oil to manufacture petrol for vehicles propelled by internal combustion spark-ignited engines can be reduced through blending hydrocarbon petrol with substitute fuel components;

Whereas the increasingly complex refining process and the creation of petro-chemical products require that such products be intended, as far as possible, for a proper use and whereas it is desirable to establish rules to that effect;

Whereas these substitute fuel components can be produced from raw materials other than crude oil both inside and outside the Community, thereby broadening the raw materials base for the production of fuels for use in internal combustion spark-ignited engines;

Whereas the distribution and use of petrol blended with substitute fuel components as defined by this Directive require no, or only minor, modifications to existing petrol distribution systems and no modification to existing vehicles propelled by internal combustion spark-ignited engines designed to operate on petrol;

Whereas the distribution and combustion of blends as defined by this Directive carries no safety, health or environmental risks significantly different from those of petrol currently sold for motor vehicles in the Community;

Whereas the objective of saving crude oil makes it desirable that no obstacles be placed in the way of the manufacture, distribution, sale and use of suitable blends for the propulsion of vehicles powered by internal combustion spark-ignited engines;

Whereas cross-border traffic requires that motorists be offered suitable fuels for their motor vehicles everywhere in the Community and that potential users be able to

(1) OJ No C 229, 2. 9. 1982, p. 4.
(2) OJ No C 96, 11. 4. 1983, p. 89.
(3) OJ No C 33, 7. 2. 1983, p. 1.

distinguish between fuels covered by this Directive and others which can be used only in specifically designed or adapted vehicles;

Whereas scientific and technical developments may make it appropriate to modify the Annex to this Directive; whereas a procedure should be set up so that such modifications may be made;

Whereas the Treaty has not provided the necessary powers other than those of Article 235,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall not prevent, restrict or discourage, on the grounds of oxygenate content, the production, marketing and free movement of blended petrol containing organic oxygenate compounds which comply with the Annex and which do not exceed the limits stipulated in column A of Section II of that Annex. Such blended fuels must be usable in complete safety and with similar performance to petrol used in vehicles propelled by internal combustion spark-ignited engines currently in use or being offered for sale without requiring any modification to such vehicles.

Article 2

For the purposes of this Directive, 'petrol' means any mixture consisting essentially of liquid hydrocarbons suitable for the operation of internal combustion spark-ignited engines.

Article 3

Pumps for the sale of motor fuels to the general public which dispense motor fuels containing organic oxygenate compounds in proportions higher than the limits set in column B of Section II of the Annex shall be very clearly marked accordingly to take account in particular of variations in the calorific value of such fuels.

Article 4

The Annex may be amended in accordance with the procedure laid down in Articles 5 and 6.

Article 5

1. A Committee on the Adaptation of the Annex to Scientific and Technical Progress, hereinafter referred to as the 'Committee', shall be established.

2. The Committee shall also be empowered to examine substitute fuel components not covered by this Directive but without having recourse to the pocedure set out in Article 6.

3. The Committee shall consist of representatives of the Member States, with a Commission representative as chairman. It shall be convened by the chairman, either on his own initiative or at the request of the representative of a Member State.

4. The Committee shall adopt its own rules of procedure.

Article 6

1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, 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 adopted. 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 a majority of 45 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the intended measures when they are in accordance with the Committee's opinion;

(b) Where the intended measures are not in accordance with the opinion of the Committee, or in the absence of any opinion, the Commission shall forthwith submit to the Council a proposal relating to the measures to be taken. The Council shall act on a qualified majority.

If, on the expiry of three months from the date on which the matter was referred to it, the Council has not adopted any measures, the Commission shall adopt the proposed measures and apply them immediately.

Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions, including those referring to the test and measuring methods in the context of the Annex, necessary to comply with this Directive by 1 January 1988. They shall forthwith inform the Commission thereof.

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 8

This Directive is addressed to the Member States.

Done at Brussels, 5 December 1985.

For the Council

The President

J.-C. JUNCKER

ANNEX

I. DEFINITIONS

Methanol, ethanol, iso-propyl alcohol (propan-2-ol), butyl alcohol (butan-1-ol), secondary butyl alcohol (butan-2-ol), tertiary butyl alcohol (TBA 2-methyl propan-2-ol), iso-butyl alcohol (2-methyl-1-propanol), other mono-alcohols with a final distillation point no higher than the final distillation point laid down in national specifications or, where these do not exist, in industrial specifications for motor fuels, and methyl tertiary butyl ether (MTBE tert-butoxymethane) and tertiary amyl-methyl ether (TAME 2-methoxy-2-methyl butane), ethyl tertiary butyl ether (ETBE 2-ethoxy-2-methyl propane) and other ethers (R_1-O-R_2) with a final distillation point no higher than the final distillation point laid down in national specifications or, where these do not exist, in industrial specifications for motor fuels, whose molecules containing five or more carbon atoms are currently acceptable organic oxygenates for use as substitute fuel components and/or stabilizing agents for motor fuel. Mixtures of these compounds are also acceptable.

The term 'stabilizing agents' refers to certain of the substances referred to in the first sub-paragraph added to assist in the prevention of phase separation of petrol/substitute fuel component blends.

II. COMPOSITION OF BLENDS

In accordance with Article 1, Member States must permit, for the proportions by volume of organic oxygenate compounds in fuel blends, those not exceeding limits indicated in column A.

Member States may authorize proportions of organic oxygenate compounds higher than those limits. The requirement for marking at the pumps prescribed by Article 3 applies to proportions of organic oxygenate compounds higher than the limits indicated in column B.

	A	B
Methanol, suitable stabilizing agents must be added (1)	3 % vol	3 % vol
Ethanol, stabilizing agents may be necessary (1)	5 % vol	5 % vol
Iso-propyl alcohol	5 % vol	10 % vol
TBA	7 % vol	7 % vol
Iso-butyl alcohol	7 % vol	10 % vol
Ethers containing five or more carbon atoms per molecule (1)	10 % vol	15 % vol
Other organic oxygenates defined in section 1	7 % vol	10 % vol
Mixture of any organic oxygenates (2) defined in section 1	2,5 % oxygen weight, not exceeding the individual limits fixed above for each component	3,7 % oxygen weight, not exceeding the individual limits fixed above for each component

(1) In accordance with national specifications or, where these do not exist, industrial specifications.

(2) Acetone is authorized up to 0,8 % by volume when it is present as a by-product of the manufacture of certain organic oxygenate compounds.

The use of components other than those specified in Section I as additives at concentrations below 0,5 % in total is not affected by this Directive.

III. REQUIREMENTS

Technical specifications for current motor fuels are defined at present in Member States by national standards or, where these do not exist, by industrial specifications.

Petrol blended with organic oxygenate compounds will have to conform with the technical specifications that apply to the types of fuels that the blends are intended to replace.

In addition, specifications relating to properties that are peculiar to blends of petrol and organic oxygenate compounds (for example, water tolerance, hygroscopicity, material compatibility and detrimental impurities, including organic acid content, copper content, etc.) will be considered and may be laid down for these blends by the appropriate standards organizations or, where these do not exist, by industrial organizations.

COMMISSION DIRECTIVE

of 29 July 1987

on crude-oil savings through the use of substitute fuel components in petrol

(87/441/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 85/536/EEC of 5 December 1985 on crude-oil savings through the use of substitute fuel components in petrol (1), and in particular Article 4 thereof,

Whereas it is necessary to cite reference methods for measuring substitute fuel components likely to be used in petrol blends;

Whereas scientific and technical progress has demonstrated that a number of measuring methods can be used on a provisional basis;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Scientific and Technical Progress of the abovementioned Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Section III of the Annex to Directive 85/536/EEC is hereby supplemented by the following text, the other provisions of this Section remaining unchanged:

'The following methods may be used on a provisional basis for measuring the proportions by volume and proportions of oxygen content by weight of the organic oxygenate compounds in petrol blends.

1. AFNOR M 07-054	Liquid fuels — method for the analysis of the oxygenate compounds in fuels (December 1984, experimental standard)
2. DIN 51 413	Analysis of liquid mineral oil hydrocarbons — gas-chromatographic analysis
/ Part 1	Measurement of alcohols
/ Part 4	Measurement of MTBE
/ Part 5	Measurement of oxygenate compounds in petrol (in the press)
/ Part 6	Measurement of acetone (in the press)
3. BSI proposed method	IP ST-G-6C: The determination of C_1-C_4 alcohols and methyl tertiary butylether in gasoline by gas chromatography
4. ASTM D2 proposal	Determination of C_1-C_4 alcohols and MTBE in gasoline (based on 9. below).

5. "Selective gas chromatographic analysis of oxygen-containing compounds by flame-ionisation detection" — by Schneider, W., Frohne J-C., Bruderreck, H.J. Chromatogr., 1982, No 245, page 71.

6. "A single-column gas chromatographic method for the analysis of gasolines containing oxygenated compounds" — by Lockwood, A.F., Caddock, B.D-Chromatographia, 1983, No 17, (2), page 65.

7. "Gas and liquid chromatographic analyses of methanol, ethanol, t-butanol and methyl t-butyl ether in gasoline" — by Pauls, R.E., McCoy, R.W-J. Chromatogr. Sci., 1981, No 19, page 558.

8. "Determination of high octane components: methyl t-butyl ether, bezene, toluene and ethanol in gasoline by liquid chromatography" by Pauls, R.E-J. Chromatogr. Sci., 1985, No 23, page 437.

9. "The analysis of C_1-C_4 alcohols and MTBE in motor gasolines by multi-dimensional GC with macro-bore capillary and a micro-packed column" by Green L., Naizhong, Z.-Paper presented at the 36th Pittsburg Analytical Conference.

(1) OJ No L 334, 12. 12. 1985, p. 20.

The Member States may use other methods if these are shown to be equivalent.

The results of the individual measurements shall be interpreted according to the method defined in ISO 4259 (published in 1979).'

Article 2

This Directive is addressed to the Member States.

Done at Brussels, 29 July 1987.

For the Commission

Nicolas MOSAR

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE
of 29 October 1990
on the transit of electricity through transmission grids

(90/547/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the European Council has recognized, at its successive meetings, in particular in Rhodes, the need for a single internal market in energy and whereas the achievement of the internal market more specifically in the electricity sector will help the further development of the Community's energy objectives;

Whereas there must be greater integration of the European energy market if the single inertnal market is to be achieved; whereas electricity is an essential component of the Community's energy balance;

Whereas the achievement of the internal market for energy, more particularly in the electricity sector, must take into account the objective of economic and social cohesion, that is to say, in concrete terms, guarantee an optimum supply of electricity to all the citizens of all the Community regions, with a view to improving and harmonizing the living conditions and development bases in particular in the least-favoured regions;

Whereas energy polices, more than any other measure contributing to the achievement of the internal market, must not be implemented with the sole aim of reducing costs and maintaining competition, but must also take account of the need to ensure the security of supplies and the compatibility of energy production methods with the environment;

Whereas to attain that objective, account should be taken of the specific characteristics of the electricity sector;

Whereas there is increasing trade in electricity each year between high-voltage electricity grids in Europe; whereas the European Community's security of electricity supply would be improved and costs reduced by coordinating the building and operation of the interconnections required for such trade;

Whereas the exchange of electricity between electricity grids which is based on contracts with a minimum duration of one year is so great that requests for transactions and their consequences should be systematically known to the Commission;

Whereas it is possible and desirable to increase electricity transfers between grids and also take account of the imperatives of security and quality of electricity supply; whereas studies show that such greater electricity transfers between grids can minimize the cost of investment and fuels involved in electricity generation and transmission and ensure optimum use of the means of production and infrastructure;

(1) OJ No C 8, 13. 1. 1990, p. 4.
(2) OJ No C 113, 7. 5. 1990, p. 91 and Decision of 10 October 1990 (not yet published in the Official Journal).
(3) OJ No C 75, 26. 3. 1990, p. 23.

Whereas there are still obstacles to such trade; whereas, provided that they are not due to the nature of technology used or the nature of the grids themselves, such obstacles can be reduced by making the transit of electricity through grids compulsory and introducing an appropriate system for monitoring compliance with this obligation;

Whereas this obligation and monitoring system concern the transit of electricity involved in trade with is in the Community interest, i.e. transit through high-voltage grids;

Whereas the contract conditions concerning the transit of electricity between grids must be negotiated between the responsible entities; whereas the conditions of transit should be fair and should not bring about, directly or indirectly, conditions contrary to Community competition rules;

Whereas, in order to facilitate the conclusion of transit contracts, the Commission is providing for the creation of a conciliation procedure under which submission must be made at the request of one of the parties, without the result of that procedure having legally binding effect;

Whereas it is necessary to approximate the provisions taken by the Member States which affect the transit of electricity;

Whereas the establishment of an internal electricity market will stimulate the dynamic process of better integration of national electricity grids, and whereas in this context special infrastructure measures and programmes should therfore be implemented to accelerate the efficient and socially advantageous linking-up of outlying areas and islands in the Community to the interconnected grid;

Whereas the interconnection of major European grids over which trade must be coordinated extends over a geographical territory which does not coincide with the Community's frontiers; whereas there is an obvious advantage in seeking cooperation with third countries involved in the interconnected European network,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take the measures necessary to facilitate transit of electricity between high-voltage grids in accordance with the conditions laid down in this Directive.

Article 2

1. Every transaction for the transport of electricity under the following conditions shall constitute transit of electricity between grids, within the meaning of this Directive, without prejudice to any special arrangements concluded between the Community and third countries:

(a) transmission is carried out by the entity or entities responsible in each Member State for a high-voltage electricity grid, with the exception of distribution grids, in a Member State's territory which contributes to the efficient operation of European high-voltage interconnections;

(b) the grid of origin or final destination is situated in the Community;

(c) the transport involves the crossing of one intra-Community frontier at least.

2. The high-voltage electricity transmission grids and the entities responsible for them in the Member States, which are listed in the Annex, shall be covered by the provisions of this Directive. This list shall be updated after consultation with the Member State concerned whenever necessary by decision of the Commission, within the context of the objectives of this Directive and in particular taking into account paragraph 1 (a).

Article 3

1. Contracts involving transit of electricity between transmission grids shall be negotiated between the entities responsible for the grids concerned and for the quality of service provided and, where appropriate, with the entities responsible in the Member States for importing and exporting electricity.

2. The conditions of transit shall, pursuant to the rules of the Treaty, be non-discriminatory and fair for all the parties concerned, shall not include unfair clauses or unjustified restrictions and shall not endanger security of supply and quality of service, in particular taking full account of the utilization of reserve production capacity and the most efficient operation of existing systems.

3. Member States shall take the measures necessary to ensure that the entities under their jurisdiction referred to in the Annex act without delay to:

— notify the Commission and the national authorities concerned of any request for transit in connection with contracts for the sale of electricity of a minimum of one year's duration,

— open negotiations on the conditions of the electricity transit requested,

— inform the Commission and the national authorities concerned of the conclusion of a transit contract,

— inform the Commission and the national authorities concerned of the reasons for the failure of the negotiations to result in the conclusion of a contract within 12 months following communication of the request.

4. Each the entities concerned may request that the conditions of transit be subject to conciliation by a body set up and chaired by the Commission and on which the entities responsible for transmission grids in the Community are represented.

Article 4

If the reasons for the absence of agreement on a request for transit appear unjustified or insufficient, the Commission, acting on a complaint from the requesting body or on its own initiative, shall implement the procedures provided for by Community law.

Article 5

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1991. They shall forthwith inform the Commission thereof.

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 29 October 1990.

For the Council

The President

A. BATTAGLIA

ANNEX

List of entities and grids in the Community covered by the Directive

Member State	Entity	Grid
Germany	Badenwerk AG Bayernwerk AG Berliner Kraft und Licht AG (Bewag) Energie-Versorgung Schwaben AG (EVS) Hamburgische Elektrizitätswerke (HEW) Preussen-Elektra AG RWE Energie AG Vereinigte Elektrizitätswerke Westfalen AG (VEW)	Interconnection grids
Belgium	CPTE — Société pour la coordination de la production et du transport de l'électricité	Coordinating body for public supply grid
Denmark	ELSAM ELKRAFT	Public supply grid (Jutland) Public supply grid (Seeland)
Spain	Red Eléctrica de España S.A.	Public supply grid
France	Électricité de France	Public supply grid
Greece	Δημόσια Επιχείρηση Ηλεκτρισμού (ΔΕΗ)	Public supply grid
Ireland	Electricity Supply Board	Public supply grid
Italy	ENEL	Public supply grid
Luxembourg	CEGEDEL	Public supply grid
Netherlands	SEP	Public supply grid
Portugal	EDP	Public supply grid
United Kingdom	National Grid Company Scottish Power Scottish Hydro-Electric Northern Ireland Electricity	High voltage transmission grids

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 March 1992

setting up a Committee of Experts on the Transit of Electricity between Grids

(92/167/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas, in the context of the completion of the internal energy market, the Commission has the objective of facilitating energy transfers by promoting the transit of electricity between grids within the meaning of Article 2 of Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids (1);

Whereas, to this end, it is desirable for the Commission to be advised by a committee of experts on matters relating to the smooth functioning of transit and related economic, technical, legal and social factors;

Whereas the entities responsible for the grids should be represented on that committee; whereas provision should also be made for the participation of particularly qualified persons capable of providing specific knowledge in the field of electricity transit;

Whereas it would be appropriate for the committee of experts also to act as the conciliation body provided for in Article 3 (4) of Directive 90/547/EEC;

Whereas, for the sake of the efficiency of the conciliation procedure, the committee of experts should meet in an *ad hoc* composition to consider any request for conciliation,

HAS DECIDED AS FOLLOWS:

Article 1

The Committee of Experts on Transit of Electricity between Grids, hereinafter referred to as 'the Committee', is hereby set up under the auspices of the Commission.

Article 2

Responsibilities

The tasks of the Committee shall be:

— to advise the Commission, at the latter's request,

— to propose conciliation compromises, at the request of the negotiating parties, in the event of specific requests for transit.

Article 3

Provision of advice

As part of its role of providing advice, the Committee:

(a) shall examine more specifically:

— the technical, financial and legal conditions of transit, taking into account economic and social factors,

(1) OJ No L 313, 13. 11. 1990, p. 30.

— measures to promote the development of electricity transfers and the improvement of infrastructures,

— the possibilities of cooperation with entities in non-member countries;

(b) shall assist the Commission in connection with:

— the drafting of an annual report on the implementation of Directive 90/547/EEC,

— the revision of the Annex to Directive 90/547/EEC.

Article 4

Composition

1. The Committee shall comprise 17 members, namely:

— 12 representatives of the high-voltage grids operating in the Community (one representative per Member State),

— three independent experts whose professional experience and competence in the field of electricity transit in the Community are widely recognized,

— one representative of Eurelectric,

— one Commission representative.

2. The members of the Committee shall be appointed by the Commission. The 12 representatives of the grids and the Eurelectric representative shall be appointed after consultation of the circles concerned from a list containing at least two proposals for each post.

Article 5

Publication

The list of members shall be published by the Commission in the *Official Journal of the European Communities.*

Article 6

Term of office

1. The term of office of members of the Committee shall be four years.

2. Their term of office shall not be renewable.

3. By way of derogation from paragraphs 1 and 2, the term of office of half of the members appointed on the setting-up of the Committee shall be two years and shall be renewable for a further four-year period.

4. On expiry of their term of office, the members of the Committee shall remain in office until they are replaced.

5. Where the term of office of a member ends before the expiry of the four-year period, as a result of his resignation or death or for any other reasons, he shall be replaced for the remainder of his term of office in accordance with Article 4 (2).

6. The Commission may bring to an end the term of office of a member after consulting the circles concerned referred to in Article 4 (2) and to replace him in accordance with that provision.

7. The office of member of the Committee shall be unpaid.

Article 7

Operation

1. The Committee shall be chaired by the Commission representative.

2. Representatives of the Commission departments concerned shall attend meetings of the Committee as observers.

3. Secretariat services for the Committee shall be provided by the Commission departments.

4. The chairman may invite any person with particular competence in respect of an item included on the agenda to take part in the deliberations as an expert. Experts shall take part in the deliberations only for the item for which they have been invited to attend.

5. The Committee shall adopt its own rules of procedure.

6. The Committee shall meet at least once a year.

Article 8

Conciliation

1. Only the parties to a dispute relating to a specific request for transit may refer a matter to the Committee.

2. The Committee shall meet in an *ad hoc* composition to consider any request for conciliation.

3. The Committee in its conciliation composition shall comprise the chairman and six members:

— the Eurelectric representative,

— two experts chosen by and from among the three experts who asre members of the Committee,

— three representatives of the grids not involved in the negotiations relating to the specific request for transit on which conciliation has been requested, chosen by and from among the twelve representatives of the grids which are members of the Committee.

The chairman shall not vote.

4. Any conciliation request must be acted upon.

5. The Committee in its conciliation composition shall designate a rapporteur from among its members.

6. The representatives of the grids involved in the negotiations on a specific request for transit on which conciliation by the Committee has been requested shall be invited to present their points of view.

7. After discussion by the Committee in its conciliation composition, the rapporteur shall formulate a conciliation compromise on which there is likely to be a consensus among the five other members of the Committee. In the event of disagreement, the rapporteur shall formulate a conciliation compromise on which there is likely to be agreement among a majority of the five other members. In that event, the opinions of the minority members shall be put on record.

8. The chairman shall submit the conciliation compromise to the parties, accompanied by any minority opinions, within three months of the date on which the request for conciliation by the Committee was submitted.

9. The outcome of the conciliation procedure shall not have binding force.

10. Representatives of the Member States concerned by a request for transit may take part in the conciliation procedure as observers.

Article 9

Confidentiality

Members of the Committee and, where appropriate, the experts referred to in Article 7 (4), shall be required not to disclose information brought to their knowledge through the work of the Committee, where the Commission informs them that the opinion requested or the question raised relates to a confidential matter.

Article 10

Effect

This Decision shall take effect on 4 March 1992.

Done at Brussels, 4 March 1992.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 31 May 1991

on the transit of natural gas through grids

(91/296/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market during the period ending 31 December 1992; whereas successive European Councils have recognized the need for a single internal market and, particularly in Rhodes, the need for a single energy market;

Whereas completion of the internal market in energy in general, and more particularly in the natural gas sector, requires the development of a Community energy strategy that will be equal to the challenges of:

— security of supply,

— environmental protection;

Whereas there must be greater integration of the European energy market if the single internal market is to be achieved; whereas natural gas is an essential component of the Community's energy balance;

Whereas greater reliance on natural gas is desirable as part of diversification of energy sources;

Whereas the completion of the internal market for energy, more particularly in the natural gas sector, will take into account the objective of economic and social cohesion;

Whereas the objective of the internal natural gas market is to ensure greater profitability, compatibility with the environment and security of supplies by free trade, without unacceptable restrictions on competition; whereas the specific characteristics of the natural gas sector must be taken into account if the pursuit of this objective is to be successful;

Whereas in completing the internal market in natural gas, consideration should be given not only to comparable features in the Member States but equally to sometimes significant differences;

Whereas trade in natural gas between the high-pressure gas transmission grids of European countries is increasing from year to year and has implications in terms of investment; whereas the Community's security of natural gas supply could be improved and costs reduced by operating the interconnections required for such trade;

Whereas the exchange of natural gas between high-pressure gas transmission grids is being conducted on such a scale that the transactions requested and their consequences should be systematically known to the Commission;

Whereas it is possible and desirable to increase natural gas transfers between grids and also take account of the imperatives of security and quality of natural gas supply;

(1) OJ No C 247, 28. 9. 1989, p. 6 and OJ No C 268, 24. 10. 1990, p. 9.
(2) OJ No C 231, 17. 9. 1990, p. 72 and OJ No C 129, 20. 5. 1991.
(3) OJ No C 75, 26. 3. 1990, p. 20.

whereas studies show that greater natural gas transfers between grids can minimize the cost of investment;

Whereas in the future additional interconnections between several Member States will need to be made to allow adequate supplies;

Whereas increased natural gas transfers between grids would also encourage cooperation between natural gas transmission companies to find ways of improving natural gas transmission equipment; whereas such improvements will also cut costs;

Whereas there are still obstacles to increased trade in natural gas between grids; whereas, provided that they are not due to the nature of the technology used or of the grids themselves, such obstacles can be reduced by making the transit of natural gas through grids compulsory and introducing an appropriate system for monitoring compliance with this obligation;

Whereas this obligation and monitoring system concern the transit of natural gas involved in trade which is in the Community interest, namely transit through high-pressure grids;

Whereas the financial, technical and legal conditions of such transit must, as a general rule, be worked out directly between the grids concerned;

Whereas the conditions of transit should be fair and should not bring about, directly or indirectly, conditions contrary to Community competition rules;

Whereas, in order to facilitate the conclusion of transit contracts, the Commission is providing for a conciliation procedure to be set up under which submission will be compulsory at the request of one of the parties, without the result of that procedure producing a legally binding effect;

Whereas it is necessary to approximate the provisions adopted by the Member States which affect the transit of natural gas;

Whereas the establishment of an internal natural gas market will stimulate the gradual dynamic integration of national natural gas grids; whereas in this context special infrastructure measures would held to accelerate the linking-up of outlying areas and islands in the Community to the overall interconnected grid;

Whereas the interconnection of European grids extends over a geographical territory which does not coincide with the Community's frontiers: whereas there is an obvious advantage in seeking cooperation with third countries involved in the interconnected European grid,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take the measures necessary to facilitate transit of natural gas between high-pressure transmission grids in accordance with the conditions laid down in this Directive.

Article 2

1. Every transaction for the transport of natural gas under the following conditions shall constitute transit of natural gas between grids, for the purpose of this Directive, without prejudice to any special agreements concluded between the Community and third countries:

(a) transmission is carried out by the entity or entities responsible in each Member State for high-pressure natural gas grids, with the exception of distribution grids, in a Member State's territory which contribute to the efficent operation of European high-pressure interconnections;

(b) the grid of origin or final destination is situated in the Community;

(c) this transport involves the crossing of at least one intra-Community frontier.

2. The high-pressure natural gas transmission grids and the entities responsible for them in the Member States, which are listed in the Annex, shall be covered by this Directive. This list shall be updated by the Commission, after consultation with the Member State concerned, whenever necessary within the context of the objectives of this Directive and in particular taking into account paragraph 1 (a).

Article 3

1. Contracts involving transit of natural gas between grids shall be negotiated between the entities responsible for those grids and for the quality of service provided and, where appropriate, with the entities responsible in the Member States for importing and exporting natural gas.

2. The conditions of transit shall, pursuant to the rules of the Treaty, be non-discriminatory and fair for all parties concerned, shall not include unfair clauses or unjustified restrictions and not endanger security of supply nor quality of service, in particular taking full account of the utilization of reserve production and storage capacity and the most efficient operation of existing systems.

3. Member States shall taken the measures necessary to ensure that the entities under their jurisdiction referred to in the Annex act without delay to:

— notify the Commission and the national authorities concerned of any request for transit;

— open negotiations on the conditions of the natural gas transit requested;

— inform the Commission and the national authorities concerned of the conclusion of a transit contract;

— inform the Commission and the national authorities concerned of the reasons for the failure of the negotiations to result in the conclusion of a contract within twelve months following communication of the request.

4. Each of the entities concerned may request that the conditions of transit be subject to conciliation by a body, set up and chaired by the Commission on which the entities responsible for grids in the Community are represented.

Article 4

If the reasons for the absence of agreement on a request for transit appear unjustified or insufficient, the Commission, acting on a complaint from the requesting body or on its own initiative, shall implement the procedures provided for by Community law.

Article 5

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1992. 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 a reference shall be laid down by the Member States.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 31 May 1991.

For the Council

The President

A. BODRY

ANNEX

List of entities and high-pressure gas transmission grids

Member State	Entity	Grid
Federal Republic of Germany	Bayerngas GmbH	Grid supplying end distributors (municipal authorities, etc.) and major end users
	BEB Erdgas und Erdöl GmbH	
	Deutsche Erdgas Transport GmbH	
	Energieversorgung Weser Ems AG (EWE)	
	Erdgas Verkaufs-Gesellschaft mbH	
	Ferngas Nordbayern GmbH	
	Ferngas Salzgitter GmbH	
	Gas-Union GmbH	
	Mobil Oil AG	
	Ruhrgas AG	
	Saar Ferngas AG	
	Thyssengas GmbH	
	Vereinigte Elektrizitätswerke Westfalen AG (VEW)	
	Westfälische Ferngas AG	
	Energieversorgung Mittelrhein	
	EWAG, Nürnberg	
	Erdgas Schwaben GmbH	
	Erdgas Südbayern GmbH	
	GEW Köln	
	Gasversorgung Süddeutschland	
	Gasversorgung Südhannover/Nordhessen	
	Hamburger Gaswerke	
	Landesgasversorgung Niedersachsen	
	Main-Gaswerke AG	
	Schleswag AG	
	Südhessische Gas und Wasser AG	
	Technische Werke der Stadt Stuttgart AG	
	Thüga AG	
	GASAG, Berlin	
Belgium	Distrigaz SA	Public grid
Denmark	Dansk Naturgas A/S	Grid supplying end distributors (municipal authorities, etc.) and major end-users
Spain	Empresa National de Gas SA (ENAGAS)	
	Catalana de Gas	
	Gas De Euskadi	
Greece	DEPA	
Luxembourg	SOTEG	
Netherlands	NV Nederlandse Gasunie	
Italy	Snam SpA	
France	Gaz de France	Public grid
	SNGSO	
	Compagnie française du méthane (CEFEM)	
United Kingdom	British Gas	High-pressure gas grid
Ireland	Irish Gas Board	

Chapter 4 — Nuclear energy

10.12.63 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 2849/63

REGULATION No 7/63/EURATOM OF THE COUNCIL

of 3 December 1963

on rules of procedure of the Arbitration Committee provided for in Article 18 of the Treaty establishing the European Atomic Energy Community

THE COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 18 thereof;

Having regard to the proposal from the Court of Justice;

Whereas it is for the Council, acting on a proposal from the Court of Justice, to lay down the rules of procedure of the Arbitration Committee;

Whereas, when establishing the way in which the Arbitration Committee should be organised and operate and the procedure to be followed in Committee, it is important to encourage recourse to that Committee to settle any dispute which may arise when licences are granted;

Whereas, to this end, it is appropriate that the Arbitration Committee should consist of nationals of Member States having the legal or technical training or experience necessary for the proper functioning of the Committee in various fields; whereas the Committee should sit in the form of arbitration boards consisting of a limited number of arbitrators; whereas it should be possible to propose to the parties an arrangement by way of settlement at any stage of the procedure and such procedure should be free of charge;

Whereas the members of the Arbitration Committee should perform their duties with complete independence and should accordingly be immune from legal proceedings in respect of any action taken by them in their official capacity;

Whereas it is important to limit as far as possible the extent of the administrative machinery required for the proper functioning of the Arbitration Committee and the expenses arising therefrom, and to this end to attach to the Court of Justice the registry of the Committee;

HAS ADOPTED THIS REGULATION:

Composition of the Arbitration Committee

Article 1

Paragraph 1

The Arbitration Committee provided for in Article 18 of the Treaty establishing the European Atomic Energy Community (hereinafter called the 'Committee') shall consist of a Chairman, two Vice-Chairmen and twelve other members who are nationals of the Member States of the Community, chosen from persons whose independence is beyond doubt and who possess the technical or legal knowledge required for the proper functioning of the Committee, and are appointed for six years by the Council of the European Atomic Energy Community (hereinafter called the 'Council').

Members of the Committee must enjoy full rights of citizenship, and the Chairman and Vice-Chairmen must, in addition, possess the necessary legal knowledge and fulfil the conditions required in their respective countries for the exercise of judicial office.

When appointing members of the Committee, the Council shall satisfy itself that there is a proper balance between members having legal training or experience and those having technical training or experience.

Paragraph 2

The Court of Justice of the European Communities (hereinafter called the 'Court') shall submit to the Council eighteen candidates for the posts of Chairman and Vice-Chairmen of the Committee, and thirty-six candidates for the other posts to be filled on the Committee.

Candidates who have not been appointed by the Council to the posts of Chairman and Vice-Chairmen of the Committee shall be considered as put forward for the other posts also.

Paragraph 3

The President of the Court shall, two months in advance, inform the Governments of the Member States of the date on which the Court intends to draw up the list of candidates to be submitted to the Council.

Paragraph 4

Members of the Court shall choose from the candidates put forward those to be proposed to the Council. The selection shall be made by secret ballot.

Candidates who obtain an absolute majority in the first ballot, or a simple majority in the second ballot, shall be proposed.

Paragraph 5

Each member appointed by the Council must let the Council know, within thirty days from his appointment, whether he accepts that appointment. Should he not reply or should he refuse it, the appointment shall be deemed never to have been made and the Council shall appoint another member.

Paragraph 6

Members' appointments shall be renewable.

Article 2

Paragraph 1

The Committee shall be constituted upon acceptance of office by all members who have been appointed.

Paragraph 2

When taking up their duties members of the Committee shall, before the Court and in open court, give a solemn undertaking to perform their duties impartially and conscientiously; to preserve the secrecy of the deliberations; and, both during and after their term of office, to respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the discharge of certain duties or the acceptance of certain benefits.

Article 3

Members of the Committee shall be immune from legal proceedings in respect of acts performed by them in their official capacity, including words spoken or written. After they have ceased to hold office, they shall continue to enjoy this immunity.

The Court, sitting in plenary session, may waive this immunity.

Article 4

No member of the Committee may take part in the settlement of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or on which he has been called upon to pronounce as a member of a court or of a commission of inquiry or in any other capacity.

If, for some special reason, one of the members of the Committee considers that he should not take part in the judgment or examination of a particular case, he shall so inform his Chairman. If, for some special reason, the Chairman of the Committee considers that any member should not sit in a particular case, he shall notify that member accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Committee.

Article 5

Paragraph 1

Apart from replacement, or death, the duties of a member of the Committee shall end when he resigns.

Where a member resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. A vacancy shall arise upon receipt of that letter by the President of the Council.

Save where paragraph 2 applies, every member shall continue to hold office until his successor takes up his duties.

Paragraph 2

Members of the Committee may be deprived of their office only if, in the unanimous opinion of the Judges and Advocates-general of the Court, they no longer fulfil the requisite conditions or meet the obligations arising from their office.

The Registrar of the Court shall notify the decision of the Court to the member concerned.

Where a decision deprives a member of the Committee of his office, a vacancy shall arise upon that notification.

Article 6

Paragraph 1

A member who is to replace another member whose term of office has not expired shall be chosen by the Council for the remainder of his predecessor's term from among the last candidates put forward by the Court under Article 1. The Council may, however, invite the court to put forward three additional candidates.

Paragraph 2

In the event of the absence or inability to attend of the Chairman of the Committee, his duties shall be discharged by the Vice-Chariman with the longest service or by the older of the two if the Vice-Chairmen have each served for an equal number of years.

Article 7

The Council shall, on a proposal from the Court, determine the payments to be made to members of the Committee.

Article 8

The Committee shall have its seat at the place where the Court has its seat. The arbitration board referred to in paragraph 1 of Article 10 may, by agreement with the parties, decide exceptionally to sit in any other place within the Community.

Article 9

The duties of the Registrar of the Committee shall be performed by an official of the Court whom the Court shall, by agreement with the Chairman of the Committee, appoint for this purpose. His duties shall be determined by the Committee on a proposal from the Chairman and shall be approved by the Court.

Appointment of arbitrators and choice of official languages

Article 10

Paragraph 1

Where a dispute is referred to the Committee, a copy of a special agreement between the parties, within the meaning of Articles 20 and 22 of the Treaty establishing the European Atomic Energy Community, shall be communicated to the Chairman of the Committee.

The Committee shall sit in the form of arbitration boards consisting of three arbitrators, namely the Chairman or one of the Vice-Chairmen and two members of this Committee. Each of the parties to the dispute shall choose one of those two members.

The Chairman of the Committee shall, in consultation with the Vice-Chairmen, share with them the work of arbitration in disputes in order to ensure that, for the benefit of the parties, the settlement of their disputes be expedited. There shall be as many arbitration boards as there are disputes. The Chairman and each of the Vice-Chairmen of the Committee may assume the chairmanship of more than one board at the same time and each of the other members may sit on more than one arbitration board at the same time.

Paragraph 2

Notwithstanding their duty to act in place of the Chairman of the Committee in the event of his absence or his inability to attend, the Vice-Chairmen shall preside over the arbitration boards as appointed by the Chairman of the Committee.

As soon as a dispute is brought before the Committee, the Chairman of the Committee shall act as Chairman of the arbitration board or shall appoint one of the Vice-Chairmen as Chairman of that board. The Chairman of the arbitration board shall then set each party a time limit not exceeding one month within which to name in writing the members of the Committee whom they have chosen as arbitrators.

The time limit provided for in the preceding subparagraph may, on a reasoned request from one of the parties, be extended for a like period by the Chairman of the arbitration board.

Where one of the parties fails to choose an arbitrator in due time, the appointment of such arbitrator shall be made by the President of the Court, at the request of the Chairman of the arbitration board.

Paragraph 3

In circumstances referred to in Article 4 or in any other instance where an arbitrator is prevented from taking part in proceedings, the party who appointed that arbitrator or who, in circumstances referred to in the fourth subparagraph of paragraph 2 of this Article, should have appointed him shall appoint another arbitrator within one month. The fourth subparagraph of paragraph 2 of this Article shall apply *mutatis mutandis*.

Paragraph 4

Where an arbitrator is replaced during the proceedings, action shall continue from the stage it had reached at the time when the vacancy occurred. However, where the newly-appointed arbitrator so requests, the oral proceedings shall be started again from the beginning.

Article 11

Paragraph 1

By way of derogation from Article 10, the parties may specify by special agreement that their dispute shall be submitted for decision either to one sole arbitrator chosen *ad personam* (the Chairman of the Committee, a Vice-Chairman or another member) or to an arbitration board consisting, in addition to its Chairman, of four members, each of the parties nominating two members.

Paragraph 2

The special agreement on arbitration shall specify the subjects in dispute, list the questions on which the arbitrators will have to adjudicate, and state the basis used by the parties in deciding the composition of the arbitration board.

Article 12

Proceedings shall be conducted in one of the official languages of the Community. The language for the proceedings shall be chosen by the proprietor of the patent, provisionally protected patent right, utility model or patent application.

The arbitration board may, however, at the request of one party and having heard the other party, authorise partial or full use of another official language as procedural language. Such request may not be made by the Commission of the EAEC.

Conciliation

Article 13

Paragraph 1

The arbitration board may at any stage of the proceedings suggest to the parties a conciliation arrangement.

In that event the arbitration board shall, at the conclusion of its inquiry, inform the parties either orally or in writing of the terms of the draft arrangement which it could recommend for acceptance by the parties, requesting them to decide thereon within a set period. It shall inform the parties either in writing or orally of the reasons which, in its opinion, favour acceptance.

Paragraph 2

If the parties accept the conciliation arrangement, a report giving the terms thereof shall be drawn up and signed by the Chairman of the arbitration board, the Registrar and the parties. A copy, signed by the Chairman of the board and the Registrar, shall be given to the parties. The Chairman of the arbitration board shall satisfy himself that the settlement is carried out by the parties. If the parties fail to carry out their obligations within the time limits provided for in the conciliation report, the arbitration board shall make its award.

Paragraph 3

If one party does not or both parties do not accept the arrangement and the arbitration board considers it useless to try to obtain the agreement of the parties to different terms, the case shall proceed to adjudication. The decision of the board shall then record that no conciliation between the parties could be achieved, but the decision shall not reproduce the terms of the proposed arrangement.

Proceedings

Article 14

The arbitration board shall decide whether there should be an exchange of written statements before oral hearings. In such event the chairman of the board shall determine the number of written statements and the time limits to be observed.

The Registrar shall communicate these time limits to the parties, who shall address their written statements to the Registrar; the latter shall transmit the statements to the opposing party and shall prepare the file for arbitration.

The Chairman of the arbitration board shall fix the date and time for the first hearing. This information shall be given by the Registrar to the parties in good time.

Article 15

When, in a case coming under the first paragraph of Article 14, one of the parties does not submit its writ-

ten statement or statements within the time limit fixed by the Chairman of the arbitration board, the latter shall nevertheless fix the date and time for the hearing.

If one of the parties, having been duly summoned, does not appear, the arbitration board may decide in favour of the submissions of the other party, after having satisfied itself that those submissions are well founded either in law or in fact. The arbitration board may also, where it considers this advisable, call for a further hearing.

Article 16

Each party may be represented or assisted by one adviser or more than one. Each party shall at the earliest possible time notify the Registrar of its intention in this matter, and the Registrar shall inform the opposing party thereof. The lodging by an adviser of either the special agreement or written statements shall take the place of such notification.

Article 17

Where the arbitration board considers it advisable, it may make an inspection; the parties may be present thereat.

Article 18

The arbitration board shall decide how the proceedings shall be conducted and the duration thereof. The board shall appraise the evidence as it thinks fit.

Article 19

The hearing shall be conducted by the Chairman of the arbitration board. It may be conducted in public only if so decided by the arbitration board with the consent of the parties.

Minutes of each hearing shall be made and shall be signed by the Chairman of the arbitration board and by the Registrar.

Article 20

When the parties have finished explaining their cases, the hearing shall be declared closed.

Until an award has been made, however, the arbitration board shall be empowered to reopen the hearing where fresh evidence which may have a decisive influence on its opinion comes to light, or where, after a more thorough examination, it wishes to have certain points clarified.

Article 21

The deliberations of the arbitration board shall be and shall remain secret. All decisions of the arbitration board shall be taken by a majority vote.

Article 22

The arbitration award shall be drawn up in writing and bear the date of the day on which it is signed. It shall mention the names of the arbitrators and be signed by them; it shall state the reasons on which it is based; the special agreement to submit the matter to arbitration may, however, provide that the reasons for certain specific points shall not be given.

The arbitration board may decide that the award shall be read in open court, the parties being present or having been duly summoned.

The award shall be notified to the parties forthwith.

Article 23

In accordance with the Treaty establishing the European Atomic Energy Community and with general principles common to the laws of the Member States, the arbitration board shall decide *ex aequo et bono*.

Article 24

This Regulation shall be applicable in all cases, including those where, in accordance with Article 11 (1), the dispute is submitted to a sole arbitrator or to a board of arbitrators of five members.

Budgetary and financial provisions

Article 25

Proceedings before the Committee shall be free of charge. Costs incurred by the Committee, such as payments provided for in Article 7, expenses of the registry and other administrative expenses and in addition purely procedural expenses for the purpose of conciliation or of arbitration shall be charged to the operating budget of the European Atomic Energy Community in a separate chapter in Section IV relating to the Court.

Article 26

Expenses defined as recoverable in Article 73 of the Rules of Procedure of the Court shall be borne by the parties. If the parties have not agreed on expenses in

a special agreement as referred to in Article 10 (1), the arbitration board shall decide on such expenses *ex aequo et bono*. The scale of charges provided for in Article 15 (5) of the Rules of Procedure of the Court shall be applicable.

Where there is any dispute as to recoverable expenses, the arbitration board to which the case was assigned shall adjudicate by means of an order, at the request of the party concerned, after having heard the comments of the other party.

Article 27

Expenses which a party has been obliged to incur for the purpose of enforcement shall be reimbursed by the other party in accordance with the scale of charges operative in the State where the enforcement takes place.

Final provisions

Article 28

This Regulation may, on a proposal from the Court, be revised and supplemented at any time after the Committee has commenced its duties. The Chairman of the Committee may transmit to the Court suggestions for amending or supplementing the rules of procedure contained in this Regulation.

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

Done at Brussels, 3 December 1963.

For the Council

The President

J. M. A. H. LUNS

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REGULATION (EURATOM) No 3

implementing Article 24 of the Treaty establishing the European Atomic Energy Community

THE COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to Articles 24, 25 and 217 of the Treaty establishing the European Atomic Energy Community;

Having regard to the proposal from the Commission;

Whereas security measures must be put into effect for each of the security gradings to be applied to information the disclosure of which is liable to harm the defence interests of one or more Member States, and whereas such measures must be exercised under the supervision of the Commission in respect of both the subject matter of such information and the persons and undertakings to which such information must be communicated in the territory of Member States;

HAS ADOPTED THIS REGULATON:

PART ONE

GENERAL PROVISIONS

SECTION I

Scope

Article 1

Scope in relation to subject matter

1. This Regulation shall determine the security gradings and the security measures to be applied to information acquired by the Community or communicated by Member States which is covered by Articles 24 and 25 of the Treaty establishing the European Atomic Community (hereinafter called 'the Treaty').

Such information shall hereinafter be called: Euratom Classified Information ('ECI').

However, when a State communicates information covered by Article 25, the Regulation shall apply only if the use to which the information is put falls within the scope of the Treaty.

2. Reports, data, documents, objects, reproducing media and matter relating to information as referred to in the first paragraph shall be treated as ECI.

Article 2

Contracts, transactions or agreements concerned with activities coming within the scope of the Treaty which are concluded, extended or renewed between a Member State and a natural or legal person after the entry into force of this Regulation shall not be relied upon as a ground for not complying with the provisions of this Regulation.

Security measures which derive from contractual obligations put into effect prior to this Regulation may, however, be applied instead of the provisions of the Regulation for the period specified in the contract concerned.

Article 3

Scope in relation to persons

The security measures laid down in this Regulation shall be applied to ECI and the instructions needed to ensure that these measures are observed shall be issued by:

(a) institutions, committees, services and installations of the Community;

(b) Member States and their authorities;

(c) Joint Undertakings;

(d) persons and undertakings as defined in Article 196 of the Treaty.

