

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 322 final - SYN 472

Brussels, 14 October 1993

Proposal for a
COUNCIL DIRECTIVE
on articles of precious metal

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. For centuries most of the Member States have applied tight laws to articles of precious metal, i.e. platinum, gold, palladium and silver, in an attempt to provide adequate protection for consumers. Such articles can provide scope for fraud owing to their high intrinsic value and because the consumer cannot determine their standard of fineness, i.e. the amount of pure precious metal they contain, from their external appearance. The standard of fineness therefore needs to be indicated on the article and its accuracy ensured.

Existing laws in the Member States often differ in respect of:

(a) Standards of fineness

In some Member States articles of precious metal have to be manufactured to specific standards of fineness in order to be placed on the market (UK, IRL, ES, FR, DA, PT). In France, for instance, the lowest authorized standard of fineness for gold is 750 parts per thousand, while in Denmark, Ireland, Germany and Italy the corresponding standard is 333 parts per thousand. In addition to this, different tolerances are allowed for the standard indicated on the article.

(b) Certification procedures

Several Member States require third party verification and marking of articles of precious metal, while others accept marking by the manufacturer. In this respect, marking systems in the Member States may be divided into three groups:

- compulsory marking by a third party (UK, IRL, FR, NL, PT and ES). However, marking methods vary within this group;
- optional marking by a third party (B and DA); and
- marking by the manufacturer (DE, GR, IT and L).

(c) Inspection methods

To ensure that the fineness mark gives a true indication of the standard of fineness and to avoid destructive testing, the competent national authorities carry out touchstone tests or use statistical methods. However, this type of testing is not accurate and lacks well established criteria.

2. A number of problems have been referred to the Commission in recent years involving difficulties encountered by economic operators wishing to trade with Member States whose laws are different, and proceedings have been instituted against the Member States to make them comply with the principles of Articles 30 et seq of the Treaty.

These proceedings were designed to bring about mutual recognition of national practices, and Member States were asked to authorize the placing on the market of articles of precious metal lawfully produced in other Member States, provided that those Member States' laws ensured an adequate level of consumer protection.

It has emerged from this exercise, which was geared towards subsidiarity, that although the various national laws all have the same purpose, i.e. to protect the consumer and ensure fair trading, the means of achieving that purpose are non-equivalent and are recognized sources of technical barriers to trade which are justified under the Treaty and must therefore be harmonized by a Community directive.

For these reasons and on the request of several Member States and European manufacturers, the Commission has elaborated a proposal for a directive on the approximation of the national regulations.

II. THE PROPOSAL FOR A DIRECTIVE

1. Objectives

The proposal for a Directive relating to articles of precious metal is based on Article 100a of the Treaty and is intended to provide a legal framework at Community level which will provide a high level of consumer protection and ensure fair trading in this area.

To this end, the proposed Directive will:

- apply solely to articles intended for the ultimate consumer;
- establish the essential requirements to be met during manufacture and before the articles are placed on the Community market;
- lay down conformity assessment procedures;
- lay down rules on the striking and the content of marks;
- establish a set of nominal standards of fineness for each precious metal. No other standards will be authorized on the Community market.

2. Scope

The proposed Directive covers provisions relating to the marking of articles of precious metal and those relating to certification procedures.

The articles covered by the Directive are those made of gold, platinum, palladium and silver, and the same coated with other metals, where such articles are intended for the Community consumer.

The Directive will also cover semi-finished articles of precious metal intended for use in the manufacture of the abovementioned articles.

3. Essential requirements and standards of fineness

The true precious metal content of the articles covered by the Directive must correspond to the standard indicated on those articles.

Annex I contains a complete set of authorized standards of fineness for each precious metal, based on ISO standard 9202.2 and taking account of practices in the Member States. This restriction of the number of standards which may be used in the manufacture of articles of precious metal will ensure transparency on the Community market and thus reduce the likelihood of confusion in the mind of the consumer between very similar products. The restriction will also make it possible to rationalize manufacturing processes for base materials.

No negative tolerance will be permitted in respect of these nominal standards, except in the case of materials used for the assembly of individual parts.

Specific requirements are also laid down for the various types of article composition (articles comprising various precious metals, mixed articles, coated articles), solders, and the possibility of using mechanisms or elements made of non-precious metals.

4. Conformity assessment procedures

The conformity assessment procedures laid down in the proposal for a Directive are based on the Council Decision of 13 December 1990⁽¹⁾. The following procedures have been selected:

- Product quality assurance (Annex III)

Under this procedure, a manufacturer whose quality system for final product inspection has been approved by a certification body must strike the fineness and sponsor's marks upon the articles before they are placed on the Community market. The quality system is subject to regular inspection by the chosen certification body.

- EC declaration of conformity (Annex IV)

Under this procedure, the manufacturer or his authorized representative whose production meets the requirements of the Directive must strike the fineness and sponsor's marks upon the articles before they are placed on the Community market. He must also keep technical documentation at the disposal of the national authorities describing the measures taken to ensure the conformity of the articles with the requirements of the Directive and must allow the manufacturing process to be checked at random intervals by a certification body of his choice.

- Third party verification (Annex V)

This is the procedure by which the manufacturer or the person responsible for placing on the Community market (wholesaler, importer, retailer, etc.) has the option of submitting the articles either to an examination and testing of every product or to the examination and testing of products on a statistical basis. In these cases, the sponsor's mark will be struck by the manufacturer or by the person responsible for placing on the market, while the fineness mark will be struck by the chosen body which carries out the checks.

⁽¹⁾ OJ No L 380, 31.12.1990, p. 13.

These procedures correspond to current practice in the Member States and require, at various levels, the participation of certification bodies.

5. Marking

Articles of precious metal must be struck with a fineness mark and a sponsor's mark before being placed on the market. The sponsor's mark must be accompanied by a small letter "e".

The striking of the fineness mark upon an article indicates that it meets the requirements of the Directive and need not, therefore, bear the CE mark. The Directive also lays down specific mark surrounds for each precious metal (Annex VII) to identify the metal of which the article is made.

