ENGLISH

COMPLETING THE INTERNAL MARKET

CURRENT STATUS 31 DECEMBER 1989

CONDITIONS FOR INDUSTRIAL COOPERATION

Company Law

Intellectual Property

Taxation

OPEN PUBLIC PROCUREMENT MARKET

COMMISSION OF THE EUROPEAN COMMUNITIES

DECEMBER 1989

In June 1985, the Commission of the European Communities issued a White Paper 'Completing the internal market' setting out a target for achieving by 1992 a single European market for goods, services, people and capital.

The White Paper included a detailed legislative timetable containing over 300 measures and proposals.

In June 1989, the Commission issued its 'Fourth report on the implementation of the White Paper on completing the internal market'. This updated and modified the original legislative timetable contained in the White Paper.

This brochure is one of a series of five intended to summarize the current problems, the 1992 objectives and the measures and proposals contained in the White Paper and Fourth report.

The complete series of brochures covers

A common market for services

The elimination of frontier controls

Conditions for industrial cooperation
Open public procurement market

A new Community standards policy

Veterinary and plant health controls

These brochures will be updated and reissued at regular intervals until 1992. Details about availability are given on the inside back cover.

This publication is also available in ES, DA, DE, GR, FR, IT, NL and PT

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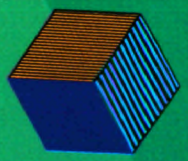

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CONDITIONS FOR INDUSTRIAL COOPERATION OPEN PUBLIC PROCUREMENT MARKET

How to use this brochure

The aim of this series of brochures is to

(i) inform the interested European public about the steps which are being taken to bring about the single market;

(ii) summarize the approach which is being taken in individual business sectors;

(iii) provide a first reference to the content and current status of each proposal which the Commission has drafted to bring about the 1992 internal market.

This brochure contains

(i) a brief description of how the Community makes laws and recommendations;

(ii) a general introduction to the issues and problems in creating an internal market in industrial cooperation and public procurement;

(iii) specialized introductions to the approach being adopted in individual sectors of industrial cooperation and public procurement;

(iv) brief summaries of every measure which has been adopted or proposed to create the internal market for industrial cooperation and public procurement. Proposals mentioned in the White Paper but not yet issued by the Commission will be summarized in the future updates of the brochure.

The reader should

(i) ensure he is familiar with how the Community makes laws and recommendations. If not, he should turn to page iii;

(ii) read the general introduction to services for an overview of the issues (pages 1, 57);

(iii) select the section(s) which cover sector(s) of interest from the contents (page vii).

The summaries provide references to the appropriate copies of the *Official Journal of the European Communities* for those readers wishing to examine measures in more detail. Copies of the Official Journal can be obtained from the information offices listed inside the back cover.

HOW THE EUROPEAN COMMUNITY MAKES LAW

AN OUTLINE

It is necessary to be familiar with the procedures by which the Community passes laws in order to understand the detail contained in the summaries. Each summary relates to a specific measure intended to facilitate the creation of the single market. In broad terms

(i) the Commission (which has both executive and administrative roles) initiates and drafts a proposal which it submits to the Council;

(ii) the European Parliament (which is elected by the citizens of the Community) and the Economic and Social Committee (which consists of representatives from employer organizations, trade unions and other interest groups) consider and comment on the proposal;

(iii) the Council (whose members represent the governments of the Member States, normally at ministerial level) adopts the proposal which then becomes law. In some cases, this power can be exercised by the Commission.

This brochure contains summaries of different types of measures; their consideration and adoption can follow different procedures. These are discussed below.

1. LAWS AND OTHER MEASURES

Regulations

A regulation is a law which is binding and directly applicable in all Member States without any implementing national legislation. Both the Council and the Commission can adopt regulations.

Directives

A directive is an EEC law binding on the Member States as to the result to be achieved, but the choice of method is their own. In practice, national implementing legislation in the form deemed appropriate in each Member State is necessary in most cases. This is an important point as businesses affected by a Directive have to take account of the national implementing legislation as well as the directive.

Decisions

A decision is binding entirely on those to whom it is addressed. No national implementing legislation is required. The decisions summarized in this brochure are Council Decisions although in certain cases the Commission has the power to adopt Commission Decisions.

Recommendations

A recommendation has no binding effect (it is not a law). Recommendations can be adopted by both the Council and the Commission.

The majority of the measures included in this brochure are Council Directives.

EEC legislation from start to finish
(Directives and regulations)

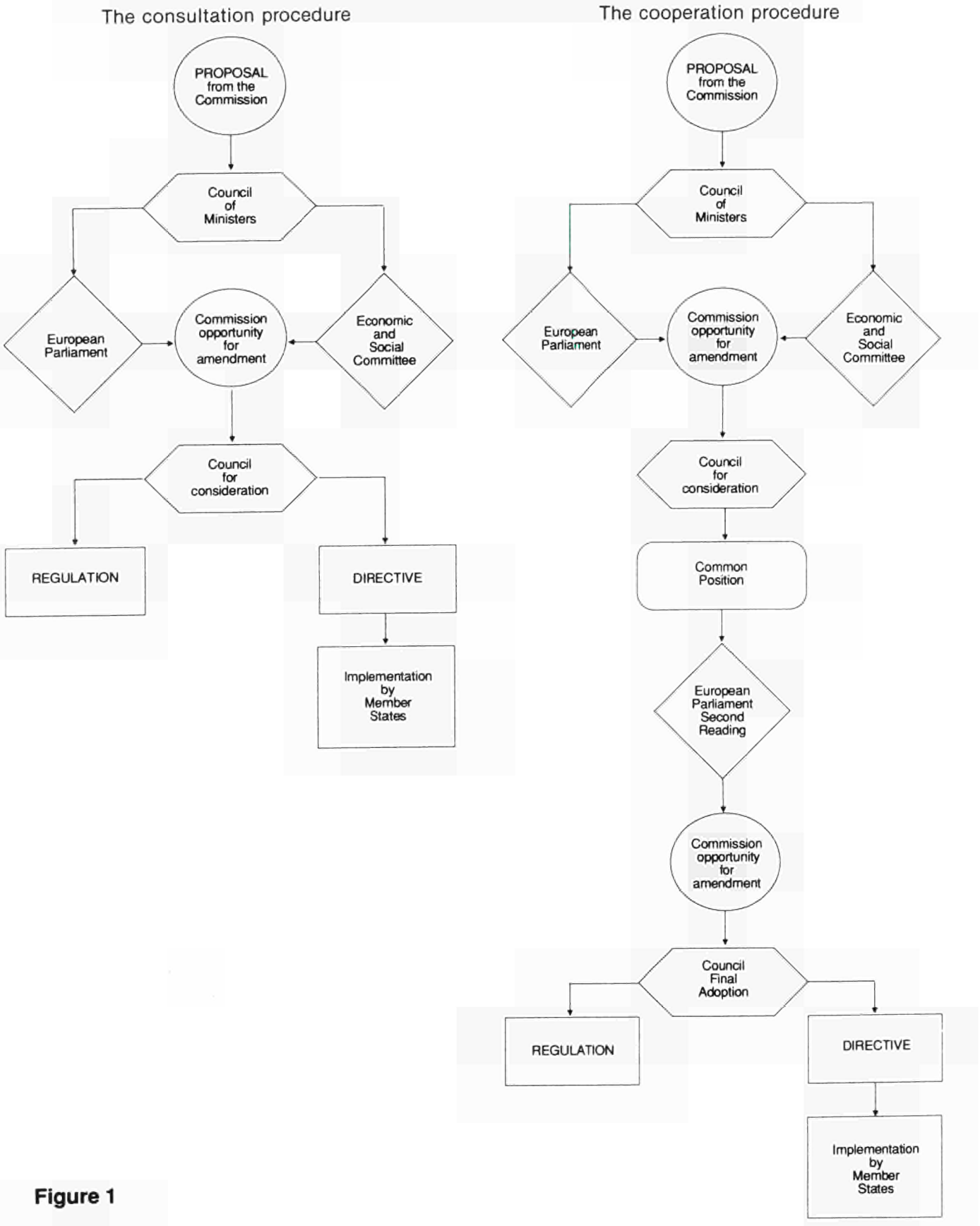

Figure 1

2. PROCEDURES FOR MAKING LAWS

The Community's decision-making procedures are best illustrated by tracing the progress of a directive. The following text should be read in conjunction with the flow chart in figure 1.

Since the entry into force of the Single European Act on 1 July 1987 there are two distinct procedures for the adoption of a directive: the consultation procedure and the cooperation procedure. The EEC Treaty article upon which a proposal is based dictates which procedure is followed.

In both cases a directive begins with a proposal from the Commission to the Council.

Under the consultation procedure, the Council requests an opinion from the European Parliament and, in most cases, from the Economic and Social Committee. Once these have been given, the Commission then has the opportunity to amend the proposal if it so wishes. The proposal is then examined by the Council which may adopt it as proposed, adopt it in an amended form, or fail to reach agreement, in which case the proposal remains 'on the table'.