Article 4

Joint Undertakings

The Statutes of each Joint Undertaking shall determine whether that Joint Undertaking is to be treated, for the purposes of this Regulation, in the same way as the institutions, services and installations of the Community or as persons and undertakings as defined in Article 196 of the Treaty.

Article 5

Provisions supplementing the Security Regulation

1. The rules for the protection of ECI laid down in this Regulation shall be treated as minimum requirements.

2. Where necessary, the Community and the Member States shall supplement the Security Regulation within their respective jurisdictions to take due account of local conditions and may strengthen it by means of appropriate provisions of their own provided, however, that they do not adversely affect the uniform treatment of ECI.

SECTION II

Organisation

Article 6

Security Bureau

Under the authority and responsibility of the Commission, the Security Bureau set up by the Commission shall:

(a) co-ordinate and ensure the general application of security measures;

(b) supervise the application of those measures in the institutions, committees, services and installations of the Community;

(c) be empowered to have the application of the security measures for ECI as laid down in this Regulation verified in the territory of Member States by the national authorities and, if it considers this necessary, carry out such verification itself in collaboration with those authorities;

(d) propose any amendments it considers necessary for the application of this Regulation.

Article 7

Bodies responsible for applying security measures in Member States

Each Member State shall appoint an official body to be responsible for applying or causing to be applied in the territory within its jurisdiction the security measures laid down in this Regulation.

Article 8

Security Officers

1. In each institution, service and installation of the Community where ECI is prepared or kept, the Security Office shall appoint an official to be responsible for applying this Regulation (hereinafter called 'Security Officer').

2. Authorities of Member States and all persons or undertakings as defined in Article 196 of the Treaty who prepare or have possession of ECI shall, with the approval of the official body responsible for security referred to in Article 7, appoint an official to be responsible for applying this Regulation (hereinafter called 'Security Officer').

3. Security Officers shall in particular be responsible for:

(a) effecting registration as provided in Article 23;

(b) keeping up to date, by category, the list of all persons entitled to have access to ECI;

(c) instructing employees in their duties with regard to security;

(d) ensuring the application of the physical security measures.

SECTION III

Classification and declassification of ECI

Article 9

Principle

Security gradings shall be applied only to the extent strictly necessary.

Article 10

Security gradings

ECI shall be classified according to a scale of security gradings as follows:

1. *Eura — Top Secret:* where unauthorised disclosure of the information would have extremely serious consequences for the defence interests of one or more Member States;

2. *Eura — Secret:* where unauthorised disclosure of the information would have serious consequences for the defence interests of one or more Member States;

3. *Eura — Confidential:* where unauthorised disclosure of the information would be harmful to the defence interests of one or more Member States;

4. *Eura — Restricted:* where unauthorised disclosure of the information would affect the defence interests of one or more Member States but where a lesser degree of security is required than in the case of documents classified as *Eura — Confidential.*

Article 11

Authorities competent in respect of classification

1. The Commission shall classify information covered by Article 24 of Treaty:

(a) provisionally, where it considers that disclosure is liable to harm the defence interests of one or more Member States;

(b) definitively, as soon as the Member States have made known the security grading they are requesting. The highest grading so requested shall be applied. The Commission shall notify the Member States accordingly.

The Commission shall establish and revise periodically, in collaboration with the competent authorities of the Member States, a non-exhaustive list of the categories of information to which a security grading should be applied.

2. The Commission shall notify both the competent institutions and the organs of the Community as well as the other Member States of the security grading required by the orginating State in respect of applications for patents or utility models covered by Article 25 of the Treaty.

Article 12

Classification of documents

1. The security grading applicable to a document relating to ECI shall be determined solely on the basis of the contents of the document in question and not on the basis of the grading of the ECI subject-matter to which it relates.

To avoid endangering the security of documents which come under *Eura — Secret* and *Eura — Top Secret* gradings, references to such documents shall be kept to a minimum and made in a way which shall disclose neither their contents nor their security gradings.

The following shall be subject to the security grading which applies to a document:

(a) copies of that document;

(b) documents concerning research or production carried out on the basis of that document.

2. If a document relating to ECI is made up of several parts, the security grading applicable to the whole shall always be that of the part requiring the highest grading.

Article 13

Changes in security grading and declassification

The security grading applied to any given ECI may be changed or declassified in the manner provided for in the fifth subparagraph of Article 24 (2) of the Treaty and in Article 25 (3) of the Treaty.

PART TWO

PROVISIONS RELATING TO PERSONS

Article 14

Access to ECI

1. Access to and possession of ECI may be granted only to persons who are duly authorised and who, in addition, on account of their duties, have a clear need to be informed of or to receive such information.

2. No authorisation shall be required for access to ECI graded *Eura — Restricted.*

Article 15

Authorisation

1. Save as otherwise laid down by the Council, authorisation shall be granted only to persons who have undergone screening in accordance with Article 16 and have received instructions as required under Article 17.

2. Authorisation shall be given in writing. The authorising document shall not be held by the authorised person.

3. The Security Officers referred to in Article 8 shall be authorised in the same manner.

4. The following shall have power to grant authorisations:

(a) in the case of members of institutions, members of committees and officials and servants of the Community, the Security Bureau;

(b) in all other cases, the Member State which, under the first subparagraph of Article 16 (2), is responsible for screening.

Authorisation granted by the Security Bureau or by a Member State shall be recognised by all organs of the Community and by all Member States.

5. The Security Bureau and the official bodies responsible for security provided for in Article 7 shall, each in respect of its own affairs, keep a list of the persons authorised to have access to ECI-graded *Eura — Top Secret* and *Eura — Secret*.

Article 16

Screening

1. The object of screening shall be to ensure that the person concerned satisfies the necessary conditions for having access to ECI.

The scope of the screening shall depend on the security grading for which authorisation is requested.

2. Screening shall in all cases be carried out under the responsibility of the Member State of which the person concerned is a national. If the person concerned is not a national of any Member State, the Member State in whose territory he has his fixed address or his usual residence shall be responsible.

If the person concerned has resided for some time or if he has connections in a Member State other than the Member State referred to in the preceding subparagraph, that Member State shall be asked by the Member State responsible for screening to participate in the investigation and shall communicate the results of its inquiries to the Member State responsible for screening.

3. The relevant provisions and directives adopted in each Member State shall apply for the purposes of screening procedure.

Save as otherwise determined by the Council in respect of members of institutions and officials and servants of the Community, screening requests made by the Security Bureau shall be addressed to the competent authorities of the Member State which, within the meaning of the first subparagraph of paragraph 2, will be responsible for carrying out the screening. Screening requests shall be accompanied by personal particulars certified by those concerned, giving full details of the personal status of the individuals concerned and their families, activities and fixed addresses covering the preceding ten years.

In the case of officials and servants of Member States and persons and undertakings as defined in Article 196 of the Treaty, including employees of such undertakings, screening shall be carried out at the request of the Member State concerned.

4. When the screening has been completed, the following procedure shall be applied in respect of members of the institutions and officials and servants of the Community:

(a) On completion of the screening, the Member State which was responsible for it within the meaning of the first subparagraph of paragraph 2 shall forward an opinion to the Security Office. That opinion shall state whether or not, on the basis of the results of the screening, there is any objection to the person concerned being authorised to have access to ECI of a given grading. In giving its opinion, the Member State shall take account of all information supplied by any other Member State taking part in the screening.

(b) If the opinion given in accordance with subparagraph (a) does not contain any objection, the Security Bureau may, if it considers that there is no serious reason for not doing so, grant the authorisation in respect of the person concerned. The Member State responsible for carrying out the screening shall be informed by the Security Bureau of the decision.

(c) If the opinion given in accordance with subparagraph (a) is unfavourable, the Security Bureau shall be bound by that opinion and shall not grant the authorisation.

(d) If, after authorisation is granted, information liable to raise doubts as to the suitability of the person authorised should come to the knowledge of the Security Bureau or of a Member State, that information shall be communicated forthwith to the Member State responsible for carrying out screening within the meaning of the first subparagraph of paragraph 2. That Member State shall review its original opinion and inform the Security Office whether it considers that the authorisation should be suspended. The Security Bureau shall, comply with the opinion of the Member State, provided that if the opinion is favourable the Security Bureau considers there is no serious reason for not doing so.

Article 17

Instructions

1. On taking up their duties and at regular intervals thereafter, all persons in the service of the Community or of Member States and all those covered by Article 196 of the Treaty whose occupations give them access to ECI shall receive instructions from the Security Officer referred to in Article 8 concerning the need for security and how it is to be maintained.

2. In giving such instructions, it shall be stressed that any breach of the obligation to maintain the security of ECI may also be treated as a breach of the criminal law applicable in respect of acts endangering the security of the State.

3. Persons who have received such instructions shall sign a declaration confirming that they have received the necessary instructions and affirming that they undertake to comply therewith.

Article 18

Visits and exchange of information

1. Where, in the course of a visit, a person in the service of one of the institutions or of one of the services or installations of the Community, or subject to the jurisdiction of a Member State, has to receive or discuss ECI graded *Eura — Top Secret* or *Eura — Secret* which is in the possession either of a body other than the body in whose service he is employed or of a person subject to the jurisdiction of another Member State, a prior agreement shall be concluded between those bodies or those persons. The agreement shall stipulate that the principal of the body to which the visitor belongs or, if there is no such body, the official body provided for in Article 7, shall send a document, certified where appropriate by the Security Officer, stating the reason for the visit and full personal particulars by which the visitor may be identified. Where appropriate, that document shall also specify his degree of authorisation.

2. The Security Officer of the body visited shall provide guidance for the visitor during his visit.

PART THREE

PHYSICAL PROTECTION OF ECI

SECTION I

Distinctive marking and reproduction of ECI

Article 19

Distinctive marking

1. The security gradings *Eura — Top Secret, Eura — Secret* and *Eura — Confidential* shall be shown by affixing a clearly visible marking with a stamp at the top and bottom of each page of every document relating to ECI.

For the *Eura — Restricted* grading it shall be sufficient to stamp or to type those words only at the top of every page of the relevant documents. In the case of a document bound into a volume those words shall be shown only at the top of the first page of that volume.

2. Each page of a document relating to ECI graded *Eura — Confidential* or of a higher grading shall be numbered. The total number of pages of ECI documents graded *Eura — Top Secret* shall be given on the first page; each copy of such a document shall bear a serial number. The reference of a document relating to ECI graded *Eura — Top Secret* shall be given on each page used.

3. If the security grading of any given ECI is changed, the relevant documents shall be appropriately marked to correspond with the new grading of the ECI.

Article 20

Reproduction

1. The number of complete or partial reproductions of ECI, in whatever form or by whatever methods they are made, shall be strictly limited to immediate and essential requirements.

2. Reproduction (for example, reprints, copies, extracts, translations, etc.) of ECI graded *Eura — Top Secret* shall, in the case of ECI communicated in accordance with Article 24 of the Treaty, be made only with the consent of the Security Bureau and, in the case of ECI communicated pursuant to Article 25 of the Treaty, with the consent of the Member State in which the ECI originated.

3. Before ECI graded *Eura — Secret* is reproduced, the Security Officer of the undertaking or the body in possession of the ECI shall be informed.

4. All index references identifying ECI at the time when it is reproduced shall appear on the reproduction or reproductions made thereof.

5. A person or body upon whose initiative reproductions are made shall affix its own distinctive reference to each such reproduction, followed, in the case of ECI of the *Eura — Top Secret* or *Eura — Secret* gradings, by a mention of the total number of reproductions made and the individual number of each copy.

SECTION II

Security in buildings

Article 21

1. The appropriate departments of the Community or of Member States shall ensure that buildings or sections of buildings in which ECI graded *Eura — Confidential* or of higher gradings is kept can be supervised easily and are accessible only to persons authorised to enter them.

2. To check the access of persons to such buildings or sections of buildings, the departments concerned shall take steps to enable employees and visitors to be positively identified. Visitors shall not be left unaccompanied in premises containing ECI.

3. After normal working hours the buildings or sections of buildings in which ECI referred to in paragraph 1 is kept shall be inspected in order to ensure that the reinforced security cabinets and the cabinets containing files etc. have been properly shut and that the ECI has been properly secured.

4. The buildings or sections of buildings in which ECI graded *Eura — Top Secret* is kept shall be protected by security guards and an alarm system.

SECTION III

Safe-keeping of ECI

Article 22

Reinforced security cabinets

1. ECI graded *Eura — Top Secret* shall be kept in reinforced security cabinets with a triple combination lock.

Secret combination settings shall be changed every time a member of the staff familiar with the combination is transferred and every time security has been or appears to have been compromised; otherwise the combination shall be changed every six months.

2. ECI graded *Eura — Secret* and *Eura — Confidential* shall be kept in reinforced or steel security cabinets the locking mechanism of which is checked regularly and known to be reliable.

3. ECI graded *Eura — Restricted* shall be kept in such a way that no unauthorised person may obtain access to it.

SECTION IV

Registration of ECI

Article 23

All ECI graded *Eura — Top Secret* and *Eura — Secret* shall be specially registered.

Such registration shall make it possible:

— to compile forthwith a list of the persons who have consulted or have possession of such documents;

— to ascertain promptly the holder of each of the copies and of duplicates thereof.

SECTION V

Circulation of ECI

Article 24

Practical provisions

1. Circulation of ECI within a building or group of buildings shall be safeguarded in such a way as to prevent any leakage.

2. ECI graded *Eura — Confidential* and of higher gradings sent outside a building or group of buildings shall be placed in two envelopes, the inner of which shall bear the security grading. The security grading shall in no circumstances be shown on the outer envelope.

Any person receiving ECI shall acknowledge receipt immediately on a receipt form. That receipt form, which shall have no security grading, shall state the ECI reference number and the copy number and date, but not the contents or security grading, of the copy. The recipient shall return the receipt form forthwith to the sender, who shall make certain that this obligation is fulfilled.

3. ECI graded *Eura — Restricted* shall be handled in such a way as to ensure its security.

Article 25

Circulation of ECI within the Community

1. ECI graded *Eura — Top Secret* dispatched abroad shall be sent by diplomatic bag in the custody of a courier accompanied by one other person.

ECI graded *Eura — Secret* and *Eura — Confidential* dispatched abroad shall be sent by diplomatic bag.

These provisions shall also be applicable when ECI is dispatched in accordance with Articles 4 and 5 of the protocol on the Privileges and Immunities of the European Atomic Energy Community.

2. Exceptionally, ECI referred to in paragraph 1 may also be carried by other persons provided that:

(a) those persons are authorised to have access to ECI of the security grading concerned;

(b) The consignments containing ECI bear an official seal exempting them from customs control;

(c) the bearer is supplied with a certificate which is recognised by all the countries through which he passes and authorises him to accompany the consignment to its stated destination;

(d) the bearer is duly instructed in the duties which devolve upon him during carriage of ECI.

3. The dispatch of ECI graded *Eura — Restricted* shall not be subject to any special provisions. It is, however, essential to ensure that no unauthorised person has access to such information.

Article 26

Circulation of ECI within a Member State

1. ECI graded *Eura — Confidential* and of higher gradings shall be dispatched by messenger. Messengers shall comply with the conditions laid down in Article 25 (2) (a) and (d). In the case of ECI graded *Eura — Top Secret* the messenger shall be accompanied by another person.

2. ECI graded *Eura — Secret* may, however, be dispatched by post as an insured letter. ECI graded *Eura — Confidential* may also be dispatched by registered post.

3. ECI graded *Eura — Restricted* shall be dispatched in accordance with the provisions of Article 25 (3).

Article 27

Carriage of ECI on official mission or for the purposes of meetings

1. Carriage of ECI on official missions or for the purposes of meetings outside the buildings in which it is kept shall be confined to the minimum.

2. ECI carried during official missions shall, when not in use, be deposited in a place complying in every respect with the security requirements within the meaning of Articles 21 and 22. The necessary assistance for that purpose shall be given by the appropriate departments of the Member State in whose territory the meeting or the official mission takes place. If it proves impossible to deposit the ECI in this way, the person travelling shall remain personally responsible for the security thereof, using any security measures to which he has recourse. The ECI shall remain in the personal custody of the person travelling if it should prove impossible to deposit it in adequate conditions of security.

It shall in particular be prohibited to leave such ECI, even temporarily, in hotel safes or in vehicles.

3. Documents relating to ECI shall not be read in public.

Article 28

Transmission of ECI by telecommunications

1. ECI graded *Eura — Confidential* and of higher gradings may be sent by telegram, radio, telephone or telex provided it is properly enciphered according to the security grading of the document concerned.

2. ECI graded *Eura — Top Secret* shall be transmitted in this way only in cases of emergency and absolute necessity.

3. Any *en clair* telephone calls relating to ECI graded *Eura — Confidential* or of higher gradings shall be prohibited.

SECTION VI

Destruction of ECI

Article 29

Systematic destruction

1. In order to avoid useless accumulation of ECI, outdated and surplus copies shall be destroyed.

Documents graded *Eura — Secret* or *Eura — Top Secret* shall not be destroyed without prior authorisation from the authority empowered to decide on their classification.

2. ECI shall be destroyed by incineration, pulping or shredding, which in the case of ECI graded *Eura — Top Secret* or *Eura — Secret* shall be carried out in the presence of the Security Officer or a person appointed by him for that purpose, who shall draw up a report thereon.

3. All the reproducing media, of whatever type, e.g. stencils, carbons, ribbons, handwritten notes, film negatives, which were used for production or reproduction shall, after the copies to be kept have been made, be destroyed in accordance with instructions given by the Security Officer.

Article 30

Emergency destruction

Each authority in possession of ECI shall draw up an emergency destruction plan which in exceptional circumstances would prevent ECI graded *Eura — Confidential* and of higher grades from falling into the hands of unauthorised persons.

SECTION VII

Special provisions

Article 31

If certain of the aforementioned provisions cannot be applied because of the special nature of the ECI, the Security Officer shall take or cause to be taken the appropriate measures to ensure that the security of such ECI is given protection equivalent to that stipulated in this Regulation.

PART FOUR

MEASURES TO BE TAKEN IN CASE OF INFRINGEMENT OF THE SECURITY REGULATION

Article 32

Compulsory notification

1. Any person who has been instructed in accordance with the provisions of this Regulation, and who finds or assumes that a breach of security regulations or of security measures has been committed, shall forthwith notify either the Security Officer or his departmental head thereof.

2. As soon as such a breach or suspected breach within the meaning of paragraph 1 suggests that ECI graded *Eura — Confidential* or of higher grading has come to the knowledge of an unauthorised person, the matter shall be referred forthwith to the Security Bureau or the official bodies provided for in Article 7, which shall ascertain the facts.

3. If the suspected breach within the meaning of paragraph 2 is confirmed, the official bodies provided for in Artice 7 of all the Member States shall be informed by the Security Office, or *vice versa;* each of them shall, for its own part, take every step:

(a) to restrict to a minimum the damage caused;

(b) to prevent a repetition of the occurrence.

Article 33

Notification of Member States procedure

The Security Bureau shall inform the Member States of the established facts through the official bodies provided for in Article 7.

The State or States concerned shall, if they consider it necessary, send to the official body of the competent State a request for initiation of the procedure laid down in the second subparagraph of Article 194 (1) of the Treaty.

PART FIVE

FINAL PROVISIONS

Article 34

Treaties or agreements with third countries

These provisions shall be without prejudice to the obligations of the Community and the Member States (or of the Community or the Member States) in this field arising out of treaties or agreements concluded with third countries, an international organisation or a national of a third country.

Article 35

Entry into force

This Regulation shall enter into force on the fortieth 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, 31 July 1958.

For the Council

The President

BALKE

534/58 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 6.12.58

THE COUNCIL

THE STATUTES OF THE EURATOM SUPPLY AGENCY

THE COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to Article 54 of the Treaty;

Having regard to the proposal from the Commission;

HAS DECIDED:

To lay down the Statutes of the Euratom Supply Agency as follows:

Article I

Name and object

1. The Agency established by Article 52 and subsequent Articles of the Treaty of 25 March 1957 establishing the European Atomic Energy Community (hereinafter called the 'Treaty') shall be called the 'Euratom Supply Agency' (hereinafter called the 'Agency').

2. The sole object of the Agency shall be to carry out the tasks assigned to it by the Treaty. It shall be governed by the provisions of the Treaty and of these Statutes. Any difficulties which may arise in interpreting the Statutes shall be settled by reference to the aims assigned to the Agency by the Treaty.

Article II

Legal status and capacity

1. The Agency shall have legal personality.

2. The Agency shall in each of the Member States enjoy the most extensive legal capacity accorded to legal persons under public and private law. It may in particular acquire and dispose of moveable and immoveable property, conclude contracts, give real or personal security, act as broker, authorised agent or commission agent, be a party to legal proceedings, agree to go to arbitration, compound and carry out commercial transactions and make any regulations which may be required for the carrying out of its tasks.

It may also raise loans subject to the conditions laid down in these Statutes.

3. The Agency shall carry on its activities solely in the general interest. It shall operate on a non-profit-making basis.

4. The Agency shall be recognised as an institution of public interest status.

Article III

Seat

1. The seat of the Agency shall be established in the town in which the Commission has its seat.

2. The Agency may, with the consent of the Commission, establish branches.

It may on its own initiative take any further measures concerning its own internal organisation which may be required for the carrying out of its tasks both within and outside the Community. It may in particular appoint agents and set up depots.

Article IV

Duration

No fixed period is set for the existence of the Agency.

In accordance with Article 76 of the Treaty, the provisions of Chapter VI concerning supplies shall be confirmed or amended at the end of the period laid down in that Article.

Article V

Capital

1. The capital of the Agency shall amount to 2 400 000 EPU units of account.

2. The capital shall be divided according to the following scale:

Belgium	8
Germany	28
France	28
Italy	28
Netherlands	8

3. An instalment of 10% of the capital shall be paid to the Agency within thirty days from the entry into force of these Statutes. Further instalments of the capital shall be called up by decision of the Council acting by a qualified majority on a proposal from the Commission. There shall, however, be a legal obligation pursuant to these Statutes to make payment to the extent necessary to meet obligations entered into by the Agency towards its creditors. The decision of the Council shall forthwith be communicated to the subscriber States. The amount of the instalment called up shall be paid to the Agency within thirty days following that decision.

4. Participation in the capital shall not confer any right to vote nor any entitlement to dividend or interest. It shall carry the right to repayment of the nominal amount of the instalments of the paid-up capital in the sole event of the Agency being wound up.

5. All payments of capital shall be made in the national currency of the subscriber State.

6. Should the parity of the currency of a Member State in relation to the unit of account defined above be reduced, that State shall adjust in proportion to the change in parity the amount of the share of capital subscribed by it by making a supplementary payment to the Agency which shall be limited to the amount of the assets actually held in the currency of that State. The payment shall be made within two months.

7. Should the parity of the currency of a Member State in relation to the unit of account defined above be increased, the Agency shall adjust in proportion to the change in parity the amount of the share of capital subscribed by that State by making a repayment to that State which shall be limited to the amount of the assets actually held in the currency of that State. Payment shall be made within two months.

Article VI

Charges

1. The Agency shall make a charge, the proceeds of which shall be used solely to defray its operating expenses.

2. The charge shall be made on transactions in which the Agency takes part by exercising its right of option or its exclusive right to conclude supply contracts.

3. The rate of charge shall be fixed in such a way as to defray the operating expenses of the Agency.

Any surplus left over from the proceeds of the charge after deducting the operating expenses as ascertained at the end of the financial year shall be paid into a reserve fund.

Whenever it is found at the end of any financial year that the amount of the reserve fund exceeds the operating expenses for that year, the rate of charge shall be revised in order to prevent a similar situation from occurring at the end of the following year.

4. The rate of charge and the methods whereby it is to be assessed and collected shall, after consultation with the Council, be fixed by the Commission acting on a proposal from the Director-General, who shall obtain beforehand the opinion of the Advisory Committee referred to in Article X.

Article VII

Financial organisation

1. The Agency shall have financial autonomy. It shall operate according to commercial rules.

2. The Agency shall at all times be entitled to transfer the assets which it holds in the currency of one Member State into the currency of another Member State in order to carry out financial operations which accord with its aims as defined by the Treaty and are consistent with these Statutes.

The Agency shall as far as possible avoid making such transfers if it has cash or liquid assets in the currency required.

The Agency may use in the following ways funds which it does not immediately require for the purposes of meeting its obligations:

(a) it may invest on the money markets;

(b) it may carry out any other financial operation connected with its object.

Without prejudice to the provisions of the first subparagraph, the Agency shall not, in managing its investments, engage in any currency arbitrage not directly necessary for carrying out its tasks.

3. The Agency shall require the purchaser to make payment in the currency needed by the Agency for the purpose of carrying out the relevant operation.

4. The Agency may dispose freely of funds in the currencies of third countries obtained by loans which it has raised in those countries.

5. The Agency may borrow on international financial markets the funds necessary for carrying out its tasks.

After consulting the Council, the Commission shall fix the limits within which the Agency may contract loans for a term not exceeding two years. For loans for a term exceeding two years the Agency must obtain through the Commission the approval of the Council acting by a qualified majority in each individual case.

The Agency may raise loans on the financial markets in a Member State subject to the provisions of law applying to internal loans or, if such provisions do not exist in a Member State, after agreement has been reached between such Member State and the Agency in regard to the proposed loan.

The consent of the competent authorities in the Member State may be refused only in cases where serious disturbance may be caused on the financial markets in that State.

6. Obligations entered into by the Agency pursuant to these Statutes are guaranteed by the European Atomic Energy Community.

7. In the fields covered by this Article, the Agency shall act in consultation with the competent authorities in the Member States or with their banks of issue.

Article VIII

Powers of the Commission

1. The Agency shall be under the supervision of the Commission, which shall issue directives to it and have a right of veto over its decisions.

2. The right of veto shall lapse after a period of seven days following a decision of the Agency, unless during that period reservation is made by the Commission or its representative. The Commission or its representative may waive the right to make such reservation before the expiry of that period.

Where reservation is made by the Commission or its representative within the period prescribed in the preceding paragraph, the Commission shall adopt a definitive position not more than fifteen days from the date on which the reservation was made.

The provisions of this paragraph shall in no way prevent the second paragraph of Article 53 of the Treaty from being applied.

3. Any act of the Agency referred to in the second paragraph of Article 53 of the Treaty may be referred to the Commission by the party concerned within fifteen days of notification being received, or, failing such notification, within fifteen days following publication. Failing both notification and publication, the period shall run from the day on which the party concerned learns of the act.

Article IX

Director-General and staff

1. The Director-General shall be responsible for managing the Agency. In the event of his death, dismissal or absence, or if he is otherwise prevented from attending to his duties, the Deputy Director-General shall act in his stead.

2. The Director-General shall represent the Agency both in judicial and in other matters. The Commission may represent the Agency at law in any proceedings brought against the Director-General.

3. The Director-General may so far as he thinks fit delegate his powers to the Deputy Director-General or to other persons. He may authorise them to represent him either individually or jointly.

Powers delegated by the Director-General or by the Deputy Director-General shall not be revoked solely by reason of the death of the person delegating them.

4. The Director-General and the Deputy Director-General shall be appointed and, if the occasion arises, dismissed by the Commission. They shall not act as agents of the Commission. The Director-General, and the Deputy Director-General when acting in his stead, shall be responsible to the Commission for their management of the Agency. They shall at all times submit to control by the Commission and shall render accounts to it in accordance with the provisions laid down in Article XVI of these Statutes and with the directives issued by the Commission.

Article X

Composition of the Advisory Committee

1. An Advisory Committee to the Agency shall be set up comprising twenty-four members.

2. Seats shall be allotted to nationals of Member States as follows:

Belgium	3 members
Germany	6 members
France	6 members
Italy	6 members
Netherlands	3 members

3. The members of the Advisory Committee shall be appointed by the Council, acting on a proposal from the Member States and after obtaining the Opinion of the Commission, from representatives of producers and users and from highly qualified experts.

Legal persons may be appointed as members of the Committee on condition that they are represented throughout their term of office by a person duly authorised for this purpose.

4. The members of the Committee shall be appointed for a period of two years. They may be reappointed. If a member resigns or is unable to perform his duties, a successor shall with the least possible delay be appointed for the remainder of the term of office.

Article XI

Terms of reference of the Advisory Committee

1. The Advisory Committee shall assist the Agency in carrying out its tasks by giving opinions and providing information. It shall act as a link between the Agency on the one hand and users and sectors concerned on the other.

2. The Advisory Committee may be consulted by the Director-General upon all matters with which the Agency has power to deal.

The Committee may also issue opinions upon any such matters on the initiative of not less than ten of its members.

3. The Director-General shall consult the Advisory Committee before taking any decisions concerning the following matters:

(1) The capital of the Agency, whether for increase or decrease thereof or for further capital subscription (fourth paragraph of Article 54 of the Treaty);

(2) The method of fixing the charge on transactions designed to defray the operating expenses of the Agency (fifth paragraph of Article 54 of the Treaty);

(3) The drawing up of Agency rules to determine the manner in which demand is to be balanced against supply (sixth paragraph of Article 60 of the Treaty);

(4) The drawing up of directives concerning the advance payments required by the Agency (second paragraph of Article 61 of the Treaty);

(5) The drawing up of a programme and the conditions applicable to the building up of commercial stocks by the Agency (first paragraph of Article 72 of the Treaty);

(6) The criteria for defining the practices prohibited by Article 68 of the Treaty;

(7) Directives concerning the keeping of the 'Special Fissile Materials Financial Account' (Article 88 of the Treaty);

(8) The Agency's part in preparing the special Agency account provided for in Article 171 (2) of the Treaty;

(9) The preparation of the Agency's annual balance sheet and report;

(10) The setting up of branches of the Agency;

(11) Winding up the Agency.

The Director-General may, if necessary, fix a time limit for the Advisory Committee to submit its opinion; this time limit shall not be less than ten days from the date on which the communication for this purpose is sent to the Chairman of the Committee.

If the opinion of the Committee cannot be obtained within this period, the Director-General shall not be obliged to postpone his decision or to call another meeting.

Decisions which are within the competence of the Director-General and relate to matters specified in this Article shall not be taken until fifteen days have elapsed since the opinion of the Advisory Committee was given, if those decisions are at variance with that opinion.

Article XII

Advisory Committee — Executive Officers

1. The Advisory Committee shall each year elect a Chairman and two Vice-Chairman. Their terms of office shall be renewable.

The Chairman and the Vice-Chairman shall be the executive officers of the Committee.

2. These officers shall convene meetings of the Advisory Committee in accordance with the provisions of Article XIII(1).

They shall maintain all necessary contacts on behalf of the Advisory Committee.

Article XIII

Advisory Committee — Meetings

1. The Advisory Committee shall be convened:

(a) on the initiative of the executive officers whenever, in their opinion, circumstances so require and, in any event, as soon as three months have elapsed since the last meeting of the Committee;

(b) at the request of the Director-General, particularly whenever consultation of the Committee is required pursuant to the provisions of Article 11 (3);

(c) at the request in writing of not less than ten members of the Committee, specifying the items to be placed on the agenda.

2. Meetings of the Advisory Committee shall be valid only if not less than half its members are present.

Opinions may be given if approved by a majority of the members present or represented.

3. Each member of the Committee shall have one vote. If a member is unable to attend, he may appoint in writing another member to vote on his behalf. No member may be appointed to vote on behalf of more than one other member.

Votes in writing or by telegram shall be permitted in urgent cases unless the Committee otherwise decides.

4. The Director-General, the Deputy Director-General, or a person representing them shall attend meetings of the Advisory Committee but shall not vote. They shall supply the Committee with any information and explanations that are necessary. They shall, however, be bound to secrecy in conformity with Article 194 of the Treaty and shall be subject to the Security Regulation.

A representative of the Commission may take part in the meetings of the Advisory Committee but shall not vote.

5. The minutes of meetings shall record not only the opinions adopted but also the motions discussed.

The minutes shall be signed by the Chairman and the secretary of the meeting and entered in a special minute-book. Certified copies together with copies of all the relevant documents shall be sent forthwith to the Commission and to the Director-General.

6. The Advisory Committee may adopt its own rules of procedure having regard to these Statutes and subject to the approval of the Commission.

Article XIV

Advisory Committee — Secretariat

1. The Director-General shall place at the disposal of the executive officers of the Advisory Committee suitable secretariat staff, directed by a secretary whose appointment shall be subject to the approval of the Commission.

2. The secretariat shall prepare the minutes of meetings of the Advisory Committee, of any subcommittees and of the executive officers.

3. The costs of maintaining the Advisory Committee shall be borne by the Agency.

Article XV

Advisory Committee — Secrecy

The Director-General, the Deputy Director-General, the staff of the Agency and the members of the Advisory Committee shall be bound to secrecy in accordance with Article 194 of the Treaty in respect of any facts, information, knowledge, documents or objects subject to a system of security grading which come into their possession or are communicated to them.

Article XVI

1. The financial year shall run from 1 January to 31 December.

2. The Director-General shall prepare and adopt the estimates in respect of the working expenditure of the Agency; he shall ensure the implementation of the budget.

3. The estimates shall be submitted not later than 20 September to the Commission, which, notwithstanding Article VIII (2) of these Statutes, shall have one month in which to exercise its right of veto.

4. A balance-sheet as at 31 December together with an annex containing a trading account shall be

drawn up annually. It shall be submitted not later than 1 March to the Audit Board provided for in Article 180 of the Treaty, which shall report on the accounts of the Agency.

5. The Director-General shall each year draw up a report concerning the operations of the preceding year.

6. The Commission shall receive the balance-sheet, the trading account, the report of the Audit Board and the Director-General's report not later than 1 May and shall grant him a discharge in respect of the performance of his duties.

The above-mentioned documents shall be annexed to the accounts for the preceding financial year, in respect of each separate budget, which are submitted annually by the Commission to the Council and to the Assembly in accordance with the provisions of the third paragraph of Article 180 of the Treaty.

Done at Brussels, 6 November 1958.

For the Council

The President

S. BALKE

In accordance with Article 222 of the Treaty establishing the European Atomic Energy Community, the Agency shall take up its duties on the date appointed by the Commission.

COUNCIL DECISION

of 8 March 1973

amending the statutes of the Euratom Supply Agency following the Accession of new Member States to the Community

(73/45/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

HAS DECIDED:

Article 1

Article V (1) and (2) of the Statutes of the Euratom Supply Agency [1] shall be amended as follows:

'1. The capital of the Agency shall be 3 200 000 EMA units of account.

2. The capital shall be divided according to the following scale:

Belgium:	6 %
Germany:	21 %
Denmark:	3 %
France:	21 %
Ireland:	1 %
Italy:	21 %
Netherlands:	6 %
United Kingdom:	21 %'.

Article 2

Article X (1) and (2) of the Statutes of the Supply Agency shall be amended as follows:

'1. An Advisory Committee for the Agency shall be set up comprising 33 members.

2. Seats shall be allotted to nationals of the Member States as follows:

Belgium:	3 members
Germany:	6 members
Denmark:	2 members
France:	6 members
Ireland:	1 member
Italy:	6 members
Netherlands:	3 members
United Kingdom:	6 members'.

Done at Brussels, 8 March 1973.

For the Council

The President

W. De CLERCQ

[1] OJ No 27, 6. 12. 1958, p. 534/58.

DECISION

fixing the date on which the Euratom Supply Agency shall take up its duties and approving the Agency Rules of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

THE COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 52, 53, 60 and 222 thereof;

Whereas it is for the Commission to fix the date on which the Supply Agency shall take up the duties devolving upon it under the Treaty;

Whereas the introduction of the procedures laid down by the Agency in implementation of the sixth paragraph of Article 60 of the Treaty necessarily entails such transitional measures as will facilitate their progressive application;

HAS DECIDED AS FOLLOWS:

Article 1

The date on which the Supply Agency shall take up the duties devolving upon it under the Treaty shall be 1 June 1960.

Article 2

Approval is given to the Agency Rules of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials.

Article 3

The Rules referred to in Article 2 shall enter into force in their entirety on 1 June 1960 for contracts covering the supply of special fissile materials.

As regards contracts for the supply of ores and source materials, implementation of Articles 5 and 6 of these Rules shall be deferred for six months from the date of their entry into force as laid down in the first paragraph of this Article.

Article 4

Contracts relating to the supply of ores or of raw materials shall during that period be submitted to the Commission for its prior approval.

During that period of six months, the market survey shall be conducted and completed according to the procedures laid down in Articles 1 to 4 of the Rules.

Article 5

This Decision shall apply to the Euratom Supply Agency and also to all users and producers of ores, raw materials and special fissile materials.

Done at Brussels, 5 May 1960.

For the Commission

E. M. J. A. SASSEN

11.5.60 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 777/60

RULES

of the Supply Agency of the European Atomic Energy Community determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

THE SUPPLY AGENCY OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the provisions of the Treaty, and in particular the sixth paragraph of Article 60 thereof;

After consulting the Advisory Committee to the Agency;

Having regard to the Decision of the Euratom Commission of 5 May 1960 fixing the date on which the Supply Agency is to take up its duties and approving these Rules, and in particular Articles 3 and 4 of that Decision relating to procedures for the entry into force of these Rules;

Whereas, in order to carry out its duties in accordance with the principles set out in Article 52 of the Treaty, the Agency must, in respect of each product and on the basis of declarations covering users' estimated requirements and producers' estimated available supplies, have a complete knowledge of the situation on the market;

Whereas the procedures for balancing demand against supply must of necessity be determined in such a way as to enable various supply situations to be met;

Whereas the introduction of these procedures includes such transitional measures as will facilitate their progressive application;

HAS ADOPTED THE FOLLOWING PROVISIONS:

Article 1

Users shall, when so requested by the Agency, notify it in respect of a given period, as provided for in Article 3, of their estimated requirements of ores, source materials and special fissile materials and, on the basis of contracts already entered into, of their supply programmes.

The declarations shall specify:

(1) Designation of product;

(2) Nature and chemical and physical composition and other relevant specifications;

(3) Quantities (in metric units);

(4) Place of origin;

(5) Intended use;

(6) Delivery dates;

(7) Price terms, which are not binding.

Article 2

Producers shall, when so requested by the Agency, notify it in respect of a given period, as provided for in Article 3, of stocks held by them at the start of the period, their estimated production and, on the basis of contracts already entered into, their delivery programmes.

The declarations shall specify:

(1) Designation of product;

(2) Nature and chemical and physical composition and other relevant specifications;

(3) Quantities (in metric units);

(4) Place of origin;

(5) Delivery dates;

(6) Price terms, which are not binding.

Article 3

The Agency shall, after obtaining the Opinion of the Advisory Committee, fix and publish in the *Official Journal of the European Communities* the time limit

within which, and the period in respect of which, users and producers must forward to the Agency the declarations referred to in Articles 1 and 2.

Article 4

When in possession of all the declarations made under Articles 1 and 2 of this Regulation the Agency shall, by means of a circular, communicate to users and producers in the Community information on general data and market trends, and also, where appropriate, on supply potential and possible outlets in third countries.

Article 5

If, in respect of a specific product and where in particular the Agency takes the initiative, the Commission, having heard the Advisory Committee, finds that the situation on the market shows a clear surplus of supply over demand, it may, by means of an appropriate directive, call upon the Agency to apply the simplified procedure set out below:

(a) On the basis of information acquired through the declarations made under Articles 1 and 2 of this Regulation, the Agency shall, after obtaining the Opinion of the Advisory Committee, lay down the general conditions to be fulfilled in supply contracts covering that product;

(b) These general conditions shall be made known to the parties concerned, who shall then be empowered to negotiate directly and to sign contracts;

(c) Contracts shall be communicated to the Agency and deemed to be concluded by it if no objection is notified by the Agency to the parties concerned within eight days from the time of receipt of the contracts.

The procedure set out in this Article shall not apply to supply contracts relating to special fissile materials.

Article 6

Where exception is provided for by Article 5, demand shall be balanced against supply in accordance with the following procedure:

Users shall notify the Agency, by the dates and in respect of the periods fixed by it, of their requirements in respect of supplies of ores, source materials and special fissile materials.

As soon as these requirements are known, the Agency shall, by inviting tenders and indicating all relevant specifications, fix the dates by which, and the periods in respect of which, producers in the Community are invited to submit their tenders.

By submitting their tenders, producers in the Community shall be considered to have fulfilled the obligation devolving upon them pursuant to the second subparagraph of Article 57 (2) of the Treaty. As soon as those tenders are received, the Agency shall decide whether it will exercise its right of option and, if it does so, the quantities that option will cover.

The Agency shall notify users of the tenders and of the number of applications it has received and shall make known to the parties concerned the terms on which their applications can be met and the procedures whereby contracts shall be concluded.

Article 7

Independently of the procedures laid down in Articles 5 and 6 of this Regulation, users may at any time make applications to or place orders with the Agency. Such orders shall be met on the best terms in relation to supplies available on the market.

Article 8

This Regulation shall enter into force in its entirety on 1 June 1960 for contracts relating to the supply of special fissile materials.

As regards contracts for the supply of ores and source materials, implementation of Articles 5 and 6 shall be deferred for six months from that date and shall take effect on 1 December 1960. During that period contracts falling within the provisions of this paragraph shall continue to be subject to the prior approval of the Commission, in accordance with Article 222 of the Treaty.

Done at Brussels, 5 May 1960.

For the Supply Agency of Euratom

The Director-General

E. SPAAK

Regulation of the Supply Agency of the European Atomic Energy Community amending the rules of the Supply Agency of 5 May 1960 determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials

THE SUPPLY AGENCY,

— Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 60 (6) thereof;

— Having regard to the Opinions of the Advisory Committee to the Agency of 17 January 1974 and 30 April 1974 and the consultation of that Committee on 3 December 1974, 21 January 1975 and 29 April 1975;

— Whereas, in order to carry out its duties in accordance with the principles set out in the Treaty and in particular Article 52 thereof, the Agency must, at any given time, have a complete knowledge of the situation on the market for ores, source materials and special fissile materials;

— Having regard to the present situation on the market for ores and source materials and the uncertain outlook for the short and medium term;

— Whereas under these circumstances it appears to be appropriate that the direct contacts between the users and the producers of ores and source materials, which have been established, be maintained,

— Whereas it appears to be necessary to complete and amend the provisions of the rules of the Supply Agency of 5 May 1960 [1] in relation to the development of this market,

HAS ADOPTED THIS REGULATION:

Article 1

A new Article 5 *bis* is inserted in the rules of the Supply Agency of 5 May 1960 as follows:

As far as ores and source materials are concerned,

(a) users shall be authorized to invite tenders directly from the producers of their choice and to negotiate the supply contract freely with the latter;

(b) users shall communicate to the Agency information obtained by them from the producers in respect of:

(i) the number of tenders received,

(ii) the quantities offered,

(iii) the range of tendering prices;

(c) the supply contract shall include at least the following information:

1. designation of the contracting parties,
2. quantities of materials to be supplied,
3. annual calendar of delivery dates,
4. nature of the materials to be supplied,
5. country of origin of the materials to be supplied. If the supplier is unable to provide this information at the time of entering into the contract, he shall give the user and the Agency an undertaking that he will subsequently inform them in writing of the country of origin of each part delivery,
6. price and terms of payment,
7. duration of the contracts;

(d) the contract shall, for the purposes of its conclusion, be submitted to the Agency for signature within 10 working days;

(e) if the supply contract does not contain any stipulation concerning the use to which the materials are to be put, the user shall at the same time supply the Agency with a written statement to that effect;

(f) the Agency shall act, either by concluding or refusing to conclude the contract, within 10 working days from the date of receipt thereof;

(g) a refusal to conclude the contract shall be notified to the parties concerned in a reasoned decision. This decision may be referred to the Commission in accordance with the provisions of Article VIII (3) of the Statutes of the Euratom Supply Agency [2];

(h) in the event of cancellation of the supply contract, the Agency shall be notified thereof;

(i) any amendment to the supply contract shall require the signature of the Agency, in accordance with the procedure for the original contract.

Article 2

Article 7 of the rules of the Supply Agency is amended as follows:

Independently of the procedures laid down in Articles 5, 5 *bis* and 6 of this Regulation, users may at any time make applications to, or place orders with, the

[1] OJ No 32, 11. 5. 1960, p. 777/60.

[2] OJ No 27, 6. 12. 1958, p. 537/58.

Agency. Such orders shall be met on the best terms in relation to supplies available on the market.

Article 3

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

Done at Brussels, 15 July 1975.

For the Euratom Supply Agency

The Director-General

F. OBOUSSIER

28.12.66 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 4057/66

COMMISSION REGULATION No 17/66/EURATOM

of 29 November 1966

exempting the transfer of small quantities of ores, source materials and special fissile materials from the Rules of the Chapter on Supplies

THE COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the provisions of the Treaty establishing the European Atomic Energy Community, and in particular Articles 2 (d), 74, 77, 124 and 161 thereof;

Whereas the volume of nuclear materials currently used in research has increased since Commission Regulation No 10 of 19 December 1961 entered into force;

Whereas the Community supply position in regard to nuclear materials makes it possible for the exemption provided for in Article 74 to be authorised in such a manner as to ensure that all users may receive a regular and equitable supply of ores, source materials and special fissile materials.

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be exempt from the provisions of Chapter VI of the Treaty, as regards ores and uranium and thorium source materials:

— transfers within and imports into the Community of quantities not exceeding, per transaction, one ton of uranium and thorium (or uranium or thorium) content, within a limit of 5 tons per year per user in respect of each of these materials;

— exports from the Community of quantities not exceeding one ton of uranium and thorium (or uranium or thorium) content, within a limit of 5 tons per year per exporter in respect of each of these materials.