The sponsor's mark provides information on the parties involved in manufacturing and inspecting the article, i.e. the manufacturer and the notified body. Given the type of article in question, this information can be understood only by consulting the appropriate registers. In the interests of decentralized management, the sponsor's mark must be registered in the Member States.

Certain articles are exempted from the marking requirement because they are small or fragile, or semi-finished. Such articles must be accompanied by an EC certificate of conformity.

III. ECONOMIC DATA

The articles covered by the Directive have a high intrinsic value.

On the gold market alone, Community production was worth ECU 5.6 billion in 1989, with the fabrication of fine gold exceeding 630 tonnes.

Indeed, the Community manufactures far more jewellery than the United States and Japan put together.

In fact, these figures fail to reflect the full importance of the sector, whose many small businesses employing fewer than 20 persons are not included in official statistics.

In the Member States where precious metal fabrication is more highly developed, including Italy, France, Germany, Spain and the United Kingdom, around 1 700 businesses are involved in industrial manufacture while some 13 000 businesses manufacture on an artisanal basis. The latter are classified as artisanal either because they employ fewer than ten workers or because articles are manufactured almost exclusively by hand.

As for job numbers, the jewellery industry alone employs over 56 000 individuals, and an estimated 120 000 persons are employed in the manufacture of articles of precious metals in Europe. These figures do not include people involved in the distribution of these articles, who slightly outnumber those working in their manufacture.

Clearly, then, there are far more artisanal than industrial manufacturers. However, the industrial manufacturers employ more workers. The situation in three of the Member States is given below.

Member State	Number of workers		Number of businesses	
	artisanal manufacture	industrial manufacture	artisanal	industrial
Italy	20 000	10 000	6 250	250
Germany	12 500	15 500	3 500	750
France	7 500	16 500	3 000	220

Various sources

IV. CONSULTATION OF THE TWO SIDES OF INDUSTRY AND THEIR POSITIONS

All the parties affected by the proposed Directive have been associated with its drafting from the outset, viz:

- International Confederation of Jewellery, Silverware, Diamonds, Pearls and Stones (CIBJO)
- Federation of the European Cutlery, Flatware, Holloware and Cookware Industries (FEC)
- Comité Permanent de l'Horlogerie Européenne
- Eurométaux (European Metal Association)
- International Federation of Watch, Jewellery, Gold and Silverware Retailers of the EEC countries
- Association of the European Assay Offices
- Convention on the control and marking of articles of precious metals
- CEN (European Committee for Standardization)
- European Bureau of Consumers' Unions.

The Commission has, wherever possible, taken account of the opinions expressed by these organizations. Generally speaking, their position at the end of the drafting work is favourable. However, some reservations were expressed by the European Bureau of Consumers' Unions, the Association of the European Assay Offices and the Convention on the control and marking of articles of precious metals regarding the guarantees which may be given to consumers regarding articles manufactured in accordance with the provisions of Annex IV to the proposed Directive (manufacturer's declaration).

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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 important that measures be adopted for the gradual establishment of the internal market; whereas the internal market is an area free of internal frontiers in which goods, persons, services and capital can move freely;

Whereas the national technical rules applying to articles of precious metal have raised barriers to the free movement of goods;

Whereas, in compliance with the principle of subsidiarity, the Community becomes involved only if the aims of a proposed measure cannot adequately be achieved by means of action at Member-State level and may thus be better achieved by action at Community level;

Whereas certain aspects of the sector must therefore be harmonized in order to remove those barriers and ensure the free movement of articles of precious metal within the Community;

Whereas the means and measures implemented by the Community are proportional to the aim pursued and must thus be restricted to the essential requirements; whereas those requirements must replace the corresponding national provisions;

Whereas an appropriate level of consumer protection and fair trading need to be ensured in the field of articles of precious metal;

Whereas, in accordance with the principles laid down in the Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards⁽⁴⁾ and those dictated by the principle of subsidiarity, rules on articles of precious metal should be confined to essential requirements; whereas these requirements must replace the corresponding national provisions;

(1) OJ No C

(2) OJ No C

(3) OJ No C

(4) OJ No C 136, 4.6.1985, p. 1.

Whereas harmonized standards would be useful in establishing a presumption of conformity with the essential requirements and with other provisions; whereas, at Community level, such harmonized standards are drawn up by bodies governed by private law and must retain their status of non-compulsory texts; whereas, to this end, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (Cenelec) are recognized as the bodies competent to adopt harmonized standards in accordance with the general guidelines on cooperation between those bodies and the Commission signed on 13 November 1984;

Whereas, in confirming the appeal of international standardization which generates standards that are in practice applied by all partners in international trade and which meets the requirements of Community policy, the Community invites the European standardization bodies to continue their cooperation with the international standardization organizations;

Whereas, for the purposes of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by one or both of these bodies on a mandate from the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽⁵⁾, as last amended by Directive 88/182/EEC⁽⁶⁾, and by virtue of the abovementioned guidelines; whereas, as regards any amendments to harmonized standards, the Commission should be assisted by the standing committee set up by Directive 83/189/EEC;

Whereas manufacturers shall have the option of applying one of the conformity attestation procedures foreseen by this Directive and may call upon one of the certification bodies amongst those published by the Commission; whereas Member States must accept products that have satisfied one of the certification procedures foreseen by this Directive; whereas these means should be based on the provisions of Council Decision 90/683/EEC⁽⁷⁾ and ensure a level of quality sufficient to meet the needs of those responsible for placing articles on the Community market; whereas, therefore, these means must always involve checks by a notified body; whereas the notification of a certification body is an option open to Member States, their duty being to ensure that the notified body meets the assessment criteria laid down in this Directive;

Whereas articles must, as a general rule, be struck with a fineness mark and a sponsor's mark; whereas the fineness mark indicates that they comply with the provisions of this Directive; whereas there is therefore no need for those products to bear the CE marking; whereas the sponsor's mark, registered in the Member States in the interests of decentralized management, must make it possible to identify the person responsible for placing the article concerned on the market; whereas, where marking is technically difficult, articles must be accompanied by a certificate;

Whereas, to ensure the transparency of the market, the number of standards which may be used for each precious metal should be restricted; whereas it would therefore be expedient to take account of existing international standards and of practices in the Member States;

⁽⁵⁾ OJ No L 109, 26.4.1983, p. 8.