Under the cooperation procedure, the Council requests opinions from the Parliament and the Economic and Social Committee in the same way. Once these opinions have been received the Council hs to adopt what is called a common position, although it seems that the proposal will again remain on the table failing any common position being reached. On a common position being reached, this is transmitted to the Parliament which has three months to accept, reject, or propose amendments to it, on its second reading.

At this stage the Commission may again amend the proposal if it wishes. The proposal is then returned to the Council which has three months to take a final decision. In the absence of a decision, the proposal lapses.

Whether the Council can adopt a proposal by a qualified majority or has to reach a unanimous decision depends in the first instance upon the article of the Treaty which is the basis for the measure. However, there are certain situations where unanimity must be reached by the Council:

(i) to introduce amendments of its own initiative to a proposal;

(ii) to adopt amendments proposed by the Parliament but not taken up by the Commission;

(iii) to adopt a measure when the Parliament has rejected the Council common position under the cooperation procedure.

The question of whether a directive or a regulation is subject to the cooperation procedure, the consultation procedure or neither of these depends on its legal basis.

There are a limited number of decisions summarized in this brochure. The European Parliament and the Economic and Social Committee are consulted on some of these.

There are also a limited number of recommendations in this brochure. Some Council recommendations are submitted to the European Parliament and the Economic and Social Committee for their opinion before adoption.

3. PUBLICATION OF TEXTS

At certain stages in the Community decision making procedure, texts are published in the *Official Journal of the European Communities*. There is an 'L' series which contains legislation and a 'C' series which contains other information, such as communications issued by the Commission.

This brochure contains summaries of both adopted legislation and proposals for legislation. In the case of adopted legislation, the summary gives the reference to the Official Journal 'L' series in which the text has been published. Readers interested in the legislative history of a measure will find in the text the Official Journal 'C' series references for the corresponding Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee.

In the case of proposals for legislation, the summary gives the Official Journal 'C' series references for the Commission proposal(s) and the oipinions of the European Parliament and the Economic and Social Committee, if published by 31 December 1989.

The Commission's 1985 White Paper 'Completing the internal market' contains a legislative programme. In the course of carrying out this programme, certain proposals have been withdrawn and others have been added. Where the Commission has not yet submitted proposals listed in the programme, these are mentioned in the sector introduction.

CONDITIONS FOR INDUSTRIAL COOPERATION

OPEN PUBLIC PROCUREMENT MARKET

INTRODUCTION
WHAT CONDITIONS FOR INDUSTRIAL COOPERATION?

1957 Treaty of Rome

This was intended to create a single market across the European Community,with free movement of goods, persons, services and capital.

Although a customs union was established very quickly and significant progress made with regard to the free movement of goods and persons, a number of administrative, physical and technical barriers continued to exist which prevented the creation of a genuine single market.

1985 White Paper

Some progress had been made towards creating an environment which encouraged cooperation between businesses in different Member States. However, such cooperation was hampered by excessive legal, fiscal and administrative problems, along with occasional problems due to different mentalities and habits.
It was recognized that the development of the internal market would result in companies becoming more and more involved in all manner of intra-Community operations and that there would be an ever-increasing number of links with associated enterprises, creditors and parties in other Member States.
The Commission published a White Paper 'Completing the Internal Market' which listed over 279 legislative proposals and set out a timetable for their adoption. The White Paper was endorsed by the Heads of State or Government.

1987 Single European Act

This Act, which amended the EEC treaty and had, therefore to be ratified by the governments and parliaments of all Community countries, confirmed the objective of achieving a single European market by 1992 and the timetable set out in the 1985 White Paper. It adapted the Community's decision-making procedures and increased the scope for majority (as opposed to unanimous) voting in the Council of Ministers. The Single European Act should facilitate the adoption of the White Paper measures in accordance with the timetable set.

1989 current situation

Of the proposals contained in the White Paper, four have been adopted to date; the Regulation creating the European Economic Interest Grouping, the Directive concerning the publicity of branches, the Directive approximating national trade-mark laws and the Directive on the legal protection of semiconductor products.

The Community trade mark has still to be adopted while the Community Patent Convention has not yet entered into force. The Council is actively pursuing its examination of the proposals on the structure of private limited-liability companies and on single-member companies. In accordance with the White Paper, the Commission has presented its proposal concerning takeover and other general bids, the aim being to make them transparent so as to protect shareholders and workers.

1992 single market

Deadline set by the 1987 Single European Act for complete elimination of obstacles to European—wide industrial cooperation.

Industrial cooperation

The measures and proposals outlined in this brochure are intended to create an environment which will favour the development of cooperation between individual businesses in the Community. Such an environment is necessary for a number of reasons. The elimination of internal frontiers, the movement of goods and capital, freedom of establishment and the freedom to supply services are fundamental to the creation of the internal market and will confer enormous benefits on suppliers and consumers of goods and services. It will also create opportunities and incentives for cooperation between businesses in different Member States, e.g. where complementary expertise and resources are identified. This cooperation could take a variety of forms ranging from mergers or the incorporation of joint subsidiaries to *ad hoc* cooperation on specific projects. The benefits of such cooperation would not only be felt within the Community itself. They would also strengthen the position of European businesses when competing on world markets.

However, the elimination of internal frontiers is not sufficient to create the optimum environment for cross-frontier cooperation between businesses. At present, there are no appropriate forms for such cooperation. Company mergers across frontiers involve the application of differing national laws and often have tax implications which can act as a severe disincentive. The setting up of a joint subsidiary involves at least one partner in an unfamiliar legal system while, again, the tax implications may act as a disincentive. When businesses wish to pursue jointly a single activity, there is no appropriate and administratively straightforward corporate form for doing so. Numerous potential joint projects have failed to get off the ground because of such problems.

The existence of differences in patent, trade mark and copyright laws also have a negative effect on intra-Community trade and on the ability of businesses to treat the Community as a single market. Multiple applications for patents and trade marks and the corresponding multiplication fees create an administrative and financial burden which also psychologically perpetuates the traditional perception of separate national markets.

Still in the intellectual property field, advances in technology, particularly in the areas of computer software, microcircuits and biotechnology create the risk that separate intellectual property systems will adapt in different ways. This would create uncertainty about the level of protection of innovation, uncertainty which would act as a disincentive to both investment and cooperation between businesses in different Member States.

The measures and proposals in the fields of company law, taxation and intellectual property which are summarized in this brochure are intended to tackle these problems head-on and to create an environment in which businesses can cooperate across frontiers in the way they can at the moment within their national frontiers.

1. COMPANY LAW

Current problems and 1992 objectives

The absence of a Community legal framework for cross-frontier operations and cooperation between enterprises of different Member States has often resulted in multinational projects being unable to get off the ground.

In order to satisfy the needs of a genuine internal market, enterprises must be able to cooperate, set up subsidiaries, merge and generally restructure across internal frontiers without unnecessary formalities of a purely administrative nature.

There is at present only one appropriate form for cross-frontier cooperation. To this end, the Community has created a new type of association known as the European Economic Interest Grouping (summary 1.1). This is a grouping which makes it easier for separate businesses from different Member States to undertake a specified range of joint activities, without actually merging or setting up a jointly owned subsidiary. It is covered by uniform legislation throughout the Community. Summary 1.2 covers the proposal to create a legal framework for a European (as opposed to national) company. This will allow existing companies to restructure across borders without suffering from differing national laws.

In order to remove the legal obstacles of a purely technical nature to industrial cooperation through the harmonization of company law across the Member States, the Commission has proposed a number of measures. There is a proposal (summary 1.4) to harmonize laws so as to provide for cross-border mergers. The proposal for the Fifth Directive on Company Law (summary 1.3) will ensure the separation of the functions of management and supervision of management in the interests of shareholders. To create more favourable conditions for small-scale entrepreneurs and to encourage the development of small and medium-sized enterprises in the Community, a Council Directive connected to the single-member companies was adopted in December 1989.

Three further measures have been proposed by the Commission. The first, which was adopted at the end of 1989, sets down the disclosure requirements for foreign branches of companies (summary 1.5). The second relates to the publication of accounts by partnerships, since these structures can be used to avoid disclosure by major businesses (summary 1.6). In connection with disclosure requirements, the Commission introduced in 1988 a proposal increasing the thresholds below which small and medium-sized companies are permitted to publish less detailed accounts.

The third proposal lays down minimum rules for the regulation of takeover bids so as to provide for a level of shareholder protection and public information when a bid takes place. In view of the likely significant increase in mergers and takeovers in the Community as 1992 approaches, these rules are important (summary 1.7).

There are serious gaps in most Member States' legislation regarding the balance to be struck between the interests of groups of companies as a whole and their members. Often company law is too closely modelled on the idea of company autonomy. This no longer reflects economic reality in many cases, e.g. many companies are wholly owned subsidiaries of centrally managed multinational companies situated in other countries.