Article 2

With regard to special fissile materials, transfers within and imports into the Community of quantities not exceeding 200 grammes of uranium-235, of uranium-233 or of plutonium per transaction shall be exempt from the provisions of Chapter VI of the Treaty, within a limit of 1000 grammes per year per user, subject, as regards imported materials, to the provisions of co-operation agreements concluded by the Community with third countries.

Article 3

Any person who effects an import or an export and any supplier who effects a transfer within the Community under the exemption provided for in Articles 1 and 2 of this Regulation shall be required to submit to the Supply Agency a quarterly statement of the transactions thus effected, giving the following informations:

(a) date of conclusion of the supply contract;

(b) names of the contracting parties;

(c) place where the material was produced;

(d) chemical and physical (or chemical or physical) nature of the products;

(e) quantities in metric units[1];

(f) use made or to be made of these ores, source materials and special fissile materials.

[1] The above-mentioned statements shall be expressed in kilogrammes of uranium or thorium contained in respect of ores and source materials, and in grammes in respect of uranium-233, uranium-235 or plutonium contained in respect of special fissile materials. Numbers containing a decimal fraction shall be rounded off to the next lower or higher whole number according to whether the decimal fraction is greater or less than 0·5. Where the decimal fraction is 0·5, the number shall be rounded off to the next higher or lower whole number according to whether the digit preceding the decimal point is an even or an odd number.

The monthly statements must be submitted to the Agency within one month from the end of each quarter during which the transactions referred to in this Regulation were effected.

Article 4

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Communities*. It repeals and replaces the Regulation adopted by the Commission on 29 November 1961, published in the *Official Journal of the European Communities* of 19 December 1961, the amended version of which was published in the *Official Journal* of 20 January 1962.

Done at Brussels, 29 November 1966.

For the Commission

The President

P. CHATENET

REGULATION (EURATOM) No 3137/74 OF THE COMMISSION

of 12 December 1974

amending Commission Regulation No 17/66/Euratom of 29 November 1966 exempting the transfer of small quantities of ores, source materials and special fissile materials from the rules of the chapter on supplies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 74 thereof;

Whereas the volume of research involving small quantities of special fissile materials has increased both within the Community and in countries outside the Community since Regulation No 17/66/Euratom entered into force on 29 November 1966;

Whereas the Community is able, without prejudice to the supply position of consumers within the Community, to contribute to the development of research in many different fields through the supply of special fissile materials produced in its Member States;

Whereas, therefore, the supply position permits the extension of the rule on exemption in Article 74 to cover special fissile materials produced within the Community,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Commission Regulation No 17/66/Euratom of 29 November 1966 relating to the exemption of small quantities of ores, source materials and special fissile materials from the rules of the chapter on supplies, published in the *Official Journal of the European Communities* on 28 December 1966, page 4057/66, is hereby amended to read as follows:

'With regard to special fissile materials, transfers within, imports into and exports from the Community shall be exempt from the provisions of Chapter VI of the Treaty provided that the quantities involved, referred to the elemental form, do not exceed 200 grammes of uranium-235, uranium-233 or plutonium in any one transaction up to an annual limit of 1 000 grammes of any of the substances per user. In the case of imports and exports this shall apply subject to the provisions of agreements for cooperation concluded by the Community with third countries.'

Article 2

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

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

Done at Brussels, 12 December 1974.

For the Commission

The President

François-Xavier ORTOLI

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 March 1977

empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

(77/270/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 2, 172 and 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas the use of nuclear energy can reduce the Community's excessive dependence on external sources of energy and thus improve the terms on which energy is imported;

Whereas, under present technical and economic conditions, the use of nuclear energy for the production of electricity is economically advantageous and more satisfactory than the use of petroleum products;

Whereas the additional investment required for nuclear plant by comparison with conventional plant, combined with the costs arising out of the increase in the price of petroleum products which affect the operating costs of existing conventional power stations, means that electricity producers are being forced to borrow more;

Whereas Article 2 (c) of the Treaty gives the Community the task of facilitating investment and ensuring, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community; whereas, if a contribution is to be made to the financing of nuclear power stations, arrangements must be made for borrowing and lending; whereas such action appears to be necessary if the objective set out in Article 2 (c) of the Treaty is to be attained, although the Treaty does not provide for the powers necessary for that purpose;

Whereas in view of the large amount of capital required the financing potential should be increased; whereas it appears that the Community can provide a substantial amount of aid in this field;

Whereas the Community has a duty to employ all the means at its disposal to facilitate the attainment of the aims adopted under the new common energy policy strategy,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission is hereby empowered to issue loans, on behalf of the European Atomic Energy Community (Euratom) and within amounts fixed by the Council, the proceeds of which will be lent for the purpose of financing investment projects relating to the industrial production of electricity in nuclear power stations and to industrial fuel cycle installations.

The Commission shall borrow no more than the amounts of the loans for which it has received applications.

[1] OJ No C 157, 14. 7. 1975, p. 35.
[2] OJ No C 248, 29. 10. 1975, p. 8.

Borrowing transactions and the lending transactions related thereto shall be expressed in the same currency and carried out on the same terms as regards the repayment of principal and the payment of interest. The costs incurred by the Community in concluding and carrying out each transaction shall be borne by the beneficiary undertakings concerned.

Article 2

The terms of loans to be issued shall be negotiated by the Commission in the best interests of the Community having regard to the conditions on capital markets and in accordance with the constraints imposed by the duration of the loans to be granted.

Article 3

The Commission shall decide on the grant of each loan. Its decisions shall be based in particular on the principle that preference will be given to the use of resources under the most profitable conditions in installations of optimum size.

Loans shall be guaranteed in the manner customary in banking practice.

Article 4

The Commission shall inform the Council and the European Parliament at regular intervals of the revenue and expenditure transactions arising out of the contracting and servicing of Euratom loans issued and granted. Each year it shall submit a review of its borrowing policy together with the budget estimates.

Article 5

Financial control and auditing shall be carried out in accordance with the Financial Regulation of 25 April 1973 applicable to the general budget of the European Communities (1).

Done at Brussels, 29 March 1977.

For the Council

The President

T. BENN

(1) OJ No L 116, 1. 5. 1973, p. 1.

COUNCIL DECISION

of 29 March 1977

on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

(77/271/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 77/270/Euratom of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations (1), and in particular Article 1 thereof,

Whereas the maximum amount of the loans which the Commission is empowered to issue on behalf of the European Atomic Energy Community should be fixed at 500 million European units of account;

Whereas the Commission should inform the Council accordingly when the total value of the transactions effected has reached 300 million European units of account, so that the Council may decide, in the light of experience gained, on the fixing of a new amount,

HAS DECIDED AS FOLLOWS:

Sole Article

Loans as provided for in Article 1 of Decision 77/270/Euratom may be contracted for amounts the total of which shall not exceed 500 million European units of account; the European unit of account is defined in Decision 75/250/EEC (2).

When the total value of the transactions effected reaches 300 million European units of account, the Commission shall inform the Council which, acting unanimously, shall decide on the fixing of a new amount as soon as possible.

Done at Brussels, 29 March 1977.

For the Council

The President

T. BENN

(1) See page 9 of this Official Journal.

(2) OJ No L 104, 24. 4. 1975, p. 35.

COUNCIL DECISION

of 23 April 1990

amending Decision 77/271/Euratom on the implementation of Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

(90/212/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 77/270/Euratom of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations [1], and in particular Article 1 thereof,

Having regard to the proposal from the Commission,

Whereas the total value of transactions effected has reached the figure of ECU 2 800 million, provided for in Decision 77/271/Euratom [2], as last amended by Decision 85/537/Euratom [3];

Whereas nuclear energy accounts for a major part of the Community's total energy supplies and considerable investment ought to be made in this sector both at the production stage, in view of the safety and security requirements, and downstream of production, particularly with regard to the reprocessing and storage of waste;

Whereas experience indicated that it is desirable to raise, by ECU 1 000 million, the total amount of borrowings which the Commission is empowered to contract on behalf of the European Atomic Energy Community;

Whereas Decision 77/271 should therefore be amended,

HAS DECIDED AS FOLLOWS:

Sole Article

The Sole Article of Decision 77/271/Euratom shall be replaced by the following:

'*Sole Article*

Loans as provided for in Article 1 of Decision 77/270/Euratom may be contracted for amounts the total principal of which shall not exceed the equivalent of ECU 4 000 million.

When the total value of the transactions effected reaches ECU 3 800 million, the Commission shall inform the Council, which, acting unanimously on a proposal from the Commission, shall decide on the fixing of a new amount as soon as possible.'

Done at Luxembourg, 23 April 1990.

For the Council

The President

A. REYNOLDS

[1] OJ No L 88, 6. 4. 1977, p. 9.
[2] OJ No L 88, 6. 4. 1977, p. 11.
[3] OJ No L 334, 12. 12. 1985, p. 23.

6.10.58 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 417/58

REGULATION No 4

defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community

THE COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the provisions of the Treaty, and in particular Articles 41, 42 and 43 thereof;

Having regard to the proposal from the Commission;

Whereas, in order to attain the objectives laid down in the Treaty, the Commission must be notified of investment projects concerning new installations and of replacements or conversions involved in the industrial activities listed in Annex II to the Treaty when such projects are sufficiently extensive and are likely to have a direct influence on production or productivity;

HAS ADOPTED THIS REGULATION:

Article 1

Persons and undertakings engaged in the industrial activities listed in Annex II to the Treaty shall communicate to the Commission, within the time limits laid down in Article 42 of the Treaty, their investment projects aimed at:

— creating new production capacity;

— maintaining quantitative and qualitative production capacity;

— directly increasing production capacity;

— directly increasing productivity;

— improving the quality of production;

(Millions of EPU units)

I Sectors	II New installations	III Replacements and conversions
1. Mining of uranium and thorium ore	2·5	2
2. Concentration of such ores	2·5	2
3. Chemical processing and refining of uranium and thorium concentrates	2·5	2
4. Preparation of nuclear fuels, in any form	1	0·5
5. Fabrication of nuclear fuel elements	1	0·5
6. Production of uranium hexafluoride	1	0·5
7. Production of enriched uranium	20	10
8. Processing of irradiated fuels for the purpose of separating some or all of the elements contained therein	5	2·5
9. Production of reactor moderators	0·5	0·25
10. Production of hafnium-free zirconium or compounds thereof	0·5	0·25
11. Nucelar reactors of all types and for all purposes	1	2
12. Facilities for the industrial processing of radioactive waste, set up in conjunction with one or more of the facilities specified in this list	0·5	0·25
13. Semi-industrial installations intended to prepare the way for the construction of plants involved in any of activities 3 to 10.	0·5	0·25

when, in the industrial activities listed in column I, the cost exceeds the corresponding amount in column II for new installations and that in column III for replacements and conversions.

Notification of projects for new installations for nuclear reactors of any type and for any purpose shall, where the cost does not exceed one million EPU units, consist merely of a declaration giving their essential characteristics; the procedure laid down in Article 43 of the Treaty need not be applied.

Article 2

For the purpose of calculating the costs referred to in Article 1 all expenditure arising directly from the carrying out of the investment projects shall be taken into account, irrespective of the time at which such expenditure is incurred.

Article 3

Communication of projects in pursuance of this Regulation shall include all the details required for the discussion provided for in Article 43 of the Treaty and in particular all the information relating to:

1. the type of products and the production capacity;
2. the total amount of expenditure directly chargeable to the project under consideration;
3. the length of time likely to be required for carrying out the project;
4. the prospects as regards supplies for and operation of the installation.

Article 4

This Regulation shall enter into force on the thirtieth 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, 15 September 1958.

For the Council

The President

BALKE

27.11.58 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 511/58

THE COMMISSION

REGULATION No 1

determining procedures for effecting the communications prescribed under Article 41 of the Treaty

THE COMMISSION OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the provisions of the Treaty, and in particular Articles 41, 124 and 161 thereof;

Having regard to the provisions of the Council Regulation defining the investment projects to be communicated to the Commission in pursuance of Article 41 of the Treaty;

Whereas it is the responsibility of the Commission, to the extent necessary for the fulfilment of the task devolving on it under Chapter IV of the Treaty, to determine procedures for carrying out the obligation imposed on persons and undertakings by Article 41 to communicate investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council;

HAS ADOPTED THIS REGULATION:

Article 1

Investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council Regulation of 15 September 1958, published in the *Official Journal of the European Communities*, No 17 of 6 October 1958, shall be communicated to the Commission by means of a form, the model for which is annexed to this Regulation.

Article 2

The obligation to communicate to the Commission the investment projects referred to in Article 41 of the Treaty devolves on persons and undertakings engaged in the industrial activities listed in Annex II to the Treaty, in respect of all installations already established or to be established within the Community; the obligation shall, in appropriate cases, be discharged by the local management in the case of undertakings having their seat outside the Community.

Article 3

Any change made in the course of carrying out investment projects communicated to the Commission in accordance with this Regulation shall be made the subject of a further communication under the same conditions.

Article 4

Any change made to the said form shall be published by the Commission in the *Official Journal of the European Communities*.

Done at Brussels, 5 November 1958.

For the Commission

The European Commissioner

P. DE GROOTE

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EURATOM) No 3227/76

of 19 October 1976

concerning the application of the provisions on Euratom safeguards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 77, 78, 79 and 81 thereof,

Having regard to the approval of the Council,

Whereas Commission of the European Atomic Energy Community Regulation No 7 established the implementing procedures for the declarations required by Article 78 of the Treaty [1],

Whereas Commission of the European Atomic Energy Community Regulation No 8 [2] defined the nature and the extent of the requirements referred to in Article 79 of the Treaty;

Whereas, in view of the increasing quantities of nuclear materials produced, used and carried in the Community and the development of trade in these materials, it is essential, in order to ensure the effectiveness of safeguards, that the nature and the extent of the requirements referred to in Article 79 of the Treaty and laid out in Regulation No 8 referred to above, be defined and brought up to date in the light of experience particularly with regard to the transportation of, or commerce in these materials;

Whereas, moreover, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the European Atomic Energy Community (Euratom) concluded on 5 April 1973 an Agreement (hereinafter called 'the Agreement') with the International Atomic Energy Agency in implementation of Article III (1) and (4) of the Treaty on the non-proliferation of nuclear weapons;

Whereas the Agreement contains a particular undertaking entered into by the Community concerning the application of safeguards on source and special fissile materials on the territories of the Community Member States which have no nuclear weapons of their own and which are parties to the Treaty on the non-proliferation of nuclear weapons and, in conjunction with the Community, to the Agreement signed on 5 April 1973 with the International Atomic Energy Agency (hereinafter called 'the Member States party to the Agreement');

Whereas the implementation of this undertaking requires the establishment of particular procedures for the application of safeguards on the territories of the Member States party to the Agreement in order to amplify the provisions of the aforementioned Regulations No 7 and No 8;

Whereas, moreover, the procedures foreseen by this Agreement are in conformity with those devised in the course of a very wide-ranging international negotiation conducted, in view of the provisions of paragraphs 1 and 4 of Article III of the Treaty on the non-proliferation of nuclear weapons, with the International Atomic Energy Agency, the result of which has been approved by the Board of Governors of that organization, and that these procedures are based on the most modern developments in the field of safeguards;

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[1] OJ No 15, 12. 3. 1959, p. 298/59, and communication on the numbering of EAEC Regulations (OJ No 34, 29. 5. 1959, p. 649/59).

[2] OJ No 34, 29. 5. 1959, p. 651/59.

Whereas, accordingly, it is opportune to define new procedures for the application of the provisions of Chapter VII of the Treaty;

Whereas the Community, the United Kingdom and the International Atomic Energy Agency have signed on 6 September 1976 an Agreement comprising a particular commitment which concerns the application of safeguards to source and special fissile materials on the territory of the United Kingdom;

Whereas it is appropriate to arrange for particular provisions relative to the accounting system and the presentation of records concerning ores;

Whereas, on the territories of the Member States not party to the Agreement, some installations or parts thereof as well as certain materials are liable to be involved in the production cycle for defence needs, therefore it is appropriate to specify particular safeguard procedures to take account of these circumstances;

Whereas, for clarity's sake, and particularly to make the respect of safeguard Regulations easier for those concerned, it is appropriate to codify these Regulations in a single text,

HAS ADOPTED THIS REGULATION:

PART I

BASIC TECHNICAL CHARACTERISTICS AND PARTICULAR SAFEGUARD PROVISIONS

DECLARATION OF THE TECHNICAL CHARACTERISTICS

Article 1

Any person or undertaking setting up or operating an installation for the production, separation or other use of source materials or special fissile materials or for the processing of irradiated nuclear fuels shall declare to the Commission the basic technical characteristics of the installation, on the basis of the relevant questionnaire given in Annex I hereto.

Any person or undertaking responsible for the storage of source materials or special fissile materials shall be subject to the provisions of the first paragraph.

Article 2

Where the basic technical characteristics of an installation have already been communicated to the Commission, the declarations specified in the said Article 1 may be made by reference to such earlier communication, provided that any additional information required by the questionnaire referred to in Article 1 is supplied within 30 days from the date on which this Regulation comes into force.

The basic technical characteristics of new installations shall be declared as laid down in Article 1 at least 45 days before the first consignment of nuclear material is due to be received.

Article 3

The 'particular safeguard provisions' referred to in Article 7 shall specify those important changes in the basic technical characteristics for which advance notification is required.

Any other changes in the basic technical characteristics shall be communicated to the Commission, together with the first inventory change report made after the modification is complete.

Article 4

On receipt of a reasoned request, the Commission may allow additional time for the completion of the declarations required in the preceding Articles.

Article 5

The provisions of Article 1 shall not apply to persons or undertakings holding only nuclear materials exempted from the declaration requirements as provided for by Article 22.

PROGRAMME OF ACTIVITIES

Article 6

The persons or undertakings referred to in Article 1 shall also communicate to the Commission, for the planning of its safeguard activities, the following information:

(a) annually, an outline programme of activities drawn up in accordance with the 'particular safeguard provisions' referred to in Article 7, the first communication being made on the basis of the guidelines given in Annex X, at the same time as that of the basic technical characteristics referred to in Article 1;

(b) at least 40 days before beginning the taking of a physical inventory, the programme for such work;

(c) at least 40 days before starting to shut down a batch-loaded reactor for reloading, the programme in respect of such shutting down unless otherwise provided in the 'particular safeguard provisions' referred to in Article 7.

Any change affecting programmes for the taking of physical inventories or for the shutting down of reactors to reload shall be communicated to the Commission without delay.

PARTICULAR SAFEGUARD PROVISIONS

Article 7

Acting on the declarations of basic technical characteristics and on the information communicated in pursuance of Article 6, the Commission shall specify in the 'particular safeguard provisions' the procedures by which the persons or undertakings concerned shall meet the requirements in relation to safeguards imposed on them. Among others these procedures shall include:

(a) the designation of the material balance areas and the selection of those strategic points which are key measurement points for determining the flow and stocks of nuclear materials;

(b) the procedures for keeping records of nuclear materials for each material balance area and for drawing up reports;

(c) the frequency of and procedures for drawing up physical inventories for accounting purposes as part of safeguard measures;

(d) containment and surveillance measures, in accordance with the modalities agreed upon with the plant operators;

(e) sample-taking by the plant operator solely for safeguard purposes.

The 'particular safeguard provisions' shall also lay down the content of subsequent communications required under Article 6 of this Regulation as well as the conditions requiring advance notification of shipments and receipts of nuclear material.

The Commission will reimburse the person or undertaking concerned the cost of those special services which are provided for in the 'particular safeguard provisions', or which are provided because of a special request of the Commission or of the inspectors and on the basis of an agreed estimate. The extent and modality of the reimbursement will be fixed between the parties concerned and will be reviewed periodically as necessary.

Article 8

The 'particular safeguard provisions' referred to in Article 7 shall be drawn up by means of an individual decision of the Commission after consultation with the person or undertaking concerned and the appropriate Member State.

The person or undertaking affected by any individual decision of the Commission will be notified thereof, and a copy of such notification will be transmitted to the Member State concerned.

PART II

ACCOUNTING SYSTEM

Article 9

The persons and undertakings referred to in Article 1 shall maintain a system of accounting for and control of nuclear materials. This system shall include accounting and operating records and, in particular, information on the quantities, nature, form and composition of these materials in accordance with the requirements of Article 21, their actual location, the particular safeguarding obligation, and the way in which the persons or undertakings concerned have stated that they intend to use such materials, in accordance with their own decisions, as well as the shipper or recipient when materials are transferred.

The system of measurements on which the records are based shall comply with the most recent international standards or shall be equivalent in quality to those standards. On the basis of these records it must be possible to establish and justify the communications addressed to the Commission in the form and at the intervals laid down in Articles 12 to 21. Records shall be retained for a period of at least five years.

ACCOUNTING RECORDS

Article 10

The accounting records shall show in respect of each material balance area:

(a) all inventory changes, so as to permit a determination of the book inventory at any time;

(b) all measurement and counting results that are used for determination of the physical inventory;

(c) all corrections that have been made in respect of inventory changes, book inventories and physical inventories.

For all inventory changes and physical inventories the accounting records shall show, in respect of each batch of nuclear material, material identification, batch data and source data. These records shall account separately for uranium, thorium and plutonium in each batch of nuclear material. Moreover for each inventory change, the date of the inventory change and, when appropriate, the dispatching material balance area and the receiving material balance area or the recipient, shall be indicated.

OPERATING RECORDS

Article 11

The operating records shall include, if appropriate, for each material balance area:

(a) those operating data which are used to establish changes in the quantities and composition of the nuclear material;

(b) the data obtained from the calibration of tanks and instruments and from sampling and analysis, the procedures to control the quality of measurements and the derived estimates of random and systematic error;

(c) a description of the sequence of actions taken in preparing for, and in taking, a physical inventory in order to ensure that it is correct and complete;

(d) a description of the actions taken in order to ascertain the cause and magnitude of any accidental or unmeasured loss that might have occurred.

ACCOUNTING AND SPECIAL REPORTS

Article 12

The persons and undertakings referred to in Article 1 shall provide the Commission with accounting reports and, when appropriate, with special reports.

The accounting reports shall set forth the information available on the date of reporting and must be corrected at a later date if necessary.

On a reasoned request by the Commission, further details or explanations in connection with these reports shall be supplied normally within three weeks of that request.

Initial inventory

Article 13

The persons and undertakings referred to in Article 1 shall transmit to the Commission an initial book inventory of all nuclear materials which for any reason they have in their possession within 15 days of the last day of the month in which this Regulation comes into force. This inventory shall describe the situation on the last day of that month. The form set out in Annex IV to this Regulation shall be used for this purpose.

Inventory change report

Article 14

For each material balance area, the persons and undertakings referred to in Article 1 shall transmit to the Commission inventory change reports in respect of all nuclear materials in accordance with the specimen set out in Annex II. The reports shall identify the materials and give batch data for each batch thereof, the date of the inventory change and, when appropriate, the dispatching material balance area and the receiving material balance area or the recipient.

The reports concerning transfers shall also indicate for receipts the intended use, pursuant to Article 9, and for dispatches the use made of the nuclear materials in the reporting installation. Unless otherwise defined in the 'particular safeguard provisions' referred to in Article 7, no declaration of use is mandatory for transfers between different material balance areas of the same installation.

These reports showing inventory changes, book inventories and corrections shall be sent as soon as possible and, in any case, within 15 days after the end of the month in which the inventory changes occur or are known, either periodically in a consolidated list or individually. For months in which no inventory changes occur, the persons or undertakings concerned may simply send in the form intended for the inventory change report carrying the indication that the situation remained unchanged. Small inventory changes, such as transfers of samples for purposes of analysis, may be grouped, as laid down in the 'particular safeguard provisions' referred to in Article 7 for the installation concerned, in order that they may be reported as a single inventory change.

Article 15

The reports referred to in Article 14 shall be accompanied by concise notes:

(a) explaining the inventory changes on the basis of the operating data contained in the operating records provided for in Article 11 (a) of this Regulation;

(b) describing as specified in the 'particular safeguard provisions' referred to in Article 7, the planned operational programme for the installation concerned and, in particular, the taking of a physical inventory.

If the required information is contained in documents which already exist, copies of such documents may take the place of the concise notes.

Material balance report and physical inventory listing

Article 16

For each material balance area, the persons and undertakings referred to in Article 1 shall transmit to the Commission, in accordance with the specimen set out in Annex III to this Regulation, material balance reports showing:

(a) beginning physical inventory;

(b) inventory changes (first increases, then decreases);

(c) ending book inventory;

(d) ending physical inventory;

(e) material unaccounted for.

A physical inventory, in accordance with the specimen set out in Annex IV, listing all batches separately giving, *inter alia,* identification of the materials and giving batch data for each batch thereof and the use, pursuant to Article 9, which the persons or undertakings concerned intend to make of the materials, shall be attached to each material balance report.

These reports shall be transmitted as soon as possible and in any case within 30 days from the date on

which a physical inventory was taken, unless otherwise specified in the 'particular safeguard provisions' referred to in Article 7.

Special reports

Article 17

The persons and undertakings referred to in Article 1 shall transmit to the Commission a special report whenever the circumstances mentioned in Articles 18 and 27 arise.

The type of information to be dealt with in such reports shall be specified in the 'particular safeguard provisions' referred to in Article 7.

The special reports and further details or explanations which may be requested by the Commission in connection with these reports shall be supplied without delay.

Article 18

A special report must be made without delay:

(a) if, as a result of any unusual incident or circumstances, it is believed that there has been or might be a loss of nuclear material in excess of the limits specified for these purposes in the 'particular safeguard provisions' referred to in Article 7; or

(b) if the containment has unexpectedly changed from that specified in the 'particular safeguard provisions' referred to in Article 7, to a point where an unauthorized removal of nuclear material has become possible.

The abovementioned obligations shall devolve upon the persons and undertakings concerned as soon as they have become aware of any such loss or sudden change in the containment conditions, or of anything which leads them to believe that there has been such an occurrence. The causes shall also be stated as soon as they are known.

Detailed rules of application

Article 19

In respect of reactors, the obligations laid down in Articles 10 to 16 shall apply under the following conditions.

As far as nuclear transformations are concerned, calculated data will be reported in the inventory change report at the latest when irradiated fuel is transferred from the reactor material balance area. In addition, where appropriate, other procedures for recording and reporting nuclear transformations shall be specified in the 'particular safeguard provisions' referred to in Article 7.

Article 20

Nuclear materials subject to particular safeguard obligations entered into by the Community in an Agreement concluded with a non-Member State or an international organization shall, unless otherwise stipulated by such Agreement, be identified separately for each obligation in the following notifications:

(a) initial book inventory (Article 13);

(b) inventory change reports, but excluding book inventories (Article 14);

(c) physical inventory listings (Article 16); and

(d) intended imports and exports (Articles 24 and 25).

Unless specifically prohibited in the Agreement referred to above, such separation shall not preclude the physical mixing of materials.

This Article shall not apply to the Agreement or to any other Agreement concluded by the Community and a Member State with the International Atomic Energy Agency.

Article 21

(a) In any notification referred to in this Regulation, quantities of source materials shall be expressed in kilogrammes and quantities of special fissile materials in grammes.

(b) The corresponding material accounting records shall be kept in the units referred to in (a) of this Article or in smaller units. They shall be kept in such a manner as to render them trustworthy and, in particular, to comply with current practices in the Member States.

(c) In the notifications provided for above, quantities may be rounded down to the nearest unit when the first decimal is 0 to 4 and rounded up when the first decimal is 5 to 9.

(d) Unless otherwise provided for in the 'particular safeguard provisions' referred to in Article 7:

(i) notifications shall indicate the total weight of the elements contained: uranium, thorium or plutonium and also, for enriched uranium, the total weight of the fissile isotopes. The isotopic composition of plutonium, if recorded at the installation for operational needs, shall be made available to the Commission on request;

(ii) separate line entries in inventory change reports and in physical inventory listings and separate material balance reports must be used for the following categories of nuclear material:

— depleted uranium,

— natural uranium,

— uranium enriched up to 20%,

— uranium enriched above 20%,

— plutonium,

— thorium.

DEROGATIONS AND EXEMPTIONS

Article 22

(a) In order to take account of any particular circumstances in which safeguarded materials are used or produced, the Commission may, in the 'particular safeguard provisions' referred to in Article 7, grant producers and users of nuclear materials a derogation from the rules governing the form and frequency of notification provided for in this Regulation.

The Commission may so decide especially in the case of installations holding only small quantities which are kept in the same state for long periods.

(b) At the request of the persons or undertakings concerned in accordance with the form set out in Annex VIII, the Commission may exempt the following materials from declaration, provided that they are not processed or stored together with non-exempted nuclear materials:

— special fissile materials which are used in quantities of the order of a gramme or less as sensing components in instruments,

— plutonium with an isotopic concentration of plutonium-238 in excess of 80%,

— nuclear materials which are used exclusively in non-nuclear activities.

If the conditions for exemption cease to be fulfilled, the exemption shall be rescinded. The person or undertaking concerned shall inform the Commission in accordance with the form set out in Annex IX that the conditions for exemption no longer exist.

Article 23

This Regulation shall not apply to holders of finished products used for non-nuclear purposes which incorporate nuclear materials that are virtually irrecoverable.

PART III

TRANSFERS: IMPORTS/EXPORTS

Article 24

(a) The persons and undertakings referred to in Article 1 which export source or special fissile materials to a non-Member State shall give advance notification to the Commission of every such export. Similarly, advance notification shall be given to the Commission:

— in the case of any export from a Member State party to the Agreement to a Member State not party to the Agreement, and

— in the case of any export from the United Kingdom to a Member State party to the Agreement.

However, advance notification is required only:

(i) where the consignment exceeds one effective kilogramme;

(ii) where the 'particular safeguard provisions' referred to in Article 7 so specify, in the case of installations habitually transferring

large total quantities of materials to the same State, even though no single consignment exceeds one effective kilogramme.

(b) Such notification shall be given after the conclusion of the contractual arrangements leading to the transfer and in any case in time to reach the Commission eight working days before the material is to be prepared for shipment.

(c) Such notification shall be given in accordance with the form set out in Annex V to this Regulation and shall state, *inter alia,*

— the identification and, if possible, the expected quantity and composition of the material to be transferred, and the material balance area from which it will come,

— the State to which the nuclear material is to be sent,

— the dates on and locations at which the nuclear material will be prepared for shipment,

— the approximate dates of dispatch and arrival of the nuclear material,

— the use which the persons or undertakings concerned had made of the nuclear material.

(d) If so required for reasons of physical protection, special arrangements concerning the form and transmission of such notification may be agreed upon with the Commission.

Article 25

(a) The persons and undertakings referred to in Article 1 which import source or special fissile materials from a non-member State shall give advance notification to the Commission of every such import. Similarly, advance notification shall be given to the Commission:

— in the case of any import into a Member State party to the Agreement from a Member State not party to the Agreement, and

— in the case of any import into the United Kingdom from a Member State party to the Agreement.

However, advance notification is required only:

(i) where the consignment exceeds one effective kilogramme;

(ii) where the 'particular safeguard provisions' referred to in Article 7 so specify, in the case of installations to which large total quantities of materials are habitually transferred from the same State, even though no single consignment exceeds one effective kilogramme.

(b) Such notification shall be given as far in advance as possible of the expected arrival of the nuclear material and, in any case, on the date of receipt and in time to reach the Commission five working days before the material is unpacked.

(c) Such notification shall be given in accordance with the form set out in Annex VI and shall state, *inter alia*:

— the identification and, if possible, the expected quantity and composition of the material,

— the expected date of arrival, the location where and the date on which the nuclear material is expected to be unpacked.

(d) If so required for reasons of physical protection, special arrangements concerning the form and transmission of such notification may be agreed upon with the Commission.

Article 26

When persons or undertakings not subject to Article 1 decide to export or import nuclear materials referred to in Articles 24 and 25, these persons or undertakings are required to make the notifications foreseen in Articles 24 and 25.

Article 27

A special report as provided for in Article 17 shall be prepared by the persons or undertakings covered by Articles 24 and 25 if, following exceptional circumstances or an incident, they have received information that nuclear materials have been or appear to be lost, particularly when there has been a considerable delay during transfer. In the same circumstances persons or undertakings covered by Article 26 are also required to inform the Commission.

Article 28

Any change of date in the preparation for shipment, in the shipment or in the unpacking of nuclear materials with respect to the dates given in the notifications provided for in Articles 24 and 25, but not a change that gives rise to special reports, shall be communicated without delay, with an indication of the revised dates, if known.

PART IV

SPECIFIC PROVISIONS

ORE PRODUCERS

Article 29

Any person or undertaking extracting ores on the territory of a Member State shall keep accounting records thereof. These records must indicate, in particular, the tonnage and average uranium and thorium content of the ore extracted and of the stock at the mine, and proof of shipment, stating the date, consignee, and quantity. Such records shall be kept for at least five years.

Article 30

No later than the end of January each year, producers of ores shall inform the Commission, in accordance with the form set out in Annex VII, of the amount of material dispatched from each mine during the privious year.

Article 31

Any person or undertaking exporting ores to non-Member States shall inform the Commission thereof, in accordance with the form set out in Annex VII, on the actual date of dispatch.

CARRIERS

Article 32

Any person or undertaking engaged, within the territories of the Member States, in carrying or temporarily storing source or special fissile materials during shipment may accept them or hand them over only against a duly signed and dated receipt. This shall state the names of the parties handing over and receiving the materials and the quantities carried, together with the nature, form and composition of the materials.

If so required for reasons of physical protection, the specification of the materials transferred may be replaced by a suitable identification of the consignment. Such identification shall be traceable to records held by the persons and undertakings referred to in Article 1 and showing the specification mentioned.

Such documents shall be kept by the contracting parties for at least one year.

Article 33

Documents and papers already held and compiled by persons or undertakings in accordance with existing regulations which apply to them on the territory of the Member States in which they operate may take the place of the documents and receipts provided for in Article 32, provided that such documents and papers contain all the required information.

INTERMEDIARIES

Article 34

Every intermediary whatsoever, in particular authorized agents, brokers, commission or business agents, taking part in the conclusion of any contract for the supply of nuclear materials shall keep all documents relating to the transactions performed by him or on his behalf for at least one year after the expiry of the contract. Such documents shall mention the names of the contracting parties, the date of the contract, the quantity, nature, form and composition together with the origin and destination of the materials.

PART V

SPECIFIC PROVISIONS APPLICABLE IN THE TERRITORIES OF MEMBER STATES WHICH ARE NUCLEAR WEAPON STATES

Article 35

1. The provisions of this Regulation shall not apply:

(a) to installations or parts of installations which have been assigned to meet defence requirements and which are situated on the territory of a Member State not party to the Agreement; or

(b) to nuclear materials which have been assigned to meet defence requirements by that Member State.

2. For nuclear materials, installations or parts of installations which are liable to be assigned to meet defence requirements and which are situated on the territory of a Member State not party to the Agreement, the extent of the application of this Regulation and the procedures under it shall be defined by the Commission in consultation and in agreement with the Member State concerned, taking into account the provisions of the second paragraph of Article 84 of the Treaty.

3. It is understood in any event that:

(a) the provisions of Articles 1 to 4, 7 and 8 shall apply to installations or parts of installations which at certain times are operated exclusively with nuclear materials liable to be assigned to meet defence requirements but at other times are operated exclusively with civil nuclear materials;

(b) the provisions of Articles 1 to 4, 7 and 8 shall apply, with exceptions for reasons of national security, to installations or parts of installations to which access could be restricted for such reasons but which produce, treat, separate, reprocess or use in any other way simultaneously both civil nuclear materials and nuclear materials assigned or liable to be assigned to meet defence requirements;

(c) the provisions of Articles 6, and 9 to 37 shall apply in relation to all civil nuclear materials situated in installations or parts of installations as referred to in subparagraphs (a) and (b) above.

PART VI

FINAL PROVISIONS

DEFINITIONS

Article 36

For the purposes of this Regulation:

(a) 'The Agreement' means the Agreement concluded on 5 April 1973 between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the European Atomic Energy Community (Euratom) with the International Atomic Energy Agency, in implementation of paragraphs 1 and 4 of Article III of the Treaty on the non-proliferation of nuclear weapons.

(b) 'Member State party to the Agreement' means the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg or the Kingdom of the Netherlands.

(c) 'Member State not party to the Agreement' means France or the United Kingdom.

(d) 'Non-Member State' means any State which is not a member of the European Atomic Energy Community.

(e) 'Special fissile materials' means plutonium-239; uranium-233; uranium enriched in uranium-235 or uranium-233, and any substance containing

one or more of the foregoing isotopes and such other fissile materials as may be specified by the Council, acting by a qualified majority on a proposal from the Commission; the expression 'special fissile materials' does not, however, include source materials nor ores or ore waste.

(f) 'Uranium enriched in uranium-235 or uranium-233' means uranium containing uranium-235 or uranium-233 or both in an amount such that the abundance ratio of the sum of these isotopes to isotope 238 is greater than the ratio of isotope 235 to isotope 238 occurring in nature. 'Enrichment' means the ratio of the combined weight of uranium-233 and uranium-235 to the total weight of the uranium under consideration.

(g) 'Source materials' means uranium containing the mixture of isotopes occurring in nature; uranium whose content in uranium-235 is less than the normal; thorium; any of the foregoing in the form of metal, alloy; chemical compound or concentrate; any other substance containing one or more of the foregoing in such a concentration as shall be specified by the Council, acting by a qualified majority on a proposal from the Commission, and any other material which the Council may determine, acting by a qualified majority on a proposal from the Commission. The words 'source materials' shall not be taken to include ores or ore waste.

(h) 'Ores' means any ore containing, in such average concentration as shall be specified by the Council acting by a qualified majority on a proposal from the Commission, substances from which the source materials defined above may be obtained by the appropriate chemical and physical processing.

(i) 'Nuclear materials' means any ore, source and special fissile material as defined in paragraphs (e), (f), (g) and (h) above.

(j) 'Nature' of a material means natural uranium, depleted uranium, uranium enriched in uranium-235 or uranium-233, thorium or plutonium, depending on the case.

(k) 'Batch' means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of identifiable items.

(l) 'Batch data' means the total weight of each element of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. For reporting purposes the weights of individual items in the batch shall be added together before rounding to the nearest unit.

(m) 'Book inventory' of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area and of all inventory changes that have occurred since that physical inventory was taken.

(n) 'Correction' means an entry in an accounting record or a report to rectify an identified mistake or to reflect an improved measurement of a quantity previously entered into the record or report. Each correction must identify the entry to which it pertains.

(o) 'Effective kilogramme' means a special unit used in safeguarding nuclear material. The quantity in effective kilogrammes is obtained by taking:

(i) for plutonium, its weight in kilogrammes;

(ii) for uranium with an enrichment of 0·01 (1%) and above, its weight in kilogrammes multiplied by the square of its enrichment;

(iii) for uranium with an enrichment below 0·01 (1%) and above 0·005 (0·5%), its weight in kilogrammes multiplied by 0·0001; and

(iv) for depleted uranium with an enrichment of 0·005 (0·5%) or below, and for thorium, its weight in kilogrammes multiplied by 0·00005.

(p) 'Inventory change' means an increase or decrease, in terms of batches, of nuclear material in a material balance area.

(q) 'Key measurement point' means location where nuclear material appears in such a form that it may be measured to determine material flow or

inventory. Key measurement points thus include, but are not limited to, inputs and outputs (including measured discards) and storages in material balance areas.

(r) 'Material balance area' means an area such that:

(i) the quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

(ii) the physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures,

in order that the material balance may be established.

(s) 'Material unaccounted for' means the difference between physical inventory and book inventory.

(t) 'Physical inventory' means the sum of all the measured or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures.

(u) 'Shipper/receiver difference' means the difference between the quantity of nuclear material in a batch as stated by the shipping material balance area and as measured at the receiving material balance area.

(v) 'Source data' means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data. Source data may include, for example, weight of compounds, conversion factors to determine weight of element, specific gravity, element concentration, isotopic ratios, relationship between volume and manometer readings and relationship between plutonium produced and power generated.

(w) 'Strategic point' means a location selected during examination of design information where, under normal conditions and when combined with the information from all 'strategic points' taken together, the information necessary and sufficient for the implementation of safeguard measures under the Agreement is obtained and verified; a 'strategic point' may include any location where key measurements related to material accountancy are made and where containment and surveillance measures are executed.

INSTALLATIONS CONTROLLED FROM OUTSIDE THE COMMUNITY

Article 37

Where an installation is controlled by a person or undertaking established outside the Community, any obligations imposed by this Regulation shall devolve upon the local management of the installation.

ANNEXES

Article 38

The Annexes to this Regulation form an integral part thereof. The Commission may make minor technical adjustments thereto.

ENTRY INTO FORCE

Article 39

This Regulation shall enter into force 15 days after its publication in the *Official Journal of the European Communities*.

Without prejudice to Article 40, Commission of the European Atomic Energy Community Regulations No 7 and No 8 are hereby repealed.

Article 40

Articles 9 to 16, 19 and 21 of this Regulation shall apply as from the adoption of the 'particular safeguard provisions' referred to in Article 7.

Until the adoption of those provisions, Articles 2, 5, 7, 8 and 10 of the abovementioned Regulation No 8 shall continue to apply.

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

Done at Brussels, 19 October 1976.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION REGULATION (EURATOM) No 2130/93

of 27 July 1993

amending Regulation (Euratom) No 3227/76 concerning the application of the provisions on Euratom safeguards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 79 thereof,

Having regard to the approval of the Council,

Whereas Commission Regulation (Euratom) No 3227/76 (1) defines the nature and the extent of the requirements referred to in Article 79 of the Treaty;

Whereas Regulation (Euratom) No 3227/76 requires persons and undertakings to communicate technical and operational information and data to the Commission;

Whereas, in order to support the International Atomic Energy Agency (IAEA) in strengthening international safeguards, it is desirable to enable the Commission to transmit certain safeguards data to the IAEA;

Whereas, as regards the basic technical characteristics of new installations, it is appropriate, in the interest of their timely transmission to the IAEA, to extend the period within which they shall be declared to the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (Euratom) No 3227/76 is hereby amended as follows:

1. the second paragraph of Article 2 is replaced by the following:

'The basic technical characteristics of new installations shall be declared as laid down in Article 1 at least 200 days before the first consignment of nuclear material is due to be received.

Furthermore, for new installations with an inventory or annual throughput of nuclear material, whichever is the greater, of more than one effective kilogramme, the owner, operator, purpose, location, type, capacity and expected commissioning date shall be declared at least 200 days before construction begins.';

2. the following Article is inserted:

'TRANSMISSION OF INFORMATION AND DATA

Article 34a

The Commission may transmit to the International Atomic Energy Agency information and data obtained pursuant to this Regulation.'

Article 2

This Regulation shall enter into force 15 days after 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, 27 July 1993.

For the Commission

Abel MATUTES

Member of the Commission

(1) OJ No L 363, 31. 12. 1976, p. 1. Regulation as last amended by Regulation (Euratom) No 220/90 (OJ No L 22, 27. 1. 1990, p. 56).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 February 1980

on the setting up of an 'ad hoc' Advisory Committee on the Reprocessing of Irradiated Nuclear Fuels

(80/237/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the draft Decision submitted by the Commission,

Whereas the Commission has submitted to the Council a communication, 'Points for a Community strategy on the reprocessing of irradiated nuclear fuels',

HAS DECIDED AS FOLLOWS:

Sole Article

An *ad hoc* Advisory Committee on the Reprocessing of Irradiated Nuclear Fuels is hereby set up, with terms of reference as set out in the Annex hereto.

The Committee shall be composed of experts from public bodies and from undertakings concerned with the various aspects of reprocessing referred to in the Commission communication, three experts being appointed by the Government of each Member State and three representatives by the Commission. The Committee shall elect its own chairman. Secretariat services shall be provided by the General Secretariat of the Council. The Committee may, by common consent, call upon the services of experts from non-member States and from undertakings in non-member States in an advisory capacity.

Done at Brussels, 18 February 1980.

For the Council

The President

G. MARCORA

ANNEX

Terms of reference of the 'ad hoc' advisory Committee on the Reprocessing of Irradiated Nuclear Fuels

A. The tasks of the Committee shall be :

1. to analyze the reprocessing situation in the Community as regards the trend both of requirements and of available capacity, and to prepare a comprehensive report ; due account is to be taken in this analysis of work already carried out ;

2. to collect information on the interim storage capacity which will be required pending medium-term reprocessing of fuel elements and to note the problems raised in this connection ;

3. to examine whether and how to promote the development of the industrial capacity required in the Community and to facilitate the coordination of measures between the partners concerned, having due regard for legal provisions and industrial arrangements already obtaining ;

4. to consider, with regard to industrial processing capacity, the desirability and feasibility of utilizing all relevant provisions of the Euratom Treaty, particularly with a view to facilitating convergence of the interests of promoters and users.