⁽⁶⁾ OJ No L 81, 26.3.1988, p. 75.

⁽⁷⁾ OJ No L 380, 31.12.1990, p. 13.

Whereas a distinctive sign has been laid down for each precious metal in order that the type of metal used may be identified; whereas the sponsor's mark must be accompanied by a small letter "e", identifying articles which comply with the provisions of this Directive;

Whereas information given in marks is in coded form; whereas, accordingly, Member States need to take appropriate steps to provide clear information to the purchaser at the point of ultimate sale;

Whereas there should be a transitional period for the disposal of stocks of articles manufactured in accordance with national rules in force on the date of adoption of the Directive,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope, placing on the market and free movement

Article 1

1. This Directive covers provisions relating to indication of the standard of fineness of articles of precious metal, finished or semi-finished, intended for the ultimate consumer.
2. For the purposes of this Directive:
 - (a) Precious metals are platinum, gold, palladium and silver in the pure state and their alloys.
 - (b) An article of precious metal is any item of jewellery, goldsmith's ware or watchmaker's ware and any other object made entirely or in part from a precious metal.
 - (c) An article comprising various precious metals is any item of jewellery, goldsmith's ware or watchmaker's ware and any other object made entirely or in part from various precious metals.
 - (d) A mixed article is an article comprising parts of precious metal and parts of base metal or other substances.
 - (e) An alloy of a precious metal is a solid solution of a precious metal and one or more other metals.
 - (f) Standard of fineness is the fine precious-metal content expressed in parts per thousand in relation to the total mass of the alloy concerned.
 - (g) The nominal standard of fineness is the standard of fineness of the alloy shown by a punched mark on the article or entered on the EC certificate of conformity.
 - (h) A precious metal coating is a coat of precious metal applied to all or part of an object by a chemical, electrochemical, mechanical or physical process.

- (i) The manufacturer is the person who assumes responsibility for the manufacture of the articles which he places on the Community market under his own name, and for their compliance with the applicable provisions.
 - (j) The importer is the person who places a qualifying article from a third country on the Community market.
 - (k) The authorized representative is the natural or legal person established within the Community who, explicitly designated by the manufacturer, acts on behalf of the latter in performing duly defined tasks.
 - (l) The person responsible for placing articles on the market is any natural or legal person established within the Community who assumes responsibility for the conformity with the applicable provisions of the articles which he places on the Community market under his own name.
 - (m) Placing on the market is the first time that an article is made available on the Community market whether by way of payment or free of charge, with a view to distribution and/or use on Community territory.
 - (n) The sponsor's mark is the mark identifying, on the one hand, the manufacturer or person responsible for placing articles on the market and, on the other, the notified body which has checked the conformity of an article.
 - (o) The fineness mark is the mark indicating the nominal standard of fineness of the precious metal, set within the appropriate surround.
 - (p) A notified body: a body responsible for carrying out the conformity assessment procedures.
3. This Directive does not apply to:
- (a) Articles of precious metal for dental prostheses or for medical use, as defined in Council Directive 93/42/EEC⁽⁸⁾.
 - (b) Objects of precious metal for scientific or technical use.
 - (c) Musical instruments or parts of such instruments made from precious metal.
 - (d) Legal tender made of precious metal and collectors' coins and medals.
 - (e) Ingots or granules of precious metal for banking use.
 - (f) Objects made of metals other than precious metal and coated with precious metal.
4. Articles made of precious metal or comprising various precious metals, finished or semi-finished, are hereinafter referred to as "articles".

Article 2

Member States shall adopt all provisions to ensure that, with regard to indication of the standard of fineness, only articles complying with this Directive may be placed on the market.

⁽⁸⁾ OJ No L 169, 12.7.1993, p. 1.

Article 3

Articles must satisfy the essential requirements which apply to them. Those requirements are set out in Annex II.

Article 4

Member States may not, with regard to the indication of the standard of fineness, prohibit, restrict or hinder the placing on the market of articles which bear the marks referred to in Articles 10 and 11 or which are accompanied by the EC certificate of conformity referred to in Article 13(3).

Article 5

1. Member States shall presume articles to conform to this Directive if they satisfy the relevant provisions of the national standards which transpose the harmonized standards whose references shall be published in the Official Journal of the European Communities.
2. Member States shall publish the references to the national standards transposing the harmonized standards referred to in paragraph 1.

Article 6

Where a Member State or the Commission considers that the standards referred to in Article 5(1) do not afford conformity with the corresponding provisions of this Directive, the Commission or the Member State concerned shall bring this to the attention of the committee set up by Directive 83/189/EEC, hereinafter referred to as "the Committee", setting out the reasons. The Committee shall give an opinion as a matter of urgency.

The Commission shall, in the light of the Committee's opinion, notify the Member States as to whether or not the standards in question must be withdrawn from the publications referred to in Article 5(2).

Article 7

1. Where a Member State finds that articles bearing the fineness mark referred to in Article 11 or accompanied by the EC certificate of conformity referred to in Article 13(3) do not correspond to the provisions of this Directive it shall take all appropriate measures to withdraw those articles from the market or to prohibit or restrict their being placed on the market.

The Member State concerned shall inform the Commission of such measures forthwith and shall indicate the reasons for its decision and, in particular, whether the non-conformity results from:

- (a) non-compliance with the essential requirements referred to in Article 3, where the standards referred to in Article 5(1) have not been applied;
- (b) incorrect application of the standards referred to in Article 5(1);
- (c) shortcomings in the standards referred to in Article 5(1).

2. The Commission shall consult the parties concerned as soon as possible. Where the Commission, after consultation, finds that the measures referred to in paragraph 1 are justified, it shall forthwith inform the Member State which took the measures and the other Member States.

Where the decision referred to in paragraph 1 is attributed to shortcomings in the standards, the Commission shall, after consulting the parties concerned, refer the matter to the Committee within a period of two months if the Member State which took the measures intends to maintain them, and shall initiate the procedure referred to in Article 6.