1 COMPANY LAW

1.1. European Economic Interest Grouping

(1) Objective	To create a new legal entity based on Community Law to facilitate and encourage cross-border cooperation. This will benefit businesses which do not wish to merge or form joint subsidiaries, but wish to carry out certain activities in common.
(2) Community measure	Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).
(3) Contents	1. A European Economic Interest Grouping can only be formed in accordance with the rules of the Regulation set out below. 2. The purpose of the grouping shall be to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This will provide better results than those of the members acting in isolation. Its purpose is not to make profits for itself. If the grouping makes profits these will be apportioned between the members and taxed accordingly. Its activities shall be related to the economic activities of its members, but cannot replace them. An EEIG cannot employ more than 500 persons. 3. An EEIG can be formed by companies, firms and other legal bodies in accordance with the national law of a Member State. It can be formed by individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services in the Community. 4. An EEIG must have at least two members. The two members necessary to form an EEIG shall be linked to different Member States. 5. The contract for the formation of an EEIG shall include its name, its official address, its objectives, the name, number and place of registration, if any, of each member of the grouping and the duration of the grouping. This contract and various other specified documents shall be filed at the registry designated by each Member State. Registration confers full legal capacity on the EEIG throughout the Community. 6. If a grouping has been formed, or liquidated, details must be published in the *Official Journal of the European Communities*. 7. A grouping's official address must be situated within the Community. It may be transferred from one Member State to another subject to certain conditions. 8. Each member of an EEIG shall have one vote although the contract for its formation may give certain members more than one vote provided that no one member holds a majority of the votes. The Regulation lays down voting procedure. 9. The EEIG must have at least two organs; the members acting collectively and the manager or managers. Each EEIG shall be managed by one or more individuals according to certain defined criteria. These managers represent and bind the EEIG towards third parties even where their acts do not fall within the objectives of the grouping.

	10. No EEIG may invite investment by the public. 11. An EEIG does not necessarily have to be formed with capital. Members are free to use alternative methods of financing the grouping. 12. The profits of an EEIG shall be the profits of its members divided either according to the relevant provision in the contract or, if such does not exist, in equal shares. The profits or losses of an EEIG shall be taxable only in the hands of its members. As a counterpart to the contractual freedom, which is the basis of the EEIG, and to the fact that members are not required to provide a mandatory capital, each member of the EEIG is jointly and severally liable for the debts of the EEIG. 13. The profits or losses of an EEIG shall be taxable only in the hands of its Members.	
(4) Deadline for implementing Member State legislation		
5) Application date (if different from 4)	1.7.1989	
(6) Date for further coordinating proposal (if specified)		
(7) References	Council Adoption	Official Journal L 199, 31.7.1985

1. COMPANY LAW

1.2. Statute for a European company

(1) Objective

To create a European company with its own legislative framework. This will allow companies incorporated in different Member States to merge or to form a holding company or a joint subsidiary, while avoiding the legal and practical constraints arising from the existence of twelve different legal systems. To arrange for the involvement of employees in the European Company and recognize their place and their role in the company.

(2) Proposal

Proposal for a Council Regulation on the Statute for a European company.

Proposal for a Council Directive complementing the Statute for a European company with regard to the involvement of employees in the European company.

(3) Contents

Proposal for Council Regulation on the Statute for a European company.

1. The Statute provides three ways of forming a European company (Latin *Societas Europaea,* SE): merger, formation of a holding company, or formation of a joint subsidiary. The first two ways are available only to public limited companies, while the third one is more generally available.
2. The SE must have a minimum capital of ECU 100 000.
3. The registered office of the SE designated in the statutes must be the place where it has its central administration, that is to say its *siège réel.*
4. The formation of an SE is disclosed for information purposes in the *Official Journal of the European Communities.* Every SE is registered, in the State where it has its registered office, in a register designated by the law of that State.
5. The statutes of the SE must provide as governing bodies the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (single-tier system). Under the two-tier system the SE will be governed and represented by a management board, supervised by a supervisory board. The members of the management board will be appointed by the supervisory board, which may revoke their appointment at any moment. No person may be a member of both the management board and the supervisory board of the same company at the same time. The rules of procedure of the management board are to be laid down by the supervisory board, after consulting the management board. Under the single-tier system the SE will be administered and represented by an administrative board. The administrative board is to delegate management of the SE to one or more of its members.

The implementation of decisions on:

(a) the closure or transfer of establishments or of substantial parts thereof;
(b) substantial reduction, extension or alteration of the activities of the SE;

(c) substantial organizational changes within the SE;
(d) the establishment of cooperation with other undertakings which is both long-term and of importance to the activities of the SE, or the termination thereof; or
(e) the setting up of a subsidiary or of a holding company;
may be effected by the management board only following prior authorization of the supervisory board, or by the administrative board as a whole.
6. Detailed provisions on the powers of the general meeting and the rights of shareholders.
7. The SE is to draw up annual accounts comprising the balance sheet, the profit and loss account and the notes on the accounts, and an annual report giving a fair review of the company's business and of its position.
8. Detailed provisions on winding up, liquidation, insolvency and suspension of payments.
9. Detailed provisions on mergers.

Proposal for a Council Directive complementing the Statute for a European company with regard to the involvement of employees in the European company.
1. Definition of employee participation: it does not mean participation in day-to-day decisions, which are a matter for the management, but participation in the supervision and strategic development of the company.
2. Several models of participation are possible: first, a model in which the employees form part of the supervisory board or of the administrative board, as the case may be; secondly, a model in which the employees are represented by a separate body; and finally, other models to be established by agreement between the management boards or the administrative boards of the founder companies and the employees or their representatives in those companies.
3. The representatives of the employees must be provided with such financial and material resources as enable them to meet and perform their duties in an appropriate manner.

(4) Opinion of the European Parliament

Not given

(5) Current status

The proposal is at present being examined by Parliament and by the Economic and Social Committee.

(6) References

Commission Proposal COM(89) 268/I and II final	Offical Journal C 263, 16.10.1989
European Parliament Opinion	
Economic and Social Committee Opinion	

1. COMPANY LAW

1.3. Structure of public limited companies

(1) Objective

To ensure that managers of public limited liability companies are effectively supervised on behalf of the shareholders. To ensure employee participation in the management of such companies.

(2) Proposal

Proposal for a Fifth Directive founded on Article 54(3)(g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs.

(3) Contents

1. The Directive will apply to types of company such as:
UK a public limited company;
France la societé anonyme;
Germany die Aktiengesellschaft;
and equivalents in the other Member States. Member States have the option to exclude cooperatives.
2. Member States must ensure that such companies are organized according to either a two-tier board structure (management body and supervisory body) or a one-tier system (administrative body in which the actions of the executive members are supervised by the non-executive members).
3. The authorization of the supervisory body or non-executive members shall be required by the management body or executive members for decisions relating to:
(i) the closure or transfer of the whole or part of the undertaking;
(ii) substantial extension or reduction in the activities of the undertaking;
(iii) important organizational changes; and
(iv) the establishment or ending of long-term cooperation with other firms.
4. In companies with less than 1 000 employees, the members of the supervisory body shall be appointed by the general meeting. If a company has more than 1 000 employees, Member States must provide for employee participation in the appointment of;
(i) members of supervisory bodies in the two-tier system,
(ii) non-executive members of boards in the one-tier system.
A maximum of two-thirds of the supervisory body or non-executive members shall be appointed by the general meeting. A minimum of one-third (maximum of one-half) shall be appointed by the employees. Alternatively, members of the supervisory board may be appointed by co-option by the board itself. However, the general meeting of the shareholders or the employees' representatives may object to such an appointment on various stated grounds. Another alternative is for Member States to provide for employee participation through a works council or through a collective agreement system rather than by employee participation on the supervisory board. No person may be a member of the management body and the supervisory body at the same time.

5. There must be an annual general meeting and other general meetings can be convened by either the management body, the executive members of the supervisory body or shareholders (providing the latter represent a certain minimum equity). The annual accounts, annual report and the auditors' report shall be made available to every shareholder. Resolutions at the AGM can only be passed by absolute majority except in special circumstances. Minutes have to be prepared for every AGM.
6. The annual accounts are subject to several requirements. For example, 5% of any profit for the year has to be put in a legal reserve until it reaches a certain minimum value. The audit has to be undertaken by persons truly independent of the company, appointed by the general meeting. The auditors have to produce a detailed report of their work.
7. After a specified time period the Commission will have to submit a report to the Council and the Parliament as to how the Directive is working.
8. Certain derogations from the Directive are allowed, e.g. for companies with political, religious, charitable or educational objectives.

(4) Opinion of the European Parliament

The Parliament approved the original proposal subject to a large number of amendments. It proposed adding the choice of a one-tier board structure to the two-tier system proposed, raising from five hundred to one thousand the threshold for obligatory employee participation and increasing the choice of forms of participation. The Commission accepted these proposals in its amended proposal.

(5) Current status

The proposal is currently before the Council for establishment of a common position.