B. Not later than one year after the date on which it is set up, and taking into account *inter alia* the results of the INFCE as seen by the Member States, the Committee will forward to the Commission a report, which the Commission will pass on to the Council accompanied, if appropriate, by suitable proposals.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/3/EURATOM

of 3 February 1992

on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the Commission (1), drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States,

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

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

Whereas on 2 February 1959 the Council adopted Directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (4), as amended by Directive 80/836/Euratom (5) and Directive 84/467/Euratom (6);

Whereas, pursuant to Article 2 of Directive 80/836/Euratom, these basic safety standards apply *inter alia* to the transport of natural and artificial radioactive substances;

Whereas, pursuant to Article 3 of Directive 80/836/Euratom, each Member State must make compulsory the reporting of activities which involve a hazard arising from ionizing radiation; whereas, in the light of possible dangers and other relevant considerations these activities are subject to prior authorization in cases decided upon by each Member State;

Whereas Member States have consequently set up systems within their territories in order to meet the requirements of Article 3 of Directive 80/836/Euratom laying down basic standards in accordance with Article 30 of the Euratom Treaty; whereas, therefore, by means of the internal controls that Member States apply on the basis of national rules consistent with existing Community and any relevant international requirements, Member States continue to ensure a comparable level of protection within their territories;

Whereas the protection of the health of workers and the general public requires that shipments of radioactive waste between Member States and into and out of the Community be subjet to a system of prior authorization; whereas this requirement is in line with the Community's policy of subsidiarity;

Whereas the European Parliament resolution of 6 July 1988 on the findings of the Committee of Inquiry into the Handling and Transport of Nuclear Materials (7) calls *inter alia*, for comprehensive Community rules to make transfrontier movements of nuclear waste subject to a system of strict controls and authorizations from their point of origin to their point of storage;

Whereas Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (8) does not apply to radioactive waste;

(1) OJ No C 210, 23. 8. 1990, p. 7.
(2) OJ No C 267, 14. 10. 1991, p. 210.
(3) OJ No C 168, 10. 7. 1990, p. 18.
(4) OJ No 11, 20. 2. 1959, p. 221/59.
(5) OJ No L 246, 17. 9. 1980, p. 1.
(6) OJ No L 265, 5. 10. 1984, p. 4.
(7) OJ No C 235, 12. 9. 1988, p. 70.
(8) OJ No L 326, 13. 12. 1984, p. 31. Directive as last amended by Directive 86/279/EEC (OJ No L 181, 4. 7. 1986, p. 13).

Whereas by Decision No 90/170/EEC [1] the Council has decided that the Community should be Party to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal of 22 March 1989; whereas that Convention does not apply to radioactive waste;

Whereas all the Member States have subscribed to the International Atomic Energy Agency (IAEA) code of good practice on the international transboundary movement of radioactive waste;

Whereas the management of radioactive waste necessitates supervision and control including a compulsory and common notification procedure for shipments of such waste;

Whereas measures ensuring *post-factum* control of shipments are necessary;

Whereas the competent authorities of the Member States of destination of radioactive waste should be able to raise objections to shipments of radioactive waste;

Whereas it is also desirable for the competent authorities of the Member State of origin and of the Member State(s) of transit to be able, subject to certain criteria, to lay down conditions in respect of the shipment of radioactive waste on their territory;

Whereas, to protect human health and the environment against dangers arising from such waste, account must be taken of risks occurring outside the Community; whereas, therefore, in the case of radioactive waste entering and/or leaving the Community, the third country of destination or origin and any third country or countries of transit must be consulted and informed and must have given their consent;

Whereas the Fourth ACP-EEC Convention signed at Lomé on 15 December 1989 contains specific provisions governing the export of radioactive waste from the Community to non-member States party to that Convention;

Whereas radioactive waste may contain nuclear materials as defined by Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards [2] and the transport of such substances must be subjected to the International Convention on the physical protection of nuclear materials (IAEA, 1980),

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Scope

Article 1

1. This Directive shall apply to shipments of radioactive waste between Member States and into and out of the Community whenever the quantities and concentration exceed the levels laid down in Articles 4 (a) and (b) of Directive 80/836/Euratom.

2. Specific provisions concerning reshipment of such waste are set out in Title IV.

Article 2

For the purpose of this Directive:

— *'radioactive waste'* means any any material which contains or is contaminated by radio-nuclides and for which no use is foreseen,

— *'shipment'* means transport operations from the place of origin to the place of destination, including loading and unloading, of radioactive waste,

— the *'holder'* of radioactive waste means any natural or legal person who, before carrying out a shipment, has the legal responsibility for such materials and intends to carry out shipment to a consignee,

— the *'consignee'* of radioactive waste means any natural or legal person to whom such material is shipped,

— *'place of origin'* and *'place of destination'* mean places situated in two different countries, either Member States of the Community or third countries, accordingly called 'country of origin' and 'country of destination',

— *'competent authorities'* means any authority which, under the law or regulations of the countries of origin, transit or destination, are empowered to implement the system of supervision and control defined in Titles I to IV inclusive; these competent authorities shall be designated in accordance with Article 17,

— *'sealed source'* has the the meaning given to it in Directive 80/836/Euratom.

Article 3

The transport operations necessary for shipment shall comply with Community and national provisions and with international agreements on the transport of radioactive material.

TITLE II

Shipments between Member States

Article 4

A holder of radioactive waste who intends to carry out a shipment of such waste or to arrange for such a shipment to be carried out shall submit an application for authori-

[1] OJ No L 92, 7. 4. 1990, p. 52.
[2] OJ No L 363, 31. 12. 1976, p. 1. Regulation as amended by Regulation (Euratom) No 220/90 (OJ No L 22, 27. 1. 1990, p. 56).

zation to the competent authorities of the country of origin. These competent authorities shall send such applications for approval to the competent authorities of the country of destination and of the country or countries of transit, if any.

For this purpose they shall use the standard document referred to in Article 20.

The sending of that document shall in no way affect the subsequent decision referred to in Article 7.

Article 5

1. Any application may be sent in respect of more than one shipment, provided that:

— the radioactive waste to which it relates essentially has the same physical, chemical and radioactive characteristics, and

— the shipments are to be made from the same holder to the same consignee and involve the same competent authorities, and

— where shipments involve third countries, such transit is via the same frontier post of entry to and/or exit from the Community and via the same frontier post of the third country or countries concerned, unless otherwise agreed between the competent authorities concerned.

2. The authorization shall be valid for a period of not more than three years.

Article 6

1. Not later than two months after receipt of the duly completed application, the competent authorities of the country of destination and of any country of transit shall notify the competent authorities of the country of origin of their acceptance or of the conditions which they consider necessary or of their refusal to grant approval.

For this purpose they shall use the standard document referred to in Article 20.

2. Any conditions required by the competent authorities of the Member States, whether they are the country of transit or of destination, may not be more stringent than those laid down for similar shipments within those States and must comply with existing international agreements.

Reasons shall be given for any refusal to grant approval, or the attaching of conditions to approval, in accordance with Article 3.

3. However, the competent authorities of the country of destination or of any country of transit may request a further period of not more than one month in addition to the period referred to in paragraph 1 to make their position known.

4. If upon expiry of the periods referred to in paragraph 1 and, if appropriate, paragraph 3, no reply has been received from the competent authorities of the country of destination and/or the intended countries of transit, those countries shall be deemed to have given their approval for the shipment requested, unless they have informed the Commission, in accordance with Article 17, that they do not accept this automatic approval procedure in general.

Article 7

If all the approvals necessary for shipment have been granted, the competent authorities of the Member State of origin shall be entitled to authorize the holder of the radioactive waste to ship it and inform the competent authorities of the country of destination and of the country or countries of transit, if any.

For that purpose, they shall use the standard document referred to in Article 20. Any additional requirements for such shipments shall be attached to this document.

This authorization shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.

Article 8

Without prejudice to any other accompanying documents required under other relevant legal provisions, the documents referred to in Articles 4 and 6 shall accompany each shipment falling under the scope of this Directive, including the cases of approval of more than one transfer referred to in Article 5.

Where shipments are made by rail, these documents shall be available to the competent authorities of all the countries concerned.

Article 9

1. Within 15 days of receipt, the consignee of the radioactive waste shall send the competent authorities of its Member State an acknowledgement of receipt, using the standard document referred to in Article 20.

2. The competent authorities of the country of destination shall send copies of the acknowledgment to the other countries involved in the operation. The competent authorities of the country of origin shall send a copy of the acknowledgement to the original holder.

TITLE III

Imports into and exports out of the Community

Article 10

1. Where waste falling within the scope of this Directive is to enter the Community from a third country and the country of destination is a Member State, the

consignee shall submit an application for authorization to the competent authorities of that Member State using the standard document referred to in Article 20. The consignee shall act as the holder and the competent authorities of the country of destination shall act as if they were the competent authorities of the country of origin referred to in Title II in respect of the country or countries of transit.

2. Where waste falling within the scope of this Directive is to enter the Community from a third country and the country of destination is not a Member State, then the Member State in whose territory the waste is first to enter the Community shall be deemed to be the country of origin for the purposes of that shipment.

3. With regard to shipments falling within paragraph 1, the intended consignee of the shipment within the Community, and with regard to shipments falling within paragraph 2, the person within the Member State in whose territory the waste is first to enter the Community who has responsibility for managing the shipment within that Member State shall inform his competent authorities in order to initiate the appropriate procedures.

Article 11

The competent authorities of Member States shall not authorize shipments:

1. either to:

   (a) a destination south of latitude 60° south;

   (b) a State party to the Fourth ACP-EEC Convention which is not a member of the Community, taking account, however, of Article 14;

2. or to a third country which, in the opinion of the competent authorities of the country of origin, in accordance with the criteria referred to in Article 20, does not have the technical, legal or administrative resources to manage the radioactive waste safely.

Article 12

1. Where radioactive waste is to be exported from the Community to a third country, the competent authorities of the Member State of origin shall contact the authorities of the country of destination regarding such a shipment.

2. If all the conditions for shipment are fulfilled, the competent authorities of the Member State of origin shall authorize the holder of radioactive waste to ship it and shall inform the authorities of the country of destination about this shipment.

3. This authorization shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.

4. For the purpose of the shipment, the standard documents referred to in Article 20 shall be used.

5. The holder of the radioactive waste shall notify the competent authorities of the country of origin that the waste has reached its destination in the third country within two weeks of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

6. This notification shall be substantiated by a declaration or certification of the consignee of the radioactive waste stating that the waste has reached its proper destination and indicating the customs post of entry in the third country.

TITLE IV

Reshipment operations

Article 13

Where a sealed source is returned by its user to the supplier of the source in another country, its shipment shall not fall within the scope of this Directive.

However, this exemption shall not apply to sealed sources containing fissile material.

Article 14

This Directive shall not affect the right of a Member State or an undertaking in the Member State to which waste is to be exported for processing to return the waste after treatment to its country of origin. Nor shall it affect the right of a Member State or an undertaking in that Member State to which irradiated nuclear fuel is to be exported for reprocessing to return to its country of origin waste and/or other products of the reprocessing operation.

Article 15

1. Where a shipment of radioactive waste cannot be completed or if the conditions for shipment are not complied with in accordance with the provisions under Title II, the competent authorities of the Member State of dispatch shall ensure that the radioactive waste in question is taken back by the holder of that waste.

2. In case of shipments of radioactive waste from a third country to a destination within the Community, the competent authorities of the Member State of destination shall ensure that the consignee of that waste negotiates a clause with the holder of the waste established in the third country obliging that holder to take back the waste where a shipment cannot be completed.

Article 16

The Member State or States which approved transit for the initial shipment may not refuse to approve reshipment in the cases referred to :

— in Article 14, if the reshipment concerns the same material after treatment or reprocessing and if all relevant legislation is respected,

— in Article 15, if the reshipment is undertaken on the same conditions and with the same specifications.

TITLE V

Procedural provisions

Article 17

Member States shall forward to the Commission not later than 1 January 1994 the name(s) and the address(es) of the competent authorities and all necessary information for rapidly communicating with such authorities, as well as their possible non-acceptance of the automatic approval procedure referred to in Article 6 (4).

Member States shall regularly forward to the Commission any changes to such data.

The Commission shall communicate this information, and any changes thereto, to all the competent authorities in the Community.

Article 18

Every two years, and for the first time on 31 January 1994, Member States shall forward to the Commission reports on the implementation of this Directive.

They shall supplement these reports by information on the situation with regard to shipments within their respective territories.

On the basis of these reports, the Commission shall prepare a summary report for the European Parliament, the Council and the Economic and Social Committee.

Article 19

The Commission shall be assisted in performing the tasks laid down in Articles 18 and 20 by a Committee of an advisory nature composed of representatives of the Member States and chaired by the representative of the Commission.

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes ; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 20

The procedure laid down in Article 19 shall in particular apply to :

— the preparation and possible updating of the standard document for applications for authorization referred to in Article 4,

— the preparation and possible updating of the standard document for granting approval referred to in Article 6 (1),

— the preparation and possible updating of the standard document for acknowledgment of receipt referred to in Article 9 (1),

— the establishment of criteria enabling Member States, to evaluate whether requirements for exports of radioactive waste are met, as provided for in Article 11 (2),

— the preparation of the summary report referred to in Article 18.

TITLE VI

Final provisions

Article 21

1. Member States shall bring into force not later than 1 January 1994 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 3 February 1992.

For the Council

The President

João PINHEIRO

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EURATOM) No 1493/93
of 8 June 1993
on shipments of radioactive substances between Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the Commission (1), drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States,

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

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

Whereas on 2 February 1959 the Council adopted directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (4), amended in particular by Directive 80/836/Euratom (5);

Whereas, pursuant to Article 3 of Directive 80/836/Euratom, each Member State must make compulsory the reporting of activities which involve a hazard arising from ionizing radiation; whereas, in the light of possible dangers and other relevant considerations, these activities are subject to prior authorization in cases decided upon by each Member State;

Whereas Member States have consequently set up systems within their territories in order to meet the requirements of Article 3 of Directive 80/836/Euratom; whereas, therefore, by means of the internal controls that Member States apply on the basis of national rules consistent with existing Community and any relevant international requirements, Member States continue to ensure a comparable level of protection within their territories;

Whereas shipments of radioactive waste between Member States and into and out of the Community are subject to the specific measures laid down by Directive 92/3/Euratom (6); whereas Member States are required to bring into force not later than 1 January 1994 the laws, regulations and administrative provisions necessary to comply with Directive 92/3/Euratom; whereas each Member State should be responsible for ensuring that its own radioactive waste is properly managed;

Whereas the removal of frontier controls in the Community as from 1 January 1993 has deprived the competent authorities of Member States of information previously received through those controls on shipments of radioactive substances; whereas there is a need for the competent authorities concerned to receive the same level of information as before to continue implementing their controls for radiation protection purposes; whereas a Community system of declaration and provision of information would facilitate the maintenance of radiation protection control; whereas a system of prior declaration is needed for shipments of sealed sources and radioactive waste;

Whereas special fissile materials as defined by Article 197 of the EAEC Treaty are subject to the provisions of Title II, Chapter VII — Safeguards of that Treaty; whereas the transport of such materials is subject to the obligations of the Member States and the Commission pursuant to the International Convention on the Physical Protection of Nuclear Materials (IAEA.1980);

Whereas this Regulation is without prejudice to provision of information and to controls imposed for reasons other than radiation protection,

(1) OJ No C 347, 31. 12. 1992, p. 17.
(2) OJ No 150, 31. 5. 1993,
(3) OJ No C 19, 25. 1. 1993, p. 13.
(4) OJ No L 11, 20. 2. 1959, p. 221/59.
(5) OJ No L 246, 17. 9. 1980, p. 1. Directive as amended by Directive 84/467/Euratom (OJ No L 265, 5. 10. 1984, p. 4).
(6) OJ No L 35, 12. 2. 1992, p. 24.

HAS ADOPTED THIS REGULATION :

Article 1

1. This Regulation shall apply to shipments, between Member States, of sealed sources and other relevant sources, whenever the quantities and concentrations exceed the levels laid down in Article 4 (a) and (b) of Directive 80/836/Euratom. It shall also apply to shipments of radioactive waste, between Member States, as covered by Directive 92/3/Euratom.

2. In the case of nuclear materials, each Member State carries out all necessary controls, within its own territory, in order to ensure that each consignee of such materials, which are the subject of a shipment from another Member State, complies with the national provisions implementing Article 3 of Directive 80/836/Euratom.

Article 2

For the purposes of this Regulation :

— *shipment* means transport operations from the place of origin to the place of destination, including loading and unloading of radioactive substances,

— the *holder* of radioactive substances means any natural or legal person who, before carrying out a shipment, has the legal responsibility under national law for such materials and intends to carry out shipment to a consignee,

— the *cosignee* of radioactive substances means any natural or legal person to whom such material is shipped,

— *sealed source* has the meaning given to it in Directive 80/836/Euratom,

— *other relevant source* means any radioactive substance not being a sealed source intended for direct or indirect use of the ionizing radiation it emits for medical, veterinary, industrial, commercial, research or agricultural applications,

— *radioactive waste* has the meaning given to it in Directive 92/3/Euratom,

— *nuclear materials* means the special fissile materials, the source materials and the ores as defined in Article 197 of the EAEC Treaty,

— *competent authorities* means any authority responsible in the Member State for the application or administration of this Regulation or of any other authority designated by the Member State,

— *activity* has the meaning given to it in Directive 80/836/Euratom.

Article 3

Controls of shipments of sealed sources, other relevant sources and radioactive waste between Member States, pursuant to Community or national law, for the purpose of radiation protection shall be performed as part of the control procedures applied in a non-discriminatory manner throughout the territory of the Member State.

Article 4

1. A holder of sealed sources or radioactive waste who intends to carry out a shipment of such sources or waste, or to arrange for such a shipment to be carried out, shall obtain a prior written declaration by the consignee of the radioactive substances to the effect that the consignee has complied, in the Member State of destination, with all applicable provisions implementing Article 3 of Directive 80/836/Euratom and with relevant national requirements for safe storage, use or disposal of that class of source or waste.

The declaration shall be made by means of the standard documents set out in Annexes I and II to this Regulation.

2. The declaration referred to in paragraph 1 shall be sent by the consignee to the competent authority of the Member State to which the shipment is to be made. The competent authority shall confirm with its stamp on the document that it has taken note of the declaration and the declaration shall then be sent by the consignee to the holder.

Article 5

1. The declaration referred to in Article 4 may refer to more than one shipment, provided that :

— the sealed sources or radioactive waste to which it relates have essentially the same physical and chemical characteristics,

— the sealed sources or radioactive waste to which it relates do not exceed the levels of activity set out in the declaration, and

— the shipments are to be made from the same holder to the same consignee and involve the same competent authorities.

2. The declaration shall be valid for a period of not more than three years from the date of stamping by the competent authority as referred to in Article 4 (2).

Article 6

A holder of sealed sources, other relevant sources and radioactive waste who has carried out a shipment of such sources or waste, or arranged for such a shipment to be carried out, shall, within 21 days of the end of each calendar quarter, provide the competent authorities in the Member State of destination with the following information in respect of deliveries during the quarter :

— names and addresses of consignees,

— the total activity per radionuclide delivered to each consignee and the number of such deliveries made,

— the highest single quantity of each radionuclide delivered to each consignee,

— the type of substance : sealed source, other relevant source or radioactive waste.

The first such return shall cover the period 1 July to 30 September 1993.

Article 7

The competent authorities of Member States shall cooperate in ensuring the application and enforcement of this Regulation.

Article 8

Member States shall forward to the Commission not later than 1 July 1993 the name(s) and the address(es) of the competent authorities as defined in Article 2 and all necessary information for rapidly communicating with such authorities.

Member States shall forward to the Commission any changes to such data.

The Commission shall communicate this information, and any changes thereto, to all competent authorities in the Community and shall publish it, and any changes thereto, in the *Official Journal of the European Communities*.

Article 9

Nothing in this Regulation shall effect existing national provisions and international agreements on the transport, including transit, of radioactive material.

Article 10

Nothing in this Regulation shall affect the obligations and rights resulting from Directive 92/3/Euratom.

Article 11

1. The Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

2. This Regulation shall cease to apply to radioactive waste on 1 January 1994.

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

Done at Luxembourg, 8 June 1993.

For the Council

The President

N. HELVEG PETERSEN

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 15 July 1980

amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation

(80/836/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the Commission, drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the Treaty establishing the European Atomic Energy Community prescribes that the basic standards for the protection of the health of the general public and workers against the dangers arising from ionizing radiation, as provided for in particular in Article 30 thereof, must be laid down in order to enable each Member State, in accordance with Article 33, to lay down the appropriate provisions, by legislation, regulation or administrative action, to ensure compliance with the basic standards, to take the necessary measures with regard to teaching, education and vocational training and to lay down such provisions in harmony with the provisions applicable in this field in the other Member States;

Whereas on 2 Feburary 1959, the Council adopted Directives laying down such basic standards (3), which were last amended by Directive 76/579/Euratom (4);

Whereas the usefulness of some review of these Directives has become apparent in the light of the development of scientific knowledge concerning radiation protection;

Whereas the protection of the health of workers and the general public requires that any activity involving danger arising from ionizing radiation must be made subject to regulation;

Whereas the basic standards must be adapted to the conditions under which nuclear energy is used; whereas they vary according to whether they are concerned with the individual safety of workers exposed to ionizing radiation or with the protection of the general public;

Whereas the protection of the health of workers exposed to ionizing radiation requires, on the one hand, the organization of measures to prevent exposure and procedures for measuring exposure and, on the other hand, an adequate degree of medical surveillance;

(1) OJ No C 140, 5. 6. 1979, p. 174.
(2) OJ No C 128, 21. 5. 1979, p. 31.
(3) OJ No 11, 20. 2. 1959, p. 221/59.
(4) OJ No L 187, 12. 7. 1976, p. 1.

Whereas the protection of the health of the general public entails a system of surveillance, inspection and, in the case of accident, intervention;

Whereas the studies conducted on the risks of ionizing radiation are of an exemplary nature, particularly in relation to those carried out on other risks; whereas the positive results achieved in radiation protection are important; whereas it is clear that Community harmonization of basic standards has a role to play;

Whereas the Member States are obliged to take the measures necessary to comply with Directive 76/579/Euratom before 3 June 1980; whereas some of the basic standards laid down in this Directive and in the aforementioned Directive are common to both Directives; whereas amendments to national laws in this field at excessively short intervals should be avoided; whereas it is necessary, therefore, to authorize Member States not to comply with the aforementioned Directive and to prescribe a sufficiently long period to comply with this Directive for Member States that do not take advantage of this authorization and a shorter period for those that do take advantage of it,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS

Article 1

For the purposes of this Directive, the following terms have the meaning hereby assigned to them:

(a) Physical terms, quantities and units

Ionizing radiation: radiation consisting of photons or of particles capable of producing ions directly or indirectly.

Activity (A): the quotient of dN by dt, where dN is the number of spontaneous nuclear transformations which occur in a quantity of a radionuclide in the time interval dt.

$$A = \frac{dN}{dt}$$

This definition does not apply to the words 'activity' and 'activities' in Articles 2, 3, 4, 6 and 13.

Becquerel (Bq): the special name of the SI unit of activity.

$$1\ Bq = 1\ s^{-1}$$

In this Directive the values to be used when the activity is expressed in curies are also given.

$$1\ Ci = 3{\cdot}7 \times 10^{10}\ Bq\ (exactly)$$
$$1\ Bq = 2{\cdot}7027 \times 10^{-11}\ Ci$$

Absorbed dose (D): the quotient of $d\bar{\varepsilon}$ by dm, where $d\bar{\varepsilon}$ is the mean energy imparted by ionizing radiation to matter in a volume element and dm is the mass of matter in that volume element.

$$D = \frac{d\bar{\varepsilon}}{dm}$$

Gray (Gy): the special name of the SI unit of absorbed dose.

$$1\ Gy = 1\ J\ kg^{-1}$$

In this Directive the values to be used when the absorbed dose is expressed in rads are also given.

$$1\ rd = 10^{-2}\ Gy$$
$$1\ Gy = 100\ rads$$

Linear energy transfer or restricted linear collision stopping power (L_Δ): the quotient of dE by dl, where dl is the distance traversed by a charged particle in a medium and dE is the mean energy loss due to collisions with energy transfers less than a given value 'Δ'.

$$L_\Delta = \left(\frac{dE}{dl}\right)_\Delta$$

For radiation protection calculations, all the transferred energies are included, so that

$$L_\Delta = L_\infty$$

(Particle) fluence (Φ): the quotient of dN by da, where dN is the number of particles which enter a sphere of cross-sectional area da.

$$\Phi = \frac{dN}{da}$$

(Particle) fluence rate (φ): the quotient of $d\Phi$ by dt, where $d\Phi$ is the increment of particle fluence in the time interval dt.

$$\varphi = \frac{d\Phi}{dt}$$

(b) Radiological, biological and medical terms

Exposure: any exposure of persons to ionizing radiation. A distinction is made between:

— external exposure: exposure resulting from sources outside the body;

— internal exposure: exposure resulting from sources inside the body;

— total exposure: the sum of external and internal exposure.

Continuous exposure: prolonged external exposure the intensity of which may, however, vary with time, or internal exposure due to continuous intake although its level may vary with time.

Single exposure: external exposure of short duration, or internal exposure resulting from the intake of radionuclides over a short period.

Quality factor (Q): a function of linear energy transfer (L_∞), used to weight absorbed doses in such a way as to indicate their significance for radiation protection purposes. The values of the quality factors to be used in evaluating dose equivalent for different types of radiation shall be those laid down in Annex II.

Effective quality factor ($\bar{Q}$): average value of the quality factor where the dose absorbed is delivered by particles with different L_∞ values. It is calculated according to the expression

$$\bar{Q} = \frac{1}{D} \int_0^\infty Q \frac{dD}{dL_\infty} dL_\infty$$

Dose equivalent (H): the product of the absorbed dose (D), the quality factor (Q) and the product of all other modifying factors (N). Where the word 'dose' is used alone the meaning is always that of 'dose equivalent'.

Sievert (Sv): the special name of the SI unit of dose equivalent.

$$1\ Sv = 1\ J\ kg^{-1}$$

In this Directive the values to be used when the dose equivalent is expressed in rems are also given.

$$1\ rem = 10^{-2}\ Sv$$
$$1\ Sv = 100\ rems$$

Deep dose equivalent index ($H_{I,d}$) *at a point:* the maximum dose equivalent within the 28-cm-diameter core of a 30-cm-diameter sphere centred at this point and consisting of material equivalent to soft tissue with a density of $1\ g \cdot cm^{-3}$.

Shallow dose equivalent index ($H_{I,s}$) *at a point:* the maximum dose equivalent within the volume between 0·07 mm and 1 cm from the surface of a 30-cm-diameter sphere centred at this point and consisting of material equivalent to soft tissue with a density of $1\ g \cdot cm^{-3}$. It is not necessary to determine the dose equivalent in the outer layer of thickness 0·07 mm.

Effective dose: the sum of the weighted average dose equivalents in the various organs or tissues.

Whole body exposure: exposure regarded as uniform throughout the body.

Partial body exposure: exposure predominantly of part of the body or of one or more organs or tissues, or exposure which is not regarded as uniform throughout the body.

Committed dose: the dose to an organ or to a tissue over a period of 50 years, resulting from an intake of one or more radionuclides.

Genetic dose: the genetic dose to a population is the dose which, if it were received by each person from conception to the mean age of reproduction, would result in the same genetic burden to the whole population as do the actual doses received by the individuals of this population. The genetic dose can be assessed as the annual genetically significant dose multiplied by the mean age of reproduction, which is taken to be 30 years.

Annual genetically significant dose: the average dose to a population of the individual annual gonad doses, weighted in the case of each individual dose for the probable number of children conceived subsequent to irradiation.

Collective dose: the collective dose (S) to a population or group is given by the summation

$$S = \sum_i H_i P_i$$

where H_i is the dose to the whole body or to a specified organ averaged over the P_i members of the i^{th} subgroup of the population or group.

Radioactive contamination: the contamination of any material, surface or environment or of a person by radioactive substances. In the specific case of the human body, this radioactive contamination includes both external skin contamination and internal contamination irrespective of method of intake.

Dose limits: the limits laid down in this Directive for the doses resulting from the exposure of exposed workers, apprentices and students, and members of the public, excluding the doses resulting from natural background radiation and exposure of individuals as a result of medical examination and treatment undergone by them. The dose limits apply to the sum of the doses received from external exposure during the period considered and the committed doses resulting from the intake of radionuclides during the same period.

Intake: the activity entering the body from the external environment.

Limit of annual intake: for a given individual, the activity which, when introduced into the body, results in a committed dose equal to the appropriate limit of annual dose laid down in Articles 8, 9, 10 and 12.

Derived limit of concentration of radionuclides in inhaled air: the annual mean concentration in the air expressed in units of activity per unit volume which, inhaled over 2 000 hours of work per year, gives an intake equal to the limit of annual intake.

Radiotoxicity: the toxicity attributable to ionizing radiation emitted by an incorporated radionuclide and its daughters; radiotoxicity is related not only to the radioactive characteristics of the radionuclide but also to its chemical and physical state and to the metabolism of the element in the body or in the organ.

(c) Other terms

Source: an apparatus or substance capable of emitting ionizing radiation.

Sealed source: a source consisting of radioactive substances firmly incorporated in solid and effectively inactive materials, or sealed in an inactive container of sufficient strength to prevent, under normal conditions of use, any dispersion of radioactive substances.

Radioactive substance: any substance that contains one or more radionuclides, the activity or the concentration of which cannot be disregarded as far as radiation protection is concerned.

Natural background radiation: all ionizing radiation from natural terrestrial and cosmic sources, to the extent that the exposure which it causes is not significantly increased by man.

Critical assembly: an assembly of fissile materials in which it is feasible to maintain a chain reaction.

Whole population: the entire population, including exposed workers, apprentices, students and members of the public.

Exposed workers: persons subjected, as a result of their work, to an exposure liable to result in annual doses exceeding one-tenth of the annual dose limits laid down for workers.

Reference groups (critical groups) of the population: groups comprising persons whose exposure is reasonably uniform and representative of that of the more highly exposed individuals in the population.

Members of the public: individuals in the population, excluding exposed workers, apprentices and students during their working hours.

Controlled area: an area subject to special rules for the purposes of protection against ionizing radiation and to which access is controlled.

Supervised area: an area subject to appropriate supervision for the purpose of protection against ionizing radiation.

Intervention level: a value of absorbed dose or dose equivalent or a derived value fixed in connection with the drawing-up of emergency plans.

Approved medical practitioner: a medical practitioner responsible for the medical surveillance of workers of category A as defined in Article 23, whose capacity to act in this respect is recognized by the competent authorities.

Qualified expert: person having the knowledge and training needed to carry out physical or technical tests, or radiochemical tests, or to give advice in order to ensure effective protection of individuals and correct operation of protective installations, as the case may be, whose capacity to act as a qualified expert is recognized by the competent authorities.

Accident: an unforeseen event that causes damage to an installation or disrupts the normal operation of an installation, and is likely to result for one or more persons in a dose exceeding the dose limits.

Planned special exposure: an exposure causing an annual dose to exceed one of the annual dose limits laid down for exposed workers, permitted exceptionally in certain situations during normal operations when alternative techniques which do not involve such exposures cannot be used.

Accidental exposure: exposure which is of a fortuitous and involuntary nature and whereby one of the dose limits laid down for exposed workers is exceeded.

Emergency exposure: an exposure justified in abnormal conditions in the interests of bringing help to endangered individuals, preventing exposure of a large number of people or saving a valuable installation, whereby one of the dose limits laid down for exposed workers is exceeded, and whereby the limits for planned special exposures may also be exceeded. Emergency exposures shall apply only to volunteers.

Apprentice: a person receiving training and instruction within an undertaking with a view to exercising a specific skill.

TITLE II

SCOPE, REPORTING AND AUTHORIZATION

Article 2

This Directive shall apply to the production, processing, handling, use, holding, storage, transport and disposal of natural and artificial radioactive substances and to any other activity which involves a hazard arising from ionizing radiation.

Article 3

Each Member State shall make the reporting of the activities referred to in Article 2 compulsory. Without prejudice to Article 5 and in the light of possible dangers and other relevant considerations, these activities shall be subject to prior authorization in cases decided upon by each Member State.

Article 4

Without prejudice to Article 5, these requirements for reporting and obtaining prior authorization need not be applied to activities involving

(a) radioactive substances where the quantities involved do not exceed in total the values given in Annex I;

(b) radioactive substances of a concentration of less than 100 Bq g^{-1} (0·0027 μCi g^{-1}), this limit being increased to 500 Bq g^{-1} (0·014 μCi g^{-1}) for solid natural radioactive substances;

(c) the use of navigation instruments or timepieces containing radioluminescent paint, but not their manufacture or repair except as provided for in (a);

(d) apparatus emitting ionizing radiation and containing radioactive substances in quantities exceeding the values specified in (a), provided that:

1. it is of a type approved by the competent authority;
2. it possesses advantages in relation to the potential hazard that, in the opinion of the competent authority, justify its use;
3. it is constructed in the form of sealed sources ensuring effective protection against any contact with the radioactive substances and against any leakage of them; and
4. it does not cause, at any point situated at a distance of 0·1 m from the accessible surface of the apparatus and under normal operating conditions, a dose rate exceeding

1 μSv h^{-1} (0·1 mrem h^{-1});

(e) apparatus other than that referred to in (f) emitting ionizing radiation but not containing any radioactive substances, provided that:

1. it is of a type approved by the competent authority;
2. it possesses advantages in relation to the potential hazard that, in the opinion of the competent authority, justify its use; and
3. it does not cause, at any point situated at a distance of 0·1 m from the accessible surface of the apparatus and under normal operating conditions, a dose rate exceeding

1 μSv h^{-1} (0·1 mrem h^{-1});

(f) cathode ray tubes intended for the display of visual images which do not cause, at any point situated at a distance of 0·05 m from the accessible surface of the apparatus, a dose rate exceeding

5 μSv h^{-1} (0·5 mrem h^{-1})

Article 5

Apart from the prohibitions provided for by national law, and irrespective of the degree of danger involved, a system of prior authorization must be applied in respect of:

(a) the administration of radioactive substances to persons for purposes of diagnosis, treatment or research;

(b) the use of radioactive substances in toys and the importation of toys containing radioactive substances;

(c) the addition of radioactive substances in the production and manufacture of foodstuffs, medicinal products, cosmetics and products for household use (except for the instruments and timepieces referred to in Article 4 (c)) and the importation for commercial purposes of such goods if they contain radioactive substances.

TITLE III

LIMITATION OF DOSES FOR CONTROLLABLE EXPOSURES

Article 6

The limitation of individual and collective doses resulting from controllable exposures shall be based on the following general principles:

(a) every activity resulting in an exposure to ionizing radiation shall be justified by the advantages which it produces;

(b) all exposures shall be kept as low as reasonably achievable;

(c) without prejudice to Article 11, the sum of the doses and committed doses received shall not exceed the dose limits laid down in this Title for exposed workers, apprentices and students and members of the public.

The principles set out in (a) and (b) shall apply to all exposures to ionizing radiation and include medical exposures. The principle set out in (c) shall not apply to the exposure of individuals as a result of medical examination and treatment undergone by them.

CHAPTER I

LIMITATION OF DOSES FOR EXPOSED WORKERS

Article 7

1. Workers under 18 years of age may not be assigned to any work which would result in their being exposed workers.

2. Nursing mothers shall not be employed in work involving a high risk of radioactive contamination; if necessary, a special watch will be kept for bodily radioactive contamination.

Article 8

Whole body exposure

1. The dose limit for whole body exposure of exposed workers shall be 50 mSv (5 rems) in a year.

2. For women of reproductive capacity, the dose to the abdomen shall not exceed 13 mSv (1·3 rems) in a quarter.

3. As soon as pregnancy is declared, measures shall be taken to ensure that exposure of the woman concerned in the context of her employment is such that the dose to the foetus, accumulated over the period of time between declaration of pregnancy and the date of delivery, remains as small as is reasonably practicable and in no case exceeds 10 mSv (1 rem). In general, this limitation can be achieved by employing the women in working conditions appropriate to category B workers.

Article 9

Partial body exposure

In the case of partial body exposure:

(a) the effective dose limit evaluated by the method set out in Annex II, Section E, shall be 50 mSv (5 rems) in a year; the average dose in each of the organs or tissues involved shall not exceed 500 mSv (50 rems) in a year.

(b) In addition:

— the dose limit for the lens of the eye shall be 300 mSv (30 rems) in a year;

— the dose limit for the skin shall be 500 mSv (50 rems) in a year. Where exposure is the result of radioactive contamination of the skin, this limit shall apply to the dose averaged over any area of 100 cm^2;

— the dose limit for the hands, forearms, feet and ankles shall be 500 mSv (50 rems) in a year.

CHAPTER II

LIMITATION OF DOSES FOR APPRENTICES AND STUDENTS

Article 10

1. The dose limits for apprentices and students aged 18 years or over who are training for employment involving exposure to ionizing radiation or who, in the course of their studies, are obliged to use sources shall be equal to the dose limits for exposed workers laid down in Articles 8 and 9.

2. The dose limits for apprentices and students aged between 16 and 18 years who are training for employment involving exposure to ionizing radiation or who, in the course of their studies, are obliged to use sources, shall be equal to three-tenths of the annual dose limits for exposed workers laid down in Articles 8 and 9.

3. The dose limits for apprentices and students aged 16 years or over who are not subject to the provisions of paragraphs 1 and 2 and for apprentices and students aged less than 16 years shall be the same as the dose limits for members of the public specified in Article 12. However, the contribution to the annual doses that they are liable to receive by virtue of their training shall not exceed one-tenth of the dose limits specified in Article 12 and the dose during each single exposure shall not exceed one-hundredth of those dose limits.

CHAPTER III

PLANNED SPECIAL EXPOSURES

Article 11

1. Only workers of category A defined in Article 23 may be subjected to planned special exposures. All planned special exposure must be subject to appropriate authorization.

Such authorization shall be given only in exceptional situations during normal operations when alternative techniques which do not involve such exposure cannot be used. Account shall be taken of the age and health of the workers involved.

2. The doses or committed doses received in the course of planned special exposures must not in any year exceed twice the annual dose limits laid down in Articles 8 and 9 and, in a lifetime, five times those dose limits.

3. Planned special exposures shall not be authorized:

(a) if, during the previous 12 months, the worker has received an exposure giving rise to doses in excess of the annual dose limits laid down in Articles 8 and 9, or

(b) if the worker has previously received accidental or emergency exposures giving rise to doses the sum of which exceeds five times the annual dose limits laid down in Articles 8 and 9, or

(c) if the worker is a woman of reproductive capacity.

4. The exceeding of dose limits as a result of planned special exposure shall not in itself be a reason for excluding the worker from his usual occupation. Subsequent conditions of exposure shall be subject to the agreement of the approved medical practitioner.

5. All planned special exposures must be entered in the medical record provided for in Article 36, in which the estimated value of the dose and that of the activities taken into the body shall also be entered.

6. Before receiving a planned special exposure, the worker shall be given appropriate information about the risks involved and the precautions to be taken during the operation.

CHAPTER IV

LIMITATION OF DOSES FOR THE POPULATION

Article 12

Dose limits for members of the public

1. The following dose limits for members of the public shall be complied with without prejudice to Article 13.

2. In the case of whole body exposure the dose limit shall be 5 mSv (0·5 rem) in a year.

3. In the case of partial body exposure:

(a) the limit for the effective dose evaluated by the method set out in Annex II, Section E, shall be 5 mSv (0·5 rem) in a year; the average dose in each of the organs or tissues involved shall not exceed 50 mSv (5 rems) in a year.

(b) In addition:

— the dose limit for the lens of the eye shall be 30 mSv (3 rems) in a year;

— the dose limit for the skin shall be 50 mSv (5 rems) in a year;

— the dose limit for the hands, forearms, feet and ankles shall be 50 mSv (5 rems) in a year.

Article 13

Exposure of the population as a whole

1. Each Member State shall ensure that the contribution to the exposure of the population as a whole from each activity is kept to the minimum amount necessitated by that activity, taking account of the principles set out in Article 6 (a) and (b).

2. The total of all such contributions shall be kept under review and in particular the genetic dose resulting from all these contributions shall be estimated.

3. Member States shall regularly transmit the results of these reviews and estimates to the Commission.

TITLE IV

DERIVED LIMITS

Article 14

Use of the derived limits laid down in this Title is a means of ensuring that the dose limits defined in Title III are complied with; however, other methods may be used to achieve this end.

Article 15

External exposure only

In the case of external exposure of the whole body or of a substantial fraction of the body, the dose limits laid down in Articles 8, 9 and 12 shall be deemed to be complied with if the requirements laid down in Annex II are met.

Article 16

Internal exposure only

In the case of internal exposure, the dose limits laid down in Articles 8, 9 and 12 shall be deemed to be complied with if the values of intake and concentration of radionuclides in the air do not exceed the values laid down in Annex III.

(a) The tables in Annex III give:

— the limits of annual intake by inhalation of radionuclides for exposed workers;

— the derived limits of concentration of radionuclides in the air inhaled for exposed workers. These must be considered as average values for one year;

— the limits of annual intake by inhalation and ingestion of radionuclides for members of the public.

(b) Where there is a mixture of radionuclides, the methods given in Annex III, paragraph 2, shall be used.

Article 17

Combinations of external and internal exposure

In the case of combinations of external exposure of the whole body or a substantial fraction of the body and internal radioactive contamination by one or more radionuclides, the limits laid down in Articles 8, 9 and 12 shall be deemed to be complied with if the requirements laid down in Annex II are met.

TITLE V

ACCIDENTAL AND EMERGENCY EXPOSURES OF WORKERS

Article 18

All accidental and emergency exposures shall be entered in the medical record of the worker provided for in Article 36. Wherever possible, doses and committed doses received in the course of accidental and emergency exposures must be recorded separately on the exposure record provided for in Article 31. The procedures set out in Article 37 shall also be applied. Only volunteers may be subjected to emergency exposures.

TITLE VI

FUNDAMENTAL PRINCIPLES GOVERNING OPERATIONAL PROTECTION OF EXPOSED WORKERS

Article 19

Operational protection of exposed workers shall be based on the following principles:

(a) classification of places of work into different areas;

(b) classification of workers into different categories;

(c) implementation of control measures and monitoring relating to these different areas and to the different categories of workers.

These principles of protection shall also apply to the apprentices and students referred to in Article 10 (1) and (2).

CHAPTER I

MEASURES FOR THE RESTRICTION OF EXPOSURE

Section 1

Classification and delineation of areas

Article 20

For the purposes of radiation protection, each Member State shall make arrangements as regards all places of work where there is a risk of exposure to ionizing radiation.

In working areas where the doses are not liable to exceed one-tenth of the annual dose limits laid down for exposed workers, it shall not be necessary to make special arrangements for the purposes of radiation protection.

In working areas where the doses are liable to exceed one-tenth of the annual dose limits laid down for exposed workers, the arrangements must be appropriate to the nature of the installation and sources and to the magnitude and nature of the hazards. The scope of the precautions and monitoring, as well as their type and quality, must be appropriate to the hazards associated with the work involving exposure to ionizing radiation.

A distinction shall be made between:

(a) controlled areas

Any area in which doses are liable to exceed three-tenths of the annual dose limits laid down for exposed workers shall constitute or be included in a controlled area.

Annex IV lists examples of establishments and plants in which the presence of generators or sources liable to be the cause of exposure generally justifies the delineation of one or more controlled areas;

(b) supervised areas

Any area which is not considered as a controlled area and in which doses are liable to exceed one-tenth of the annual dose limits laid down for exposed workers shall be considered as a supervised area.

Article 21

Controlled areas must be delineated.

Taking into account the nature and extent of the radiation hazards:

(a) radiological environmental surveillance shall be organized in controlled and supervised areas, and, in particular, activities, doses and dose rates as the case may be shall be monitored and results recorded;

(b) in controlled and supervised areas, working instructions appropriate to the radiation hazard shall be laid down;

(c) the hazards inherent in the sources shall be indicated in controlled areas;

(d) signs indicating sources shall be displayed in controlled and supervised areas.

Qualified experts shall be concerned in the discharge of these duties.

Article 22

The minimum requirement for a controlled area shall be the control of access by appropriate identification.

Section 2

Classification of exposed workers

Article 23

For the purposes of monitoring and surveillance, a distinction shall be made between two categories of exposed workers:

— category A: those who are liable to receive a dose greater than three-tenths of one of the annual dose limits;

— category B: those who are not liable to receive this dose.

Article 24

Exposed workers and the apprentices and students referred to in Article 10 (1) and (2) shall be informed of the health risks involved in their work, the precautions to be taken and the importance of complying with the technical and medical requirements and shall also be given appropriate training in the field of radiation protection.

Section 3

Examination and testing of protective devices and measuring instruments

Article 25

The examination and testing of protective devices and measuring instruments shall be the responsibility of qualified experts.

The examination and testing shall comprise:

(a) prior critical examination of plans for installations from the point of view of radiation protection;

(b) the acceptance of new installations from the point of view of radiation protection;

(c) regular checking of the effectiveness of protective devices and techniques;

(d) regular checking that measuring instruments are serviceable and correctly used.

CHAPTER II

ASSESSMENT OF EXPOSURE

Article 26

The nature and frequency of assessment of exposure shall be such as to enable compliance with this Directive in each case.

Section 1

Collective monitoring

Article 27

Taking into account the radiological hazards, measurements shall be carried out:

(a) of dose rates and fluence rates, indicating the nature and the quality of the radiation in question;

(b) of the atmospheric concentration and surface density of contaminating radioactive substances, indicating their nature and their physical and chemical states.

Where appropriate, the results of these measurements shall be used for estimating individual doses.

Section 2

Individual monitoring

Article 28

The assessment of the individual doses shall be systematic for workers of category A. This assessment shall be based on individual measurements or, in cases where these are impossible or inadequate, on an estimate arrived at either from individual measurements made on other exposed workers, or from the results of the collective monitoring provided for in Article 27.