Where the Commission finds, after consultation, that the measure is unjustified it shall forthwith inform the Member State which took the initiative thereof, as well as the manufacturer or his authorized representative or the person responsible for placing goods on the market.

3. The Member State concerned shall take the appropriate measures against any person who has improperly affixed the fineness mark or drawn up the EC certificate of conformity and shall inform the Commission and the other Member States thereof.
4. The Commission shall ensure that the Member States are kept informed of the progress and outcome of the procedure.

CHAPTER II

Conformity attestation procedures

Article 8

1. Before placing them on the market, the manufacturer or his authorized representative must ensure the conformity of the articles. In order to do so he has the option of:
 - (a) following the procedure for the EC declaration of conformity based on a system of product quality assurance as referred to in Annex III, or;
 - (b) following the procedure for the EC declaration of conformity referred to in Annex IV, or;
 - (c) submitting the articles for verification as referred to in Annex V.
2. The conformity assessment procedure referred to in Annex V may also be requested by the person responsible for placing the articles on the market.
3. The manufacturer, his authorized representative or, where appropriate, the person responsible for placing articles on the market shall select a notified body from amongst those notified pursuant to Article 9 to carry out the checks prescribed in whichever conformity assessment procedure is used.
4. The dossiers and correspondence relating to the conformity assessment procedures referred to in paragraph 1 shall be written in an official language of the Member State in which the notified body is established or in a language accepted by that body.

Article 9

1. Member States shall notify to the other Member States and to the Commission the bodies responsible for carrying out the procedures referred to in Article 8 and their specific tasks in the matter.

The Commission shall publish in the Official Journal of the European Communities, for information, the list of notified bodies and the tasks for which they have been notified. The Commission shall be responsible for updating this list.

2. Member States which designate certification bodies to implement the procedures specified in Article 8 shall apply the criteria set out in Annex VI for the designation of those bodies. Bodies which meet the assessment criteria laid down in the national standards which transpose the relevant harmonized standards shall be presumed to satisfy the criteria which apply to them.
3. A Member State which has notified a body must withdraw that notification if it finds that the body in question no longer satisfies the criteria referred to in paragraph 2. It shall forthwith inform the other Member States and the Commission thereof.
4. Without prejudice to Articles 4 and 8, Member States are not obliged to set up on their territory the procedures specified in Article 8.

CHAPTER III

Marking

Article 10

1. Articles must be struck with the sponsor's mark before being placed on the market. This mark shall be accompanied by a small letter "e".
2. The manufacturer or the person responsible for placing the articles on the market must apply to a Member State for his sponsor's mark to be registered and must, where appropriate, communicate to it the decision referred to in point 3.3 of Annex III.
3. Member States must register the sponsor's mark and make sure, in collaboration with the applicant, that there is an unequivocal correspondence between that mark and the applicant.

Registration of the sponsor's mark must make it possible to identify the applicant, the notified body chosen by the applicant to implement the procedures referred to in Article 8, the conformity procedure applied and the date of registration.

4. Data relating to the registration of sponsor's marks shall be made available by the Member States.

Article 11

Articles deemed to satisfy the essential requirements referred to in Article 3 must, prior to being placed on the market, be struck with one or more fineness marks by the manufacturer or, where appropriate, by his authorized representative, the person responsible for placing on the market or the notified body which carried out the verification referred to in Annex V.

The specific surrounds to be used for each precious metal, within which the standard of fineness as set out in Annex I must be indicated, are set out in Annex VII.

Article 12

1. The informative content of the fineness and sponsor's marks and the letter "e" must be visible, legible and durable and at least 0.5 mm high.
2. Existing traditional marks may also be struck on articles as long as they do not lead to confusion with fineness marks or sponsor's marks or the letter "e".

Article 13

1. The obligation to strike fineness marks, sponsor's marks and the letter "e" shall not apply in respect of:
 - small articles or those which are too fragile upon which it is technically difficult to strike marks;
 - semi-finished articles.
2. The obligation to strike the fineness mark shall not apply in respect of those parts of articles consisting of various precious metals upon which it is technically difficult to strike such a mark.
3. The articles referred to in paragraphs 1 and 2 must be accompanied by an EC certificate of conformity issued by the manufacturer, or where appropriate, by his authorized representative, the person responsible for placing on the market or the notified body which carried out the verification referred to in Annex V. The information to be given on the certificate is set out in Annex VIII.

Article 14

Where it is found that a fineness mark has been affixed improperly or that an EC certificate of conformity has been issued improperly, the notified body which checked the conformity shall take the necessary measures and shall forthwith inform the Member State concerned thereof. The latter shall inform the other Member States and the Commission thereof.

CHAPTER IV

Labelling

Article 15

Member States shall take the appropriate measures to ensure that purchasers are provided with proper information at the place of sale to the ultimate consumer regarding the standard of fineness of articles, particularly where, in accordance with Article 13, articles do not bear marks.

CHAPTER V

Final provisions

Article 16

1. Precise grounds must be given for any decision relating to the indication of standards of fineness taken by virtue of this Directive which results in articles of precious metal being withdrawn from the market or in a ban or restriction being applied to their being placed on the market.
2. The decision shall be notified to the party concerned as soon as possible, together with an indication of the means of appeal available under the laws in force in the Member State in question and the period within which such appeal must be made.

Article 17

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1995 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Member States shall apply these provisions from 1 January 1996.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.
3. Member States shall, for the period up to 1 January 1998, authorize the placing on the market of articles of precious metal which are in conformity with the rules in force on their territory on the date of adoption of this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX I

Nominal standards of fineness for articles of precious metal

Precious metals and their alloys	Nominal fineness (parts per thousand)
Gold	333
	375
	500
	585
	750
	800
	840
	916
	990
	999
Platinum	850
	900
	950
	999
Palladium	500
	950
	999
Silver	800
	835
	925
	999

ANNEX II

Essential requirements

1. Articles of precious metal covered by this Directive must be manufactured and marked in such a way as to minimize the risk to consumers of confusion or fraud in respect of the precious metal content.
2. Articles must bear a fineness mark or, in the cases referred to in Article 13, be accompanied by an EC certificate of conformity indicating a nominal standard of fineness corresponding to one of the standards set out in Annex I.