(6) References

Commission Proposal COM(72) 887 final	Official Journal C 131, 13.12.1972
Amended Proposal COM(83) 185 final	Official Journal C 240, 9.9.1983
European Parliament Opinion	Official Journal C 149, 14.6.1982
Economic and Social Committee Opinion	Official Journal C 109, 19.9.1974

1. COMPANY LAW

1.4. Cross-border mergers

(1) Objective	Currently it is difficult for companies in different Member States to merge. This Directive will harmonize the laws on cross-border mergers of public limited companies so as to facilitate this process. It will introduce additional requirements to the previous Directive on national mergers for those aspects of cross-border mergers which differ from national mergers (due to different legal systems applying). To protect shareholders, creditors and employees when all the assets and liabilities in a company are transferred to another company in another Member State.
(2) Proposal	Proposal for a tenth Council Directive based on Article 54(3)(g) of the Treaty concerning cross-border mergers of public limited companies.
(3) Contents	1. Definition of cross-border merger and the type of company to which the Directive is to apply in each of the Member States, for example Belgium société anonyme; United Kingdom public companies limited by shares or by guarantee. 2. Obligation on the managers of the merging companies to draw up draft terms for the merger as required by the Member States involved and this Directive. Additional information to that already required by the Directive on national mergers will have to be included because of the transnational element; for example the location of the public registers which contain information on the companies involved. Member States cannot oblige merging companies to include other information. 3. A merger must have the approval of no less than two-thirds of the votes of the general meeting of each of the merging companies. 4. The merging companies must engage at least one independent expert to examine the draft terms of the merger and draw up a report for the shareholders. The expert must either be appointed or approved by a judicial or administrative body of the Member State of one or other of the merging companies. 5. Obligation on the Member States to provide adequate safeguards for the creditors and debenture holders of the merging companies. 6. Obligation on the management of each company to produce a report explaining the effect of the merger on employees.
(4) Opinion of the European Parliament	Not yet given.

(5) Current status	The proposal is currently being considered by the European Parliament.	
(6) References	Commission Proposal COM(84) 727 final	Official Journal C 23, 25.1.1985
	European Parliament Opinion	
	Economic and Social Committee Opinion	Official Journal C 303, 25.11.1985

1. COMPANY LAW

1.5. Disclosure requirements in respect of branches

(1) Objective

To provide rules concerning the disclosure requirements required in a Member State for branches of companies which are governed by laws of another State, in order to provide an equivalent level of protection for shareholders and third parties and to facilitate the freedom of establishment.

(2) Community measure

Council Directive 89/XXX/EEC of 21 December 1989 on company law concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State.

(3) Contents

1. The Directive applies to branches of public and private companies situated in a Member State other than that in which the company is established. For branches of companies from another Member State, the branch shall publish documents which cover:

(i) the address of the branch;
(ii) the object of the activities of the branch;
(iii) The company's place of registration and its registration number;
(iv) information on the company directors.

The branch will no longer need to publish branch accounts but it must publish the annual accounts and annual report of the company as audited and published in accordance with the law of the Member State by which the company is governed.

2. EC branches of public and private companies which are established in a non-EC State but have a legal form comparable to that of Community companies shall publish documents which cover, *inter alia,* the information required for branches of EC companies, together with the following particulars:

(i) the law of the State by which the company is governed;
(ii) the company's memorandum and articles of association;
(iii) the legal form of the company.

The branch must publish the annual accounts and annual report of the company. These accounting documents must have been drawn up either under Community legislation, or so as to be at least equivalent to those so drawn up; they must also have been audited in conformity with the law which governs the company. In the event of non-conformity or non-equivalence, Member States may require that accounting documents relating to the branch's activities be drawn up and published.

3. Member States shall provide appropriate penalties for failure to disclose the information required.

4. The provisions of the Directive dealing with the disclosure of accounting documents need not be applied to branches of banks, other financial institutions and insurance companies. As regards the former, a separate Directive has been adopted (see 1.6); as regards the latter, a Directive will be proposed.

(4) Deadline for implementing Member State legislation		
(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)		
(7) References	Adoption by the Council	Not yet published

1. COMPANY LAW

1.6. Annual and consolidated accounts: amendments

(1) Objective	To extend Community legislation relating to annual company accounts and consolidated accounts to partnerships. This will ensure that certain types of partnerships, all of whose unlimited members are constituted as limited liability companies, do not avoid corporate disclosure (for example, German firms organized as GmbH & Co. KG).
(2) Proposal	Proposal for a Directive amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives.
(3) Contents	1. Extension of Community legislation on the form, content and publication of annual accounts of companies to partnerships: for example: UK the partnership, the unlimited partnership, the unlimited company; France la société en nom collectif, la société en commandite simple; Germany die Offene Handelsgesellschaft, die Kommanditgesellschaft. 2. Extension of Community legislation on the form, content and publication of consolidated accounts of companies to those partnerships as in 1. It applies when either the parent or subsidiary is organized in this way.
(4) Opinion of the European Parliament	The Parliament approved the proposal but called for concessions to be made for small and medium-sized enterprises.
(5) Current status	An amended proposal is awaited.
(6) References	Commission Proposal COM(86) 238 — Official Journal C 144, 11.6.1986 European Parliament Opinion — Official Journal C 125, 11.5.1987 Economic and Social Committee Opinion — Official Journal C 328, 22.12.1986

1. COMPANY LAW

1.7. Takeover bids

(1) Objective

The Directive introduces a series of basic rules to guarantee equality of treatment of shareholders, publicity and clarity of information required and the defensive measures that may be adopted once the bid is announced.

(2) Proposal

Proposal for a thirteenth Council Directive based on Article 54(3)(g) of the Treaty concerning harmonization of Member States' laws on takeover bids.

(3) Contents

1. Definitions of offeree company, securities, parties to the bid, persons acting in concert and general bids.
Definition of the type of company to which the Directive is to apply in each of the Member States, e.g. AG and KgA in Germany, plc in the United Kingdom.
2. The Directive lays down the fundamental rule that shareholders who are in the same position are to be treated equally.
3. The Directive requires that where shares are acquired which give a percentage of voting rights over a specified level, a general bid must be made for the company by the purchaser. The Directive does not permit partial bids. Member States must fix this level at not more than one-third. In calculating the percentage, voting rights held by connected parties and existing holdings must be taken into account and the Directive lays down those who are to be considered connected parties.
The Directive sets out the circumstances where the supervisory authority may grant exemptions from the obligation to make a bid. 4. The Directive provides for an exemption from obligations to make a bid where the target company is small or medium-sized.
5. Member States are required to designate a supervisory authority to monitor compliance with the rules by all bid parties. The national authority responsible for supervising the publication of the offer document shall be that of the Member State in which the offeree company has its registered office.
6. As soon as the offeror decides to make a bid, he must announce his intention of doing so and notify the relevant supervisory authority. He must then immediately draw up an offer document, which must be communicated to the responsible supervisory authority and the board of the offeree company before being sent to the addressees of the bid and published. The Directive specifies the means of publication of the intention to bid and the offer document.
7. Between the date of receiving notification of the decision to bid and the expiry of the period for accepting the bid, the board of the offeree company shall not, without the approval of the shareholders in general meeting:

(i) issue securities carrying voting rights or which may be converted into such securities; or

(ii) engage in transactions outside the normal operations of the business unless authorization is given by the supervisory authority.

8. The offeror must be represented by either a qualified person who is licensed to deal on the Community financial markets or a licensed credit institution within the Community.

9.The Directive lists the minimum contents of the offer document that must be drawn up by the offeror. For example, the offer document must contain the following:

(i) general information concerning the offeror company;
(ii) details of the securities for which the bid is made;
(iii) number or percentage holdings of the securities already held by the offeror, directly or indirectly;
(iv) the consideration offered for each security;
(v) the latest date for acceptance of the bid;
(vi) the intentions of the offeror regarding the continuation of the business of the offeree company, the future composition of its board and the continued employment of its employees;
(vii) any special advantages which the offeror intends to grant to the board of the offeree company.

The Directive does not prevent national authorities from requiring additional items of information to be included in the offer document.

10. The period for accepting the bid may not be less than four weeks nor more than ten weeks from the date of publication of the offer document.

11. Circumstances where bids may be withdrawn are specified.

12. The board of the offeree company must draw up a detailed report giving its views on the bid and setting out the arguments for and against acceptance. The report shall state whether the board is in agreement with the bid and specify any agreements on the exercise of voting rights within the offeree company. Where the consideration offered comprises unquoted shares, the board's report shall be accompanied by an independent expert's report on the basis of valuation of the consideration and whether the consideration offered is fair and reasonable. The report must be filed with the responsible supervisory authority and notified to the addressees of the bid in good time before the deadline for acceptance.

13. The offeror may revise his bid at any time before the last week of the period of acceptance announced in the offer document. The Member States shall ensure that the persons who have already accepted the previous bid may accept the revised bid instead.

14. The acquisition by the offeror, or by persons acting on his behalf or in concert, during the acceptance period of shares in respect of which the bid is made at a price higher than that in the offer document or one of its revisions, will be considered as a full-scale revision of the bid and will increase the consideration offered to those who have already accepted.