Article 29

In the case of accidental or emergency exposure, the absorbed doses shall be assessed, whether whole or partial body exposure has occurred.

Article 30

The results of individual monitoring shall be submitted to an approved medical practitioner whose responsibility it shall be to interpret their implications for human health. In an emergency the results shall be submitted immediately.

Section 3

Recording of results

Article 31

The following shall be kept in the archives for a period of at least 30 years:

(a) the results of collective monitoring measurements used to assess individual doses;

(b) the exposure record containing the data relating to the assessment of individual doses;

(c) in the case of accidental or emergency exposure, the reports relating to the circumstances and to the action taken.

For the documents referred to in (b) and (c), the period of 30 years shall start at the time of termination of the work involving exposure to ionizing radiation.

CHAPTER III

MEDICAL SURVEILLANCE OF EXPOSED WORKERS

Article 32

The medical surveillance of exposed workers shall be based on the principles that govern occupational medicine generally. It shall include, as appropriate, pre-employment medical examinations and periodic reviews of health, the frequency and the form of the latter being determined by the worker's state of health, the conditions of work and the incidents that may be associated with the work.

Article 33

No worker may be employed for any period as an exposed worker if the medical findings are unfavourable.

Section 1

Medical surveillance of workers of category A

Article 34

The medical surveillance of workers of category A shall be the responsibility of approved medical practitioners.

It shall include:

(a) a pre-employment medical examination

The purpose of this examination shall be to determine the worker's fitness for the first post for which he is being considered. It shall include an inquiry into his medical history including all known previous exposures to ionizing radiation resulting either from his employment or from medical examination and treatment, and also a clinical and any other investigations necessary for assessing his general state of health.

(b) general medical surveillance

The approved medical practitioner must have access to any information he requires in order to ascertain the state of health of workers under surveillance and to assess the environmental conditions existing in

the working premises in so far as they might affect the fitness of workers for the tasks assigned to them.

(c) periodic reviews of health

The health of workers shall be subject to review as a matter of routine to determine whether they remain fit to perform their duties. The nature of this review shall depend on the type and extent of exposure to ionizing radiation and on the individual worker's state of health. The state of health of each worker shall be reviewed at least once a year and more frequently if the worker's exposure conditions or state of health so require.

The approved medical practitioner may indicate the need for medical surveillance after cessation of work for as long as he considers it necessary to safeguard the health of the person concerned.

Article 35

The following medical classification shall be adopted with respect to fitness for work as a worker of category A:

— fit;

— fit, subject to certain conditions;

— unfit.

Article 36

1. A medical record shall be opened for each worker of category A and kept up to date so long as he remains a worker of that category. Thereafter it shall be retained in the archives for a period of at least 30 years from the termination of the work involving exposure to ionizing radiation.

2. The medical record shall include information regarding the nature of the employment, the results of the pre-employment medical examination and periodic reviews of health, a record of doses to check that the values laid down in Articles 8, 9 and 11 have not been exceeded, and the record of doses received in the course of accidental and emergency exposures.

Section 2

Special surveillance of exposed workers

Article 37

Special surveillance shall be provided in each case where the dose limits laid down in Articles 8 and 9 have been exceeded. Subsequent conditions of exposure shall be subject to the agreement of the approved medical practitioner.

Article 38

In addition to the periodic reviews of health provided for in Article 34, provision shall be made for any further examinations, decontamination measures or urgent remedial treatment considered necessary by the approved medical practitioner.

Section 3

Appeals

Article 39

Each Member State shall lay down the procedure for appeal against the findings and decisions made in pursuance of Articles 33 and 37.

CHAPTER IV

Article 40

1. Each Member State shall take all necessary measures to ensure the effective protection of exposed workers. It shall lay down provisions relating to the classification of places of work and of workers, to the implementation of arrangements aimed at restricting exposure and to monitoring. It shall also establish a system or systems of inspection to supervise the examinations and monitoring specified in this Directive and to initiate surveillance and intervention measures wherever necessary.

2. Each Member State shall ensure that workers have access to the results of the exposure measurements and the biological examinations concerning them.

3. Each Member State shall make the necessary arrangements to recognize the capacity of the experts responsible for the examination and testing of the various protective devices and measuring instruments and to approve medical practitioners responsible for the medical surveillance of category A workers. To this end, each Member State shall arrange for the training of such specialists.

4. Each Member State shall ensure that the means necessary for proper radiation protection are placed at the disposal of the departments responsible. The

creation of a specialized radiation protection unit shall be required for all establishments in which there is a serious risk of exposure or radioactive contamination. This unit, which may be shared by several establishments, shall be distinct from production and operation units.

5. Each Member State shall facilitate appropriate access within the Community to all relevant information concerning the posting of each exposed worker and the doses received.

6. For the guidance of medical practitioners responsible for the medical surveillance of exposed workers, each Member State shall draw up a list, which need not be exhaustive, of the criteria which should be taken into account when judging a worker's fitness to be exposed to ionizing radiation.

TITLE VII

FUNDAMENTAL PRINCIPLES GOVERNING OPERATIONAL PROTECTION OF THE POPULATION

Article 41

Each Member State shall adopt the provisions necessary for applying the fundamental principles governing operational protection of the population.

Article 42

Operational protection of the population means all arrangements and surveys for detecting and eliminating the factors which, in the production and use of ionizing radiation or in the course of any operation involving exposure to its effects, are liable to create an unjustifiable risk of exposure for the population. The extent of the precautions taken shall depend upon the magnitude of the risk of exposure, especially in the event of an accident, and upon demographic data. Operational protection has application in the medical field as well as in other fields. Protection shall include the examination and testing of protective arrangements and the dose determinations to be carried out for the protection of the population.

Article 43

The examination and testing of protective arrangements shall include:

(a) examination and approval of proposed installations involving an exposure hazard, and of the proposed siting of installations within the territory;

(b) acceptance into service of new installations with regard to protection against any exposure or radioactive contamination liable to extend beyond the perimeter of the establishment, taking into account demographic, meteorological, geological, hydrological and ecological conditions;

(c) checking the effectiveness of technical protective devices:

(d) acceptance, from the point of view of surveillance of radiological hazards, of equipment for measuring exposure and radioactive contamination;

(e) checking that measuring instruments are serviceable and correctly used;

(f) whenever necessary, the establishment of emergency plans and their approval;

(g) the establishment and application of waste discharge formulae and provisions to be laid down for measurement.

The tasks listed in (a) to (g) shall be carried out in accordance with rules laid down by the competent authorities on the basis of the extent of the exposure hazard involved.

Article 44

1. The health surveillance of the population shall be based, in particular, on the assessment of the doses received by the population, both in normal circumstances and in the event of an accident.

2. Surveillance shall be carried out:

(a) on the whole population of the area concerned;

(b) on reference groups of the population in all places where such groups may occur.

3. Taking into account the radiological hazards, the dose determinations to be carried out for the protection of the population shall include:

(a) assessment of external exposure, indicating, where appropriate, the quality of the radiation in question;

(b) assessment of radioactive contamination, indicating the nature and the physical and chemical state of the

radioactive contaminants and determination of their activity and their concentration;

(c) assessment of the doses that the reference groups of the population are liable to receive in normal or exceptional circumstances, and specification of the characteristics of these groups;

(d) assessment of the genetic dose and of the annual genetically significant dose, taking demographic characteristics into account. Doses due to exposure to various sources must be added together wherever possible;

(e) the frequency of assessments shall be such as to enable compliance with this Directive in each case;

(f) records relating to measurements of external exposure and radioactive contamination and the results of the assessment of the doses received by the population shall be kept in the archives and shall include accidental and emergency exposures.

Article 45

1. Each Member State shall establish a system of inspection to supervise the protection of the health of the population, to interpret, in terms of the effects on health, the results of the assessments provided for in Article 44 (3), and to check compliance with the dose limits laid down in Article 12.

2. Each Member State shall initiate action in regard to surveillance and intervention wherever necessary.

3. Each Member State shall take measures to ensure and effectively coordinate the health surveillance of the population, shall decide on the frequency of assessments and shall take all necessary steps to identify the reference groups of the population, taking into account the effective pathway of transmission of the radioactive material. These measures may, if necessary, be taken by one Member State jointly with other Member States.

4. In the event of accidents, each Member State shall stipulate:

(a) intervention levels, measures to be taken by the competent authorities and surveillance procedures with respect to the population groups that are liable to receive a dose in excess of the dose limits laid down in Article 12;

(b) the necessary resources both in personnel and in equipment to enable action to be taken to safeguard and maintain the health of the population. These measures may, if necessary, be taken by one Member State jointly with other Member States.

5. Any accident involving exposure of the population must be notified as a matter of urgency, when the circumstances so require, to neighbouring Member States and to the Commission.

Article 46

1. Member States shall be authorized not to take measures provided for in Article 40 (1) of Directive 76/579/Euratom, as amended by Directive 79/343/Euratom [1].

Member States which take advantage of this authorization shall take the measures necessary to comply with this Directive within 30 months from 3 June 1980.

Member States which do not take advantage of this authorization shall take the measures necessary to comply with this Directive within four years from 3 June 1980

2. Member States shall inform the Commission of the provisions they have adopted to comply with this Directive.

Article 47

This Directive is addressed to the Member States.

Done at Brussels, 15 July 1980.

For the Council

The President

J. SANTER

[1] OJ No L 83, 3. 4. 1979, p. 18.

COUNCIL DIRECTIVE

of 3 September 1984

amending Directive 80/836/Euratom as regards the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation

(84/467/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the Commission, drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas the Treaty establishing the European Atomic Energy Community prescribes that the basic standards for the protection of the health of the general public and workers against the dangers arising from ionizing radiation, as provided for in particular in Article 30 thereof, must be laid down in order to enable each Member State, in accordance with Article 33, to lay down by legislation, regulation or administrative action the appropriate provisions to ensure compliance with the basic standards, to take the necessary measures with regard to teaching, education and vocational training and to lay down such provisions in harmony with the provisions applicable in this field in the other Member States;

Whereas on 2 February 1959 the Council adopted Directives laying down such basic standards [3], which were last amended by Directive 80/836/Euratom [4];

Whereas the advantage of some review of Annexes I and III to Directive 80/836/Euratom has become apparent in the light of the development of scientific knowledge concerning radiation protection;

Whereas the protection of the health of workers and the general public requires that any activity involving danger arising from ionizing radiation must be made subject to regulation;

Whereas the basic standards must be adapted to the conditions under which nuclear energy is used; whereas these standards vary according to whether they are concerned with the individual safety of workers exposed to ionizing radiation or with the protection of the general public;

Whereas the values laid down in Annexes I and III to Directive 80/836/Euratom take account, only in part, of the latest scientific knowledge available;

Whereas in order to establish some of these values it was necessary provisionally to use values laid down previously in the 1959, 1962 and 1966 Directives for the maximum permissible concentration;

Whereas in 1980 it was not possible to carry out calculations for all radionuclides under consideration;

Whereas, in its opinion of 7 July 1983, the Economic and Social Committee considered it necessary to amend, in Articles 9 and 12 of Directive 80/836/Euratom, the annual dose limits for the lens of the eye, in line with the most recent recommendations of the International Commission on Radiological Protection, a step which involves amending the original values in Annex III for krypton intake limits; whereas these amendments should be adopted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 80/836/Euratom is hereby amended as follows:

(1) OJ No C 127, 14. 5. 1984, p. 120.
(2) OJ No C 286, 24. 10. 1983, p. 15.
(3) OJ No 11, 20. 2. 1959, p. 221/59.
(4) OJ No L 246, 17. 9. 1980, p. 1.

1. in Article 1 (b) (radiological, biological and medical terms), the term 'dose effective' in the French text is replaced by the term 'dose efficace';

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

'(a) the various types of activity resulting in an exposure to ionizing radiation shall have been justified in advance by the advantages which they produce (1);

(1) Account being taken, for medical activities, of Council Direcitve 84/466/Euratom of 3 September 1984, laying down basic measures relating to the radiation protection of persons undergoing medical examination or treatment (OJ No L 265, 5. 10. 1984, p. 1).';

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

'(a) the effective dose limit mainly used to estimate internal exposure in practice (1) evaluated by the method set out in Annex II, Section E, shall be 50 mSv (5 rems) in a year; the average dose in each of the organs or tissues involved shall not exceed 500 mSv (50 rems) in a year:

(1) This effective dose limit shall be taken into account in calculating the limits of annual intake set out in Annex III which enable the derived limits of concentration, including in air and water, to be determined.';

4. In Article 9 (b), the first indent is replaced by the following:

'— the dose limit for the lens of the eye shall be 150 mSv (15 rems) in a year,';

5. Article 12 (3) (a) is replaced by the following:

'(a) the effective dose limit mainly used to estimate internal exposure in practice (1), evaluated by the method set out in Annex II, Section E, shall be 5 mSv (0,5 rem) in a year; the average dose in each of the organs or tissues involved shall not exceed 50 mSv (5 rems) in a year;

(1) This effective dose limit shall be taken into account in calculating the limits of annual intake set out in Annex III which enable the derived limits of concentration, including in air and water, to be determined.';

6. in Article 12 (3) (b), the first indent is replaced by the following:

'— the dose limit for the lens of the eye shall be 15 mSv (1,5 rems) in a year,';

7. Annex I is replaced by Annex I hereto;

8. in Annex II, Section E, first and second lines, the term 'dose effective' in the French text is replaced by the term 'dose efficace';

9. Annex III is replaced by Annex III hereto.

Article 2

Member States shall take the measures necessary to comply with this Directive within 18 months of its publication.

Member States shall inform the Commission of the provisions which they have adopted pursuant to this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 3 September 1984.

For the Council

The President

P. BARRY

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 3 September 1984

laying down basic measures for the radiation protection of persons undergoing medical examination or treatment

(84/466/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Having regard to the proposal from the Commission, drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the Council has adopted Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation, as last amended by Directive 80/836/Euratom (3);

Whereas these standards also relate to problems of radiation protection connected with the use of ionizing radiation for diagnostic and therapeutic purposes;

Whereas, on the one hand, apart from natural background radiation, medical exposure to radiation is at present by far the major source of exposure to ionizing radiation; whereas this problem has been reviewed repeatedly by the World Health Organization, the United Nations Scientific Committee on the Effects of Atomic Radiation and the International Commission on Radiological Protection, which have already recommended measures to prevent excessive medical exposure;

Whereas, on the other hand, ionizing radiation has enabled great progress to be made in the diagnostic, therapeutic and preventive aspects of medicine, particularly since new techniques are under development, notably in nuclear medicine, high-energy therapy and the use of computer-controlled tomography; whereas, although there is certainly no desire to raise objections to the proper use of ionizing radiation for legitimate reasons and under good radiation-protection conditions, it is nevertheless important to eliminate unnecessary radiation exposure;

Whereas measures which make it possible to improve the radiation protection of patients and of the general public in no way jeopardize the benefits — whether early recognition, diagnosis or therapy — obtainable from radiation; whereas, on the contrary, measures which avoid inappropriate or excessive radiation levels improve the quality and effectiveness of medical uses of radiation;

Whereas it must also be recognized that the number of radiological installations and the variety of uses of ionizing radiation are increasing; whereas any resultant unjustified increase in public exposure must be prevented;

Whereas, given the growing use of ionizing radiation and the proliferation of techniques, it is necessary to ensure that users have the necessary competence and experience to avoid inappropriate uses of these techniques; whereas any unnecessary proliferation of radiological installations must be avoided;

(1) OJ No C 149, 14. 6. 1982, p. 102.
(2) OJ No C 230, 8. 9. 1980, p. 1.
(3) OJ No L 246, 17. 9. 1980, p. 1.

Whereas it is therefore appropriate that other provisions be enacted, to complement those contained in the aforementioned Directives, laying down suitable measures relating to the radiation protection of patients;

Whereas the Member States will also take into account the results achieved to date by the five-year Euratom research and training programme in the field of biology and health protection adopted by the Council,

HAS ADOPTED THIS DIRECTIVE:

Article 1

All medical exposures must be medically justified and kept as low as reasonably achievable, as defined in (a) and (b) of the first paragraph of Article 6 of Directive 80/836/Euratom.

Article 2

1. Without prejudice to Directives 75/362/EEC (1) and 75/363/EEC (2), as amended by Directive 82/76/EEC (3), and Directives 78/686/EEC (4) and 78/687/EEC (5), Member States shall take all appropriate measures to ensure that any ionizing radiation used in medical procedures is effected under the responsibility of doctors or dental practitioners or other practitioners who are entitled to perform such medical procedures in accordance with the national legislation and who, during their training, have acquired competence in radiation protection and received adequate training appropriate to the techniques used in medical and dental diagnostic radiology, in radiotherapy or in nuclear medicine.

2. Complementary training must be provided, if necessary, for the persons referred to in paragraph 1 who are already in practice where their competence in radiation protection has not been approved by the competent authorities.

3. Assistants shall receive instruction in the techniques applied and in suitable radiation protection procedures; they shall receive training appropriate to their work.

Article 3

The competent authorities shall draw up an inventory of medical and dental radiological equipment and nuclear medical installations and shall establish criteria of acceptability for radiological installations and nuclear medical installations. All installations in use must be kept under strict surveillance with regard to radiological protection and the quality control of appliances.

The competent authorities shall implement the necessary measures to improve inadequate or defective features of installations subject to such surveillance. They shall ensure as soon as possible that all installations which no longer meet the criteria specified in the first paragraph are taken out of service or replaced. Direct fluoroscopic examinations without the use of image intensification shall be carried out only in exceptional circumstances.

Article 4

Each Member State shall take such steps as it may consider necessary to discourage the unnecessary proliferation of equipment for radiotherapy, radiodiagnosis and nuclear medicine.

Article 5

A qualified expert in radiophysics shall be available to sophisticated departments of radiotherapy and nuclear medicine.

Article 6

Practical recommendations to which Member States may refer are set out in the Annex to this Directive.

Article 7

Member States shall take the measures necessary to comply with this Directive before 1 January 1986.

Member States shall inform the Commission of the provisions they have adopted to comply with this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 3 September 1984.

For the Council

The President

P. BARRY

(1) OJ No L 167, 30. 6. 1975, p. 1.
(2) OJ No L 167, 30. 6. 1975, p. 14.
(3) OJ No L 43, 15. 2. 1982, p. 21.
(4) OJ No L 233, 24. 8. 1978, p. 1.
(5) OJ No L 233, 24. 8. 1978, p. 10.

ANNEX

PRACTICAL RECOMMENDATIONS

1. (a) No radiological procedure should be carried out unless medically indicated (1);

   (b) individual or collective preventive radiological examinations, including nuclear medicine examinations, should be carried out only if they are medically and epidemiologically justified;

   (c) encouragement should be given to alternative techniques likely to prove at least as effective from a diagnostic or therapeutic point of view and to involve a lesser risk to health.

2. Measures should be taken to ensure that existing radiological and nuclear medical information and/or records can be forwarded quickly, possibly by the patient himself, to the persons referred to in Article 2 (1) of the Directive treating or examining the patient.

   Member States should take such necessary steps as they consider necessary to provide the persons referred to in Article 2 (1) of the Directive with information on any radiological examinations and/or treatment undergone by the patient in the past, provided the latter agrees.

   In order to avoid unnecessary radiological examinations, the persons referred to in Article 2 (1) of the Directive should see if they can obtain the necessary information by consulting the results of previous examinations. This applies particularly to procedures followed for medico-legal or insurance purposes. Special care should be taken to ensure that such procedures are justified.

   With reference to Article 4 of the Directive, Member States should endeavour to ensure that optimum use is made of the most advanced installations of radiotherapy, radiodiagnosis and nuclear medicine.

(1) The scope of Directive and of these recommendations does not extend to the use of ionizing radiation in the field of scientific research.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 December 1987

on Community arrangements for the early exchange of information in the event of a radiological emergency

(87/600/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Having regard to the proposal from the Commission, submitted after obtaining the opinion of the group of persons appointed by the Scientific and Technical Committee,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas Article 2 (b) of the Treaty requires the Community to establish uniform safety standards to protect the health of workers and of the general public;

Whereas, on 2 February 1959, the Council adopted Directives laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiations [3], which were last amended by Directive 80/836/Euratom [4] and Directive 84/467/Euratom [5];

Whereas Article 45 (5) of Directive 80/836/Euratom already requires that any accident involving exposure of the population be notified as a matter of urgency, when the circumstances so require, to neighbouring Member States and to the Commission;

Whereas Articles 35 and 36 of the Treaty already provide that Member States are to establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to communicate such information to the Commission so that it is kept informed of the levels of radioactivity to which the public is exposed;

Whereas Article 13 of Directive 80/836/Euratom requires Member States regularly to transmit to the Commission results of reviews and estimates referred to in that Article;

Whereas the accident at the nuclear power station at Chernobyl in the Soviet Union demonstrated that, in the event of a radiological emergency and in order to fulfil its tasks, the Commission needs to receive promptly all relevant information in an agreed format;

Whereas some bilateral arrangements have been agreed upon by Member States and whereas all Member States have signed the IAEA Convention on Early Notification of a Nuclear Accident;

Whereas these Community arrangements will ensure that all Member States are promptly informed in the event of a radiological emergency in order to provide that the uniform standards for protection of the population as is laid down in the Directives made pursuant to Title Two, Chapter III, of the Treaty are applied throughout the Community;

Whereas the establishment of Community arrangements for the early exchange of information does not affect the rights and obligations of Member States under bilateral and multilateral treaties or conventions;

[1] OJ No C 318, 30. 11. 1987.
[2] OJ No C 105, 21. 4. 1987, p. 9.
[3] OJ No 11, 20. 2. 1959, p. 221/59.
[4] OJ No L 246, 17. 9. 1980, p. 1.
[5] OJ No L 265, 5. 10. 1984, p. 4.

Whereas, in furtherance of international cooperation, the Community will participate in the IAEA Convention on Early Notification of a Nuclear Accident,

HAS ADOPTED THIS DECISION:

Article 1

1. These arrangements shall apply to the notification and provision of information whenever a Member State decides to take measures of a wide-spread nature in order to protect the general public in case of a radiological emergency following:

(a) an accident in its territory involving facilities or activities referred to in paragraph 2 from which a significant release of radioactive material occurs or is likely to occur; or

(b) the detection, within or outside its own territory, of abnormal levels of radioactivity which are likely to be detrimental to public health in that Member State; or

(c) accidents other than those specified in (a) involving facilities or activities referred to in paragraph 2 from which a significant release of radioactive material occurs or is likely to occur; or

(d) other accidents from which a significant release of radioactive materials occurs or is likely to occur.

2. The facilities or activities referred to in paragraph 1 (a) and 1 (c) are the following:

(a) any nuclear reactor, wherever located;

(b) any other nuclear fuel cycle facility;

(c) any radioactive waste management facility;

(d) the transport and storage of nuclear fuels or radioactive wastes;

(e) the manufacture, use, storage, disposal and transport of radioisotopes for agricultural, industrial, medical and related scientific and research purposes; and

(f) the use of radioisotopes for power generation in space objects.

Article 2

1. When a Member State decides to take measures as referred to in Article 1, that Member State shall:

(a) forthwith notify the Commission and those Member States which are, or are likely to be, affected of such measures and the reasons for taking them;

(b) promptly provide the Commission and those Member States which are, or are likely to be, affected with available information relevant to minimizing the foreseen radiological consequences, if any, in those States.

2. A Member State should whenever possible provide the Commission and those Member States which are likely to be affected with notification of its intention to take without delay measures as referred to in Article 1.

Article 3

1. The information to be provided pursuant to Article 2 (1) (b) shall, without jeopardy to matters of national security, include, as far as practicable and appropriate, the following:

(a) the nature and time of the event, its exact location and the facility or the activity involved;

(b) the assumed or established cause and the foreseeable development of the accident relevant to the release of the radioactive materials;

(c) the general characteristics of the radioactive release, including the nature, probable physical and chemical form and the quantity, composition and effective height of the radioactive release;

(d) information on current and forecast meteorological and hydrological conditions, necessary for forecasting the dispersion of the radioactive release;

(e) the results of environmental monitoring;

(f) the results of measurements of foodstuffs, feedingstuffs and drinking water;

(g) the protective measures taken or planned;

(h) the measures taken, or planned, to inform the public;

(i) the predicted behaviour over time of the radioactive release.

2. The information shall be supplemented at appropriate intervals by further relevant information, including the development of the emergency situation and its foreseeable or actual termination.

3. The Member State referred to in Article 1 shall, in accordance with Article 36 of the Treaty, continue to inform the Commission at appropriate intervals of the levels of radioactivity as laid down in paragraph 1 (e) and (f).

Article 4

Any Member State, upon receipt of the information set out in Articles 2 and 3, shall:

(a) promptly inform the Commission of the measures taken and recommendations issued following the receipt of such information;

(b) inform the Commission, at appropriate intervals, of the levels of radioactivity measured by their monitoring facilities in foodstuffs, feedingstuffs, drinking water and the environment.

Article 5

1. Upon receipt of the information referred to in Articles 2, 3 and 4, the Commission shall, subject to Article 6, immediately forward it to the competent authorities of all other Member States. Likewise the Commission shall forward to all Member States any information it receives about significant increases in the level of radioactivity or about nuclear accidents in non-Community countries and especially those adjacent to the Community.

2. Detailed procedures for the transmission of the information referred to in Articles 1 to 4 shall be agreed by the Commission and the competent authorities of the Member States and tested at regular intervals.

3. Each Member State shall indicate to the Commission the competent national authorities and points of contact designated to forward or receive the information set out in Articles 2 to 5. The Commission shall in turn communicate this and details of the designated Commission service to the competent authorities of the other Member States.

4. Points of contact and the designated Commission service shall be available on a 24 hour basis.

Article 6

1. Information received pursuant to Articles 2, 3 and 4 may be used without restrictions except when such information is provided in confidence by the notifying Member State.

2. Information received by the Commission relating to an establishment of the Joint Research Centre will not be circulated or released without the agreement of the host Member State.

Article 7

This Decision does not affect the reciprocal rights and obligations of the Member States resulting from bilateral or multilateral agreements or Conventions existing or to be concluded in the field covered by this Decision and in accordance with its object and purpose.

Article 8

Member States shall take the measures necessary to comply with this Decision within three months of the date of its notification.

Article 9

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1987.

For the Council

The President

U. ELLEMANN-JENSEN

COUNCIL DIRECTIVE

of 27 November 1989

on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency

(89/618/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 31 thereof,

Having regard to the proposal from the Commission, submitted following consultation with a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, as laid down in that Article,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Article 2 (b) of the Treaty lays down that the Community shall establish uniform safety standards to protect the health of workers and of the general public;

Whereas, on 2 February 1959, the Council adopted Directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiations (3), as last amended by Directives 80/836/Euratom (4) and 84/467/Euratom (5);

Whereas, pursuant to Article 24 of Directive 80/836/Euratom, all Member States must ensure that exposed workers received adequate information on radiation protection;

Whereas, pursuant to Article 45 (4) of the said Directive, each Member State must, in the event of an accident, stipulate the intervention levels and measures to be taken by the competent authorities and the necessary resources both in personnel and equipment to enable action to be taken to safeguard and maintain the health of the general public;

Whereas, at Community level, further elements should be added to the information made available to the public over and above the areas already covered by Article 6 (2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (6) and by Article 8 (1) of Council Directive 82/501/EEC of 24 June 1982 on the major accident hazards of certain industrial activities (7), as amended by Directive 88/610/EEC (8);

Whereas all Member States have signed the International Atomic Energy Agency (IAEA) Convention on Early Notification of a Nuclear Accident;

Whereas Council Decision 87/600/Euratom of 14 December 1987 on Community arranements for the early exchange of information in the event of a radiological emergency (9) requires all Member States which decide to take mergency measures to protect the general public, either as a result of abnormally high levels of radioactivity in the environment, or following an accident from which a significant release of radioactive material occurs or is likely to occur, to notify the Commission and the Member States which are, or are likely to be, affected, of the protective measures which they have taken or planned and also of any measures which they have taken or planned and also of any measures which they have taken or planned to inform the general public;

Whereas some Member States have already concluded bilateral agreements on information, coordination and mutual assistance in the event a nuclear accident;

Whereas, in the event of an accident in a nuclear installation in a Member State, the population affected should be encouraged to take appropriate action likely to increase the effectiveness of the emergency measures taken or planned;

Whereas the sections of the population likely to be affected by the radiological emergency should therefore be given in advance appropriate and continuing information on the planned health protection measures relating to them and the action they should take in the event of a radiological emergency; whereas certain joint principles and specific provisions for informing such sections of the population should be drawn up for this purpose at Community level;

Whereas joint principles and specific provisions for informing the population actually affected by a real radiological emergency should also be drawn up;

(1) OJ No C 158, 26. 6. 1989, p. 403.
(2) OJ No C 337, 31. 12. 1988, p. 67.
(3) OJ No 11, 20. 2. 1959, p. 221/59.
(4) OJ No L 246, 17. 9. 1980, p. 1.
(5) OJ No L 265, 5. 10. 1984, p. 4.
(6) OJ No L 175, 5. 7. 1985, p. 40.
(7) OJ No L 230, 5. 8. 1982, p. 1.
(8) OJ No L 336, 7. 12. 1988, p. 14.
(9) OJ No L 371, 30. 12. 1987, p. 76.

Whereas account must also be taken, in the information supplied, of those sections of the population living in frontier areas;

Whereas, moreover, efforts should be made to strengthen the measures and practices for informing the general public already in force at national level in the event of a radiological emergency,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Objectives and definitions

Article 1

This Directive is intended to define, at Community level, common objectives with regard to measures and procedures for informing the general public for the purpose of improving the operational health protection provided in the event of a radiological emergency.

Article 2

For the purposes of this Directive, 'a radiological emergency' means any situation:

1. that follows:
   (a) an accident in the territory of a Member State involving facilities or activities referred to in point 2 which a significant release of radioactive material occurs or is likely to occur; or
   (b) the detection, within or outside its own territory, of abnormal levels of radioactivity which are likely to be detrimental to public health in that Member State; or
   (c) accidents other than those specified in (a) involving facilities or activites referred to in point 2 from which a significant of radioactive material occurs or is likely to occur; or
   (d) other accidents from which a significant release of radioactive material occurs or is likely to occur;
2. that is attributable to the facilities or activities referred to in point 1 (a) and (c), viz.:
   (a) any nuclear reactor, wherever located;
   (b) any other nuclear-fuel-cycle facility:
   (c) any radioactive-waste management facility;
   (d) the transport and storage of nuclear fuels or radioactive wastes;
   (e) the manufacture, use, storage, disposal and transport of radioisotopes for agricultural, industrial, medical and related scientific and research purposes; and
   (f) the use of radioisotopes for power generation in space vehicles.

Article 3

For the purposes of applying this Directive, the terms 'significant release of radioactive material' and 'abnormal levels of radioactivity which are likely to be detrimental to public health' are to be understood as covering situations likely to result in members of the public being exposed to doses in excess of the dose limits prescribed under the Directives laying down basic Community safety standards for radiological protection (1).

Article 4

For the purposes of this Directive the following terms shall have the meanings hereby assigned:

(a) population likely to be affected in the event of a radiological emergency:

any population group for which Member States have drawn up intervention plans in the event of a radiological emergency;

(b) population actually affected in the event of a radiological emergency:

any population group for which specific protection measures are taken as soon as a radiological emergency occurs.

TITLE II

Prior information

Article 5

1. Member States shall ensure that the population likely to be affected in the event of a radiological emergency is given information about the health-protection measures applicab le to it and about the action it should take in the event of such an emergency.

2. The information supplied shall at least include the elements set out in Annex I.

3. This information shall be communicated to the population referred to in paragraph 1 without any request being made.

4. Member States shall update the information and circulate it at regular intervals and whenever significant changes in the arrangements that it describes take place. This information shall be permanently available to the public.

(1) See in particular Article 12 of Directive 80/836/Euratom.

TITLE III

Information in the event of a radiological emergency

Article 6

1. Member States shall ensure that, when a radiological emergency occurs, the population actually affected is informed without delay of the facts of the emergency, of the steps to be taken and, as appropriate to the case in point, of the health-protection measures applicable to it.

2. The information provided shall cover the points contained in Annex II which are relevant to the type of radiological emergency.

TITLE IV

Information of persons who might be involved in the organization of emergency assistance in the event of a radiological emergency

Article 7

1. Member States shall ensure that any persons who are not on the staff of the facilities and/or not engaged in the activities defined in Article 2 (2) but who might be involved in the organization of emergency assistance in the event of a radiological emergency are given adequate and regularly updated information on the health their intervention might involve and on the precautionary measures to be taken in such an event; this information shall take into account the range of potential radiological emergencies.

2. As soon as a radiological emergency occurs, this information shall be supplemented appropriately, having regard to the specific circumstances.

TITLE V

Implementation procedures

Article 8

The information referred to in Articles 5, 6 and 7 shall also mantion the authorities responsible for implementing the measures referred to in those Articles.

Article 9

Procedures for circulating the information referred to in Articles 5, 6 and 7 and those to whom the information shall be addressed (natural and legal persons shall be determined in each Member State.

Article 10

1. The information referred to in Article 5 shall be notified to the Commission, if it so requests, without prejudice to the Member States' right to notify this information to other States.

2. The information circulated by a Member State, pursuant to Article 6, shall be notified to the Commission and to those Member which are, or are likely to be, affected.

3. With respect to the information referred to in Article 7, the data relevant to the radiological emergency shall be notified to the Commission, at its request, as soon as possible and in so far as this is feasible.

TITLE VI

Final provisions

Article 11

This Directive shall not affect the right of the Member States to apply or adopt measures to provide information additional to that required under this Directive.

Article 12

Member States shall take the measures necessary to comply with this Directive not later than 24 months after its adoption. They shall forthwith inform the Commission thereof as well as of any further amendments thereto.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 27 November 1989.

For the Council

The President

R. DUMAS

ANNEX I

Prior information referred to in Article 5

1. Basic facts about radioacativity and its effects on human beings and on the environment.
2. The various types of radiological emergency covered and their consequences for the general public and the environment.
3. Emergency measures envisaged to alert, protect and assist the general public in the event of a radiological emergency.
4. Appropriate information on action to be taken by the general public in the event of a radiological emergency.

ANNEX II

Information in the event of a radiological emergency referred to in Article 6

1. On the basis of the intervention plans previously drawn up in the Member States, the population actually affected in the event of a radiological emergency will rapidly and regularly receive :
   (a) information on the type of emergency which has occurred and, where possible, its characteristics (e.g. its origin, extent and probable development);
   (b) advice on protection which, depending on the type of emergency, might :
      — cover the following : restrictions on the consumption of certain foodstuffs likely to be contaminated, simple rules on hygiene and decontamination, recommendations to stay indoors, distribution and use of protective substances, evacuation arrangements,
      — be accompanied, where necessary, by special warnings for certain population groups ;
   (c) announcements recommending cooperation with instructions or requests by the competent authorities.
2. If the emergency is preceded by a pre-alarm phase, the population likely to be affected in the event of a radiological emergency should already receive information and advice during that phase, such as :
   — an invitation to the population concerned to tune in to radio or television,
   — preparatory advice to establishments with particular collective responsibilities,
   — recommendations to occupational groups particularly affected.
3. This information and advice will be supplemented if time permits by a reminder of the basic facts about radiocativity and its effects on human beings and on the environment.

COUNCIL DIRECTIVE

of 4 December 1990

on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas

(90/641/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the Commission, submitted following consultation with a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, as laid down in Article 31 of the Treaty,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, Article 2 (b) of the Treaty provides that the Community shall establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied in accordance with the procedures laid down in Chapter III of Title II of the Treaty;

Whereas, on 2 February 1959, the Council adopted Directives laying down the basic standards for the protection of the health of workers and of the general public against the dangers arising from ionizing radiations (3), as amended by Directives 80/836/Euratom (4) and 84/467/Euratom (5);

Whereas Title VI of Directive 80/836/Euratom lays down the fundamental principles governing operational protection of exposed workers;

Whereas Article 40 (1) of that Directive provides that each Member State shall take all necessary measures to ensure the effective protection of exposed workers;

Whereas Article 20 and 23 of that Directive establish a classification of areas of work and categories of exposed workers according to the level of exposure;

Whereas the workers performing activities in a controlled area within the meaning of the said Articles 20 and 23 can belong to the personnel of the operator or be outside workers;

Whereas Article 3 of Directive 80/836/Euratom concerning the activities referred to in Article 2 of that Directive provides that they should be reported or subject to prior authorization in cases decided upon by each Member State;

Whereas outside workers are liable to be exposed to ionizing radiation in several controlled areas in succession in one and the same Member State or in different Member States; whereas these specific working conditions require an appropriate radiological monitoring system;

Whereas any radiological monitoring system for outside workers must provide protection equivalent to that offered the operator's established workers, by means of common provisions;

Whereas, pending the introduction of a uniform Community-wide system, account should also be taken of the radiological monitoring systems for outside workers which may exist in the Member States;

Whereas, to optimize the protection of outside workers, it is necessary to define clearly the obligations of outside undertakings and operators, without prejudice to the contribution that outside workers themselves have to make to their own protection;

Whereas the system for the radiological protection of outside workers also applies as far as practicable to the case of a self-employed worker with the status of outside undertaking,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Purpose and definitions

Article 1

The purpose of this Directive is to supplement Directive 80/836/Euratom thereby optimizing at Community level operational protection arrangements for outside workers performing activities in controlled areas.

Article 2

For the purposes of this Directive:

— 'controlled area' means any area subject to special rules for the purposes of protection against ionizing radiation and to which access is controlled, as specified in Article 20 of Directive 80/836/Euratom;

(1) Opinion delivered on 11 October 1990 (not yet published in the Official Journal).
(2) OJ No C 56, 7. 3. 1990, p. 1.
(3) OJ No 11, 20. 2. 1959, p. 221/59.
(4) OJ No L 246, 17. 9. 1980, p. 1.
(5) OJ No L 265, 5. 10. 1984, p. 4.

— 'operator' means any natural or legal person who under national law, is responsible for a controlled area in which an activity required to be reported under Article 3 of Directive 80/836/Euratom is carried on ;

— 'outside undertaking' means any natural or legal person, other than the operator, including members of his staff, performing an activity of any sort in a controlled area ;

— 'outside worker' means any worker of category A, as defined in Article 23 of Directive 80/836/Euratom, performing activities of any sort in a controlled area, whether employed temporarily or permanently by an outside undertaking, including trainees, apprentices and students within the meaning of Article 10 of that Directive, or whether he provides services as a self-employed worker ;

— 'radiological monitoring system' means measures to apply the arrangements set out in Directive 80/836/Euratom, and in particular in Title VI thereof, during the activities of outside workers.

— 'activities carried out by a worker' means any service or services provided by an outside worker in a controlled area for which an operator is responsible.

TITLE II

Obligations of Member States' competent authorities

Article 3

Each Member State shall make the performance of the activities referred to in Article 2 of Directive 80/836/Euratom by outside undertakings subject to reporting or prior authorization as laid down in accordance with Title II of the aforementioned Directive, in particular Article 3 thereof.

Article 4

1. Each Member State shall ensure that the radiological monitoring system affords outside workers equivalent protection to that for workers employed on a permanent basis by the operator.

2. Pending the establishment, at Community level, of a uniform system for the radiological protection of outside workers, such as a computer network, recourse shall be had :

(a) on a transitional basis, in accordance with the common provisions set out in Annex I, to

— a centralized national network, or

— the issuing of an individual radiological monitoring document to every outside worker, in which case the common provisions of Annex II shall also apply ;

(b) in the case of cross-frontier outside workers, and until the date of establishment of a system within the meaning of paragraph 2, to the individual document referred to in (a).

TITLE III

Obligations of outside undertakings and operators

Article 5

Outside undertakings shall, either directly or through contractual agreements with the operators, ensure the radiological protection of their workers in accordance with the relevant provisions of Titles III to VI of Directive 80/836/Euratom, and in particular :

(a) ensure compliance with the general principles and the limitation of doses referred to in Articles 6 to 11 thereof ;

(b) provide the information and training in the field of radiation protection referred to in Article 24 thereof ;

(c) guarantee that their workers are subject to assessment of exposure and medical surveillance under the conditions laid down in Articles 26 and 28 to 38 thereof ;

(d) ensure that the radiological data of the individual exposure monitoring of each of their workers within the meaning of Annex I, part II to this Directive are kept up to date in the networks and individual documents referred to in Article 4 (2).

Article 6

1. The operator of a controlled area in which outside workers perform activities shall be responsible, either directly or through contractual agreements, for the operational aspects of their radiological protection which are directly related to the nature of the controlled area and of the activities.

2. In particular, for each outside worker performing activities in a controlled area, the operator must :

(a) check that the worker concerned has been passed as medically fit for the activities to be assigned to him ;

(b) ensure that, in addition to the basic training in radiation protection referred to in Article 5 (1) (b), he has received specific training in connection with the characteristics of both the controlled area and the activities ;

(c) ensure that he has been issued with the necessary personal protective equipment ;

(d) also ensure that he receives individual exposure monitoring appropriate to the nature of the activities, and any operational dosimetric monitoring that may be necessary ;

(e) ensure compliance with the general principles and limitation of doses referred to in Articles 6 to 11 of Directive 80/836/Euratom ;

(f) ensure or take all appropriate steps to ensure that after every activity the radiological data of individual exposure monitoring of each outside worker within the meaning of Annex I, Part III, are recorded.

TITLE IV

Obligations of outside workers

Article 7

Every outside worker shall be obliged to make his own contribution as far as practicable towards the protection that the radiological monitoring system referred to in Article 4 is intended to afford him.

TITLE V

Final provisions

Article 8

1. Member States shall bring into force not later than 31 December 1993, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, 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 a reference shall be laid down by the Member States.

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

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 4 December 1990.

For the Council

The President

G. DE MICHELIS

ANNEX I

PROVISIONS COMMON TO THE NETWORKS AND INDIVIDUAL DOCUMENTS REFERRED TO IN ARTICLE 4 (2)

PART I

1. Any radiological monitoring system of the Member States for outside workers must comprise the following three sections:
   - — particulars concerning the outside workers' identity;
   - — particulars to be supplied before the start of any activity;
   - — particulars to be supplied after the end of any activity.
2. The competent authorities of the Member States shall take the measures necessary to prevent any forgery or misuse of, or illegal tampering with, the radiological monitoring system.
3. Data on the outside worker's identity must also include the worker's sex and date of birth.

PART II

Before the start of any activity, the data to be supplied via the radiological monitoring system to the operator or his approved medical practitioner by the outside undertaking or an authority empowered to that end must be as follows:

- — the name and address of the outside undertaking;
- — the medical classification of the outside worker in accordance with Article 35 of Directive 80/836/Euratom;
- — the date of the last periodic health review;
- — the results of the outside worker's individual exposure monitoring.

PART III

The data which the operator must record or have recorded by the authority empowered to that end in the radiological monitoring system after the end of any activity must be as follows:

- — the period covered by the activity;
- — an estimate of any effective dose received by the outside worker;
- — in the event of non-uniform exposure, an estimate of the dose-equivalent in the different parts of the body;
- — in the event of internal contamination, an estimate of the activity taken in or the committed dose.

ANNEX II

PROVISIONS ADDITIONAL TO THOSE OF ANNEX I CONCERNING THE INDIVIDUAL RADIOLOGICAL MONITORING DOCUMENT

1. The individual radiological monitoring document issued by the Member States' competent authorities for outside workers shall be a non-transferable document.

2. Pursuant to Annex I, Part I (2), individual documents shall be issued by the Member States' competent authorities, which shall give each individual document an identification number.

II

(Acts whose publication is not obligatory)

COMMISSION

Amendment to the Agreement of 6 October 1959 (1), in the form of an exchange of letters, between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy

(78/217/Euratom)

(1) OJ No 60, 24. 11. 1959, p. 1165/59.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I have the honour to acknowledge receipt of your letter dated 16 January 1978, stating the following:

'Mr Commissioner,

As the Commission has been informed, the Canadian Government has decided to require more stringent safeguards in respect of sales abroad of Canadian material, equipment and information.

This decision implies an updating of the existing Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for cooperation in the Peaceful Uses of Atomic Energy of 6 October 1959 (hereinafter referred to as the Canada/Euratom Agreement of 1959) particularly in so far as it relates to safeguards.

The Canadian Government considers it necessary to come to an interim agreement through the present exchange of letters until the entire Canada/Euratom Agreement of 1959 has been updated, to provide for the requirement of the new Canadian safeguards policy by amending the relevant provisions of the Canada/Euratom Agreement of 1959.

Accordingly, I propose that the Canada/Euratom Agreement of 1959 be amended to include the following provisions relating to safeguards:

(a) For the purposes of the Canada/Euratom Agreement of 1959, the phrase "machinery and plant" in paragraph (d) of Article XIV of the Canada/Euratom Agreement of 1959 shall be deemed to include all items listed in Annex A to this letter.

(b) Equipment which a Member State has designed to the Commission as equipment designed, constructed or operated on the basis of or by the use of information obtained from Canada and which is within the jurisdiction of that Member State at the time of designation, shall be considered as equipment subject to the Canada/Euratom Agreement of 1959, as amended.

Equipment which Canada has designated, as equipment designed, constructed or operated on the basis of or by the use of information obtained from that Member State shall be considered as equipment subject to the Canada/Euratom Agreement of 1959, as amended.