The standard of fineness of precious metals must be expressed in parts per thousand.

3. Marking and certificates

- 3.1 Articles of a single precious metal must bear a fineness mark.
- 3.2 Articles comprising various precious metals must bear the relevant fineness mark on each part.
- 3.3 Mixed articles must bear the corresponding fineness mark on the part made of precious metal or of various precious metals.

Parts made of non-precious metal must be easily recognizable or clearly identified.

- 3.4 In the cases provided for in Article 13(1) and (2), articles must be accompanied by an EC certificate of conformity.

4. Articles of precious metal, where coated with other metals, must bear the fineness mark of the base precious metal alloy. They must also bear an indication of the type of coating or be accompanied by a document giving that information where it cannot be indicated on the article.
5. No negative tolerance is permissible in relation to the nominal standard of fineness. Thus a given precious metal alloy in an article must, with the exception of the solder, have a standard of fineness at least equal to that indicated.
6. Precious metals in an article must be soldered using an alloy of the same standard of fineness and of the same precious metal as the rest of the article. Where this is technically not possible, soldering may be carried out using an alloy of a lower standard of fineness or another material.
7. Mechanisms or elements made of non-precious metal may be used to satisfy essential technical requirements. Where they are visible, such mechanisms must be easily recognizable or clearly identified.

ANNEX III

Product quality assurance

1. The manufacturer shall operate the approved quality system for final product control as specified in point 3 and shall be subject to inspection as specified in point 4.

2. (a) The manufacturer shall meet the obligations set out in point 1 and shall ensure and make a declaration to the effect that the articles concerned satisfy the provisions of this Directive which apply to them.

The manufacturer shall strike upon the articles the fineness mark, within the surrounds set out in Annex VII, and the registered sponsor's mark, together with the letter "e" and shall, where appropriate, draw up an EC certificate of conformity.

(b) The manufacturer shall draw up such technical documentation as to permit the conformity of the articles with the requirements of the Directive to be assessed.

This documentation shall include:

- a list of the standards referred to in Article 5 which are applied;
- the means employed to ensure the quality of the alloys used;
- where appropriate, the soldering methods.

The manufacturer or his authorized representative shall keep this documentation available for inspection by the national authorities for as long as the decision referred to in points 3.3 and 3.4 remains valid.

3. Quality system

3.1 The manufacturer shall lodge an application for the assessment of his quality system for the articles concerned with a single notified body of his choice.

The application shall include:

- all appropriate information on the articles;
- the documentation relating to the quality system;
- an undertaking to discharge the obligations arising from the quality system as approved;
- an undertaking to maintain the approved quality system in such a way that it remains appropriate and effective.

3.2 The quality system must ensure that the articles conform to the requirements of the Directive which apply to them.

All provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written measures, procedures and instructions. This quality system documentation shall ensure a common understanding of the quality programmes, plans, manuals and records.

It shall contain in particular a proper description of:

- the quality objectives;
- the examinations and tests which will be carried out;
- the means of monitoring the effective operation of the quality system;
- the quality records.

3.3 The notified body shall audit the quality system to determine whether it satisfies the requirements referred to in point 3.2. It shall presume conformity with these requirements in respect of quality systems which implement the relevant harmonized standard.

The auditing team shall include at least one member with experience in assessing the technology concerned. The assessment procedure shall include a visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. It shall contain the conclusions of the examination and the reasoned assessment.

3.4 The manufacturer shall inform the notified body which approved the quality system of any plan to introduce changes in the quality system.

The notified body shall assess the proposed modifications and determine whether the modified quality system will still satisfy the requirements referred to in point 3.2 or whether a reassessment is required.

It shall notify its decision to the manufacturer. The notification shall contain, where appropriate, the conclusions of the examination and the reasoned assessment decision.

4. Inspection

4.1 The purpose of inspection is to make sure that the manufacturer duly fulfills the obligations arising out of the approved quality system.

4.2 The manufacturer shall allow the notified body access for inspection purposes to the places of inspection, testing and storage and shall provide it with all the appropriate information.

4.3 The notified body shall periodically carry out audits to ensure that the manufacturer is applying the quality system and shall provide an audit report to the manufacturer.

5. Administrative provisions

5.1 The manufacturer shall keep the following at the disposal of the national authorities:

- the documentation referred to in point 3.1;
- the documentation on the changes referred to in point 3.4;
- the decisions and reports from the notified body which are referred to in points 3.3, 3.4 and 4.3.

5.2 Each notified body shall forward to the other notified bodies any relevant information concerning the issue and withdrawal of quality system approvals.

ANNEX IV

EC declaration of conformity

1. The manufacturer, or his authorized representative, who carries out the obligations laid down in point 2 shall ensure and make a declaration to the effect that the articles concerned satisfy the requirements of the Directive which apply to them.

The manufacturer or his authorized representative shall strike upon the articles the fineness mark, within the surrounds referred to in Annex VII, and the registered sponsor's mark together with the letter "e" or shall, where appropriate, draw up an EC certificate of conformity.

2. The manufacturer shall draw up such technical documentation as to permit the conformity of the product with the requirements of the Directive to be assessed.

This documentation shall include:

- a list of the standards referred to in Article 5 which are applied;
- the means employed to ensure the quality of the alloys used.
- where appropriate, the soldering methods.

The manufacturer or his authorized representative shall keep this documentation available for inspection by the national authorities.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available shall fall to the person responsible for placing the article on the market.

3. The manufacturer shall take all measures necessary in order that the manufacturing process shall ensure compliance of the manufactured articles with the technical documentation referred to in point 2 and with the requirements of the Directive which apply to them.

4. A notified body chosen by the manufacturer shall carry out or have carried out product checks at random intervals. An appropriate sample of the finished articles, taken on site by the notified body, shall be examined and appropriate tests as set out in the relevant standard(s) referred to in Article 5, or equivalent tests, shall be carried out to check the conformity of the articles with the requirements of the Directive.

In those cases where one or more of the articles checked does not conform, the notified body shall take appropriate measures.