15. From the time of the public announcement of a bid, the offeror or the holder of 1% or more of the offeree company or the offeror company or any company whose securities are offered in exchange, must declare to the supervisory authority all further acquisitions of securities of the said companies and the purchase price paid.

	16. Where the number of acceptances received exceeds that specified in the offer document and the offeror does not wish to acquire all the shares, equal treatment of those who accepted must be ensured. 17. The Directive shall apply to each bid where there are competing bids. Where there are competing bids and the initial bid is not withdrawn, the period of acceptance for the initial bid is automatically extended to the date of expiry of the competing bid. 18. A contact committee shall be set up by the Commission to facilitate the application of the Directive and to advise the Commission, if necessary, on additions and amendments to the Directive. The Committee shall comprise representatives of the Member States and the Commission.
(4) Opinion of the European Parliament	Not yet given
(5) Current status	The proposal is before the Parliament for its opinion.
(6) References	Commission Proposal COM(88) 823 final — Official Journal C 64, 14.3.1989 European Parliament Opinion Economic and Social Committee Opinion — Official Journal C 298, 27.11.1989

2. INTELLECTUAL PROPERTY

Current problems and 1992 objectives

Differences between Member States' intellectual property laws have an adverse impact on intra-Community trade and on the ability of firms to treat the common market as a single environment for their activities. To a certain extent, the EEC Treaty mitigates these problems. For example, Articles 30 to 36 of the Treaty relating to the free movement of goods have been dynamically treated in the European Court of Justice in such a manner as to prevent intellectual property rights being used to partition off Member States' markets from each other by preventing the free movement of goods. Similarly Articles 85 and 86 of the Treaty relating to competition have been applied by the Commission, as an enforcement agency under the Competition Law, and interpreted by the European Court of Justice so as to prevent intellectual property rights being exercised in a manner which prevents, restricts or distorts competition in trade between Member States. Furthermore, to facilitate cross-frontier patent licensing, the Commission adopted in 1984 a Regulation on the application of Article 85(3) of the Treaty to certain categories of patent licensing agreements which automatically authorizes certain restrictive provisions in licences without the parties having to make notification for a specific authorization decision by the Commission, and in 1988 adopted a similar Regulation on know-how licensing.

In the field of trade marks, the existence of the distinct national systems (and the combined Benelux system) creates obstacles to Community-wide marketing, in addition to cumbersome and costly administrative and legal burdens. A single European market needs a single Community trade mark system for companies trading throughout the Community. The Commission has tabled a proposal for a Council Regulation in this area which, once adopted, will make it possible for businesses to obtain a single trade mark valid in all twelve Member States on the basis of one application to a Community Trade Mark Office (summary 2.1). The Community also needs more uniformity in national trade mark systems for companies who, although not trading throughout the Community, do have commercial activities in more than one Member State, and the Council recently adopted a Directive which aims to harmonize Member States' legislation in this area (summary 2.2).

The intellectual property situation is currently complicated by the need to provide protection to inventions in new technologies such as computer software, microcircuits and biotechnology. These technologies were not in existence when the present intellectual property laws were drafted, and so methods for legal protection are obscure. The Community has already taken an important step to improve the situation by adopting a Directive (summary 2.6) concerning the legal protection of semiconductors. The Commission has also tabled proposals for the legal protection of innovations in biotechnology (summary 2.7) and computer programs (summary 2.8).

Patents are in a somewhat different situation since a European Patent Convention was signed in 1973 by a number of Member States and non-EC European countries. This provides for patents for a number of countries to be obtained through a single application to the European Patent Office. However, this convention effectively just simplifies the procedure for obtaining a number of national patents. The operation of a single market requires a single Community patent valid in all Member States. Therefore, the then nine Member States negotiated, in 1975, the 'Convention for the European Patent for the Common Market (Community Patent Convention)'.

Unfortunately, this convention has never come into effect. It was amended in December 1989 to allow it to enter into force in 1993 in those Member States that are in a position to ratify it. It is important to note that work is proceeding to ensure that the single market will have an appropriate patent system.

2. INTELLECTUAL PROPERTY

2.1. Trade mark: Community trade mark

(1) Objective	To create a Community trade mark applicable throughout the Community. This will remove the current requirement to make separate applications for trade marks in each Member State. To ensure that registered trade marks enjoy uniform protection under the legal system of all the Member States.
(2) Proposal	Proposal for a Council Regulation on the Community trade marks.
(3) Contents	1. The Regulation would create Community trade marks. A Community trade mark would come into existence on registration by a Community Trade Mark Office. 2. Definition of what cannot be registered as a Community trade mark, e.g. anything which consists solely of signs used to indicate the kind, value, or purpose of the goods. 3. Application for a Community trade mark, grounds for refusal of registration, e.g. if the mark is likely to be confused with an existing trade mark. Permitted proprietors of trade marks include nationals or residents of Member States and nationals of any State which provides Member States' nationals with the same trade-mark protection as it provides for its own nationals. 4. Procedure to be followed when applying for a Community trade mark, including surrender, revocation and invalidity and appeals against these. 5. A Community trade mark shall be registered for a period of 10 years from the date of filing, renewable for a further 10 years. 6. Effect of Community trade marks and rights conferred by such trade marks. Limitations of such rights and effects, e.g. if a proprietor allows its use by a third party he cannot subsequently withdraw this permission after a set time limit. 7. A Community trade mark may only be granted for the whole of the Community. However, the Regulation does not prevent the owner of an earlier national trade mark from taking an action in respect of a Community trade mark under the law of one of the Member States. 8. Alteration, transfer and licensing of Community trade marks. 9. Provision for collective marks to be registered as Community trade marks if the purpose is to distinguish the goods or services of the association which is the proprietor of the mark from those of other businesses. 10. Establishment of a Community Trade Mark Office. The revenue of the Trade Mark Office shall come from fees payable for registration of trade marks and, if necessary, financing from the Communities' budget.
(4) Opinion of the European Parliament	The Parliament approved the proposal subject to several recommendations for amendment. These include the definition of the right conferred by the trade mark. The Commission included these recommendations in its amended proposal.
(5) Current status	The proposal is currently before the Council for the establishment of a common position. This shall then be sent to the European Parliament for a second reading.

(6) References	Commission Proposal COM(80) 635/II final	Official Journal C 351, 31.12.1980
	Amended Proposal COM(84) 470 final	Official Journal C 230, 31.8.1984
	European Parliament Opinion	Official Journal C 307, 14.11.1983
	Economic and Social Committee Opinion	Official Journal C 310, 30.11.1981

2. INTELLECTUAL PROPERTY

2.2. Implementing Regulation

(1) Objective	To lay down rules implementing the Regulation on the Community trade mark, especially as regards the formalities for applying for a Community trade mark, the time limits to be observed in dealings with the Community Trade Mark Office, the items to be published in the Community Trade Marks Bulletin and conduct of the opposition, appeals, revocation and invalidity procedures.
(2) Proposal	Proposal for a Council Regulation implementing Regulation (EEC) No XXX of XX/XX/XX on the Community trade mark.
(3) Contents	1. Applications for Community trade marks must be made in writing. They must contain, in addition to a request for registration of the trade mark, the applicant's name and address and the address at which he is habitually resident or at which his industrial or commerical place of business is located, if different from the address stated, together with details of the goods and/or services for which registration is sought. 2. So as to simplify applications for and processing of Community trade marks, the Nice Agreement concerning the International Classification of Goods and Services is to apply. 3. The aim of the implementing Regulation is to ensure that the procedure leading to registration is as speedy as possible. Decisions on applications, opposition and other references to the office are to be taken as quickly as possible. The office may transmit its communications to persons concerned using any type of modern information transmission equipment. Applicants are also encouraged to make full use of each of such equipment. 4. The filling of applications for Community trade marks will be simplified by allowing blanket authorizations in case of agency. The office is required at each stage of the proceedings to check that the authorization is still valid. 5. In the interests of flexibility, the president may settle a number of matters by issuing administrative instructions. 6. As regards the languages used, the parties to proceedings before the office may, in both written and oral proceedings, use their own language provided it is an official language of the Communities, but they must themselves arrange for translation into the language for procedural purposes. This solution is a compromise between the principle of a single language for procedural purposes, the aim of which is to reduce costs and ensure the efficiency of the Community trade mark system, and the need for parties to be able to use their own language. 7. Provision is made for a comprehensive system under which all application and registration particulars that are of legal significance will be published.
(4) Opinion of the European Parliament	Not yet given.