(c) Material which is subject to the terms of the Canada/Euratom Agreement of 1959 shall not be used for the manufacture of any nuclear weapon or for other military uses of nuclear energy or for the manufacture of any other nuclear explosive device. The foregoing undertaking shall be verified within Canada by the IAEA pursuant to an agreement between Canada and the IAEA and within the Community by the Community and by the IAEA pursuant to the Treaty establishing the European Atomic Energy Community and the agreements concluded between the Community, its Member States and the IAEA or if at any time such verification procedures are not in effect, there shall be agreement between the Contracting Parties for the application of a safeguards system which conforms with IAEA safeguards principles and procedures.

Mr P. D. Lee
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(d) Equipment or material transferred between Canada and the Community after the coming into force of this Agreement, shall be subject to the Canada/Euratom Agreement of 1959 only if the supplying Contracting Party has so informed the other Contracting Party in writing prior to the transfer. In the case of transfer of equipment from the Community to Canada, notifications may also be given by a Member State.

(e) Material referred to in paragraph (c) shall be enriched beyond 20 % or reprocessed and plutonium or uranium enriched beyond 20 % shall be stored only according to conditions agreed upon in writing between the parties. (See Annex C — Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada.)

(f) In no event shall a Contracting Party use the provisions of the present Agreement for the purpose of securing commercial advantages or for the purpose of interfering with the commercial relations of the other Contracting Party.

(g) The Community shall inform Member States of the levels of physical protection set out in Annex B to this letter which should be applied as minima to the material referred to in paragraph (c) above. Canada will apply such levels of physical protection as minima to material referred to in paragraph (c).

(h) Any dispute arising out of the interpretation or application of the present Agreement which is not settled by negotiation or as may otherwise be agreed by the Contracting Parties concerned shall, on the request of either Contracting Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Contracting Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, who shall be the chairman. If within 30 days of the request for arbitration either Contracting Party has not designated an arbitrator, either Contracting Party to the dispute may request the Secretary General of the OECD to appoint an arbitrator. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall be made by majority vote of all members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Contracting Parties shall be binding on both Contracting Parties and shall be implemented by them, in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that for *ad hoc* judges of the International Court of Justice.

(i) The provisions of paragraphs (a) to (h) above, inclusive, as well as Articles III, IX and XIV of the Canada/Euratom Agreement of 1959 (as those Articles are amended by the proposals in this letter) shall in all circumstances remain in force so long as any equipment or material referred to in this letter or in the Canada/Euratom Agreement of 1959 remains in existence or it is otherwise agreed.

If the foregoing is acceptable to the European Atomic Energy Community I have the honour to propose that this letter which is authentic in both English and French, together with Your Excellency's reply to that effect shall constitute an amendment to the Canada/Euratom Agreement of 1959 which shall enter into force on the date of Your Excellency's reply and which shall continue in force so long as any equipment, material or facilities referred to in this letter or in the Canada/Euratom Agreement of 1959 remain in existence or it is otherwise agreed.

Please accept, Mr Commissioner, the assurance of my highest consideration.

ANNEX A

1. *Nuclear reactors* capable of operation so as to maintain a controlled self-sustaining fission chain reaction, excluding zero energy reactors, the latter being defined as reactors with a designed maximum rate of production of plutonium not exceeding 100 grams per year.

   A nuclear reactor basically includes the items within or attached directly to the reactor vessel, the equipment which controls the level of power in the core, and the components which normally contain or come in direct contact with or control the primary coolant of the reactor core.

   It is not intended to exclude reactors which could reasonably be capable of modification to produce significantly more than 100 grams of plutonium per year. Reactors designed for sustained operation at significant power levels, regardless of their capacity for plutonium production, are not considered as 'zero energy reactors'.

2. *Reactor pressure vessels:* metal vessels, as complete units or as major shop-fabricated parts therefor, which are especially designed or prepared to contain the core of a nuclear reactor as defined in paragraph 1 above and are capable of withstanding the operating pressure of the primary coolant.

   A top plate for a reactor pressure vessel is a major shop-fabricated part of a pressure vessel.

3. *Reactor internals:* (e.g. support columns and plates for the core and other vessel internals, control rod guide tubes, thermal shields, baffles, core grid plates, diffuser plates, etc.).

4. *Reactor fuel charging and discharging machines:* manipulative equipment especially designed or prepared for inserting or removing fuel in nuclear reactors as defined in paragraph 1 above capable of on-load operation or employing technically sophisticated positioning or alignment features to allow complex off-load fuelling operations such as those in which direct viewing of or access to the fuel is not normally available.

5. *Reactor control rods:* rods especially designed or prepared for the control of the reaction rate in a nuclear reactor as defined in paragraph 1 above.

   This item includes, in addition to the neutron absorbing part, the support or suspension structures therefor if supplied separately.

6. *Reactor pressure tubes:* tubes which are especially designed or prepared to contain fuel elements and the primary coolant in a reactor as defined in paragraph 1 above at an operating pressure in excess of 50 atmospheres.

7. *Zirconium tubes:* Zirconium metal and alloys in the form of tubes or assemblies of tubes, and in quantities exceeding 500 kg per year especially designed or prepared for use in a reactor as defined in paragraph 1 above, and in which the relationship of hafnium to zirconium is less than 1 : 500 parts by weight.

8. *Plants for the reprocessing of irradiated fuel elements*, and equipment especially designed or prepared therefor.

   A plant for the reprocessing of irradiated fuel elements includes the equipment and components which normally come in direct contact with and directly control the irradiated fuel and the major nuclear material in fission product processing streams. In the present state of technology only two items of equipment are considered to fall within the meaning of the phrase 'and equipment especially designed or prepared therefor'. These items are :

   (a) irradiated fuel element chopping machines : remotely operated equipment especially designed or prepared to use in a reprocessing plant as identified above and intended to cut, chop or shear irradiated nuclear fuel assemblies, bundles or rods ; and

   (b) critically safe tanks (e.g. small diameter, annular or slab tanks) especially designed or prepared to use in a reprocessing plant as identified above, intended for dissolution of irradiated nuclear fuel and which are capable of withstanding hot, highly corrosive liquid, and which can be remotely loaded and maintained.

9. *Plants for the fabrication of fuel elements:*

A plant for the fabrication of fuel elements includes the equipment:

(a) which normally comes in direct contact with or directly processes or controls, the production flow of nuclear material; or

(b) which seals the nuclear material within the cladding.

The whole set of items for the foregoing operations, as well as individual items intended for any of the foregoing operations, and for other fuel fabrication operations, such as checking the integrity of the cladding or the seal, and the finish treatment to the sealed fuel.

10. *Equipment, other than analytical instruments, especially designed or prepared for the separation of isotopes of uranium:*

Equipment, other than analytical instruments, especially designed or prepared for the separation of isotopes of uranium includes each of the major items of equipment especially designed or prepared for the separation process. Such items include:

— gaseous diffusion barrier,
— gaseous diffusion housings,
— gas centrifuge assemblies, corrosion resistant to UF_6,
— large UF_6 corrosion resistant axial or centrifugal compressors,
— special compressor seals for such compressors.

11. *Plants for the production of heavy water:*

A plant for the production of heavy water includes the plant and equipment specially designed for enrichment of deuterium or its compounds, as well as any significant fraction of the items essential to the operation of the plant.

ANNEX B

LEVELS OF PHYSICAL PROTECTION

The levels of physical protection to be ensured by the appropriate governmental authorities in the use, storage and transportation of the materials of the attached table shall as a minimum include protection characteristics as follows :

Category III

Use and storage within an area to which access is controlled.

Transportation under special precautions including prior arrangements between sender, recipient and carrier, and prior agreement between States in cases of international transport specifying time, place and procedures for transferring transport responsibility.

Category II

Use and storage within a protected area to which access is controlled, i.e. an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control, or any area with an equivalent level of physical protection.

Transportation under special precautions including prior arrangement between sender, recipient and carrier, and prior agreement between States in cases of international transport specifying time, place and procedures for transferring transport responsibility.

Category I

Materials in this category shall be protected with highly reliable systems against unauthorized use as follows :

Use and storage within a highly protected area, i.e. a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined and under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their objective the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

Transportation under special precautions as identified above for transportation of Category II and III materials and, in addition, under constant surveillance of escorts and under conditions which assure close communication with appropriate response forces.

Categorization of nuclear material

Material	Form	Category		
		I	II	III
1. Plutonium (a)	Unirradiated (b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less (c)
2. Uranium-235	Unirradiated (b)			
	— uranium enriched to 20 % U-235 or more	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less
	— uranium enriched to 10 % U-235 but less than 20 %	—	10 kg or more	Less than 10 kg (c)
	— uranium enriched above natural, but less than 10 % U-235 (d)	—		10 kg or more
3. Uranium-233	Unirradiated (b)	2 kg or more	Less than 2 kg but more than 500 g	500 g or less
4. Irradiated fuel			Depleted or natural uranium, thorium or low enriched fuel (less than 10 % fissile content) (e) (f)	

(a) As identified in the Statute of the IAEA.

(b) Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rad/hour at one metre unshielded.

(c) Less than a radiologically significant quantity should be exempted.

(d) Natural uranium, depleted uranium and thorium and quantities of uranium enriched to less than 10 % not falling in Category III should be protected in accordance with prudent management practice.

(e) Although this level of protection is recommended, it would be open to States upon evaluation of the specific circumstances, to assign a different degree of physical protection.

(f) Other fuel which by virtue of its original fissile material content is classified as Category I or II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rad/hour at one metre unshielded.

ANNEX C

INTERIM ARRANGEMENT CONCERNING ENRICHMENT, REPROCESSING AND SUBSEQUENT STORAGE OF NUCLEAR MATERIAL WITHIN THE COMMUNITY AND CANADA

1. Both parties recognize that while increasing reliance is placed on nuclear energy for peaceful purposes to satisfy world energy requirements, its use requires that every precaution should be taken with respect to the generation and dissemination of material that can be used for nuclear weapons. The parties agree to cooperate both bilaterally and internationally to identify arrangements which will advance this objective.

   Both parties agree that their objective is to meet their energy needs while avoiding the danger of the spread of such material and respecting the choices and decisions of each party in the peaceful nuclear field.

   The parties note with satisfaction that the organizing Conference on International Fuel Cycle Evaluation (INFCE), in which Canada, the Commission of the European Communities and Member States of Euratom took part, agreed to carry out a study which is expected to extend over the next two years. INFCE will explore the best means of advancing the objectives of making nuclear energy for peaceful purposes widely available to meet the world's energy requirements while at the same time minimizing the danger of the proliferation of nuclear weapons.

   The participants in the study are pledged to cooperate constructively in the study which will examine all aspects of the nuclear cycle.

   Among the matters to be examined by working groups of INFCE are reprocessing and enrichment and storage of plutonium and uranium enriched beyond 20 %.

   Against this background, the parties agree on the following interim arrangement which shall apply to reprocessing and to enrichment beyond 20 % U-235; and the storage of plutonium and uranium enriched beyond 20 %.

2. With respect to material which has been transferred between 20 December 1974 and the end of the interim period, Euratom will notify the Government of Canada in advance of its intention to undertake any such reprocessing, enrichment or storage. This notification will include the quantities of material to be enriched, reprocessed or stored, the facility in which such operations will take place, and the intended disposition and use of the special fissionable material. The purpose of such advance notification is to permit joint consultation to take place between the parties concerning the adequacy of safeguards for the operation contemplated and avoidance of the risks of nuclear proliferation. Consultations shall enable each party to appreciate to the fullest extent possible the nature and purposes of the operation involved.

   These consultations shall be without prejudice to the commercial or industrial policy of either party. An early meeting will be held to work out appropriate modalities for notification and consultations.

3. It is understood between the parties that during the period of the interim arrangement supplies of Canadian uranium to be exported to Euratom would be broadly limited to the current needs of Euratom, the term 'current needs' to take account also of enrichment contract commitments entered into by the member countries of Euratom.

   The contracting parties shall consult at the request of either concerning the application of this part of this interim arrangement, in accordance with Article XIII of the 1959 Agreement.

4. Subject to the foregoing it is agreed that Canadian-origin uranium transferred to Euratom subsequent to 20 December 1974 or any Canadian-origin uranium being exported to Euratom during the period of the interim arrangement may be reprocessed or enriched beyond 20 % U-235, if the need arises in plants now operating or foreseen to be operating in Euratom. The same applies to plutonium and uranium enriched beyond 20 % U-235 stored in Euratom. In respect of Canadian-origin uranium transferred to Euratom prior to 20 December 1974, it is open to either Party to request consultation as provided in Articles IX (3) and XIII, of the 1959 Agreement.

5. As soon as possible after 31 December 1979 or the termination of the INFCE study, whichever is earlier, the parties will commence negotiations with a view to replacing this arrangement by other arrangements which will take into account *inter alia* any results of the INFCE studies in relation to the operations in question. If no such arrangements have been agreed upon by the end of 1980, the parties may jointly agree to extend the present interim arrangement.'

I have the honour to confirm that these proposals are acceptable to the European Atomic Energy Community.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities :

During the Council consideration of the abovementioned exchange, it was agreed that the following represented our understanding of the procedure provided for in (c).

1. Supply of Canadian material to persons in the territory of the seven non-nuclear weapon States parties to the Euratom/IAEA verification Agreement, and transfer of such material within these States :

   This event would raise no problem, the verification agreement having entered into force on 21 February 1977.

2. Supply of Canadian material to the United Kingdom or transfer of Canadian material into the United Kingdom :

   Although the trilateral UK/Euratom/IAEA Agreement has not yet entered into force, no interim agreements providing IAEA verification of such material in the United Kingdom will be required by Canada for a reasonable period of time, which should not exceed 18 months starting from 23 December 1976.

3. Supply of Canadian material to France or transfer of Canadian material into France :

   Canadian material for end-use in France shall be submitted to IAEA verification as from the entry into force of the trilateral France/Euratom/IAEA Agreement currently under negotiation.

   The Council took note of statement by the French representative that material subject to the Canada/Euratom Agreement of 1959, as amended, would not be employed for end use in France before the entry into force of this trilateral Agreement.

   The Council also took note that the Canadian Government, given the application of Euratom safeguards and their verification under the trilateral France/Euratom/IAEA Agreement currently under negotiation, agrees that Canadian material may be directly supplied from Canada to France or be transferred into France in order to be enriched or reprocessed in France provided that it would leave France after the normal period required for those operations.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum, 6 (fifth floor)
1000 Brussels

MISSION OF CANADA
TO THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Commissioner,

I wish to acknowledge receipt of your letter of 16 January 1978, which reads as follows and of which the contents have been noted by the Canadian authorities and upon which Canada shall reply when authorizing transfers to Euratom :

'Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities :

During the Council consideration of the abovementioned exchange, it was agreed that the following represented our understanding of the procedure provided for in (c) :

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   Although the trilateral UK/Euratom/IAEA Agreement has not yet entered into force, no interim agreements providing IAEA verification of such material in the United Kingdom will be required by Canada for a reasonable period of time, which should not exceed 18 months starting from 23 December 1976.

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   Canadian material for end-use in France shall be submitted to IAEA verification as from the entry into force of the trilateral France/Euratom/IAEA Agreement currently under negotiation.

   The Council took note of statement by the French representative that material subject to the Canada/Euratom Agreement of 1959, as amended, would not be employed for end use in France before the entry into force of this trilateral Agreement.

   The Council also took note that the Canadian Government, given the application of Euratom safeguards and their verification under the trilateral France/Euratom/IAEA Agreement currently under negotiation, agrees that Canadian material may be directly from Canada to France or be transferred into France in order to be enriched or reprocessed in France provided that it would leave France after the normal period required for those operations.

Mr Guido Brunner
Commissioner
Commission of the European Communities
Rue de la Loi, 200
1049 Brussels

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.'

I have been instructed to confirm the understanding reached during the negotiations that any transfer within the Community of material subject to the Agreement which does not take place in accordance with paragraph (c) of the exchange of letters will constitute a breach of the Agreement on the Euratom side. Under such circumstances, the Canadian authorities would of course be required to review their obligations under the Agreement.

Please accept, Mr Commissioner, the assurance of my highest consideration.

P. D. LEE
Chargé d'Affaires a.i.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the exchange of letters between us of 16 January 1978 regarding nuclear safeguards, and have the honour to state further as follows, for the information of the Canadian authorities :

During the Council consideration of the abovementioned exchange of letters, the Council took note of the 'Declaration on transfer of technology' made by the nine Member States and the Community and approved it in so far as it concerns the Community. The text of this declaration is annexed to the present letter (Annex I).

The Council further agreed to the following declarations :

— 'Both sides agreed to ask the Joint Technical Working Group to look into the question of information on reprocessing of Canadian material transferred to Euratom prior to 20 December 1974.'

— 'Neither party will invoke any rights under an agreement entered into with a third State to impair any rights or obligations under this agreement as amended.'

The technical note on the *pro rata* principle and the interpretation with respect to double labelling, agreed upon during the negotiations, was also approved by the Council and inserted in the minutes of the meeting. The text of this technical note is annexed to the present letter (Annex II).

Lastly, the Council took note of the 'Note on physical protection' to be sent by the Member States to the Canadian Ambassadors. The text of this note is annexed to this letter (Annex III).

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
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ANNEX I

DECLARATION ON TRANSFER OF TECHNOLOGY

'The Member States and the Community are prepared to confirm to the Canadian Government that they recognize the legitimacy of transferring sensitive technology within the meaning of the London Guidelines on the conditions laid down therein. They note that Canada also intends to make transfers of CANDU technology (heavy water moderated pressure tube reactor technology and fuel element fabrication technology, D_2O technology) and other technology specific to its fuel cycle to any Member State subject to certain conditions.

They consider that it is or will be for the Member States wishing to import such technology to conclude agreements with Canada comprising the commitments required by the Canadian Government in connection with these transfers.

However, these States must be entitled to transfer this technology to another Member State on condition that the second recipient Member State has provided the Canadian Government with the same commitments as those provided by the first Member State.

Accordingly, the Community and the Member States confirm that there is no obstacle to the conclusion of such agreements between Canada and any Member State of the Community wishing to conclude them, provided that these agreements are entirely consistent with the Treaty establishing the European Atomic Energy Community.'

ANNEX II

TECHNICAL NOTE

1. 'Pro rata' principle

Where Canadian material is produced, processed or used together with material of other origin, materials produced as well as losses during the operation will be attributed to materials subject to the Canada/Euratom Agreement in proportion to the percentage of materials subject to that agreement initially included in the mixture. The words 'produced, processed or used' cover conversion, fabrication, enrichment, reprocessing and irradiation.

2. Interpretation with respect to double labelling

In many cases, material which originates in one of the Contracting Parties to the 1959 Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for Cooperation in the Peaceful Uses of Atomic Energy, as amended, is sent to a third State for processing, including conversion, enrichment and fabrication, before delivery to the receiving Contracting Party. Such processed material is obtained by the receiving Contracting Party pursuant to the 1959 Agreement and is therefore subject to the provisions of that Agreement, as amended.

It is recognized that there is legitimate concern regarding the accumulation of safeguard provisions over nuclear material and the resulting administrative problems. These difficulties are being considered in international fora and suppliers and recipients should continue to seek mutually satisfactory solutions, both bilaterally and multilaterally.

ANNEX III

NOTE ON PHYSICAL PROTECTION

From Euratom Member State Foreign Minister to Canadian Ambassadors.

Your Excellency,

I have the honour to refer to the Agreement between the Government of Canada and the European Atomic Energy Community (Euratom) for Cooperation in the Peaceful Uses of Atomic Energy of 6 October 1959, as amended (hereinafter referring to as the Agreement).

In addition to the obligations to Canada entered into under the Agreement, I have the honour to inform you that my Government confirms that the items referred to in the Agreement which are within the territory, jurisdiction or control of my Government shall be subject to the levels of physical protection described in the Agreement.

Please accept, Your Excellency, the assurance of my highest consideration.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Chargé d'Affaires,

I refer to the Agreement between us of 16 January 1978 and have the honour to state that during the Council consideration of that Agreement the following interpretation was given by the Council concerning the effect of the Agreement in relation to the period after the interim period:

'In approving the exchange of letters between Canada and Euratom, the Council recognizes that the conditions under which:

— material covered by the Canada/Euratom Agreement shall be enriched beyond 20 % or reprocessed,

— and those under which uranium enriched beyond 20 % and plutonium shall be stored,

have been covered by an Agreement for an interim period.

For materials supplied after the end of the interim period, an agreement on the regime governing these sensitive operations remains to be concluded. The Council, therefore, recognizes that, for these materials, the parties have not accepted any obligation, either as to the supply of the materials or as to the fact that the regime to be negotiated, and which would govern the sensitive operations, would include any conditions, nor *a fortiori* as to the nature of any such conditions.'

I would be obliged if you would confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.

Mr P. D. Lee
Chargé d'Affaires a.i.
Mission of Canada
to the European Communities
Rue de Loxum, 6 (fifth floor)
1000 Brussels

MISSION OF CANADA
TO THE
EUROPEAN COMMUNITIES

Brussels, 16 January 1978

Mr Commissioner,

I have the honour to acknowledge receipt of your letter dated 16 January 1978, stating the following :

'Mr Chargé d'Affaires,

I refer to the Agreement between us of 16 January 1978 and have the honour to state that during the Council consideration of that Agreement the following interpretation was given by the Council concerning the effect of the Agreement in relation to the period after the interim period :

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For materials supplied after the end of the interim period, an agreement on the regime governing these sensitive operations remains to be concluded. The Council, therefore, recognizes that, for these materials, the parties have not accepted any obligation, either as to the supply of the materials or as to the fact that the regime to be negotiated, and which would govern the sensitive operations, would include any conditions, nor *a fortiori* as to the nature of any such conditions."

I would be obliged if you would confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Chargé d'Affaires, the assurance of my highest consideration.'

I have the honour to confirm that this interpretation is shared by the Canadian authorities.

Please accept, Mr Commissioner, the assurance of my highest consideration.

P. D. LEE
Chargé d'Affaires a.i.

Mr Guido Brunner
Commissioner
Commission of the European Communities
Rue de la Loi, 200
1049 Brussels

COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE

INFORMATIONS

LA COMMISSION

AMENDEMENT A L'AVENANT

du 11 juin 1960 (amendé) à l'accord de coopération entre les États-Unis d'Amérique et la Communauté européenne de l'énergie atomique (Euratom)

(64/50/Euratom)

Considérant que le gouvernement des États-Unis d'Amérique et la Communauté européenne de l'énergie atomique (Euratom) ont, en date du 8 novembre 1958, signé un accord de coopération concernant les utilisations pacifiques de l'énergie atomique offrant la base d'une coopération dans l'exécution de programmes destinés à promouvoir les applications pacifiques de l'énergie atomique;

considérant que ledit accord prévoit la possibilité pour les parties de conclure, de temps à autre, d'autres accords de coopération relatifs aux aspects pacifiques de l'énergie atomique;

considérant que lesdites parties ont, en date du 11 juin 1960 (1), signé un avenant à l'accord de coopération (ci-après dénommé «avenant») prévoyant une plus ample coopération, avenant qui a été modifié par l'amendement signé les 21 et 22 mai 1962 (2), en vue de la fourniture de quantités supplémentaires de matières nucléaires spéciales;

considérant que certains programmes dans la Communauté nécessitent des quantités supplémentaires d'uranium 235 qui ne sont pas prévues dans les accords de coopération existants; et

AMENDMENT TO THE ADDITIONAL AGREEMENT FOR COOPERATION

of June 11, 1960, as amended between the United States of America and the European Atomic Energy Community (Euratom)

Whereas the Government of the United States of America and the European Atomic Energy Community (Euratom) signed an Agreement for Cooperation on November 8, 1958, concerning Peaceful Uses of Atomic Energy, as a basis for cooperation in programs for the advancement of peaceful applications of atomic energy;

Whereas such Agreement contemplates that from time to time the Parties may enter into further Agreements for Cooperation in the peaceful aspects of atomic energy;

Whereas said Parties signed an additional agreement, hereinafter referred to as the Additional Agreement, on June 11, 1960, to provide for further cooperation, which was amended by the Agreement signed on May 21 and 22, 1962, to provide supplementary requirements for special nuclear materials;

Whereas programs within the Community require additional quantities of uranium 235 that are not provided for by existing Agreements for Cooperation; and

(1) JO n° 31 du 29. 4. 1961, pp. 668/61.
(2) JO n° 72 du 8. 8. 1962, pp. 2045/62.

considérant que le gouvernement des États-Unis d'Amérique a fait savoir qu'il était disposé à fournir des quantités supplémentaires d'uranium 235,

les parties conviennent de modifier l'avenant comme suit:

1. Le paragraphe A. de l'article I est amendé comme suit:

A.1. Les États-Unis vendront ou loueront à la Communauté, selon ce qui sera convenu entre les parties, pour utilisation:

a) Dans des applications déterminées en matière de recherche dans la Communauté, y compris les installations expérimentales de traitement chimique ou de fabrication de matières nucléaires spéciales, ainsi que les réacteurs de recherche et les réacteurs d'essai des matériaux, et

b) Dans des applications déterminées en matière de production d'énergie (y compris la propulsion) dans la Communauté, y compris les installations expérimentales et de démonstration,

une quantité nette maxima d'uranium 235 contenu dans l'uranium qui, ajoutée à la quantité nette d'uranium 235 nécessaire pour l'exécution du programme commun établi dans l'accord de coopération signé le 8 novembre 1958 entre les parties, ne dépassera pas 30.000 kilogrammes d'uranium 235. Des quantités supplémentaires d'uranium 235 pour les mêmes usages pourront être fournies dans la mesure autorisée par la législation des États-Unis et convenue entre les parties.

2. Une quantité maxima nette de 3.000 kilogrammes d'uranium 235 pourra être fournie pour utilisation dans des projets déterminés conformément au paragraphe A.1., alinéa a) du présent article. Des quantités supplémentaires d'uranium 235 pour les mêmes usages pourront être fournies en plus des 3.000 kilogrammes, selon ce qui sera convenu.

3. La fourniture d'uranium 235 pour des applications définies en matière de production d'énergie dans le cadre du paragraphe A.1, alinéa b) fera l'objet de contrats spéciaux conclus dans les cinq ans à partir de la date à laquelle il aura été convenu de chaque quantité particulière en application du paragraphe A.1. Passé ce délai, toute quantité d'uranium 235 qui n'aura pas déjà été vendue ou louée pour des applications en matière de production d'énergie pourra, d'un commun accord, être affectée à des utilisations, dans la Communauté, relevant du domaine d'application du présent accord ou cessera d'être

Whereas the Government of the United States of America has indicated its readiness to supply supplementary quantities of uranium 235,

The Parties agree to amend the Additional Agreement as follows:

1. Paragraph A. of Article I is amended to read as follows:

A.1. The United States will sell or lease, as the Parties may agree, to the Community for use in

a) defined research applications in the Community, including experimental plants for the chemical processing or fabrication of special nuclear materials, and research and materials testing reactors and

b) defined power (including propulsion) applications in the Community, including experimental and demonstration projects

up to a net amount of uranium 235 contained in uranium which when added to the net amount of uranium 235 required for the execution of the Joint Program as established by the Agreement for Cooperation signed on November 8, 1958, between the Parties will not exceed 30,000 kilograms of uranium 235. Additional quantities of uranium 235 for the same purposes will be made available as may be authorized pursuant to United States law and agreed by the Parties.

2. Up to a net amount of 3,000 kilograms of uranium 235 will be made available for use in defined projects pursuant to Paragraph A.1. a) of this Article. Additional quantities of uranium 235 for the same purposes may be made available in excess of the quantity of 3,000 kilograms as may be agreed.

3. The supply of uranium 235 for defined power applications pursuant to Paragraph A.1. b) will take place pursuant to specific contracts entered into within five years of the date each particular amount is agreed upon pursuant to Paragraph A.1. Any such amount of uranium 235 not already sold or leased within that period for power applications may be allocated by mutual agreement to uses in the Community within the scope of this Agreement or will cease to be available for the Community unless otherwise agreed.

à la disposition de la Communauté, à moins qu'il n'en soit décidé autrement.

4. La quantité nette de matières nucléaires spéciales représentera la quantité brute vendue ou louée à la Communauté, moins la quantité récupérable de ces matières qui aura été revendue ou aura fait retour d'une autre manière au gouvernement des États-Unis d'Amérique, ou encore aura été transférée à toute autre nation ou groupe de nations avec l'approbation du gouvernement des États-Unis d'Amérique.

2. Le paragraphe A de l'article VI est amendé comme suit:

A. Le présent avenant entrera en vigueur le jour ou chacune des parties aura reçu de l'autre partie notification écrite indiquant qu'elle a accompli toutes les formalités légales et constitutionnelles requises pour l'entrée en vigueur d'un tel avenant et demeurera en vigueur jusqu'au 31 décembre 1995.

3. Le présent amendement, qui sera réputé partie intégrante de l'avenant, entrera en vigueur le jour où chacune des parties aura reçu de l'autre partie notification écrite indiquant qu'elle a accompli toutes les formalités légales et constitutionnelles requises pour l'entrée en vigueur du présent amendement.

En foi de quoi les représentants soussignés, dûment autorisés à cet effet, ont signé le présent amendement.

Fait à Bruxelles et à Washington les 22 et 27 août 1963 en deux exemplaires, en langues allemande, anglaise, française, italienne et néerlandaise, chaque texte faisant également foi.

Pour le gouvernement des États-Unis d'Amérique:

RUSSELL FESSENDEN

GLENN T. SEABORG

Pour la Communauté européenne de l'énergie atomique (Euratom):

HEINZ L. KREKELER

4. The net amount of special nuclear material shall be its gross quantity, sold or leased to the Community, less the recoverable quantity thereof which has been resold or otherwise returned to the Government of the United States of America or transferred to any other nation or group of nations with the approval of the Government of the United States of America.

2. Paragraph A. of Article VI is amended to read as follows:

A. This Agreement shall enter into force on the first day on which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of such Agreement and shall remain in force until December 31, 1995.

3. This Amendment, which shall be regarded as an integral part of the Additional Agreement, shall enter into force on the day on which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Amendment.

In witness whereof, the undersigned representatives duly authorized thereto have signed this Amendment.

Done at Brussels and Washington this 22nd and 27th day of August 1963, in duplicate, in the English, French, German, Italian and Dutch languages, each language being equally authentic.

For the Government of the United States of America:

RUSSELL FESSENDEN

GLENN T. SEABORG

For the European Atomic Energy Community (Euratom):

HEINZ L. KREKELER

COMMISSION

AMENDMENT TO THE ADDITIONAL AGREEMENT FOR COOPERATION of 11 June 1960 between the European Atomic Energy Community (Euratom) and the Government of the United States of America

(74/254/Euratom)

Preamble

Whereas the European Atomic Energy Community (Euratom) and the Government of the United States of America signed an Agreement for Cooperation on 8 November 1958 (hereinafter referred to as the 'Joint Program Agreement') which was amended by the Agreement signed on 21 and 22 May 1962;

Whereas the Parties signed an Additional Agreement on 11 June 1960 (hereinafter referred to as the 'Additional Agreement'), to provide for further cooperation, which was amended by the Agreements signed on 21 and 22 May 1962, and 22 and 27 August 1963, to provide supplementary requirements for special nuclear material;

Whereas the Parties wish to bring up to date the provisions of the Additional Agreement concerning transfers of special nuclear material, as well as the performance of services with respect to special nuclear material;

The Parties agree to amend the Additional Agreement as follows:

Article I

Article I of the Additional Agreement, as amended, is amended to read as follows:

'A. Subject to the availability of capacity in United States Commission facilities for uranium enrichment and within such quantities as may be authorized for transfer, contracts with Euratom, or with authorized persons within the Community, may be entered into by the United States Commission as herein set forth for the production or enrichment of uranium enriched in the isotope U-235 for use as fuel in power applications undertaken within the Community. It is understood by the Parties that, at such times as Euratom, or such authorized persons, have requirements for such services and are prepared to execute firm contracts under the United States Commission's standard terms which set forth the agreed delivery schedules and other conditions for supply of such services, Euratom, or such authorized persons, will have access on an equitable basis with other purchasers of such services to uranium enrichment capacity then available to the United States Commission and not already allocated, or to other means of supply in accordance with existing United States Commission policy. Contracts for supply of such services will be negotiated and executed on a timely basis.

B. Additionally, upon request by Euratom or authorized persons within the Community, the United States Commission may, at its option and under such terms and conditions as may be agreed, sell uranium enriched in the isotope U-235 in such amounts as are within quantities authorized for transfer for use as fuel in power applications undertaken within the Community.

C. Under such terms and conditions as may be agreed and within such quantities as may be authorized for transfer, the United States Commission

may transfer (including *inter alia* supply through enrichment services contracts) to Euratom or authorized persons within the Community uranium enriched in the isotope U-235 for use in research applications, including *inter alia* fuel for research, materials testing, and experimental reactors and reactor experiments. The principle of equitable treatment among its foreign customers will govern the United States Commission in its decisions on the situations under which such uranium will be supplied and on the type of transfer to be employed.

D. Special nuclear material may also be transferred (including *inter alia* supply through enrichment services contracts) to either Party, or to persons authorized by it to receive such material, under such terms and conditions as may be agreed and within such quantities as may be authorized for transfer, for the performance within the territory of the receiving Party of conversion or fabrication services, or both, and for subsequent return to the territory of the Party from which it was transferred, or for subsequent transfer to any other nation or group of nations pursuant, in case of the performance of the conversion or fabrication services within the Community, to Article XI of the Joint Program Agreement.

E. Irradiated special nuclear material of United States origin may be transferred to Euratom, or to authorized persons within the Community, under such terms and conditions as the Parties may agree and within such quantities as may be authorized for transfer, for chemical reprocessing and subsequent retention within the Community for applications within the scope of this Agreement, or subsequent transfer to a nation outside the Community or another group of nations pursuant to Article XI of the Joint Program Agreement.

F. Special nuclear material other than uranium enriched in the isotope U-235 may be transferred to Euratom, or to authorized persons within the Community, for use as fuel in reactors and reactor experiments and for other peaceful applications, provided that the net amount of material so transferred by the United States Commission shall not exceed such quantities as may be authorized for transfer, and that the terms and conditions of each such transfer shall be agreed upon in advance.'

Article II

Article I bis of the Additional Agreement is amended to read as follows:

'A. The enriched uranium supplied under this Agreement may contain up to twenty percent (20 %) in the isotope U-235. A portion of the uranium enriched in the isotope U-235 so supplied may be made available as material containing more than twenty percent (20 %) in the isotope U-235 when the use of such material is technically or economically justified.

B. Subject to the provisions of Article II bis, the quantity of uranium enriched in the isotope U-235 transferred under Article I or Article II to the Community or to authorized persons within the Community for purposes authorized in this Agreement may include such amounts as are mutually agreed are necessary for the accomplishment of such purposes, including the fueling of reactors or reactor experiments within the Community and their efficient and continuous operation.

C. Special nuclear material produced as a result of irradiation processes in any part of the fuel that may be leased by the United States Commission under this Agreement shall be for the account of the lessee and, after reprocessing, title to such produced material shall be in the lessee unless the United States Commission and the lessee otherwise agree.

D. Special nuclear material produced through the use of material transferred to the Community or to authorized persons within the Community pursuant to this Agreement may be transferred to any nation outside the Community or any other group of nations, provided that such nation or group of nations has an appropriate agreement for cooperation with the Government of the United States of America or guarantees the use of such material for peaceful purposes under safeguards acceptable to the Parties.

E. 1 Special nuclear material of non-United States origin which is exported from the Community to the United States of America shall not, if re-exported from the United States of America to the Community, be charged against the quantity authorized for transfer to the Community and, if not improved while in the United States of America, shall be exempt from the safeguards required pursuant to this Agreement.

2 The material shall be deemed to be improved and therefore subject to the safeguards required pursuant to this Agreement when

(a) the concentration of fissionable isotopes in it has been increased,

(b) the amount of chemically separable fissionable isotopes in it has been increased, or

(c) its chemical or physical form has been changed so as to facilitate further use or processing.

F. Some atomic energy materials which may be provided in accordance with this Agreement are harmful to persons and property unless handled and used carefully. After delivery of such materials, the Community shall bear all responsibility, insofar as the Government of the United States of America is concerned, for the safe handling and use of such materials. With respect to any special nuclear material which the United States Commission may, pursuant to this Agreement, lease to the Community, or to authorized persons within the Community, the Community shall indemnify and save harmless the Government of the United States of America against any and all liability (including third party liability) for any cause whatsoever arising out of the production, fabrication, ownership, lease, possession and use of such special nuclear material after delivery by the United States Commission.'

Article III

Article II of the Additional Agreement, as amended, is amended to read as follows:

'A. With respect to the application of atomic energy to peaceful uses, it is understood that arrangements may be made between either Party or authorized persons under its jurisdiction and authorized persons under the jurisdiction of the other Party for the transfer of special nuclear material and for the performance of services with respect thereto for the uses specified in Article I and subject to the relevant provisions of Article I bis and to the provisions of Article II bis.

B. The Parties agree that the activities referred to in paragraph A of this Article shall be subject to the limitations in Article III and, on a non-discriminatory basis, to the export policies of the Community and the Government of the United States of America with regard to transactions involving the authorized persons referred to in paragraph A of this Article.'

Article IV

A new Article II bis is added to read as follows:

'Article II bis

A. The total quantity of U-235 in enriched uranium transferred by the Government of the United States of America or persons authorized by it under Articles I and II of this Agreement shall not exceed the quantity authorized for transfer by the United States Commission pursuant to United States law.

B. The net amounts of special nuclear material other than U-235 in enriched uranium which may be transferred by the United States Commission under Article I, paragraph F of this Agreement shall not exceed the quantities authorized for transfer by United States law. The net amounts of such material shall be the gross quantity of each such special nuclear material transferred less the quantity thereof which has been returned to the United States of America or transferred to any other nation or group of nations pursuant to Article XI of the Joint Program Agreement.'

Article V

The definition of 'person' in paragraph (a) of Article XV of the Joint Program Agreement, incorporated by reference in Article V of the Additional Agreement, is changed to read as follows:

'"Person" means any individual, enterprise, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency, government corporation, or national, regional or local government, but does not include the Parties to this Agreement.'

Article VI

Paragraph B of Article VI of the Additional Agreement, as amended, is amended to read as follows:

'B. The Parties agree that their undertakings under this Agreement are subject to appropriate statutory steps, including authorization by competent bodies of the Community and the Government of the United States of America, and the provisions of applicable laws, treaties, regulations and license requirements in effect in the Community, in the United States and within the Member States.'

Article VII

This Amendment shall enter into force on the date on which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of such Amendment and shall remain in force for the period of the Additional Agreement, as amended.

In witness whereof, the undersigned, duly authorized, have signed this Amendment.

Done at Washington, in duplicate, this twentieth day of September, 1972.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Walter J. Stoessel Jr.
James R. Schlesinger

FOR THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM):

A. M. Mazio

Chapter 5 — Rational energy use and renewable energy sources

COUNCIL DIRECTIVE

of 13 February 1978

on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings

(78/170/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, in its resolution of 17 September 1974 concerning a new energy policy strategy for the Community (3), the Council adopted the objective of a reduction of the rate of growth of internal consumption by measures for using energy rationally and economically without jeopardizing social and economic growth objectives;

Whereas, in its resolution of 17 December 1974 on a Community action programme on the rational utilization of energy (4), the Council noted that, in its communications to the Council entitled 'Rational utilization of energy', the Commission had drawn up a Community action programme in this field;

Whereas any improvement in the rational use of energy is generally beneficial to the environment;

Whereas the sector concerned with heating systems in buildings lends itself to such measures;

Whereas recommendation 76/493/EEC (5), related to the heating systems of existing buildings;

Whereas in the case of new heating systems it is necessary to achieve energy savings as soon as possible which will have an influence on total energy consumption as and when the systems are installed;

Whereas, to this end, a Directive should be adopted to provide a general framework within which the Member States would jointly explore energy saving methods designed to lessen the impact of the supply difficulties referred to in Article 103 (4) of the Treaty;

Whereas heat generators for space heating and the production of domestic hot water in new or existing non-industrial buildings should be inspected at the stage of manufacture or at the time of installation;

Whereas it should be made compulsory in new non-industrial buildings to provide, in economically justifiable conditions, thermal insulation both for generators and for the system whereby the heated fluids are distributed;

Whereas the Commission should receive regular information on the implementing measures adopted and the results obtained or anticipated;

Whereas the implementing measures adopted for this Directive should incorporate the measures adopted for the approximation of the laws of the Member States in the fields concerned by this Directive and should be directed towards facilitating the harmonization and standardization work in progress or to be undertaken in these fields both at Community and international level,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall take all necessary measures to ensure that all new heat generators for space heating and/or the production of hot water in new or existing non-industrial buildings comply with minimum performance requirements.

In the case of generators capable of using various forms of energy, the minimum performance requirements must relate to each form of energy used.

(1) OJ No C 266, 7. 11. 1977, p. 55.
(2) OJ No C 287, 30. 11. 1977, p. 9.
(3) OJ No C 153, 9. 7. 1975, p. 1.
(4) OJ No C 153, 9. 7. 1975, p. 5.
(5) OJ No L 140, 28. 5. 1976, p. 12.

The term heat generator shall, in particular, mean hot-water boilers, steam boilers, air heaters, including components and especially the associated firing equipment appropriate to the type of fossil fuel used. Combined electricity/heat generators used in buildings shall also be regarded as heat generators; for these, the minimum performance requirements must relate to the full energy output.

Electric heat generators with resistances and connections to a remote heating network shall be excluded.

Those appliances for which type-testing is not practicable will be the subject of a subsequent proposal after appropriate technical study.

2. Member States shall ensure that compliance with the minimum performance requirements is assured by an inspection carried out either at the stage of manufacture of the generator or at the time of installation.

3. Heat generators subject to inspection at the time of manufacture cannot be offered for sale unless they comply with the minimum performance requirements; compliance with the relevant rules shall be certified by means of a data plate giving the following minimum details:

— manufacturer's identity,
— type of heat generator and its year of manufacture,
— heat rating in kW for every type of energy foreseen,
— type and characteristics of the energy or energies used,
— maximum temperature of the heating fluid,
— confirmation of inspection and identification of the body which carried it out,
— consumption of each heat generator when working to rated capacity.

The term 'heat rating' refers to the highest output that can be continuously supplied by the heat generator.

When a heat generator of a type subject to inspection at the time of manufacture is installed, the user shall be provided with written operating and maintenance instructions to enable him to obtain optimum efficiency. These instructions must have been inspected in the same way as the generator and include the main details of the findings of the inspection.

4. In the case of heat generators subject to inspection at the time of installation, energy losses must not exceed the levels laid down by the Member States.

Article 2

Member States shall take all necessary measures to ensure that economically justifiable insulation of the distribution and storage system is made compulsory in new non-industrial buildings, both as regards heating fluid and domestic hot water.

These provisions shall also apply to systems connected to a remote-heating network.

They shall also apply to new heat generators, including electric systems for heating water, in all new or existing non-industrial buildings.

Article 3

The date from which a heat generator may no longer be installed, unless it complies with the minimum performance requirements in accordance with Article 1, shall be 1 January 1981.

The measures referred to in Article 2 shall apply from 1 July 1980.

Article 4

The Member States shall duly inform the Commission of measures taken within the scope of this Directive and of the results obtained or anticipated from such measures.

Article 5

This Directive shall in no way prejudge measures based on Article 100 of the Treaty.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 13 February 1978.

For the Council

The President

P. DALSAGER

COUNCIL DIRECTIVE

of 10 December 1982

amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings

(82/885/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas Directive 78/170/EEC (3) requires Member States to take all necessary measures to ensure that all new heat generators for space heating and/or the production of domestic hot water in new or existing non-industrial buildings comply with minimum performance requirements;

Whereas the said Directive provides that compliance with these minimum performance requirements should be assured by an inspection carried out either at the stage of manufacture of the generator or at the time of installation;

Whereas it further provides that, in the case of heat generators subject to inspection at the time of installation, energy losses must not exceed the levels laid down by the Member States;

Whereas it nevertheless provides that those appliances for which type-testing is not practicable will be the subject of a subsequent proposal after appropriate technical studies have been carried out;

Whereas, these studies having been duly completed, appropriate measures should be adopted in respect of the said heat generators;

Whereas these studies show the need to provide for the possibility of an interval between the time of installation of a generator for which type-testing is not practicable and the time at which an on-site inspection is carried out;

Whereas, moreover, these studies have led to the drafting of a code of practice indicating the procedures to be followed for the on-site performance testing of a liquid or gaseous fuel fired heat generator subject to inspection in connection with its installation;

Whereas it is consequently necessary for inspections of the generators in question to be carried out in compliance with the said code, which constitutes a minimum common basis throughout the Community; whereas the provisions of the code do not apply to solid-fuel heat generators;

Whereas it is appropriate that, in order to permit ready verification of compliance with the rules relating to an inspection carried out in connection with installation, provision be made for a data plate similar to that laid down for heat generators inspected at the stage of manufacture; whereas this plate may be replaced by the inspection report; whereas, in the event of non-compliance with the performance requirements or levels of energy loss, the inspection report will be sent to the competent administrative authority;

Whereas the measures adopted to implement this Directive should incorporate the measures adopted for the approximation of the laws of the Member States in the fields concerned by this Directive and should be directed towards facilitating the work on harmonization or standardization in progress or to be undertaken in these fields at Community level or internationally;

Whereas Directive 78/170/EEC should therefore be amended,

(1) OJ No C 175, 14. 7. 1980, p. 12.
(2) OJ No C 300, 18. 11. 1980, p. 6.
(3) OJ No L 52, 23. 2. 1978, p. 32.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 78/170/EEC is hereby amended as follows:

1. The words 'economically justifiable' shall be inserted before the words 'minimum performance requirements' in the first subparagraph of Article 1 (1);

2. The fourth subparagraph of Article 1 (1) shall be replaced by the following:

'Electric heat generators with resistances, heat pumps and connections to a remote heating network shall be excluded.';

3. The last subparagraph of Article 1 (1) shall be deleted;

4. The following paragraphs shall be inserted in Article 1:

'3a. Heat generators subject to inspection at the time of installation which do not comply with minimum performance requirements shall be the subject of a decision by the competent administrative authority, which may even order that a generator be taken out of service; compliance with these requirements shall be certified by means of a data plate giving at least the details provided for in paragraph 3, with the exception of the last indent regarding the consumption of the generator when working to rated capacity.