ANNEX V

Third party verification

1. Verification is the act by which a notified body checks and attests that articles satisfy the essential requirements set out in this Directive which apply to them.
2. Verification may be carried out either by examination and testing of every product as specified in point 3 or by examination and testing of products on a statistical basis as specified in point 4, at the choice of the manufacturer or the person responsible for placing on the market.

3. Verification by examination and testing of every product

- 3.1 Each product bearing the registered sponsor's mark together with the letter "e" shall be examined and appropriate tests as set out in the relevant standards referred to in Article 5, or equivalent tests, shall be carried out in order to verify its conformity with the essential requirements of the Directive which apply to it.
- 3.2 The notified body shall strike the fineness mark, within the surrounds set out in Annex VII, upon each approved article or shall, where appropriate, draw up an EC certificate of conformity.

4. Statistical verification

- 4.1 Having taken all the measures necessary to ensure the homogeneity of each lot, the manufacturer, his authorized representative or the person responsible for placing on the market shall present his articles in the form of homogeneous lots already bearing the registered sponsor's mark together with the letter "e".

4.2 The notified body shall strike the fineness mark, within the surrounds set out in Annex VII, upon each article in the accepted lot or shall, where appropriate, draw up an EC certificate of conformity for each accepted article or for several articles, duly identified.

4.3 Articles shall be submitted for statistical checking by essential characteristics. They shall be grouped in identifiable lots and each lot shall be checked. The articles in a sample shall be individually examined and appropriate tests as set out in the relevant standard(s) referred to in Article 5, or equivalent tests, shall be carried out in order to determine whether the lot is accepted or rejected.

A sampling plan with the following operational characteristics shall be applied:

- a standard quality level corresponding to a 95% probability of acceptance with a non-conformity percentage of less than 1%;
- a limit quality corresponding to a 5% probability of acceptance with a non-conformity percentage of less than 5%.

4.4 If a lot is rejected, the notified body shall take appropriate measures to prevent the placing on the market of that lot. In the event of frequent rejection of lots the notified body may suspend the statistical verification.

ANNEX VI

Criteria for the assessment of the
bodies to be notified

Bodies designated by Member States must satisfy the following conditions:

- availability of staff and of the necessary means and equipment;
- technical competence and professional integrity of the staff;
- In carrying out tests, drafting reports, issuing attestations and carrying out inspections in accordance with this Directive, the management and technical staff must be independent of all circles, groupings or persons with a direct or indirect interest in the area concerned;
- staff must be bound by professional secrecy;
- third party insurance must be taken out unless such liability is covered by the State under national law.

The conditions referred to in the first two indents above shall be periodically checked by the competent authorities of the Member States or by bodies designated by the Member States.

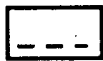
ANNEX VII

Fineness mark surrounds

1. The surrounds specific to each precious metal and which must surround the standard of fineness of the precious metals and their alloys set out in Annex I are given below:



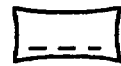
GOLD



SILVER



PLATINUM



PALLADIUM

2. The standard of fineness must be indicated within these surrounds along the axis of the dashes.

ANNEX VIII

Contents of EC certificate of conformity

The EC certificate of conformity must be drawn up in an official language of the Member State in which the articles are marketed and must include the following:

- name and address of the manufacturer or his authorized representative or the person responsible for placing on the market;
- the letter "e";
- a description of the article or of the semi-finished articles;
- the standard of fineness in parts per thousand of the precious metal or precious metals concerned;
- the name and address of the notified body involved in the conformity attestation procedures referred to in Article 8 and the procedure applied.

FINANCIAL STATEMENT

FINANCIAL IMPLICATIONS

(For publication in working papers)

1. Title of operation:

Proposal for a Directive on the approximation of the laws of the Member States relating to articles of precious metal.

2. Budget headings involved:

B 5-300: Completing the Internal market
(Operations support expenditure)

3. Legal basis:

Article 100a of the EEC Treaty

4. Description of operation:

4.1 Specific objectives of operation

The specific objective of this action is the completion of the internal market in articles of precious metal, i.e. platinum, gold, palladium and silver. This industry has been regulated in most of the Member States, though different approaches have been taken, particularly as

regards checks on precious metal content, the number of standards of fineness in use and the marks to be struck.

These differences, plus the fact that the national measures are not equivalent, make it difficult to apply the principle of mutual recognition.

The Directive will harmonize the essential requirements applying to articles of precious metal, conformity assessment procedures and the specific standards of fineness which may be used for each precious metal. The following will be necessary if the Directive is to be implemented effectively:

- the drawing-up or revision by the CEN of harmonized standards, which will make it easier to prove conformity with the essential requirements;
- collaboration between notified bodies in order that they may harmonize their procedures;
- management of the procedures to be used in the event of recourse by the Member States to the safeguard clause.

4.2 Duration

This is a one-off operation.

4.3 Target population

Potentially, all consumers in the Community.

5. Classification of expenditure or revenue

- 5.1 B5-300: non-compulsory expenditure
- 5.2 B5-300: differentiated appropriations
- 5.3 No revenue is expected

6. Type of expenditure or revenue

Expenditure relates to standardization.

Mandate

The Directive will lay down essential requirements for articles of precious metal intended for Community consumers. Article 5 includes a reference to harmonized standards. As with other directives, the Commission is planning to entrust the CEN with the task of drawing up the relevant harmonized standards. The corresponding mandate is covered by the provisions of the framework contract of 15 September 1992, which provides for financial support from the Commission.

Financing will be granted on the basis of mandates.

6.1 100% subsidy

-

6.2 Subsidy for joint financing with other sources in the public and/or private sector

-

6.3 Interest subsidy

-

6.4 Other

-

6.5 Should the operation prove an economic success, is there provision for all or part of the Community contribution to be reimbursed?

Not applicable.

6.6 Will the proposed operation cause any change in the level of revenue?

If so, what sort of change and what type of revenue is involved?

Not applicable.

7. Financial Impact

7.1 Method of calculating total cost of operation

7.1.1 Standardization

(a) Method of calculating the cost of drawing up standards

Some 12 harmonized standards will be needed (this figure was estimated with the standardization bodies).