(5) Current status	The proposal is currently before the Council	
(6) References	Commission Proposal COM(85) 844 final	Not yet published in the Official Journal

2. INTELLECTUAL PROPERTY

2.3. National trade-mark legislation approximation

(1) Objective	To ensure that registered trade marks enjoy the same protection under the legal systems of all the Member States.	
(2) Community measure	Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.	
(3) Contents	1. The Directive shall apply to every trade mark which has been registered for goods or services in a Member State. 2. Registration will be refused or invalidated if the mark: (i) consists of a sign which cannot, under law, constitute a trade mark; (ii) is devoid of distinctive character; (iii) is liable to mislead or is contrary to public policy; (iv) is identical or similar to a previous mark and the goods which it represents are the same as those represented by the earlier mark. 3. The registered trade mark confers on the proprietor exclusive right of use. The proprietor shall be entitled to prohibit any third party from using it in the course of trade, except with his consent. This will also apply to any other sign which is identical or similar and is used in relation to goods which are identical or similar. 4. If the owner of a trade mark consents to the use of a later trade mark for five successive years, he shall forfeit the right to apply for a declaration that the later mark is invalid. He shall no longer be able to oppose the use of the later mark in respect of the goods or services for which the later mark has been used unless this was in bad faith. 5. Unless there is a legitimate reason for non-use, a trade mark will be invalidated if: (i) the owner has not put it to genuine use in the Member State and in connection with the goods for which it is registered within five years of registration; or (ii) it has not been used for any continuous period of five years. 6. A trade mark shall also be invalidated if, due to the inactivity of its owner, it has become a common name in trade for an entire category of products or services.	
(4) Deadline for implementing Member State legislation	28.12.1991	
(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)		
(7) References	Council Adoption	Official Journal L 40, 11.2.1989

2. INTELLECTUAL PROPERTY
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2.4. Community Trade Mark Office: fees

(1) Objective	To specify the fees payable to the Community Trade Mark Office. Methods of payment are also defined.
(2) Proposal	Proposal for a Council Regulation on fees payable to the Community Trade Mark Office.
(3) Contents	1. Fees governed by the Regulation include application fee for a Community trade mark, fee for opposition to a Community trade mark, registration and renewal fees. 2. Detailed provisions covering the fees to be paid for different classes of goods and different actions taken by the Trade Mark Office. 3. The amount of fees, costs and prices shall be specified in ecus. Payment may, however, be made in the currency of the Member State where the financial institution making the payment is established.
(4) Opinion of the European Parliament	Not yet given.
(5) Current status	The proposal has not yet been submitted to the European Parliament for its opinion.
(6) References	Commission Proposal COM(86) 742 final — Official Journal C 67, 14.3.1987 European Parliament Opinion Economic and Social Committee Opinion

2. INTELLECTUAL PROPERTY

2.5. Rules of procedure of the Boards of Appeal of the Community Trade Mark Office

(1) Objective	To lay down rules of procedure of the Boards of Appeal set up within the Community Trade Mark Office; to ensure the proper organization of those boards and to provide legal certainty for parties concerned by the decisions of the office.
(2) Proposal	Proposal for a Regulation on the rules of procedure of the Boards of Appeal instituted by Regulation (EEC) on the Community trade mark.
(3) Contents	1. To give effect to the principle of the independence of members of the Boards of Appeal, the competent Boards of Appeal and the competent members are to be designated in advance for every possible type of appeal. A special authority is to have the task of distributing business among the various boards of appeal and of designating the permanent members before the beginning of each working year. 2. Each board of appeal is to be composed of three members qualified in law, one of whom will be responsible for preparing the oral hearings and drawing up the draft decision. 3. A rapporteur is to give the parties a summary of the factual and legal problems arising and give them the provisional opinion of the Board. Thus a single oral hearing should make it possible to conclude the proceedings. 4. Rules on deliberation and the order of voting within the boards.
(4) Opinion of the European Parliament	Not yet given
(5) Current status	The proposal is currently being examined by the Council.
(6) References	Commission Proposal COM(86) 731 final — Not yet published in the Official Journal

2. INTELLECTUAL PROPERTY

2.6. Legal protection: topographies of semiconductor products

(1) Objective	To harmonize Member State legislation regarding the protection of the topographies (design) of semiconductor products. The Directive not only provides protection for the creator of the design, it also allows for the free movement of semiconductors within the Community.
(2) Community measure	Council Directive 87/54 EEC of 16 December 1986 on the legal protection of topographies of semiconductor products.
(3) Contents	1. Definition of semiconductor products, topography and commercial exploitation for the purposes of the Directive. 2. Obligation on Member States to adopt legislation to protect topographies, providing that they are the result of their creator's own intellectual effort and not commonplace in the semiconductor industry. This legislation shall confer exclusive rights. Member States shall specify in favour of whom the right to protection shall apply. 3. The Directive specifies which persons benefit from the right to protection and the procedure to be followed to extend protection in favour of persons not covered by the Directive. 4. Member States may refuse protection or remove protection under the Directive. They can do so if an application for registration of the topography has not been made to a public authority within two years of its first commercial exploitation. Member States may require that material identifying the topography is also provided, but shall ensure that this is not made public if it is a trade secret. 5. Member States shall grant exclusive rights. These include the right to authorize or prohibit reproduction of a protected topography and the right to commercial exploitation or import of a topography or a product manufactured by using the topography. The exclusive right shall not apply to reproduction for the following purposes: analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself. 6. If exclusive rights are conditional on registration, they will come into existence on the date of filing or the date of first commercial exploitation anywhere in the world, whichever comes first. If registration is not a condition, the rights will come into existence on the date of first commercial exploitation anywhere in the world or when the topography was first fixed or encoded. 7. The exclusive right shall come to an end 10 years from the end of the calendar year in which the topography was first commercially exploited anywhere in the world. If registration is required and an application is filed prior to the date of first commercial exploitation, the 10-year period is calcultated from the filing date.
(4) Deadline for implementing Member State legislation	7.11.1987

(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)		
(7) References	Council Adoption	Official Journal L 24, 27.1.1987

2. INTELLECTUAL PROPERTY

2.7. Legal protection: biotechnological inventions

(1) Objective

To improve the possibility for Community industry to treat the single market as one environment for its economic activities by reducing as far as possible the existing differences among Member States in the legal protection of biotechnological inventions and to prevent other differences from arising. This is important for the future of research in this field.

(2) Proposal

Proposal for a Council Directive on the legal protection of biotechnological inventions.

(3) Contents

1. Obligation on Member States to ensure that their national patent laws conform with the provisions of the Directive, which establishes clearly the patentability of living matter, sets out the scope of protection of patented biotechnological inventions, provides for dependency licences for plant varieties and regulates deposit, access and redeposit of micro-organisms and other self-replicating material.
2. An invention shall not be unpatentable for the sole reason that it is composed of living matter or forms part of natural material.
3. Patents shall be available for the following;
(i) micro-organisms;
(ii) biological classifications other than plant or animal varieties which are protectable under plant variety protection law;
(iii) plant and animal material which is not a variety;
(iv) uses of plant or animal varieties and processes for their production;
(v) micro-biological processes, including processes consisting of a series of steps provided the essence of the invention involves one or more micro-biological steps in the process.
4. For a process involving biological forces or phenomena to be patentable, human intervention must go beyond merely selecting an available material and letting it perform an inherent biological function under natural conditions.
5. Use of patented inventions in experiments shall not constitute patent infringement as would use for commercial purposes. The proposal establishes the point beyond which use ceases to be experimental.
6. Extension of patent rights to identical or derived products and processes. This includes patents for industrial use.
7. Conditions for licensing from patenters to holders of plant breeder rights and vice versa.
8. Obligations in respect of the disclosure of inventions and their deposit with a recognized institution acting as a depositary. Time limits for the application for a patent, and other information related to institutions acting as a depositary are specified.
9. Where a sample of a deposited material has been released relative to a process patent and a patent infringement dispute arises, the burden of proof will be on the alleged infringer to show that he produced the product by another unpatented process.

	10. Surgical and diagnostic methods will only be excluded from patentability or from the field of industrial applicability if they are practised for a therapeutic purpose. 11. Definitions of micro-organism as including all micro-biological entities capable of replication, and of self-replicable matter as matter possessing the genetic material necessary to direct its own replication via a host organism.
(4) Opinion of the European Parliament	Not yet given.
(5) Current status	The proposal has been submitted to the Parliament for its opinion.
(6) References	Commission Proposal COM(88) 496 final — Official Journal C 10, 13.1.1989 European Parliament Opinion Economic and Social Committee Opinion — Official Journal C 159, 26.6.1989

2. INTELLECTUAL PROPERTY

2.8. Legal protection: computer programs

(1) Objective

To harmonize Member State legislation regarding the protection of computer programs, in order to create a legal environment which will afford a degree of security against unauthorized reproduction to the computer program.

(2) Proposal

Proposal for a Council Directive on the legal protection of computer programs.