Indication of the maximum temperature of the heating fluid provided for in the fifth indent may be omitted if the temperature is specified in another document.

The inspecting body shall be required to provide the user with an inspection report in a form laid down by the Member State; this report must state, in particular, the details which must be given on the data plate provided for in the first subparagraph; It may replace the plate.

When an inspection report states that a heat generator fails to comply with the minimum performance requirements, the inspecting body shall forward a copy of the report to the competent administrative authority. In the case of any heat generator coming from another Member State the competent administrative authority of the place where the inspection is carried out shall, with the owner's consent, provide the supplier, at the latter's request, with a copy of the inspection report.

3b. The inspection of heat generators at the time of installation shall be carried out in compliance with the code of practice annexed to this Directive. The provisions of the code shall constitute a minimum common basis for the inspection procedure throughout the Community. They may be supplemented, but not cancelled or contradicted, by provisions decided upon by the Member States. The provisions of the code shall not apply to solid-fuel fired heat generators or to condensing boilers.';

5. Article 1 (4) shall be replaced by the following:

'4. In the case of heat generators subject to inspection at the time of installation, Member States may fix, instead of minimum performance requirements, maximum levels of energy loss in accordance with point 3.1 of the code of practice.

In such case, the provisions of paragraphs 3a and 3b shall apply'.

Article 2

The Annex to this Directive shall be added to Directive 78/170/EEC.

Article 3

Member States shall adopt the measures relating to the testing of heat generators at the time of installation within 18 months of notification of this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 10 December 1982.

For the Council

The President

G. FENGER MØLLER

ANNEX

CODE OF PRACTICE FOR TESTING THE PERFORMANCE AT THE TIME OF INSTALLATION OF A LIQUID OR GASEOUS-FUEL FIRED HEAT GENERATOR USED IN A NON-INDUSTRIAL BUILDING FOR SPACE HEATING AND/OR THE PRODUCTION OF DOMESTIC HOT WATER

TEST PROCEDURE AND DETERMINATION OF LOSSES

1. GENERAL

1.1. In the case of a heat generator capable of using various types of fuel (liquid or gaseous), the test shall be carried out with a fuel of each type which is in conformity with the manufacturer's specifications and available at the time of the test.

1.2. The exit for the flue-gases shall be provided with an aperture for the insertion of measuring probes and for smoke sampling.

1.3. The accuracy of each measurement must be such as to enable the overall accuracy of results specified by the Member States to be obtained.

1.4. The test will be carried out within a reasonable period of time and preferably at the nominal calorific output of the generator. Where this is impossible, the next-closest load should be used. If the generator is designed to operate at two or at several loads, a reduced load test may also be carried out at the request of the Member States. The loads used shall be assessed by a reliable method.

1.5. Performance, whether determined by the direct or indirect method, shall be expressed as a percentage on the basis of the net or gross calorific value of the fuel injected into the burner at the load assessed as indicated in 1.4.

2. TEST CONDITIONS

2.1. Preparation of the generator

2.1.1. It shall be the responsibility of the user, with the possible help of the manufacturer and/or the installer, to carry out before the test any cleaning, regulation and preparation of the generator which he considers necessary. The competent administrative authorities may make such cleaning compulsory.

2.1.2. The leak tightness of the generator and of its connection with the flue shall be checked.

2.2. Identification of the generator

2.2.1. Prior to the test, the inspecting body (hereinafter called 'the body') shall record all necessary data for identification of the generator, and at least the generator's features or specifications as stated for example on the data plate and/or in the instructions for assembly and operation given to the user with regard to manufacturer, make, year of manufacture and heat rating.

2.2.2. The body shall check that the necessary conditions are fulfilled for ensuring that no disturbance occurs during the test which is likely to adversely affect its validity. To this end

it shall in particular require the user to produce the certificates — or provide any other means of proof — establishing that the safety checks laid down for the boiler-room and boiler-room premises have been carried out. This condition may be deemed to have been fulfilled in Member States where heat generators cannot be installed or put into operation without prior safety checks. If no such checks are required by national law, the body is entitled to reasonable assurance of safe working conditions before it carries out the check.

Should it fail to obtain satisfaction on the above points, the body may refuse to carry out the check; in that event it shall draw up an *ad hoc* report.

2.3. **Preliminary running**

2.3.1. Prior to the test, preliminary running may be carried out by the body in order to check and pre-set the functioning of the measuring equipment installed for checking purposes. The body shall ensure that all measurements are to the required degree of accuracy. More specifically, if the body decides to use certain measuring instruments forming part of the installation's normal equipment, it must check that these meet the desired conditions as regards standards of accuracy and reliability.

2.3.2. It shall be the responsibility of the user, assisted by the manufacturer and/or the installer, with the permission of the generator's owner, to carry out any final adjustments to the generator which may be necessary and to provide any additional explanations of the various instructions so as to create optimum test conditions.

2.4. **The test**

2.4.1. Testing operations shall be the responsibility of the body alone.

2.4.2. The test shall be carried out under steady-state conditions, with the fuel and combustion-air flow rates kept constant.

2.4.3. During the test the body shall take the compulsory measurements provided for under 3 and, if appropriate, the optional measurements provided for under 4. It shall draw up a report as provided in 5.

3. DETERMINATION OF LOSSES VIA FLUE GASES

3.1. **Measurement of sensible-heat losses**

Where performance is determined by the indirect method, the body shall be entitled to measure the percentage by volume by either carbon dioxide or oxygen in the flue gases.

It shall then apply a formula which in addition to the temperature difference between flue gases and combustion air incorporates adequate constants. The formula and constants must have been published by the Member State under whose jurisdiction the inspecting body comes or be laid down in a standard.

In the absence of official regulations or a standard, sensible-heat losses may be calculated from the characteristics of the fuel, its calorific value and the volume of excess air by using tables giving the specific heat of combustion gases such as those established by the 12th World Gas Congress (IGU/E/17/73).

The above procedure shall not apply to condensing boilers.

3.2. **Measurement of flue-gas capacity**

The body shall carry out this measurement where the generator uses a liquid fuel or a liquefied petroleum gas (LPG) injected in liquid form; measurement shall be by means of an adequate instrument; the result shall be expressed as a conventional smoke number (0 to 9).

4. OTHER CHECKS (OPTIONAL)

4.1. Traces of carbon monoxide

The body may be empowered to check that generator flue-gases do not contain carbon monoxide in such quantities as to cast doubts on the results of measurements made in accordance with 3.1.

4.2. Losses through the heat generator casing

In those Member States where there are neither regulations nor technical rules or other provisions on the subject, the body may be authorized to assess casing losses from data provided by the manufacturer and/or from surface temperatures observed during the test.

5. TEST REPORT

After the test the body shall draw up a report in the form laid down by the Member State, giving the generator's main features, the measurements taken, the formula used to calculate losses and the heat generator's performance.

COUNCIL DIRECTIVE

of 14 May 1979

applying to electric ovens Directive 79/530/EEC on the indication by labelling of the energy consumption of household appliances

(79/531/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 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 79/530/EEC of 14 May 1979 on the indication by labelling of the energy consumption of household appliances (4) provides that an implementing Directive will lay down the standards and methods applying to ovens;

Whereas the public should be informed, in the most comprehensible and standardized manner possible, of the specific consumption of electric ovens; whereas the provision of accurate, relevant and comparable information may influence the public's choice in favour of those ovens which consume less energy, thus prompting manufacturers to take steps to reduce the consumption of the electric ovens which they manufacture;

Whereas information on electric ovens differs from that on ovens using other sources of heat;

Whereas Article 10 (1) of Directive 79/530/EEC provides that the Member States shall comply with that Directive within two years of the notification of the first implementing Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is the harmonization of national regulations on the publication of information on the energy consumption of radiant electric ovens, either self-contained or forming part of a combined household appliance, and of supplementary information.

Article 2

Member States shall take all appropriate measures to ensure that labels relating to energy consumption and all other information on energy consumption comply with the definitions and rules laid down by Directive 79/530/EEC and by this Directive.

Article 3

For the purposes of this Directive, the standards and methods within the meaning of Article 2 of Directive 79/530/EEC shall be those set out in Annex I to this Directive.

Article 4

1. Member States shall bring into force the provisions necessary to comply with this Directive within two years of its notification and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission any measures which they take in the field covered by this Directive.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 14 May 1979.

For the Council

The President

R. MONORY

(1) OJ No C 212, 6. 9. 1978, p. 7.
(2) OJ No C 93, 9. 4. 1979, p. 72.
(3) Opinion delivered on 4 and 5 April 1979 (not yet published in the Official Journal).
(4) See page 1 of this Official Journal.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 June 1989

on a Community action programme for improving the efficiency of electricity use

(89/364/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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 its resolution of 15 January 1985 on the improvement of energy-saving programmes in Member States (4), the Council invited Member States to pursue and where necessary increase their efforts to promote the more rational use of energy by the further development of integrated energy-saving policies;

Whereas, in its resolution of 16 September 1986 (5) concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States, the Council called for a vigorous policy of energy saving;

Whereas electricity production contributes by more than 35 % to the coverage of the Community's total primary energy consumption and whereas electricity consumption accounts for over 17 % of the Community's total final energy consumption;

Whereas improvements in the efficiency of electricity use would bring benefits in terms of lower primary energy consumption, reduced investment in electricity production capacity, reduced emission levels and lower electricity costs to consumers;

Whereas there is significant potential for improving the efficiency of electricity use and whereas specific action is required to exploit this potential;

Whereas an immediate consequence of saving energy is the saving of non-renewable raw materials and a reduction in the pollution of the environment, and whereas this is therefore consistent with the objectives laid down by Article 130r (1) of the Treaty;

Whereas, to achieve improvements in the efficiency of electricity use, electricity consumers should be encouraged to use the most efficient electrical appliances and equipment and whereas the efficiency of such appliances and equipment and of electrically-based processes should be further improved;

Whereas a Community action programme should be instituted to achieve these objectives, and whereas the Treaty does not provide for the action concerned, powers other than those of Article 235;

Whereas such a Community action programme would be complementary to other actions in the general field of energy saving;

Whereas the Community action programme would involve not only the Commission and Member State Governments but also other parties in the electricity sector notably the electricity consumers' organizations, and professional institutions,

(1) OJ No C 307, 2. 12. 1988, p. 6.
(2) OJ No C 96, 17. 4. 1989.
(3) OJ No C 139, 5. 6. 1989, p. 1.
(4) OJ No C 20, 22. 1. 1985, p. 1.
(5) OJ No C 241, 25. 9. 1986, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

1. A Community action programme, hereinafter called 'Programme', for improving the efficiency of electricity use shall be instituted.

2. The Programme shall have as its twin objectives, inasmuch as this is technically and, in the long term, economically justified:

— to influence electricity consumers in favour of the use of appliances and equipment with high electrical efficiency in the most efficient manner, and

— to encourage further improvements in the efficiency of electrical appliances and equipment and of electricity-based processes.

Article 2

1. The action which may be taken under the Programme is summarized in the Annex.

2. The carrying-out of any or all of those activities shall depend on the specific situation of each Member State in relation to the Community objective to be achieved as defined in Article 1.

Article 3

In the context of the management and execution of measures under the Programme in its territory each Member State shall appoint a body to recommend and coordinate the implementation of action to carry out the Programme, in cooperation with the interested parties. The Member States shall set up such bodies as necessary.

Article 4

1. The Commission shall:

(a) coordinate, at Community level:

— action taken under the Programme, in conjunction, where necessary, with other existing programmes;

— the exchange of information and experience;

(b) monitor the Programme's progress and results.

2. In this connection, the Commission shall be responsible for technical support to the management of the Programme and for the management of actions which it takes with a view to the successful implementation of the Programme.

3. The Commission shall report regularly to the European Parliament, the Council and the Economic and Social Committee on the progress of the Programme and, where appropriate, on any additional measures which it envisages proposing to achieve the aims of the Programme. The first such report shall be submitted not later than eighteen months following the date on which this Decision takes effect, and ensuring reports at intervals not exceeding eighteen months.

Article 5

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

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 6

If the achievement of the Programme objectives requires further Community action, the Commission shall lay before the Council any appropriate proposals for the purpose pursuant to the provisions of the Treaty.

Article 7

Before a period of three years has elapsed, the Programme and the procedures established for its implementation shall be re-examined, on the basis of a report by the Commission with a view to examining their effectiveness and their possible improvement.

Article 8

The Member States shall bring into force the provisions necessary to comply with this Decision not later than nine months after its adoption. They shall forthwith inform the Commission thereof.

Article 9

This Decision is addressed to the Member States.

Done at Luxembourg, 5 June 1989.

For the Council

The President

J. BARRIONUEVO PEÑA

ANNEX

SUMMARY OF THE ACTION WHICH MAY BE TAKEN UNDER THE COMMUNITY ACTION PROGRAMME

1. Consumer information

— action to improve the quality and availability of information to electricity consumers and equipment specifiers concerning the efficiency of electrical appliances and equipment and their efficient use ;

— provision of information by electricity distributors, consumer organizations and, where appropriate, by governments, including more detailed information about tariffs, metering and accounts ;

— most effective use of all media for disseminating information ;

— provision by manufacturers of data relating to appliance and equipment efficiency, including improvement of the labelling system ;

— use of appropriate data bases ;

— adoption of directives by the competent authorities, in this context, regarding the provision of information to the consumer.

2. Technical advice

Action to ensure that technical advice on the purchase, installation and use of the most efficient electrical appliances and equipment is readily available to electricity consumers, including :

— action by electricity distributors, consumer organizations and Member State Governments to ensure that advice is available to consumers on the purchase, installation and use of the most efficient electrical appliances and equipment possible ;

— action by professional institutions concerned with the specification and installation of electrical equipment to ensure that their members are adequately informed on the efficient use of electricity, the aim being to safeguard consumer interests while protecting the interests of the community as a whole.

3. Efficiency of electrical appliances and equipment

Action to improve the efficiency of electrical appliances and equipment and to increase the market share of the most efficient products on the market including :

— the establishment of cooperation between manufacturers to improve the efficiency of appliances and equipment and in particular the fitting of thermostats to all electrical equipment with a heating element ;

— efforts to increase the market penetration of efficient appliances and equipment including examination of the potential of selective financial intervention and particularly of third-party financing ;

— action by official authorities to ensure that, in all activities which they are responsible for and in all buildings they own or occupy, including street-lighting, electrical appliances and equipment are of high efficiency and efficiently operated ;

— examination by the Commission of how it can promote the effectiveness of the Programme at Community level, to supplement the activities of the Member States under the Programme both by coordination and by promoting harmonization of product information regarding the (energy) performance of appliances and equipment and the development of European product standards on performance and energy consumption ;

— examination of the possibilities for electronic control of domestic and industrial electricity consumption, by use of remote reading and control microprocessors ;

— examination of a more comprehensive system of metering and signalling that would be more accessible to the consumer, enabling him to act promptly in cases of excessive consumption.

4. Demonstration

Action in conjunction, where necessary, with other existing programmes, to ensure that the demonstration of new, more efficient appliances, equipment and technologies is adequately supported, and that information thereon is disseminated throughout the Community.

5. Studies and other support activities

Action to analyse factors determining the efficiency of electricity use and to identify areas in which additional measures might effectively be taken ; other studies and information seminars.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 October 1991

concerning the promotion of energy efficiency in the Community (SAVE programme)

(91/565/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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 its resolution of 15 January 1985 on the improvement of energy saving programmes in the Member States (4), the Council invited the latter to pursue and, where necessary, increase their efforts to promote the more rational use of energy by the development of integrated energy-saving policies;

Whereas, in its resolution of 16 September 1986 concerning new Community energy policy objectives for 1995 and the convergence of the policies of Member States (5), the Council considered that the energy policy of the Community and the Member States must endeavour to achieve the objective of more secure conditions of supply through a vigorous policy for energy-saving and the rational use of energy; whereas, in that resolution, the Council adopted for the Community the objective of achieving a more rational use of energy through improved energy efficiency and decided that the efficiency of final demand should be improved by at least 20 % by 1995;

Whereas Article 130r of the Treaty requires a prudent and rational utilization of natural resources and the rational use of energy is one of the principal means by which this objective can be respected and environmental pollution reduced;

Whereas the Commission, in its Communication to the Council of 3 May 1988 on the principal results of the review of Member States' energy policies, noted that the Community would fail to achieve the energy efficiency objective of a further 20 % saving if vigorous measures were not adopted;

Whereas the promotion of energy efficiency in all regions of the Community will help to reinforce the economic and social development of the Community as a whole, an objective which, according to Article 130r of the Treaty, should be taken into account when implementing common policies and the internal market;

Whereas the Commission, in its Communication to the Council of 8 February 1990 on energy and the environment, stressed that energy efficiency had to be increased to reduce the negative impact of energy on the environment;

Whereas improved energy efficiency will have a positive impact on both the security of energy supplies and the environment, which are by nature of global significance, and whereas a high level of international cooperation is therefore desirable to produce the most positive results;

(1) OJ No C 301, 30. 11. 1990, p. 11.
(2) OJ No C 240, 16. 9. 1991, p. 273.
(3) OJ No C 120, 6. 5. 1991, p. 6.
(4) OJ No C 20, 22. 1. 1985, p. 1.
(5) OJ No C 241, 25. 9. 1986, p. 1.

Whereas the Council, in its Decision 89/364/EEC (1), established a Community action programme for improving the efficiency of electricity use;

Whereas a programme lasting five years is called for;

Whereas an amount of ECU 35 million is estimated as necessary to implement this multiannual programme; whereas, for the period 1991 to 1992, in the framework of the current financial perspective, the funds estimated as necessary are ECU 14 million;

Whereas the amounts to be committed for the financing of the programme for the period after the budget year 1992 will have to fall within the Community financial framework in force;

Whereas the Treaty makes no provision for powers other than those of Article 235 for the adoption of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The Community shall support a series of energy efficiency actions within the context of this programme, entitled SAVE (Specific Actions for Vigorous Energy Efficiency) and hereinafter referred to as the 'programme'.

2. The programme shall last five years.

3. The Community financial resources estimated as necessary for its implementation amount to ECU 35 million, of which ECU 14 million are for the period 1991 to 1992 in the framework of the 1988 to 1992 financial perspectives.

For the subsequent period of implementation of the programme, the amount shall fall within the Community financial framework in force.

4. The budget authority shall determine the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 2

Four categories of action on energy efficiency shall be financed under the programme, namely:

(a) technical evaluations for assessing the data needed for defining technical standards or specifications;

(b) measures to support the Member States' initiatives for extending or creating infrastructures concerned with energy efficiency. These initiatives shall include:

— training and information activities with regard to energy efficiency at a level as close as possible to the final consumers of energy,

— sectoral pilot projects such as those listed in the Annex to this Decision;

(c) measures to foster the creation of an information network aimed at promoting better coordination between national, Community and international activities through the establishment of appropriate means for exchanging information and at evaluating the impact of the various measures provided for in this Article;

(d) measures to implement the programme for improving the efficiency of electricity use adopted by Decision 89/364/EEC.

Article 3

1. All costs relating to the measures referred to in Article 2 (a) shall be borne by the Community.

2. The level of Community support for the measures referred to in Article 2 (b) and (c) shall be between 30 and 50 % of their total cost. The balance may be made up from either government or private funding or by a combination of the two. In exceptional cases duly justified to the advisory committee referred to in Article 5 (2), Community funding may exceed the 50 % limit, while not exceeding 60 %.

3. The level of Community support for the measures referred to in Article 2 (d), covered by Decision 89/364/EEC, shall be determined case by case in the light of the type of measure.

Article 4

1. The Commission shall establish guidelines for the support measures referred to in Article 2 (b) and (c) in consultation with the committee referred to in Article 5 (2).

2. The proposed initiatives referred to in Article 2 (b) and the list of bodies which are to implement these projects shall be submitted annually by the Member States to the Commission, which shall decide on the level and conditions of Community funding according to the procedure referred to in Article 6. The Commission shall sign contracts relating to the support measures with those bodies.

Article 5

1. The Commission shall be responsible for the implementation of the programme.

2. The Commission shall be assisted by an advisory committee, hereinafter referred to as the committee, composed of the representatives of the Member States and chaired by the representative of the Commission.

(1) OJ No L 157, 9. 6. 1989, p. 32.

Article 6

As regards the measures referred to in Article 2 (a), (b) and (c), 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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its positioin recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 7

1. During the third year of the programme, the Commission shall present a report to the European Parliament to the Council on the basis of the results achieved. This report shall be accompanied by proposals for any changes which may be necessary in the light of these results.

2. On the expiry of the programme, the Commission shall assess the results obtained, the application of this Decision and the coherence of national and Community actions. It shall present a report thereon to the European Parliament and the Council.

Article 8

This Decision shall apply from 1 January 1991 to 31 December 1995.

Article 9

This Decision is addressed to the Member States.

Done at Luxembourg, 29 October 1991.

For the Council

The President

K. ANDRIESSEN

ANNEX

Illustrative, non-limitative list of sectoral pilot projects referred to in the second indent of Article 2 (b), to be implemented at a level as close as possibile to the final consumers of energy (1)

1. Pilot studies on least cost planning and demand side management
2. Feasibility studies on cogeneration projects involving institutional or organizational innovations
3. Sectoral targeting and monitoring of energy efficiency
4. Sectoral audits
5. Pilot projects in the transport sector, e.g. improving traffic flow in towns, toll systems, etc.
6. Pilot projects on third-party financing within the framework of the European network for third-party financing (Community participation in the direct financing of an investment is ruled out).

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(1) A non-binding framework of the projects, drawn up by the Commission on the basis of the amendments proposed by the European Parliament, will be found in a separate Commission communication in the *Official Journal of the Europeen Communities* ('C' edition).

COUNCIL DIRECTIVE 92/42/EEC

of 21 May 1992

on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas Decision 91/565/EEC (4) provides for the promotion of energy efficiency in the Community under the SAVE programme;

Whereas it is important to promote measures aimed at the progressive establishement of the internal market in the period up to 31 December 1992; whereas the internal market encompasses an area without internal frontiers, in which the free circulation of goods, persons, services and capital is assured;

Whereas the Council resolution of 15 January 1985 on the improvement of energy-saving programmes in the Member States (5) invites Member States to pursue and where necessary increase their efforts to promote the more rational use of energy by the further development of integrated energy-saving policies;

Whereas the Council resolution of 16 September 1986 concerns new Community energy-policy objectives for 1995 and convergence of the policies of the Member States (6), and in particular the objective of improving the efficiency of final energy demand by at least 20 %;

Whereas Article 130r of the Treaty provides that action by the Community relating to the environment shall have the objective of ensuring a prudent and rational utilization of natural resources;

Whereas it is appropriate to take as a base a high level of protection in proposals for the approximation of the provisions laid down by law, regulation or administrative action in Member States and concerning health, safety, environmental protection and consumer protection;

Whereas the Council resolution of 21 June 1989 declares 'that the Community should take proper account of potential climatic change linked to the greenhouse effect' (7) and the Council's conclusions of 29 October 1990 state that CO_2 emissions in the year 2000 should be stabilized throughout the Community at their 1990 level;

Whereas the importance of the domestic and tertiary sector, which absorbs a major proportion of the final consumption of energy in the Community, is considerable;

Whereas this sector will become even more important through trends towards more central heating and a general increase in thermal comfort;

Whereas better boiler efficiency is in the consumer's interest; whereas energy saving will be reflected in fewer imports of hydrocarbons; whereas reduction in the Community's energy dependence will have a positive impact on its trade balance;

Whereas Council Directive 78/170/EEC of 13 February 1978 on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial builings (8), has given rise to the establishment of substantially different efficiency levels between one Member State and another;

Whereas the requirement of high efficiency for hot-water boilers will reduce the range of technical properties of equipment placed on the market, thus facilitating series production and making for economies of scale; whereas the absence of a measure laying down energy requirements at a sufficiently high level may result, with the completion of the internal market, in a significant drop in the efficiency levels of heating installations through the spread on the market of low-efficiency boilers;

Whereas local climatic conditions and the energy and occupancy characteristics of buildings differ greatly within the Community; whereas Member States must take this diversity into account when determining the conditions for putting boilers into service in implementation of this Direcitve; whereas these circumstances justify the fact that Member States where back-boilers and boilers designed to be installed in the living space are widely installed at the date of

(1) OJ No C 292, 22. 11. 1990, p. 8.
(2) OJ No C 129, 20. 5. 1991, p. 97 and OJ No C 94, 13. 4. 1992.
(3) OJ No C 102, 18. 4. 1991, p. 46.
(4) OJ No L 307, 8. 11. 1991, p. 34.
(5) OJ No C 20, 22. 1. 1985, p. 1.
(6) OJ No C 241, 25. 9. 1986, p. 1.
(7) OJ No C 183, 20. 7. 1989, p. 4.
(8) OJ No L 52, 23. 2. 1978, p. 32. Directive amended by Directive 82/885/EEC (OJ No L 378, 31. 12. 1982, p. 19).

the adoption of this Directive should continue to authorize, within specific limits, the placing on their markets and the putting into service of such boilers; whereas these arrangements should be subject to particular surveillance by the Commission;

Whereas this Directive, which is aimed at eliminating technical barriers with regard to boiler efficiency, must follow the new approach established by the Council resolution of 7 May 1985 (1) which specifically lays down that legislative harmonization is limited to the adoption, by means of directives based on Article 100 of the EEC Treaty, of the essential requirements with which products put on the market must conform and that 'these essential requirements shall be worded precisely enough in order to create legally binding obligations which can be enforced and to enable the certification bodies to certify products as being in conformity, having regard to those requirements in the absence of standards';

Having regard to Directive 83/189/EEC (2) laying down a procedure for the provision of information in the field of technical standards and regulations;

Having regard to Decision 90/683/EEC (3) concerning the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives;

Whereas boilers complying with the efficiency requirements should bear the CE mark and, where appropriate, signs in order to enable them to move freely and to be put into service in accordance with their intended purpose within the Community;

Having regard to Directive 89/106/EEC (4) on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products;

Whereas efficiency requirements to encourage the rational use of energy as laid down in Council Directive 90/396/EEC of 29 June 1990 on the approximation of the laws of the Member States relating to appliances burning gaseous fuels (5) should be established for the gas boilers referred to in this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive, which comes under the SAVE programme concerning the promotion of energy efficiency in the Community, determines the efficiency requirement applicable to new hot-water boilers fired by liquid or gaseou fuels with a rated output of no less than 4 kW and no mor than 400 kW, hereinafter called 'boilers'.

Article 2

For the purposes of this Directive:

— *boiler:* the combined boiler body-burner unit, designed t transmit to water the heat released from burning,

— *appliance:*

  — the boiler body designed to have a burner fitted,

  — the burner designed to be fitted to a boiler body,

— *effective rated output (expressed in kW):* the maximun calorific output laid down and guaranteed by th manufacturer as being deliverable during continuou operation while complying with the useful efficienc indicated by the manufacturer,

— *useful efficiency (expressed in %):* the ratio between th heat output transmitted to the boiler water and th product of the net calorific value at constant fuel pressur and the consumption expressed as a quantity of fuel pe unit time,

— *part load (expressed in %):* the ratio between the effectiv output of a boiler operating intermittently or at an outpu lower than the effective rated output and the sam effective rated output;

— *average temperature of the boiler water:* the average o the water temperatures at the entry and exit of th boiler,

— *standard boiler:* a boiler for which the average wate temperature can be restricted by design,

— *back-boiler:* a boiler designed to supply a central-heatin system and to be installed in a fireplace recess as part of back boiler/gas fire combination,

— *low-temperature boiler:* a boiler which can worl continuously with a water supply temperature of 35 t 40° C, possibly producing condensation in certai circumstances, including condensing boilers using liqui fuel,

— *gas condensing boiler:* a boiler designed to condens permanently a large part of the water vapour contained i the combustion gases,

— *boiler to be installed in the living space:* a boiler with a effective rated output of less than 37 kW, designed t provide heat to the part of the living space in which it i installed by means of the emission of heat from the casin having an open expansion chamber, supplying hot wate

(1) OJ No C 136, 4. 6. 1985, p. 1.
(2) OJ No L 109, 26. 4. 1983, p. 8; Directive last amended by Decision 90/230/EEC (OJ No L 128, 18. 5. 1990, p. 15).
(3) OJ No L 380, 31. 12. 1990, p. 13.
(4) OJ No L 40, 11. 2. 1989, p. 12.
(5) OJ No L 196, 26. 7. 1990, p. 15.

using gravity circulation; such boilers shall bear on their casings the explicit indication that they must be installed in living space.

Article 3

1. The following shall be excluded from this Directive:

— hot-water boilers capable of being fired by different fuels including solid fuels,

— equipment for the instantaneous preparation of hot water,

— boilers designed to be fired by fuels the properties of which differ appreciably from the properties of the liquid and gaseous fuels commonly marketed (industrial waste gas, biogas, etc),

— cookers and appliances designed mainly to heat the premises in which they are installed and, as a subsidiary function, to supply hot water for central heating and sanitary hot water,

— appliances with rated outputs of less than 6 kW using gravity circulation and designed solely for the production of stored sanitary hot water,

— boilers manufactured on a one-off basis.

2. In the case of boilers with a dual function, that of heating premises and also providing sanitary hot water, the efficiency requirements referred to in Article 5 (1) concern the heating function only.

Article 4

1. Member States may not prohibit, restrict or impede the placing on the market or entry into service within their territories of appliances and boilers which satisfy the requirements of this Directive, save as otherwise laid down in the Treaty or other Directives or Community provisions.

2. Member States shall take all necessary measures to ensure that boilers cannot be put into service unless they satisfy the efficiency requirements set out in Article 5 (1) and the conditions for entry into service which the Member States lay down on the basis of local climatic conditions and the energy and occupancy characteristics of the buildings.

3. However, Member States where back-boilers and/or boilers that are to be installed in the living space, are widely installed at the date of the adoption of the present Directive, shall continue to authorize their entry into service, provided that their efficiency both at rated output and at 30 % part load is not more than 4 % below the requirements laid down in Article 5 (1) for standard boilers.

4. The effects of the provisions in paragraphs 2 and 3 shall be constantly monitored by the Commission and analysed in the report to be submitted under Article 10. To this end the Member States shall forward to the Commission any information it requires to submit to the Council the proposed amendments, provided for in that Article, designed to ensure at all events the energy efficiency and free movement of boilers in the Community.

Article 5

1. Boilers must comply with the following useful efficiency requirements:

— at rated output, i.e. operating at rated output Pn expressed in kW, at an average boiler-water temperature of 70 °C,

and

— a part load, i.e. operating at 30 % part load, at an average boiler-water temperature which varies according to the type of the boiler.

The useful efficiency requirements to be complied with are set out in the following table:

Type of boiler	Range of power output	Efficiency at rated output		Efficiency at partload	
	kW	Average boiler-water temperature (in °C)	Efficiency requirement expressed (in %)	Average boiler-water temperature (in °C)	Efficiency requirement expressed (in %)
Standard boilers	4 to 400	70	$\geq 84 + 2 \log Pn$	≥ 50	$\geq 80 + 3 \log Pn$
Low-temperature boilers (*)	4 to 400	70	$\geq 87{,}5 + 1{,}5 \log Pn$	40	$\geq 87{,}5 + 1{,}5 \log Pn$
Gas condensing boilers	4 to 400	70	$\geq 91 + 1 \log Pn$	30 (**)	$\geq 97 + 1 \log Pn$

(*) Including condensing boilers using liquid fuels.
(**) Temperature of boiler water-supply.

2. The harmonized standards relating to the requirements of this Directive drawn up under mandate from the Commission in accordance with Directive 83/189/EEC and 88/182/EEC (1) shall determine, *inter alia*, the verification methods valid for production and measurements. Appropriate tolerances must be incorporated in the efficiency levels.

Article 6

1. Under the procedures laid down in Article 7, Member States may decide to apply a specific system of labels enabling the energy performance of boilers to be clearly ascertained. This system shall apply to boilers the efficiency of which is superior to the requirements for standard boilers set out in Article 5 (1).

If its efficiency at rated output and its efficiency at part load are equal to or greater than the relevant values for standard boilers, a boiler shall be awarded an '★' as set out in Annex I, section 2.

If its efficiency at rated output and its efficiency at part load are three or more points higher than the relevant values for standard boilers a boiler shall be awarded '★ ★'.

Every extra step of efficiency of three points at rated output and at part load will allow the attribution of an extra '★' as set out in Annex II.

2. Member States may not authorize any other label likely to be confused with those referred to in paragraph 1.

Article 7

1. Member States shall deem that boilers which comply with the harmonized standards, the reference numbers of which have been published in the *Official Journal of the European Communities* and for which the Member States have published the reference numbers of the national standards transposing those harmonized standards, to be in conformity with the essential efficiency requirements stipulated in Article 5 (1). Such boilers must bear the CE mark referred to in Annex 1, section 1, and be accompanied by the EC declaration of conformity.

2. The conformity of series-produced boilers shall be certified by:

— examination of the efficiency of a boiler type in accordance with module B as described in Annex III,

— a declaration of conformity to the approved type in accordance with module C, D or E as described in Annex IV.

For boilers burning gaseous fuels, the procedures for assessing the conformity of their efficiency shall be those used to assess conformity to the safety requirements laid down in Directive 90/396/EEC on the approximation of the laws of the Member States relating to appliances burning gaseous fuels.

3. When appliances marketed separately are placed on the market, they must bear the CE mark and be accompanied by the EC declaration of conformity, which defines the parameters enabling them after assembly to achieve the useful efficiency levels laid down in Article 5 (1).

4. The CE mark of conformity to the requirements of this Directive and to the other provisions concerning the granting of the CE mark, and also the inscriptions specified in Annex I, shall be affixed on boilers in a visible, easily legible and indelible manner. The affixing on such products of any other mark, sign or indication liable to create confusion with the CE mark both as regards its significance or in its appearance shall be prohibited.

Article 8

1. Each Member State shall notify the Commission and the other Member States of the bodies it has appointed to carry out the tasks relating to the procedures referred to in Article 7, hereinafter called 'notified bodies'.

The Commission shall allocate identification numbers to those bodies and shall inform the Member States thereof.

Lists of the notified bodies shall be published by the Council in the *Official Journal of the European Communities* and shall be continually updated.

2. Member States shall implement the minimum criteria laid down in Annex V for the appointment of such bodies. Bodies which satisfy the criteria laid down in the corresponding harmonized standards shall be deemed to comply with the criteria laid down in that Annex.

3. A Member State which has notified a particular body must withdraw that notification if it finds that the body concerned no longer satisfies the criteria referred to in paragraph 2. It shall immediately inform the other Member States and the Commission accordingly and shall withdraw the notification.

Article 9

1. By 1 January 1993, Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions form 1 January 1994.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied

(1) OJ No L 81, 26. 3. 1988, p. 75.

by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Until 31 December 1997, Member States shall permit the placing on the market and putting into service of appliances complying with the national rules and schemes in force within their territories on the date of the adoption of this Directive.

Article 10

Three years after the implementation of this Directive the Commission shall submit a report to the European Parliament and to the Council on the results achieved. That report shall be accompanied by proposals for any changes to be made to this Directive in the light of those results and of advances in technology.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 21 May 1992.

For the Council

The President

Luis MIRA AMARAL

ANNEX I

CONFORMITY MARKS AND ADDITIONAL SPECIFIC MARKINGS

1. **Conformity mark**

The conformity mark consists of the letters CE as shown below and the last two figures of the year in which the mark was affixed.

CE

2. **Additional specific markings**

The energy performance label awarded under Article 6 of this Directive consists of the following symbol:

★

ANNEX II

AWARD OF ENERGY-PERFORMANCE LABELS

Efficiency requirements to be met both at nominal output and at part-load of 0,3 Pn

Label	*Efficiency requirement at nominal output* Pn and at an average boiler-water temperature of 70 °C %	*Efficiency requirement at part-load of* 0,3 Pn and at an average boiler-water temperature of ⩾ 50 °C %
★	⩾ 84 + 2 log Pn	⩾ 80 + 3 log Pn
★★	⩾ 87 + 2 log Pn	⩾ 83 + 3 log Pn
★★★	⩾ 90 + 2 log Pn	⩾ 86 + 3 log Pn
★★★★	⩾ 93 + 2 log Pn	⩾ 89 + 3 log Pn

ANNEX III

Module B: EC type-examination

1. This module describes that part of the procedure by which a notified body ascertains and attests that an example, representative of the production envisaged, meets the relevant provisions of the Directive.

2. The application for EC type-examination is lodged by the manufacturer or his authorized representative established within the Community with a notified body of his choice.

   The application must include:

   — the name and address of the manufacturer and, if the application is lodged by the authorized representative, the name and address in addition,

   — a written declaration that the same application has not been lodged with any other notified body,

   — the technical documents, as described in section 3.

   The applicant must place at the disposal of the notified body an example representative of the production envisaged, hereinafter called 'type'. The notified body may request further examples if needed for carrying out the test programme.

3. The technical documents must enable the conformity of the appliance with the requirements of the Directive to be assessed. They must, as far as is relevant for such assessment, cover the design, manufacture and operation of the appliance and contain as far as is relevant for assessment:

   — a general type-description,

   — conceptual design and manufacturing drawings and diagrams of components, sub-assemblies, circuits, etc.,

   — descriptions and explanations necessary for the understanding of the drawings and diagrams and the operation of the product,

   — a list of the standards referred to in Article 5 (2), applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where the standards referred to in Article 5 have not been applied,

   — results of design calculations made, examinations carried out, etc.,

   — test reports.

4. The notified body must:

   4.1. examine the technical documents, verify that the type has been manufactured in conformity with those documents and identify the elements which have been designed in accordance with the relevant provisions of the standards referred to in Article 5 (2) as well as the components which have been designed without applying the relevant provisions of those standards;

   4.2. perform or have performed the appropriate examinations and necessary tests to check whether, where the standards referred to in Article 5 (2) have not been applied, the solutions adopted by the manufacturer meet the essential requirements of the Directive;

   4.3. perform or have performed the appropriate examinations and necessary tests to check whether, where the manufacturer has chosen to apply the relevant standards, these have actually been applied;

   4.4. agree with the applicant the location where the examinations and necessary tests are to be carried out.

5. Where the type meets the relevant provisions of this Directive, the notified body issues an EC type-examination certificate to the applicant. The certificate contains the name and address of the manufacturer, the conclusion of the examination and necessary data for identification of the approved type.

   A list of the relevant parts of the technical documents is annexed to the certificate and a copy kept by the notified body.

   If the manufacturer or his authorized representative established in the Community is refused a type certificate, the notified body must provide detailed reasons for such refusal.

   Provision must be made for an appeals procedure.

6. The applicant informs the notified body that holds the technical documents concerning the EC type-examination certificate of all modifications to the approved appliance which must receive additional approval where such changes may affect the conformity with the essential requirements or the prescribed conditions for use of the product. This additional approval is given in the form of an addition to the original EC type-examination certificate.

7. Each notified body must communicate to the other notified bodies the relevant information concerning the EC type-examination certificates and additions issued and withdrawn.

8. The other notified bodies may receive copies of the EC type-examination certificates and/or their additions. The Annexes to the certificates must be kept at the disposal of the other notified bodies.

9. The manufacturer or his authorized representative established within the Community must keep with the technical documents copies of EC type-examination certificates and their additions for a period of at least 10 years after the last date of manufacture of the product concerned.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documents available is the responsibility of the person who places the product on the Community market.

ANNEX IV

Module C: Conformity to type

1. This module describes that part of the procedure whereby the manufacturer or his authorized representative established within the Community ensures and declares that the appliances concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of this Directive that apply to them. The manufacturer must affix the CE mark to each appliance and draw up a written declaration of conformity.

2. The manufacturer must take all measures necessary to ensure that the manufacturing process assures the conformity of the manufactured appliances with the type as described in the EC type-examination certificate and with the efficiency requirements of the Directive.

3. The manufacturer or his authorized representative must keep a copy of the declaration of conformity for a period of at least 10 years after the last date of manufacture of the product concerned.

   Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documents available is the responsibility of the person who places the product on the Community market.

4. A notified body chosen by the manufacturer must perform or have performed examinations of the product at random intervals. A suitable sample of the finished products, taken on the spot by the notified body, is examined and appropriate tests, defined in the applicable standard or standards referred to in Article 5 (2) or equivalent tests are carried out to check the conformity of the product with the requirements of the corresponding Directive. In the event of one or more samples of the products examined not conforming, the notified body must take the appropriate measures.

Module D: Production quality assurance

1. This module describes the procedure whereby the manufacturer who satisfies the obligations of section 2 ensures and declares that the appliances concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of this Directive. The manufacturer affixes the CE mark to each appliance and draws up a written declaration of conformity. The CE mark is accompanied by the identification symbol of the notified body responsible for the checks referred to in section 4.

2. The manufacturer must operate an approved quality system for production, final appliance inspection and testing as specified in section 3. He is subject to the checks referred to in section 4.

3. *Quality system*

3.1. The manufacturer lodges an application for assessment of his quality system with a notified body of his choice, for the appliances concerned.

   The application must include:

   — all relevant information for the appliance category envisaged,

   — the documents concerning the quality system,

   — the technical documents pertaining to the approved type and a copy of the EC type-examination certificate.

3.2. The quality system must ensure conformity of appliances with the type as described in the EC type-examination certificate and with the requirements of this Directive that apply to them.

   All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documents must permit a consistent interpretation of the quality programmes, plans, manuals and quality records.

   It must contain in particular an adequate description of:

   — the quality objectives and the organizational structure, responsibilities and powers of the management with regard to appliance quality,

   — the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,

   — the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,

   — the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,

   — the means of monitoring the achievement of the required appliance quality and the effective operation of the quality system.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in section 3.2. It must presume conformity with those requirements in respect of quality systems that implement the relevant harmonized standard. The auditing team must have at least one member with experience of assessing the relevant product technology. The assessment procedure includes an inspection visit to the manufacturer's premises.

The decision is notified to the manufacturer. The notification must contain the conclusions of the examination and the duly substantiated assessment decision.

3.4. The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and maintain it at an adequate and efficient level.

The manufacturer or his authorized representative must keep the notified body that has approved the quality system informed of any proposed change in the quality system.

The notified body must assess the changes proposed and decide whether the altered quality system will still satisfy the requirements referred to in 3.2 or whether reassessment in required.

It must notify the manufacturer of its decision. The notification must contain the conclusions of the examination and the substantiated assessment decision.

4. *Monitoring under the responsibility of the notified body*

4.1. The purpose of monitoring is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the manufacturing, inspection, testing and storage premises and provide it with all necessary information, in particular:

— the quality system documents,

— the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3. The notified body must periodically carry out audits to make sure that the manufacturer maintains and applies the quality system and provides an audit report to the manufacturer.

4.4. Additionally the notified body may pay unannounced visits to the manufacturer. During such visits the notified body may carry out tests or have them carried out to verify that the quality system is functioning correctly; if necessary, the notified body must provide the manufacturer with a visit report and, if a test has taken place, with a test report.

5. The manufacturer must, for a period of at least 10 years after the last date of manufacture of the product, keep at the disposal of the national authorities:

— the document referred to in the second indent of 3.1,

— the updating referred to in the second paragraph of 3.4,

— the decisions and reports from the notified body which are referred to in the final paragraph of 3.4, and in 4.3 and 4.4.

6. Each notified body must give the other notified bodies the relevant information concerning the quality system approvals issued and withdrawn.

Module E: Product quality assurance

1. This module describes the procedure whereby the manufacturer who satisfies the obligations of section 2 ensures and declares that the boilers and appliances are in conformity with the type as described in the EC type-examination certificate. The manufacturer must affix the CE mark to each boiler and appliance and draw up a written declaration of conformity. The CE mark must be accompanied by the identification symbol of the notified body responsible for the checks referred to in section 4.

2. The manufacturer must operate an approved quality system for final boiler and appliance inspection and testing as specified in section 3. He must be subject to the checks referred to in section 4.

3. *Quality system*

3.1. The manufacturer lodges an application with a notified body of this choice for the assessment of the quality system for his boilers and appliances.

The application must include:

— all relevant information for the boiler or appliance category envisaged,

— the quality system's documentation,

— the technical documents pertaining to the approved type and a copy of the EC type-examination certificate.

3.2. Under the quality system, each boiler or appliance is examined and appropriate tests as defined in the relevant standard(s) referred to in Article 5 or equivalent tests are carried out in order to verify its conformity with the relevant requirements of the Directive. All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation must enable the quality programmes, plans, manuals and records to be interpreted in a uniform manner.