Financing will be determined according to the work to be entrusted to contractors.

The standard average cost of drawing up a standard being an estimated ECU 50 000, total expenditure will be some ECU 600 000.

7.2 Breakdown of the operation by components

In ECU

BREAKDOWN	BUDGET 93	PDB 94	% VARIATION
Standardization (B5-300) . mandate	-	200 000	-

7.3 Indicative schedule of commitment appropriations

In ecu

	budg. 1993	pdb 1994	Indicative programming				
			1994	1995	1996	1997	1998
Standardization (B5-300) . mandate	-	-	200 000	100 000	200 000	100 000	-

8. What anti-fraud measures are planned in the proposal for the operation?

The Commission carries out checks on subsidies and on the performance of services and preparatory, feasibility and assessment studies prior to payment. In doing so it takes account of contractual obligations and principles of economy and good financial or overall management. Anti-fraud

measures (checks, reports, etc.) are included in all agreements or contracts concluded between the Commission and the beneficiaries of the payments.

9. Elements of cost-effectiveness analysis

9.1 Objectives

This New Approach Directive has been requested by a large majority of Member States. Reference to harmonized standards is part of the Commission's multiannual operation to support the growth of European standardization.

9.2 Grounds for the operation

The manufacture of articles of precious metal is quite heavily regulated at national level, with various approaches being taken to marking and the checking of precious metal content. The principle of mutual recognition is being applied, though it is accepted that the existence of non-equivalent national provisions which are justified under the Treaty calls for harmonization.

Differences between the national requirements applying to products and marketing procedures are causing an enormous waste of human and financial resources, at the expense of manufacturers and Member States (see complaints lodged with the Commission and between Member States).

Community procedures will prevent articles from undergoing a series of repetitious national procedures. At the same time, harmonized requirements will enable the industry to reduce its unit production costs thanks to rationalization of the manufacturing process and of stock management.

As for the harmonization of standards, the aim is to make use of existing ISO standards, wherever possible, and to pool resources, thereby avoiding duplicated expenditure by Member States.

All in all, the resources required from the Community budget represent only a fraction of the total resources which Member States and other interested parties will be putting forward for the common benefit later in the operation.

9.3 Monitoring and evaluation of the operation

9.3.1 Performance indicators selected:

- rationalization of standards of fineness;
- degree of standards harmonization (number of standards);
- number of certifications carried out;
- number of infringement procedures.

9.3.2 Details and frequency of planned evaluation

- regular progress reports on standardization within the framework of Council Directive 83/189/EEC, to be produced at least annually.

9.4 Consistency with the financial programming

9.4.1 The operation is incorporated in the financial programming of DG III.

9.4.2 To which broader objective defined in DG III's financial programming does the objective of the proposed operation correspond?

Not applicable

9.4.3 Main factors of uncertainty which could affect the specific results of the operation

Not applicable

10. Administrative expenditure (Part A of the Budget)

10.1 The proposed operation will entail an increase in the number of Commission staff involved in the management of the Directive.

The decision-making procedures regarding safeguard clauses, registration of marks and the monitoring of European standardization will require the existence of staff able to produce technical and legal analyses and opinions and organize the relevant administration.

FINANCIAL STATEMENT

FINANCIAL IMPLICATIONS (for Internal Information)

10.2 Indicate the amount of staff and administrative expenditure involved in the proposed operation

10.2.1 Staff expenditure

Staffing requirements will be met either through internal redeployment or by a Commission Decision on the allocation of resources under the budgetary procedure. It is estimated that one A grade official will be required as from 1993.

Titles I and II:

ECU 90 000 per year per person x 1 = ECU 90 000 per year

10.2.2 Other expenditure under Part A of the Budget

Budget headings concerned and type of expenditure

A 2500

Meetings of experts (around ECU 44 500 per year as from 1994).

To facilitate the uniform application of the Directive, the Commission is planning regular meetings of experts from the Member States and representatives of the notified bodies and European federations in order to coordinate their work and harmonize their practices.

Estimated annual cost:

Twenty-four government experts x 3 meetings x ECU 618 =
ECU 44 496 per year.

A 2551

Financial contribution to the organization of conferences (ECU 30 000 in 1996) and to meetings of the notified bodies (ECU 6 000 per meeting at a rate of three meetings per year from 1994 to 1998. The estimate of costs is based on similar cases in the past.

The holding of a symposium will allow the Commission to present the outlines of the Directive to the parties concerned, listen to their comments or observations and try to answer them.

The notified bodies responsible for implementing the attestation of conformity procedures will have to collaborate if the Directive is to be implemented consistently and practices harmonized in the Member States.

At the end of this period (1994-98) enough experience should have been gained to relieve the Commission of the need to fund such operations.

A 2600

Studies and consultations

Consultants: In the phase prior to the implementation of the Directive (1994-96) it would be reasonable to provide for recourse to consultants, at an estimated cost of ECU 15 000 per year.

Technical opinions: the technical opinions necessary for

the management of the "safeguard clause" procedures will be financed by study or service contracts for ECU 10 000 as from 1996.

10.3 Indicative schedule of appropriations

In ecu.

	budg. 1993	dpb 1994	Indicative programming				
			1994	1995	1996	1997	1998
(b) Meetings (A-2500)	-	-	44 500	44 500	44 500	44 500	44 500
(c) Conferences & meetings Financial partici- pation (A-2551)							
- conferences	-	-	-	-	30 000	-	-
- meetings of notified bodies	-	-	18 000	18 000	18 000	18 000	18 000
(d) Studies and consultations (A-2600)							
- consultants	-	-	15 000	15 000	15 000	-	-
- technical opinions	-	-	-	-	10 000	10 000	10 000
TOTAL	-	-	77 500	77 500	117 500	72 500	72 500

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BUSINESS IMPACT STATEMENT

Title of the proposal

Proposal for a Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to articles of precious metal

Document reference number:

1. The proposal

The proposed Directive will include provisions relating to the marking of articles of precious metal, i.e. gold, platinum, silver and palladium, and the same coated with other precious metals, where these are intended for the Community consumer.

The Directive also covers semi-finished articles of precious metal where these are intended for the manufacture of the abovementioned articles.