(3) Contents

1. Obligation on Member States to protect computer programs by conferring exclusive rights under the provisions of copyright laws. Protection is to be accorded to computer programs as literary works. No definition of program is given, but a program is taken, at present, to encompass the expression in any form, language, notation or code of set of instructions, the purpose of which is to cause a computer to execute a particular task or function.
2. As copyright is taken to be protection of the expression of ideas, and not the ideas themselves, the Directive will not apply to the ideas, principles, logic etc. underlying the program. It will also not apply to the ideas and principles which underlie the expression of interfaces and access protocols.
3. A computer program will not be protected unless it satisfies the same conditions as regards originality as apply to other literary works.
4. In general, the author of a computer program is the natural person or group of persons who have created the program. A distinction is therefore made between natural and legal persons. With a group, the exclusive right shall be exercised in common unless provided otherwise by contract. However, the Directive lays down specific provisions as to who shall be entitled to exclusive rights in certain circumstances, unless provided otherwise by contract:
   (i) where the program is created under contract, the rights lie with the person who commissioned the contract;
   (ii) where the program is created in the course of employment, the rights lie with the employer;
   (iii) where the program is created by another computer program, the rights shall lie with the person who generated the subsequent programs.
5. Protection is to be afforded to all natural and legal persons who are eligible under national copyright legislation as applied to literary works. The protection therefore covers eligibility through residence, nationality and first publication as laid down by the relevant Member State law. In the case of groups, all members will benefit from protection as long as one member qualifies under the relevant Member State copyright law.
6. Definition of restricted acts, i.e. acts which can be controlled by the person enjoying protection. These are:
   (a) reproduction or adaptation, in whole or in part, by any means;

(b) loading, running, transmission, storage;
(c) distribution by means of sale, licensing, lease, rental or importation for these purposes.

The right to control distribution shall not be available in respect of the sale or importation of a program following the first marketing of the program by the right-holder.

7. Certain exceptions to restricted acts are laid down. Where the program is sold or made public other than through a written licence agreement, the acts listed in 6(a) and 6(b) above are allowed without authorization, in so far as they are necessary for the use of the program. In addition the exclusive right to control rental given in 6(c) above may not be exercised by the right-holder in the case of non-profit-making public libraries.

8. It shall be an infringement of the author's exclusive rights:
(i) to import, process or deal with an infringing copy of the program, if the person knows or has reason to believe that it is an infringing copy of the work; or
(ii) to make, import, possess or deal with articles specifically intended to facilitate the removal or circumvention of any technical means which may have been applied to protect a program.

9. Copyright protection shall be granted for 50 years from the date of creation of the program.

10. The provisions of the Directive are without prejudice to any other legal remedies concerning protection of intellectual property such as trade marks, patents, unfair competition, trade secrets and contract law.

11. The provisions of the proposed Directive will also apply to programs created before the entry into force of the Directive.

(4) Opinion of the European Parliament

Not yet given.

(5) Current status

The proposal is currently before the Parliament and the Economic and Social Committee for their opinions.

(6) References

Commission Proposal COM(88) 816 final	Not yet published in the Official Journal
European Parliament Opinion	
Economic and Social Committee Opinion	

3. TAXATION

Current problems and 1992 objectives

In a single market, business decisions should be taken on commercial grounds which have uniform tax considerations throughout the Community. The current differences in company tax between Member States can distort investment decisions and conditions of competition.

There is a widespread feeling in private enterprises in Europe that the fiscal environment discourages risk capital and innovation. This compares badly with that of the Community's major competitors.

A major problem in cross-border operations is the risk of double taxation, due to differences in national tax laws. Little progress has been made in this field, despite the fact that the Council has expressed the view that a number of basic decisions need to be taken quickly in relation to removal of these barriers.

The proposals in the White Paper which aim to remove these tax obstacles to cross-frontier expansion and cooperation between businesses in different Member States are presently being considered by the Council. Summary 3.1 covers setting up a common taxation system for the members of a group of companies to eliminate double taxation; summary 3.2 aims to eliminate a particular type of double taxation which can arise due to non-market based transfer pricing between companies in a group, and summary 3.3 concerns the tax treatment of a group restructuring across frontiers. There is a proposal (summary 3.4) to harmonize the tax treatment of the carry-over of losses from year to year. Summary 3.5 describes a proposal to abolish certain taxes on security transactions which distort movements of capital.

3. TAXATION

3.1. Common taxation of parent companies and their subsidiaries

(1) Objective	To create a system whereby the profits of a subsidiary company in one Member State distributed to the parent company in another Member State are exempt from: (i) withholding tax on dividends; (ii) corporation tax in the hands of the parent company.
(2) Proposal	Proposal for a Council Directive on the common system of taxation applicable to parent companies and their subsidiaries in different Member States.
(3) Contents	1. Member States' tax legislation can discourage companies from setting up subsidiaries across frontiers. The distributed profits of a subsidiary can be taxed several times. They can be taxed as profits of that subsidiary, then be subject to a deduction of tax by that company when it distributes a dividend, and then taxed again as dividend income of the parent in another Member State. The Directive is intended to create a situation whereby a subsidiary's profits are taxed only once. 2. Member State's tax legislation may distort decisions on the location of subsidiaries. The Directive is intended to make the effect of tax considerations neutral in these decisions. This is achieved by introducing a common system of taxation of parent and subsidiaries situated in different Member States.
(4) Opinion of the European Parliament	The Parliament approved the proposal subject to certain recommendations for amendment.
(5) Current status	The proposal is currently before the Council for adoption.
(6) References	Commission Proposal COM(69) 6 final — Official Journal C 39, 22.3.1969 European Parliament Opinion — Official Journal C 51, 29.4.1970 Economic and Social Committee Opinion — Official Journal C 100, 1.8.1969

3. TAXATION

3.2. Elimination of double taxation (arbitration)

(1) Objective

Some multinational companies currently suffer from double taxation because national tax authorities adjust transfer prices between subsidiaries in the group. This Directive will eliminate this source of double taxation within the Community.

(2) Proposal

Proposal for a Council Directive on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises (arbitration procedure).

(3) Contents

1. The Directive would apply where double taxation arises as a result of:
   (a) the tax authorities of one Member State increasing the taxable profits of an enterprise on the grounds of transactions with an associated enterprise in another Member State not being at arms length; and
   (b) the tax authorities of the second Member State not making a corresponding reduction in the taxable profits of the associated enterprise.
2. At present there is no obligation on national tax authorities to eliminate double taxation of profits resulting in this way. The aim of the proposal is to allow an associated enterprise, whose profits have been subjected to such double taxation, to present its case to the tax authorities entrusted with the taxation of its profits, with a view to eliminating the double taxation.
3. If the tax authority did not arrive at a satisfactory solution of the problem, it and the authorities of the Member State where the other associated enterprise is taxed would try to reach mutual agreement with a view to eliminating the double taxation.
4. If the tax authorities concerned failed to reach an agreement that eliminates the double taxation, they would present the case to an arbitration commission whose decision they agreed from the outset to accept.
5. The commission would consist of:
   (i) an equal number of representatives from the tax authorities concerned,
   (ii) an uneven number of independent persons appointed by mutual agreement.

(4) Opinion of the European Parliament

The Parliament approved the proposal.

(5) Current status

The proposal is currently before the Council for adoption. Whether the final format will be a Community Directive or an inter-State convention has not yet been decided.

(6) References

Commission Proposal COM(76) 611 final	Official Journal C 301, 21.12.1976
European Parliament Opinion	Official Journal C 163, 11.7.1977
Economic and Social Committee Opinion	Official Journal C 18, 23.1.1978

3. TAXATION

3.3. Common taxation: mergers, divisions and contributions of assets

(1) Objective	To resolve the tax problems resulting from Member State tax treatment of cross-frontier restructuring of companies.
(2) Proposal	Proposal for a Council Directive on the common system of taxation of mergers, divisions and contribution of assets taking place between companies from different Member States.
(3) Contents	1. The national fiscal legislation of Member States can restrict cross-border restructuring of companies and impede the completion of the internal market. 2. The tax cost of mergers, acquisitions and divisions is a major obstacle. It impedes the adaptation of the size of enterprises to the requirements of the common market: e.g. producing in economically efficient quantities; being large enough to compete in global markets. Taxation of these transactions can replace purely commercial factors as major grounds for decisions on restructuring. It can even prevent restructuring operations from being carried out. 3. The purpose of the Directive is to introduce throughout the Community a common tax treatment of these cross-frontier restructuring operations so as to eliminate these problems.
(4) Opinion of the European Parliament	The Parliament approved the proposal.
(5) Current status	The proposal is now before the Council for adoption.
(6) References	Commission Proposal COM(69) 5 final — Official Journal C 39, 22.3.1969 European Parliament Opinion — Official Journal C 51, 29.4.1970 Economic and Social Committee Opinion — Official Journal C 100, 1.8.1969

3. TAXATION

3.4. Tax treatment of carry-over of losses

(1) Objective

To harmonize and liberalize Member States laws governing the carry-over of losses. This is of special importance because of its effect on the investment capability and competitiveness of businesses.

(2) Proposal

Proposal for a Council Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings.

(3) Contents

1. Taxes to which the Directive shall apply, for example:

France Impôt sur le revenu;
Impôt sur les sociétés;

Italy Imposta sul reddito delle persone fisiche;
Imposta sul reddito delle persone giuridiche;
Imposta locale sui redditi.

2. Rules for calculating profit or loss for the purpose of this Directive.

3. The firm can choose from one of two alternative approaches to the carry-over of losses. The first is that losses from a given financial year may be offset against the profits of one or more of the three preceding financial years. If not completely offset in this way, the balance may be set against the profits of the following financial years in chronological order. The second alternative is that the loss may be offset against the profits of the following financial years in chronological order.