It must in particular contain an adequate description of:

— the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality,

— the examination and tests that will be carried out after manufacture,

— the means of monitoring the effective operation of the quality system,

— quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in 3.2. It must presume conformity with these requirements in respect of quality systems that implement the relevant harmonized standard.

The auditing team must have at least one member with experience of assessing the relevant product technology. The assessment procedure must include an inspection visit to the manufacturer's premises.

The manufacturer must be notified of the decision. The notification must contain the conclusions of the examination and the substantiated assessment decision.

3.4. The manufacturer must undertake to fulfil the obligations arising out of the quality system as approved and maintain it at an adequate and efficient level.

The manufacturer or his authorized representative must keep the notified body which has approved the quality system informed of any proposed change in the quality system.

The notified body must assess the changes proposed and decide whether the altered quality system will still satisfy the requirements referred to in 3.2 or whether a reassessment is required.

It must notify the manufacturer of its decision. The notification must contain the conclusions of the examination and the substantiated assessment decision.

4. *Monitoring under the responsibility of the notified body*

4.1. The purpose of monitoring is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body access for inspection purposes to the inspection, testing and storage premises and provide it with all necessary information, in particular:

— the quality system documentation,

— the technical documents,

— the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3. The notified body must periodically carry out audits to ensure that the manufacturer maintains and applies the quality system and must provide an audit report to the manufacturer.

4.4. Additionally, the notified body may pay unannounced visits to the manufacturer. During such visits the notified body may carry out tests or have them carried out to verify that the quality system is functioning correctly; if necessary, the notified body must provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer must, for a period of at least 10 years after the last date of manufacture of the boiler or appliance, keep at the disposal of the national authorities:

— the documents referred to in the third indent of 3.1,

— the changes referred to in the second paragraph of 3.4,

— the decisions and reports from the notified body which are referred to in the final paragraph of 3.4, and in 4.3 and 4.4.

6. Each notified body must forward to the other notified bodies the relevant information concerning the quality system approvals issued and withdrawn.

ANNEX V

Minimum criteria to be taken into account by Member States for the notification of bodies

1. The body, its director and the staff responsible for carrying out the verification tests may not be the designer, manufacturer, supplier or installer of appliances which they inspect, nor the authorized representative of any of those parties. They may not become either involved directly or as authorized representatives in the design, construction, marketing or maintenance of such boilers and appliances. This does not preclude the possibility of exchanges of technical information between the manufacturer and the body.

2. The body and its staff must carry out the verification tests with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgment of the results of the inspection, especially from persons or groups of persons with an interest in the result of verifications.

3. The body must have at its disposal the necessary staff and possess the necessary facilities to enable it to perform properly the administrative and technical tasks connected with verification; it must also have access to the equipment required for special verification.

4. The staff responsible for inspection must have:

   — sound technical and professional training,

   — satisfactory knowledge of the requirements of the tests they carry out and adequate experience of such tests,

   — the ability to draw up the certificates, records and reports required to authenticate the performance of the tests.

5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests carried out or on the results of such tests.

6. The body must take out liability insurance unless its liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the tests.

7. The staff of the body must be bound to observe professional secrecy (except *vis-à-vis* the competent administrative authorities of the State in which its activities are carried out) under this Directive or any provision of national law giving effect to it.

COUNCIL DIRECTIVE 92/75/EEC

of 22 September 1992

on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament (2),

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

Whereas measures should be taken progressively to achieve the internal market by 31 December 1992;

Whereas certain Member States already have their own voluntary schemes for energy labelling and the provision of other energy consumption information for household appliances; whereas one Member State has formally proposed introducing its own compulsory labelling scheme, and other Member States are considering such introduction; whereas the existence of a number of compulsory national schemes would create barriers to intra-Community trade;

Whereas Article 130r of the Treaty requires prudent and rational utilization of natural resources; whereas the rational use of energy is one of the principal means by which this objective can be achieved and environmental pollution reduced;

Whereas the provision of accurate, relevant and comparable information on the specific energy consumption of household appliances may influence the public's choice in favour of those appliances which consume less energy, thus prompting manufacturers to take steps to reduce the consumption of the appliances which they manufacture; whereas it will also, indirectly, encourage the efficient use of these appliances; whereas, in the absence of this information, the operation of market forces alone will fail to promote the rational use of energy for these appliances;

Whereas information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all appliances of the same type, to provide potential purchasers with supplementary standardized information on those appliances' costs in terms of energy and the consumption of other resources and to take measures to ensure that potential purchasers who do not see the appliance displayed, and thus have no opportunity to see the label, are also supplied with this information;

Whereas to this end the energy consumption of and other information concerning each type of appliance must be measured in accordance with harmonized standards and methods and the application of these standards and methods must be monitored at the marketing stage;

Whereas Directive 79/530/EEC (4) sought to promote these aims in the case of household appliances; whereas, however, only one implementing Directive for electric ovens has been adopted and few Member States have introduced this label; whereas it is therefore now necessary to learn from the experience acquired and to strengthen the provisions of that Directive; whereas Directive 79/530/EEC must therefore be replaced and Directive 79/531/EEC (5) applying to those electric ovens should be revised and subsequently integrated into the present scheme;

Whereas a completely voluntary scheme would lead to only some appliances being labelled, or supplied with standard product information, with the risk that this might result in confusion for some consumers; whereas the present scheme must therefore ensure that for all the appliances concerned, the energy consumption is indicated by labelling and standard product fiches are provided;

Whereas household appliances use a wide variety of forms of energy, with electricity and gas being the most important; whereas this Directive must therefore in principle cover appliances using any form of energy;

Whereas Council Directive 86/594/EEC of 1 December 1986 on airborne noise emitted by household appliances (6) provides for an indication of noise emission to be included on energy labels, where appropriate; whereas provision must therefore be made for the incorporation of any other information and labelling covered by Community schemes;

Whereas only those types of appliances whose aggregate energy use is significant and which afford adequate scope for increased efficiency need be included,

(1) OJ No C 235, 10. 9. 1991, p. 5.
(2) OJ No C 125, 18. 5. 1992, p. 172 and OJ No C 241, 21. 9. 1992.
(3) OJ No C 49, 24. 2. 1992, p. 32.
(4) OJ No L 145, 13. 6. 1979, p. 1.
(5) OJ No L 145, 13. 6. 1979, p. 7.
(6) OJ No L 344, 6. 12. 1986, p. 24.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The purpose of this Directive is to enable the harmonization of national measures on the publication, particularly by means of labelling and of product information, of information on the consumption of energy and of other essential resources, and additional information concerning certain types of household appliances, thereby allowing consumers to choose more energy-efficient appliances. This Directive shall apply to the following types of household appliances, even where these are sold for non-household uses:

— refrigerators, freezers and their combinations,

— washing machines, driers and their combinations,

— dishwashers,

— ovens,

— water heaters and hot-water storage appliances,

— lighting sources,

— air-conditioning appliances.

2. Further types of household appliances may be added to the list in this Article in accordance with Article 9 (b).

3. This Directive shall not apply to the rating plate or its equivalent affixed for safety purposes to such appliances.

4. For the purpose of this Directive:

— *dealer* means a retailer or other person who sells, hires, offers for hire-purchase or displays household appliances to end-users,

— *supplier* means the manufacturer or his authorized representative in the Community or the person who places the product on the Community market,

— *information sheet* means a standard table of information relating to the appliance in question,

— *other essential resources* means water, chemicals or any other substance consumed by an appliance in normal use,

— *supplementary information* means other information concerning the performance of an appliance, which relates to, or is helpful in evaluating, its use of energy or other essential resources.

5. There shall be no obligation to label or to provide fiches in respect of models of appliances of which production has ceased before the relevant implementing directive comes into effect, or second-hand appliances.

Article 2

1. Information relating to the consumption of electric energy, other forms of energy and other essential resources and supplementary information shall be brought to consumers' attention by means of a fiche and a label related to household appliances offered for sale, hire, hire-purchase or displayed to end-users.

2. Details relating to the label and the fiche shall be defined by directives relating to each type of appliance adopted pursuant to this Directive in accordance with Article 9.

3. Technical documentation shall be established which shall be sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. It shall include:

— a general description of the product,

— the results of design calculations carried out, where these are relevant,

— test reports, where available, including those carried out by relevant notified organizations as defined under other Community legislation,

— where values are derived from those obtained for similar models, the same information for these models.

4. The supplier shall establish the technical documentation described in paragraph 3. To this end it may use documentation already required on the basis of relevant Community legislation. The supplier shall make this documentation available for inspection purposes for a period ending five years after the last product has been manufactured.

Article 3

1. All suppliers placing on the market the household appliances specified in the implementing directives shall supply a label in accordance with this Directive. The labels used shall in all respects comply with this Directive and with the implementing directives.

2. In addition to the labels, suppliers shall provide a product fiche. This fiche shall be contained in all product brochures. Where these are not provided by the supplier, he shall supply fiches with other literature provided with the appliance. The fiches used shall in all respects comply with this Directive and with the implementing Directives.

3. Suppliers shall be responsible for the accuracy of the labels and fiches that they supply.

4. The supplier shall be deemed to have given his consent to the publication of the information given on the label or the fiche.

Article 4

In respect of labelling and product information, the following provisions shall apply:

(a) whenever an appliance specified in an implementing directive is displayed, dealers shall attach an appropriate label, in the clearly visible position specified in the relevant implementing directive, and in the relevant language version;

(b) the supplier shall supply the necessary labels free of charge, to dealers referred to in paragraph (a). Suppliers are free to choose their own system for delivery of labels. However, where a dealer sends a request for labels, the supplier must ensure that the requested labels are delivered promptly.

Article 5

Where the relevant appliances are offered for sale, hire or hire-purchase by mail order, by catalogue, or by other means which imply that the potential customer cannot be expected to see the appliance displayed, the implementing directives shall make provision to ensure that potential customers are provided with the essential information specified in the label or the fiche before buying an appliance.

Article 6

The implementing Directives shall make provision for the inclusion on the label or on the fiche of information on airborne noise, where such information is provided pursuant to Directive 86/594/EEC and of other public information relating to the relevant appliance, which is provided pursuant to other Community legislation.

Article 7

Member States shall take all necessary measures to ensure that:

(a) all suppliers and dealers established in their territory fulfil their obligations under this Directive;

(b) if this is likely to mislead or confuse, the display of other labels, marks, symbols or inscriptions relating to energy consumption which do not comply with the requirements of this Directive and of the relevant implementing directives is prohibited. This prohibition shall not apply to Community or national environmental labelling schemes;

(c) the introduction of the system of labels and fiches concerning energy consumption is accompanied by educational and promotional information campaigns aimed at encouraging more responsible use of energy by private consumers.

Article 8

1. Where the provisions of this Directive and of the implementing directives are satisfied, Member States shall neither prohibit nor restrict the placing on the market of the household appliances covered by an implementing directive.

2. Unless they have evidence to the contrary, Member States shall deem labels and fiches to comply with the provisions of this Directive and the implementing directives. They may require suppliers to furnish evidence within the meaning of Article 2 (3) concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect it is incorrect.

Article 9

The measures relating to the establishment and operation of the scheme shall be adopted and adapted to technical progress in accordance with the procedure set out in Article 10. These measures are:

(a) the implementing directives;

(b) the addition of further household appliances to the list in Article 1 (1) where significant energy savings are likely to be achieved.

Article 10

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

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 EEC 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.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the

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

If, on the expiry of three months from the date of referral to the Council, 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 11

After the expiry of a period of three years from the application of this Directive, the Commission shall make an assessment of the implementation thereof and the results obtained. The assessment shall be the subject of a report to be submitted to the European Parliament and the Council.

Article 12

The implementing directives shall specify:

(a) the exact definition of the type of appliances to be included;

(b) the measurement standards and methods to be used in obtaining the information referred to in Article 1 (1);

(c) details of the technical documentation required under Article 2 (3);

(d) the design and content of the label referred to in Article 2, which as far as possible shall have uniform design characteristics;

(e) the location where the label shall be fixed to the appliance. Where appropriate they may provide for the label to be attached to or printed on the packaging;

(f) the content and where appropriate the format and other details concerning the fiche or further information specified in Article 3 (2). The information on the label shall also be included on the fiche;

(g) the information to be provided in the case of offers for sale covered by Article 5, and the manner in which it is to be provided.

Article 13

Directive 79/530/EEC is hereby repealed, with effect from 1 January 1994.

Directive 79/531/EEC shall be considered as implementing this Directive for electric ovens; however Member States may refrain from its compulsory introduction, until a date set in a revised implementing directive concerning ovens passed in accordance with the procedure laid down in Article 10.

Article 14

1. Member States shall adopt the provisions necessary to comply with this Directive by 1 July 1993. They shall immediately notify the Commission of these measures.

They shall bring these provisions into force by not later than 1 January 1994.

2. 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 a reference shall be laid down by the Member States.

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

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 22 September 1992.

For the Council

The President

R. NEEDHAM

COUNCIL DIRECTIVE 93/76/EEC

of 13 September 1993

to limit carbon dioxide emissions by improving energy efficiency (SAVE)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 130s and 235 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, by its resolution of 16 September 1986 (4), the Council set new Community energy policy objectives for 1995 and convergence of the policies of the Member States;

Whereas the Council of Environment and Energy Ministers agreed at their meeting on 29 October 1990 that the Community and the Member States, assuming that other leading countries undertook similar commitments, and acknowledging the targets identified by a number of Member States for stabilizing or reducing emissions by different dates, were willing to take actions aimed at reaching stabilization of the total carbon dioxide emissions by the year 2000 at the 1990 level in the Community as a whole; whereas it was also agreed that Member States which start from relatively low levels of energy consumption and therefore low emissions measured on a per capita or other appropriate basis are entitled to have carbon dioxide targets and/or strategies corresponding to their economic and social development, while improving the energy efficiency of their economic activities;

Whereas by Decision 91/565/EEC the Council adopted the SAVE programme aimed at promoting energy efficiency in the Community (5);

Whereas Article 130r of the Treaty stipulates that the objective of action by the Community relating to the environment shall be to ensure a prudent and rational utilization of natural resources; whereas these natural resources include oil products, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions;

Whereas, since the Treaty has not provided elsewhere the powers required to legislate on energy-related aspects of the programmes laid down in this Directive, recourse should be had also to Article 235 of the Treaty;

Whereas the residential and tertiary sectors account for nearly 40 % of final energy consumption in the Community and are expanding, a trend which is bound to increase their energy consumption and hence also their carbon dioxide emissions;

Whereas this Directive aims to preserve the quality of the environment and to ensure a prudent and rational utilization of natural resources, which are matters of non-exclusive Community competence;

Whereas a collective effort by all Member States, implying measures at Community level, is necessary in order to limit carbon dioxide emissions and to promote the rational use of energy;

Whereas the measures are to be determined according to the principle of subsidiarity by Member States on the basis of potential improvements in energy efficiency, cost effectiveness, technical feasibility and environmental impact;

Whereas, by providing objective information on the energy characteristics of buildings, energy certification will help to improve transparency of the property market and to encourage investment in energy savings;

Whereas the billing, to occupiers of buildings, of heating, air-conditioning and hot water costs calculated, in an appropriate proportion, on the basis of actual consumption will contribute towards energy saving in the residential sector; whereas it is desirable that occupants of such buildings should be enabled to regulate their own consumption of heat, cold and hot water; whereas the recommendations and resolutions adopted by the Council on the billing of heating and hot water costs (6) have been applied in only two Member States; whereas a significant proportion of heating, air-conditioning and hot water costs are still being billed on the basis of factors other than energy consumption;

(1) OJ No C 179, 16. 7. 1992, p. 8.
(2) OJ No C 176, 28. 6. 1993.
(3) OJ No C 19, 25. 1. 1993, p. 134.
(4) OJ No C 241, 25. 9. 1986, p. 1.
(5) OJ No L 307, 8. 11. 1991, p. 34.

(6) Recommendation 76/493/EEC (OJ No L 140, 28. 5. 1976, p. 12).
Recommendation 77/712/EEC (OJ No L 295, 18. 11. 1977, p. 1).
Resolution of 9. 6. 1980 (OJ No C 149, 18. 6. 1980, p. 3).
Resolution of 15. 1. 1985 (OJ No C 20, 22. 1. 1985, p. 1).

Whereas new methods of financial support are needed to promote investments in energy saving in the public sector; whereas, with that in mind, the Member States should permit and make full use of the possibilities offered by third-party financing;

Whereas buildings will have an impact on long-term energy consumption; whereas new buildings should therefore be fitted with efficient thermal insulation tailored to the local climate; whereas this applies also to public authority buildings where the public authorities should set an example in taking environmental and energy considerations into account;

Whereas regular maintenance of boilers contributes to maintaining their correct adjustment in accordance with the product specification and in that way to an optimal performance from an environmental and energy point of view;

Whereas industry is generally willing to make more efficient use of energy to meet its own economic objectives; whereas energy audits in particular in undertakings with high energy consumption should be promoted to bring about significant improvements in energy efficiency in this sector;

Whereas improving energy efficiency in all regions of the Community will strengthen economic and social cohesion in the Community, as provided for in Article 130a of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is the attainment by Member States of the objective of limiting carbon dioxide emissions by improving energy efficiency, notably by means of drawing up and implementing programmes in the following fields:

— energy certification of buildings,

— the billing of heating, air-conditioning and hot water costs on the basis of actual consumption,

— third-party financing for energy efficiency investments in the public sector,

— thermal insulation of new buildings,

— regular inspection of boilers,

— energy audits of undertakings with high energy consumption.

Programmes can include laws, regulations, economic and administrative instruments, information, education and voluntary agreements whose impact can be objectively assessed.

Article 2

Member States shall draw up and implement programmes on the energy certification of buildings. Energy certification of buildings, which shall consist of a description of their energy characteristics, must provide information for prospective users concerning a building's energy efficiency.

Whereas appropriate, certification may also include options for the improvement of these energy characteristics.

Article 3

Member States shall draw up and implement programmes on the billing of heating, air-conditioning and hot water costs calculated, in an appropriate proportion, on the basis of actual consumption. These programmes shall enable the cost of these services to be apportioned among the users of all or part of a building on the basis of the specific quantities of heat, of cold and of hot water consumed by each occupier. This shall apply to buildings or parts of buildings supplied by a collective heating, air-conditioning or domestic hot water installation. Occupants of such buildings should be enabled to regulate their own consumption of heat, cold or hot water.

Article 4

Member States shall draw up and implement programmes to permit third-party financing for energy efficiency investments in the public sector.

For the purposes of this Directive, 'third-party financing' means the overall provision of auditing, installation, operation, maintenance and financing services for an energy efficiency investment, with recovery of the cost of these services being contingent, either wholly or in part, on the level of energy savings.

Article 5

Member States shall draw up and implement programmes so that new buildings receive effective thermal insulation, taking a long-term view, on the basis of standards laid down by the Member States, taking account of climatic conditions or climatic areas and the intended use of the building.

Article 6

Member States shall draw up and implement programmes on the regular inspection of heating installations of an effective rated output of more than 15 Kw with the aim of improving operating conditions from the point of view of energy consumption and of limiting carbon dioxide emissions.

Article 7

Member States shall draw up and implement programmes with the aim of promoting the regular completion of energy audits of industrial undertakings with high energy consumption to improve their energy efficiency and limit emissions of carbon dioxide, and may make similar provisions for other undertakings with high energy consumption.

Article 8

Member States shall determine the scope of the programmes referred to in Articles 1 to 7 on the basis of potential improvements in energy efficiency, cost-effectiveness, technical feasibility and environmental impact.

Article 9

Member States shall report to the Commission every two years on the results of the measures taken to implement the programmes provided for in this Directive. In so doing, they shall inform the Commission of the choices they have made in their package of measures. In addition, they shall, on request, provide the Commission with justification for the content of the programmes, taking Article 8 into account.

In considering Member States' reports, the Commission shall be assisted by the advisory committee referred to in Decision 91/565/EEC following the procedure referred to in Article 6 of that Decision.

Article 10

1. Member States shall bring into force the laws, regulations and/or other measures as mentioned in Article 1 as necessary to comply with this Directive as soon as possible and not later than 31 December 1994. Member States are required to make all the necessary provisions to enable them to fulfil the objectives of this Directive.

When Member States adopt laws or regulations for this purpose, such laws or regulations 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 a reference shall be laid down by the Member States. This shall apply by analogy where the programmes are transposed in another form.

2. Member States shall communicate to the Commission the provisions of national law and/or other measures as mentioned in Article 1 which they adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 13 September 1993.

For the Council

The President

Ph. MAYSTADT

COUNCIL DECISION

of 29 June 1992

concerning the conclusion of a Cooperation Agreement between the European Economic Community and the Republic of Finland on research and technological development in the field of renewable raw materials: forestry and wood products (including cork) ('Forest' 1990 to 1992)

(92/412/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130q (2) thereof,

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

In cooperation with the European Parliament (2),

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

Whereas by Decision 89/626/EEC (4), the Council adopted a specific research and technological development programme of the European Economic Community in the fields of raw materials and recycling (1990 to 1992); whereas Article 8 of that Decision authorizes the Commission to negotiate agreements with specified third countries, including those European countries having concluded framework agreements for scientific and technical cooperation with the Community, with a view to associating them wholly or partly with the programme;

Whereas by Decision 87/177/EEC (5), the Council approved the conclusion, on behalf of the European Economic Community, of the Framework Agreement for scientific and technical cooperation between the European Communities and, among others, the Republic of Finland;

Whereas the Government of Finland has asked to participate in one subprogramme of the abovementioned Community research programme, relating to forestry and wood products (including cork) as a renewable raw material (Forest);

Whereas the Community and Finland expect to obtain mutual benefit from cooperation and whereas this Agreement should be approved;

HAS DECIDED AS FOLLWOS:

Article 1

The Cooperation Agreement between the European Economic Community and the Republic of Finland on research and technological development in the field of renewable raw materials: forestry and wood products (including cork) ('Forest', 1990 to 1992) is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification as provided for in Article 10 of the Agreement (6).

Done at Luxembourg, 29 June 1992.

For the Council

The President

Carlos BORREGO

(1) OJ No C 316, 6. 12. 1991, p. 4.
(2) OJ No C 194, 13. 4. 1992, p. 160 and Decision of 11 June 1992 (not yet published in the Official Journal).
(3) OJ No C 106, 27. 4. 1992, p. 12.
(4) OJ No L 359, 8. 12. 1989, p. 16.
(5) OJ No L 71, 14. 3. 1987, p. 29.

(6) The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

COUNCIL DECISION

of 29 June 1992

concerning the conclusion of a Cooperation Agreement between the European Economic Community and the Kingdom of Sweden on research and technological development in the field of renewable raw materials: forestry and wood products (including cork) (Forest) and the recycling of waste (Reward)

(92/413/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130q (2) thereof,

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

In cooperation with the European Parliament (2),

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

Whereas by Decision 89/626/EEC (4), the Council adopted a specific research and technological development programme of the European Economic Community in the fields of raw materials and recycling (1990 to 1992); whereas Article 8 of this Decision authorizes the Commission to negotiate agreements with specified third countries, including those European countries having concluded framework agreements for scientific and technical cooperation with the Community, with a view to associating them wholly or partly with the programme;

Whereas by Decision 87/177/EEC (5), the Council approved the conclusion, on behalf of the European Economic Community, of the Framework Agreement for scientific and technical cooperation between the European Communities and, among others, the Kingdom of Sweden;

Whereas the Government of Sweden has asked to participate in two subprogrammes of the abovementioned Communtiy research programme, relating to both forestry and wood products (including cork) as a renewable raw material (Forest) and the recycling of waste (Reward);

Whereas the Community and Sweden expect to obtain mutual benefit from cooperation and whereas this Agreement should be approved

HAS DECIDED AS FOLLWOS:

Article 1

The Cooperation Agreement between the European Economic Community and the Kingdom of Sweden on research and technological development in the fields of renewable raw materials and recycling: forestry and wood products (including cork) (Forest) and the recycling of waste (Reward) is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification as provided for in Article 10 of the Agreement (6).

Done at Luxembourg, 29 June 1992.

For the Council

The President

Carlos BORREGO

(1) OJ No C 316, 6. 12. 1991, p. 10.
(2) OJ No C 194, 13. 4. 1992, p. 161 and Decision of 10 June 1992 (not yet published in the Official Journal).
(3) OJ No C 106, 27. 4. 1992, p. 13.
(4) OJ No L 359, 8. 12. 1989, p. 16.
(5) OJ No L 71, 14. 3. 1987, p. 29.

(6) The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

COOPERATION AGREEMENT

between the European Economic Community and the Kingdom of Sweden of research and technological development in the fields of renewable raw materials and recycling: forestry and wood products (icluding cork) (Forest) and the recycling of waste (Reward)

THE EUROPEAN ECONOMIC COMMUNITY,

hereinafter referred to as 'the Community'

and

'THE KINGDOM OF SWEDEN',

hereinafter referred to as 'Sweden',

both hereinafter referred to as the 'Contracting Parties',

WHEREAS the Community and Sweden concluded a Framework Agreement for scientific and technical cooperation which entered into force on 27 August 1987;

WHEREAS, by Decision 89/626/EEC of 20 November 1989, the Council of the European Communities, hereinafter called 'the Council', adopted a research and technological development (RTD) programme in the fields of raw materials and recycling (1990 to 1992), which includes *inter alia* two subprogrammes relating to both forestry and wood products (including cork) as a renewable raw material (Forest) and the recycling of waste (Reward), hereinafter referred to as 'the Community subprogrammes';

WHEREAS the association of Sweden with the Community subprogammes can help to improve the efficacy of the research carried out by the Contracting Parties in the fields of forestry, wood products and the recycling of waste and can avoid the useless duplication of efforts;

WHEREAS the ongoing talks, relating to a European Economic Area, between the Community and the EFTA countries are likely to lead to a result in the area of research and development (R&D), the Contracting Parties should endeavour to find solutions for the continued cooperation in the field of R&D in the raw materials and recycling sector which take this development into consideration;

WHEREAS the Community and Sweden expect to obtain mutual benefit from Sweden's association with the Community subprogrammes,

HAVE AGREED AS FOLLOWS:

Article 1

Sweden is hereby associated as from 20 November 1989 with the implementation of the Community subprogrammes as set out in Annex A. The implementation of the subprogrammes and the Community's rate of financial participation are set out in Annex B.

Article 2

The financial contribution of Sweden, deriving from its association with the implementation of the Community subprogrammes, shall be established in proportion to the amount available each year in the general budget of the European Communities for appropriations covering commitments to meet financial obligations of the Commission of the European Communities, hereinafter referred to as 'the Commission', resulting from work to be carried out in the framework of shared-cost research contracts necessary for the implementation of the Community subprogrammes and from management and administrative operating expenditure for the said subprogrammes.

The proportionality factor governing Sweden's contribution shall be obtained by establishing the ratio between Sweden's gross domestic product (GDP), at market prices, and the sum of gross domestic products, at market prices, of the Member States of the Community and

of Sweden. This ratio shall be calculated on the basis of the latest available statistical data of the Organization for Economic Cooperation and Development (OECD).

The funds estimated as necessary to carry out the Community subprogrammes, the amount of Sweden's contribution and the timetable of the commitment estimates are set out in Annec C.

The rules governing Sweden's financial contribution are set out in Annex D.

Article 3

1. For the purposes of the Agreement, a Cooperation Committee to assist the Commission in the implementation of the research and technological development subprogrammes in the fields of renewable raw materials and recycling (1990 to 1992), adopted by Council Decision 89/626/EEC of 20 November 1989, hereinafter referred to as 'the Committee', is hereby established.

2. The Committee shall consist of representatives of the Community and Sweden.

3. The Committee shall be consulted on all the matters concerning the implementation of the Agreement. For this purpose, it shall make recommendations.

4. The representative of the Community shall take the appropriate steps to ensure coordination between the implementation of this Agreement and the decisions taken by the Community in respect of the implementation of the Community subprogrammes.

5. For the purpose of the proper implementation of the Agreement, the Contracting Parties shall exchange information and, at the request of either Party, shall hold consultations within the Committee.

6. The Committee shall adopt its own rules or procedure and it shall meet, at the request of either Contracting Party, in accordance with the conditions to be laid down in its rules of procedure.

Article 4

For Swedish research and development bodies and persons, the terms and conditions for the submission and evaluation of proposals and the terms and conditions for the granting and conclusion of contracts under the Community subprogrammes shall be limited to those arising from contracts under the same subprogrammes. In particular, the general provisions applicable to research contracts within the Community shall apply subject to this Article, *mutatis mutandis*, to research contracts with Swedish research and development bodies and persons as far as questions relating to taxation and customs duties and the utilization of research results are concerned.

Article 5

The Commision shall send to Sweden a copy of the reports established in accordance with Article 4 of Council Decision 89/626/EEC.

Article 6

Each Contracting Party undertakes, in accordance with their respective rules and regulations, to facilitate the movement and residence of research workers participating in Sweden and in the Community in the activities covered by this Agreement.

Article 7

The Commission, the Swedish National Board for Industrial and Technical Development (for subprogrammes 'Forest' and 'Reward') and the Swedish Council for Forestry and Agricultural Research (for subprogramme 'Forest' only) shall ensure the implementation of this Agreement.

Article 8

Annexes A, B, C and D to this Agreement shall form an integral part thereof.

Article 9

1. This Agreement shall be concluded for the duration of the Community subprogrammes.

Should the Community revise the Community subprogrammes, the Agreement may be denounced under mutually agreed conditions. Sweden shall be notified of the exact content of the revised subprogrammes within one week of its adoption by the Community. The Contracting Parties shall notify each other within three months after the Community decision has been adopted if a termination of the Agreement is envisaged.

2. Where the Community adopts a new R&D programme in the fields of forestry, wood products and/or the recycling of waste, this Agreement may be renegotiated or renewed under mutually agreed conditions.

3. Subject to paragraph 1, either Contracting Party may at any time terminate the Agreement with six months notice. The projects and work in progress at the time of termination and/or expiry of this Agreement shall be continued until they are completed under the conditions laid down in this Agreement.

Article 10

This Agreement shall be approved by the Contracting Parties in accordance with their existing procedures.

It shall enter into force on the date on which the Contracting Parties notify each other of the completion of the procedures necessary for this purpose.

Article 11

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the Kingdom of Sweden.

Article 12

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish and Swedisch languages, each of these texts being equally authentic.

On behalf of the Council of the European Communties

For the Kingdom of Sweden

ANNEX A

COMMUNITY SUBPROGRAMMES IN THE FIELD OF RENEWABLE RAW MATERIALS AND RECYCLING (1990 to 1992)

The Community subprogrammes shall cover the following research areas:

		Indicative allocation of funds (in millions of ecus)
A.	**Renewable raw materials: forestry and wood products (including cork) (Forest)**	
1.	*Forest resources*	4
1.1.	Tree improvement	
1.2.	Planning and management	
1.3.	Forest protection	
2.	*Wood and cork technologies*	4
2.1.	Quality assessment	
2.2.	Processing technology	
3.	*Pulp and paper manufacturing*	4
3.1.	Improvement in pulping and bleaching	
3.2.	Improvement of paper manufacture and coating	
	Total	12
B.	**Recycling of waste (Reward)**	
1.	*Sampling, analysis and classification of waste; waste statistics*	1
1.1.	Household and urban waste	
1.2.	Industrial waste	
1.3.	Emissions and residues from waste processing	
2.	*Recycling technologies*	4
2.1.	Separation and recovery	
2.2.	Upgrading and use of reclaimed products	
2.3.	Production of chemicals	
2.4.	Prevention of emissions from recycling processes	
2.5.	Upgrading of lignocellulosic waste (COST Project 84)	
2.6.	Composting	
3.	*Energy production from waste*	1
3.1.	Production and combustion of refuse derived fuels (RDF)	
3.2.	Pyrolysis and gasification	
	Total	6

ANNEX B

IMPLEMENTATION OF THE SUBPROGRAMME AND THE COMMUNITY'S RATE OF FINANCIAL PARTICIPATION

The subprogramme shall be implemented by means of:

(i) shared-cost research contracts;

(ii) concerted actions;

(iii) coordination activities;

(iv) education and training activities and

(v) studies and assessments.

The subprogramme is open to universities, research organizations and industrial companies, including small and medium-sized enterprises, individuals, or any combination therof established in the Community and in Sweden. As a rule projects must be transnational and at least one partner in a project must be established in the Community.

For shared-cost contracts, the Community participation shall not normally exceed 50 % of the total expenditure, but this percentage may be varied according to the nature and the stage of development of the research. In respect of universities and research institutes carrying out projects in this subprogramme, the Community may bear up to 100 % of the additional expenditure involved.

ANNEX C

FINANCIAL PROVISIONS

1. According to Council Decision 89/626/EEC adopting the Forest and Reward subprogrammes, the amount estimated as necessary to carry out these Community subprogrammes shall be ECU 12 000 000 for Forest and ECU 6 000 000 for Reward.

2. Sweden's financial contributions for its association to the Community subprogrammes are estimated to be ECU 454 534 for Forest and ECU 227 267 for Reward and shall be added, along with other possible contributions from third countries, to the abovementioned amounts, as provided for in Article 2 of this Agreement.

3. The indicative timetable for the commitment appropriations of the Forest and Reward subprogrammes and Sweden's contribution are as follows:

FOREST

(in ecus)

Community Commitments	1990	1991	1992	Total
Management and administration operations	456 000	510 000	490 000	1 456 000
Contracts	2 644 000	6 090 000	1 810 000	10 544 000
Total	3 100 000	6 600 000	2 300 000	12 000 000
Sweden's contribution				
Management and administration operations	17 272	19 318	18 560	55 150
Contracts	100 149	230 676	68 559	399 384
Total	117 421	249 994	87 119	454 534

REWARD

(in ecus)

Community Commitments	1990	1991	1992	Total
Management and administration operations	210 000	230 000	220 000	660 000
Contracts	1 490 000	2 570 000	1 280 000	5 340 000
Total	1 700 000	2 800 000	1 500 000	6 000 000
Sweden's contribution				
Management and administration operations	7 954	8 712	8 333	24 999
Contracts	56 438	97 346	48 484	202 268
Total	64 392	106 058	56 817	227 267

ANNEX D

FINANCING RULES

1. The Annex lays down the detailed rules governing Sweden's fiancial contribution referred to in Article 2 of the Agreement.

2. At the beginning of each year, or whenever the Community subprogramme is revised so as to involve an increase in the amount estimated as necessary for its implementation, the Commission shall send to Finland a call for funds corresponding to its contribution to the costs under the Agreement.

   This contribution shall be expressed both in ecus and in Swedish currency, the composition of the ecu being defined in Council Regulation (EEC) No 3180/78 [1]. The value in Swedish currency of the contribution in ecus shall be determined on the date of the call for funds.

   Finland shall pay its contribution to the annual cost under the Agreement at the beginning of each year and at the latest three months after the call for funds is sent. Any delay in the payment of the contribution shall give rise to the payment of interest by Sweden at a rate equal to the highest discount rate obtained in the Member States of the Community on the due date. The rate shall be increased by 0,25 of a percentage point for each month of delay.

   The increased rate shall be applied to the entire period of delay. However, this interest shall be payable only if the contribution is paid more than three months after a call for funds has been made by the Commission.

   Travel costs of Swedish representatives and experts arising from their participation in the work of the Committee referred to in Article 3 of the Agreement shall be reimbursed by the Commission in accordance with the procedures currently in force for the representatives and experts of the Member States of the Community and, in particular, in accordance with Decision No 84/338/EURATOM, ECSC, EEC [2].

3. The funds paid by Sweden shall be credited to the Community subprogramme as budget receipts allocated to its appropriate heading in the statement of revenue of the general budget of the European Communities.

4. The financial regulation in force applicable to the general budget of the European Communities shall apply to the management of the appropriations.

5. At the end of each year, a statement of appropriations for the Community subprogramme shall be prepared and transmitted to Sweden for information.

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[1] OJ No L 379, 30. 12. 1978, p. 1. Regulation as amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).
[2] OJ No L 177, 4. 7. 1984, p. 25.

COUNCIL DECISION

of 13 September 1993

concerning the promotion of renewable energy sources in the Community (Altener programme)

(93/500/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 130s and 235 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, at their meeting on 29 October 1990, the Council (Environment and Energy Ministers) agreed that the Community and Member States, assuming that other leading countries would enter into similar commitments, and acknowledging the targets identified by a number of Member States for stabilizing or reducing emissions by different dates, were willing to take action aimed at reaching stabilization of the total CO_2 emissions by 2000 at the 1990 level in the Community as a whole and that Member States which start from relatively low levels of energy consumption and therefore low emissions measured on a per capita or other appropriate basis are entitled to have CO_2 targets and/or strategies corresponding to their economic and social development, while continuing to improve the energy efficiency of their economic activities;

Whereas, in its communication to the Council concerning a Community strategy to limit carbon dioxide emissions and to improve energy efficiency, the Commission indicated the action the Community should take to limit CO_2 emissions;

Whereas, at its meeting on 13 December 1991, the Council invited the Commission to put forward formal proposals for the adoption of measures as part of a Community strategy;

Whereas a significant increase in the use of renewable energy sources will contribute towards achieving the objective of stabilizing CO_2 emissions;

Whereas, pursuant to Article 130r of the Treaty, action by the Community relating to the environment should improve the quality of the environment and ensure a prudent and rational utilization of natural resources, objectives which are furthered by the use of renewable energy sources;

Whereas the development of renewable energy sources can make a significant contribution to the reduction of polluting emissions arising from the consumption of fossil fuels;

Whereas the development of renewable energy sources will contribute to the reduction of greenhouse gases and the danger of global warming; whereas wide-ranging international cooperation is therefore desirable in order to obtain significant results;

Whereas, since the Treaty does not provide for other powers to cover the energy aspects of the programme referred to in Article 2, Article 235 should also be invoked;

Whereas the Council resolution of 16 September 1986 concerning new Community energy policy objectives for 1995 and convergence of the policies of the Member States (4) states that the contribution of new and renewable energy sources to the replacement of traditional fuels should increase substantially, so that those energy sources can play a significant part in the overall energy balance sheet;

Whereas some renewable energy sources today occupy only a few market slots; whereas, if they are not yet competitive, this is to be explained in part by the fact that the present pricing system does not always take into account fully the ecological cost of the principal traditional sources of energy; whereas, in order to strengthen the future contribution of renewable energy sources to energy supplies, the Member States will have to avoid such distortions;

Whereas, by its recommendation of 9 June 1988 on developing the exploitation of renewable energy sources in the Community (5), the Council confirmed in detail its desire to pursue a policy of developing renewable energy sources;

Whereas, when reviewing the progress made towards achieving the energy objectives for 1995 provided for in its resolution of 16 September 1986, the Council stated in its conclusions of 8 November 1988 that it attributed particular importance to renewable energy sources for future energy supplies;

Whereas the development of renewable energy sources and in particular the exploitation of biomass offer secondary economic advantages in terms of employment and keeping local populations *in situ*;

(1) OJ No C 179, 16. 7. 1992, p. 4.
(2) OJ No C 176, 28. 6. 1993.
(3) OJ No C 19, 25. 1. 1993, p. 7.
(4) OJ No C 241, 25. 9. 1986, p. 1.
(5) OJ No L 160, 28. 6. 1988, p. 46.

Whereas the promotion and wider use of renewable energy sources throughout the Community are likely to strengthen its economic and social cohesion, as called for by Article 130a of the Treaty;

Whereas, to this end, it is appropriate to take account of the Community's indicative objectives and make provision for resources to further the attainment of those objectives, taking into consideration the particular conditions in each Member State;

Whereas provision should be made for a five-year programme;

Whereas ECU 40 million is the amount estimated as necessary in order to implement the multiannual programme; whereas this amount is intended to fund the programme for the period 1993 to 1997 provided it is consistent with the Community's medium-term financial perspective in force as from 1 January 1993,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall endeavour to contribute in their energy policies to the limitation of carbon dioxide emissions by taking account of the Community's indicative objectives relating to the renewable energy sources which are set out in Annex I.

Article 2

1. The Community shall support a series of actions to promote renewable energy sources within the context of the Altener programme (specific actions for greater penetration of renewable energy sources), hereinafter referred to as 'the programme'.

2. The programme shall last five years.

3. The amount of Community funds estimated as necessary for implementation of the programme shall be ECU 40 million for the period 1993 to 1997, provided that amount is consistent with the Community's medium-term financial perspective in force as from 1 January 1993.

4. The budget authority shall determine the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1).

(1) OJ No L 356, 31. 12. 1977, p. 1. Financial Regulation as last amended by Regulation (Euratom, ECSC, EEC) No 610/90 (OJ No L 70, 16. 3. 1990, p. 1).

Article 3

Four categories of actions on renewable energy sources shall be financed under the programme, namely:

(a) studies and technical evaluations for defining technical standards or specifications;

(b) measures to support the Member States' initiatives for extending or creating infrastructures concerned with renewable energy sources. These initiatives shall include:

— training and information activities with regard to renewable energy sources at a level as close as possible to operators and the final consumers of energy,

— sectoral actions, as referred to in Annex II;

(c) measures to foster the creation of an information network aimed at promoting better coordination between national, Community and international activities through the establishment of appropriate means for exchanging information and at evaluating the impact of the various actions provided for in this Article;

(d) studies, evaluations and other appropriate measures aimed at assessing the technical feasibility and the advantages for the economy and the environment of the industrial exploitation of biomass for energy purposes, in particular heat and electricity production.

Article 4

1. All costs relating to the actions referred to in Article 3 (a) shall be borne by the Community.

2. The level of funding for the actions referred to in Article 3 (b) and (c) shall be between 30 and 50 % of their total cost.

In exceptional cases duly justified to the committee provided for in Article 7 (1) such funding may exceed the 50 % limit, while not, however, exceeding 60 %.

3. The level of funding for the actions referred to in Article 3 (d) must not exceed 30 % of their total cost.

4. The balance of the funding of the actions referred to in Article 3 (b), (c) and (d) may be made up from either public or private sources or from a contribution of the two.

Article 5

1. The Commission shall establish guidelines for the support measures referred to in Article 3 (b), (c) and (d) each year, in consultation with the committee provided for in Article 7 (1).

2. The proposed initiatives referred to in Article 3 (b) and the list of bodies which are to implement them shall be submitted annually by the Member States to the Commission, which shall decide on the level and conditions of Community funding according to the procedure provided for in Article 7 (1). The Commission shall sign contracts relating to the support measures with those bodies.

Article 6

1. The Commission shall be responsible for the implementation of the programme.

2. For the implementation of the actions referred to in Article 3 (a), (b) and (c), the Commission shall apply the procedure laid down in Article 7 (1).

3. For the implementation of the actions referred to in Article 3 (d), the Commission shall apply the procedure laid down in Article 7 (2).

Article 7

1. In carrying out the activities referred to in Article 6 (2), the Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

2. In carrying out the activities referred to in Article 6 (3), the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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.

The Commission shall adopt measures which shall apply immediately.

However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event, the Commission shall defer application of the measures which it has decided for a period of one month from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

Article 8

1. During the third year of the programme, the Commission shall present a report to the European Parliament and to the Council on the results achieved. The report shall be accompanied by proposals for any amendments which might be necessary in the light of these results.

2. On expiry of the programme, the Commission shall assess the results obtained, the application of this Decision and the consistency of national and Community actions. It shall present a report thereon to the European Parliament, the Council and the Economic and Social Committee.

Article 9

This Decision shall apply from 1 January 1993 to 31 December 1997.

Article 10

This Decision is addressed to the Member States.

Done at Brussels, 13 September 1993.

For the Council

The President

Ph. MAYSTADT

ANNEX I

Community indicative objectives for reducing carbon dioxide emissions by developing renewable energy sources

A 180-million tonne reduction in carbon dioxide emissions could be achieved in 2005 by:

A. increasing the contribution of renewable energy sources to the coverage of total energy demand from nearly 4 % in 1991 to 8 % in 2005 (1).

To achieve this objective, the production of renewable energy sources should rise from nearly 43 million toe in 1991 to approximately 109 million toe in 2005;

B. trebling the production of electricity from renewable energy sources (excluding large hydro-electric power stations).

To achieve this objective, the capacity and electricity production of all power stations (excluding large hydro-electric power stations) using renewable energy sources should rise from 8 GW and 25 TWh in 1991 to 27 GW and 80 TWh in 2005;

C. securing for biofuels a market share of 5 % of total fuel consumption by motor vehicles.

The production in 2005 of 11 million toe of biofuels is considered necessary in order to achieve this objective.

ANNEX II

Illustrative, non-restrictive list of sectoral actions, as referred to in the second indent of Article 3 (b)

1. Pilot actions aimed at introducing a 'guarantee of solar results' in the market for solar collectors and solar water heaters.
2. Pilot actions relating to vehicle fleets aimed at introducing biofuels in place of petroleum products in the transport sector.
3. Pilot studies on least-cost (integrated resource) planning and demand-side management.
4. Pilot projects on third-party financing within the framework of the European network for third-party financing (without direct Community funding).
5. Guarantee of financial risks arising from the geological uncertainties surrounding the development of geothermal resources.
6. Establishment of local plans for the development of renewable energy sources.
7. Establishment and development of infrastructures in the Member States for offering investors assistance with the drawing up of pre-feasibility studies.
8. Pilot actions involving the equipping of new or existing buildings with photovoltaic modules.
9. Pilot actions relating to the planning of windform projects.
10. Pilot actions to integrate bioclimatic systems into architecture.

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(1) In the energy balances on which the formulation of objective A is based, the electricity produced from the various alternative sources is accounted for in accordance with the conventions of the Statistical Office of the European Communities.

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