The Directive has been requested by a majority of the Member States, notably as a result of the difficulties caused by differences in national laws to economic operators trading between Member States.

With a view to removing these trade barriers, and in accordance with the principles of proportionality and subsidiarity, the Commission initially instituted proceedings against the Member States to make them comply with the rules laid down in Articles 30 *et seq.* of the Treaty.

These proceedings, which were intended to lead to mutual recognition, revealed the existence of barriers to trade which could be justified under the Treaty and which must therefore be removed by a Community harmonization directive.

2. Impact on businesses

(a) The type of business concerned

While not enjoying abundant natural resources of precious metals, the Community does possess a highly developed precious metal fabrication industry. The value of Community production in the Jewellery industry alone was put at an estimated ECU 5.6 billion in 1989. It must be pointed out that Eurostat figures on production and employment do not reflect the full importance of the industry, since businesses employing fewer than 20 persons are not included in the official statistics.

Nonetheless, it has been estimated that the Community contains some 1 700 industrial businesses and a further 13 000 businesses manufacturing on an artisanal basis. Member States sometimes use different parameters to classify businesses involved in artisanal manufacture. While it is difficult to calculate the number of persons employed in the manufacturing of precious metals in Europe, the figure of 120 000 has been put forward. A slightly higher figure has been estimated for those working on the distribution side of the industry.

The figures also show that more businesses manufacture on an artisanal basis (SMEs) than on an industrial basis.

(b) Geographical distribution

Within the Community, businesses involved in the fabrication of precious metals are concentrated in Italy, Germany, France, the United Kingdom and Spain. Within these countries businesses are again concentrated geographically (e.g. Arezzo, Vicenza and Valenza in Italy and Pforzheim in Germany) where a specialized workforce and the necessary infrastructure are to be found.

(c) Are these businesses located in regions eligible for regional aid from the Member States and the ERDF?

Yes. In certain Member States these businesses are located in regions eligible for aid, e.g. St. Amand Montrand in France, Birmingham in the United Kingdom and Cordoba, Valencia and Madrid in Spain.

3. What measures will businesses have to take to comply with the proposal?

The proposal lays down essential requirements for articles of precious metal and rules for their marking (fineness and sponsor's marks).

These provisions are based on national rules (which are sometimes more binding, as in FR, ES, UK, IRL, NL and PT)) and give businesses the option of following one of the certification procedures provided for, viz. product quality assurance, the manufacturer's declaration and third party verification. The latter may, at the choice of the manufacturer or the person responsible for placing on the market, be carried out either by inspecting and testing all products or by checking lots on a statistical basis.

The rules in the other Member States are less binding.

To comply with the provisions of the Directive, businesses established in certain Member States will now have to keep the necessary technical documentation at the disposal of the national authorities and to have their production checked by certifying bodies which they themselves choose from among those notified by the Member States to the Commission.

6. The foreseeable impact of the proposal

(a) On jobs

In itself, the proposal will not improve the employment situation, which is a result of the general economic situation. It will help, however, by improving international competitiveness.

(b) On investment and the creation of new businesses

The Directive is designed to approximate national laws justified under the Treaty. Such work will have no direct impact on the creation of new businesses or investment. However, it will constitute an instrument giving manufacturers the legal security they need for the smooth development of their economic activity.

(c) On business competitiveness

The existence of harmonized European standards applicable throughout the Community will give a considerable boost to the competitiveness of all businesses, especially SMEs.

If businesses comply with the certification procedures referred to in point 3(2), particularly in the Member States with mandatory inspection of articles prior to placing on the market (UK, IRL, NL, ES, FR, PT), this will reduce the obligations currently imposed on businesses established in those Member States. Businesses will thus have the choice not only of the certification procedure, but also of the certification body at Community level and will be able to avoid the repetition of tests and inspections of articles.

However, some businesses will have to make an effort to adapt their production to the certification procedures laid down in the Directive, which means that additional costs may be incurred. According to an estimate by Emagold (European Gold Manufacturers

Association) these costs would not be excessive; for product quality assurance (Annex III), for instance, they might range from ECU 1 700 to ECU 2 350 in the first year and from ECU 1 000 to ECU 1 600 in subsequent years.

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Furthermore, compliance with the obligations imposed by the Directive will enable manufacturers and those responsible for placing on the market to benefit from the transparency of the sector, fairer competitive conditions thanks to the levelling out of quality control costs, rationalized manufacturing processes, optionalized stock management and the removal of technical barriers to trade which prevent the free movement of goods. This applies not only to the Community market but also to exports to the United States and Japan, where there are major outlets for Community articles. Community standardization of national rules will thus facilitate exports to those countries.

5. Measures taking account of the specific situation of small businesses

There are no specific measures applying solely to small businesses. However, manufacturers will be able to choose the certification procedure best suited to the structure of their business.

6. Consultation of the two sides of industry and their positions

All the parties affected by the proposed Directive have been associated with its drafting from the outset, viz:

- International Confederation of Jewellery, Silverware, Diamonds, Pearls and Stones (CIBJO)
- Federation of the European Cutlery, Flatware, Holloware and Cookware Industries (FEC)

- Comité Permanent de l'Horlogerie Européenne
- Eurométaux (European Metal Association)
- International Federation of Watch, Jewellery, Gold and Silverware Retailers of the EEC countries
- Association of the European Assay Offices
- Convention on the control and marking of articles of precious metals
- CEN (European Committee for Standardization)
- European Bureau of Consumers' Unions.

The Commission has taken account of the opinions expressed by these organizations wherever possible. Generally speaking, their position at the end of the drafting work is favourable. However, some reservations were expressed by the European Bureau of Consumers' Unions, the Association of the European Assay Offices and the Convention on the control and marking of articles of precious metals regarding the guarantees which may be given to consumers regarding articles manufactured in accordance with the provisions of Annex IV to the proposed Directive (manufacturer's declaration).

ISSN 0254-1475

COM(93) 322 final

DOCUMENTS

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Catalogue number : CB-CO-93-354-EN-C

ISBN 92-77-57692-8

Office for Official Publications of the European Communities
L-2985 Luxembourg