(4) Opinion of the European Parliament

The Parliament approved the proposal subject to recommendations for amendment including a recommendation that the period of carry-over of profits from previous years be extended from two years to three. This was accepted by the Commission in its amended proposal.

(5) Current status

The proposal is currently before the Council of Ministers for adoption.

(6) References

Commission Proposal COM(84) 404 final	Official Journal C 253, 20.9.1984
Amended Proposal COM(85) 319 final	Official Journal C 170, 9.7.1985
European Parliament Opinion	Official Journal C 46, 18.2.1985
Economic and Social Committee Opinion	Official Journal C 160, 1.7.1985

3. TAXATION

3.5. Securities transactions: abolition of taxes

(1) Objective	To abolish indirect taxation on transactions in securities. Movements of capital will no longer be distorted by differing national taxes which currently often result in double taxation and discrimination.
(2) Proposal	Amended proposal for a Council Directive concerning indirect taxes on transactions in securities.
(3) Contents	1. Member States which impose a tax on transactions in securities must abolish it. 2. Obligation on Member States not to levy any tax on transactions in securities, whether or not levied at a flat rate, which is based on the value of the security being traded. 3. Member States may still levy certain duties: capital duty, transfer duty on transfers of shares when the transaction in fact relates to land and buildings, value-added tax on securities representing land and buildings.
(4) Opinion of the European Parliament	The Parliament approved the proposal.
(5) Current status	The proposal is currently before the Council for adoption.
(6) References	Commission Proposal COM(76) 124 final — Official Journal C 133, 14.6.1976 Amended Proposal COM(87) 139 final — Official Journal C 115, 30.4.1987 European Parliament Opinion — Official Journal C 318, 30.11.1987 Economic and Social Committee Opinion — Official Journal C 319, 30.11.1987

1. PUBLIC PROCUREMENT

Current problems and 1992 objectives

The total value of government procurement including contracts awarded by firms in the public sector is estimated at about ECU 400 billion (about 15% of the Community's gross domestic product). However only 2% of public procurement contracts in the Community are awarded to firms from a Member State other than the Member State advertising the tender.

This lack of open and effective competition is one of the most obvious and anachronistic obstacles to the completion of the internal market. As well as increasing costs for the procuring bodies, the lack of intra-Community competition in certain key industries (e.g. telecommunications) discourages the emergence of European firms which are competitive on world markets.

Two Directives in force for a number of years aim to open up national tendering procedures to competition by firms from other Member States. One addresses public supply contracts, the other public works (e.g. building and road construction). That dealing with public supply contracts has now been amended by a Directive adopted by the Council in 1988 (summary 1.1). This new Directive will substantially strengthen and improve existing provisions by describing the field of application in a more precise way, introducing new tendering procedures, imposing the use of common technical standards and by extending time limits. The Directive amending Directive 71/305/EEC concerning public works contracts was adopted by the Council in June 1989 (summary 1.2). Finally, the proposal intended to ensure that there are effective remedies should national or other discrimination occur in the award of contracts was adopted at the end of 1989 (summary 1.3).

Two proposals concerning water, energy, transport and telecommunications sectors have been brought together in an amended proposal (summary 1.4).

All the recent measures and proposals include the requirement that contracting entities use the same format for publishing tender notices in the *Official Journal of the European Communities* (S series). As with the previous Directives they also require that summaries of intended procurement be published in the Official Journal on a regular basis.

With a view to speeding up the transmission of essential information, the Commission has created a database containing all tenders published in the Official Journal Supplement, with daily updates. This database which is known as TED (Tenders Electronic Daily), is accessible to the public. For further information, contact ECHO - Service Clients, BP 2373, L-1023 Luxembourg (telephone: 352/488041).

Given the recent decision of the Council of Ministers to double the resources allocated to the structural funds by 1993, the Commission is determined to ensure compliance with Community tendering rules where government projects are part financed by these funds. When a public procurement contract is awarded in connection with the implementation of projects and programmes part financed by the structural Funds, the Commission plans to create a new 'public contract' questionnaire. The aim of the questionnaire, which would be completed by the tendering authority, is to provide the Commission with a simple method of checking that the tendering operations are being properly conducted. The Commission has also published a 'vade mecum on public contracts in the Community' to increase awareness of the rights and obligations of those operating in procurement markets by explaining the principles of the EEC Treaty as they apply to public procurement and the main features of the EC Directives.

1. PUBLIC PROCUREMENT

1.1. Public supply contracts

(1) Objective	The objective of Directive 77/62/EEC was to increase openness of procedures and practices in awarding public supply contracts; to develop the conditions of effective competition in the public procurement markets, and to define and reduce the extent of industry sectors which were currently exempt from the Directive. The objective of Directive 88/295/EEC is to strengthen the existing Directives; to make the use of the open procedure the rule and to create a negotiating procedure in order to limit the use of the single tender procedure; to lay down all applicable thresholds in one provision; to incorporate the contents of the GATT Agreement on Public Procurement into Community rules.
(2) Community measure	Council Directive 88/295/EEC of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and deleting certain provisions of Directive 80/767/EEC.
(3) Contents	1. Definition of public supply contracts including rental, lease and hire-purchase contracts. Definition of open, restricted and negotiated procedures. Open procedures allow any supplier to submit a bid and restricted procedures allow the purchasing authority to restrict the invitation to tender to a particular supplier. Negotiated procedures are where the purchasing authority consults suppliers of its choice and negotiates the contract terms with one or more of them. 2. The Directive covers certain parts of the defence sector. Also not covered is procurement of transport carriers by land, sea and air. Contracts awarded by contracting authorities where such contracts concern the production, transport and distribution of drinking water and contracts awarded by contracting authorities whose principal activity lies in the production and distribution of energy or telecommunication services are also excluded. Exemptions also apply to supplies which are declared secret or whose delivery must be accompanied by special security measures under national legislation, to cases where exclusion is required for protection of the security of the state and to procurement covered by special award procedures outlined in certain international agreements. 3. Thresholds above which the EC rules shall apply and rules for calculating certain estimated contract values (ECU 130 000 or ECU 200 000, depending on the status of the authority). The threshold in national currencies and the ecu equivalent of the threshold of the GATT Agreement on government procurement shall be revised every two years from 1 January 1988. 4. Basis for calculating contract value for the lease, rental or hire-purchase of products; fixed duration contracts, indefinite contracts, renewable contracts, split contracts.

5. Obligation on contracting authorities to use the open procedure for public supply contracts. There are certain exceptions covering situations where it would be impossible to maintain a balance between the value of the contract and procedural costs, or because of the special nature of the goods to be supplied. In such cases a restricted procedure may be used. Contracting authorities may also award their supply contracts by negotiated procedure which normally also requires prior publication of a tender notice. There are a number of exceptions to the publication rule for certain specified cases.
6. Obligation on contracting authorities to draw up a written report with specifically detailed contents on every contract awarded on the basis of restricted, negotiated and single tender procedures.
7. Obligation on contracting authorities to use the technical standards defined in the Directive for establishing contractual or general documents. Technical specifications shall be defined by the contracting authorities by reference to national standards which implement European standards or to common technical specifications. Rules governing any departure from this obligation in the absence of European standards or common technical specifications may refer to:

(i) national standards which implement international standards accepted in the country of the contracting authority;
(ii) national standards of the country of the contracting authority;
(iii) other standards.

8. Requirement for contracting authorities to publish, at the beginning of each fiscal year, notices by product area of intended procurement during the coming 12 months which has an estimated value of at least ECU 750 000. Obligation for the results of the tender to be published, except in certain cases where this would be contrary to public interest, or prejudice fair competition among suppliers.
9. Time limits for receipt of requests for participation in restricted and negotiated procedures with prior call for competition to be not less than 37 days from the day the invitation to tender was sent out. In restricted procedures, the time limit for receipt of tenders shall be not less than 40 days from the date a written invitation to tender was sent out and in open procedure it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender.
10. Exemption until 31 December 1992 for certain existing national provisions which aim to reduce regional disparities and to promote job creation in areas where development is lagging behind.
11. Obligation on Member States to communicate to the Commission no later than 31 October each year, a detailed statistical report relating to contracts awarded in the previous year.

(4) Deadline for implementing Member State legislation	1.1.1989 Derogations for Greece, Spain and Portugal until 1 March 1992, as regards the modification covered by Directive 88/295/EEC. However, these countries are under the obligation to apply Directive 77/62/EEC and 80/767/EEC.	
(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)	The Commission will propose a consolidation of the various Directives in this field in the near future.	
(7) References	Council Adoption	Official Journal L 127, 22.3.1988

1. PUBLIC PROCUREMENT

1.2. Public works contracts

(1) Objective

The objective of the Directive is to open up public works to competition by publication in the *Official Journal of the European Communities* of contracts awarded at national, regional and local level.

(2) Community measure

Council Directive 89/440/EEC Of 18 July 1989 amending Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts.

(3) Contents

1. Extension of the field of application of Directive 71/305/EEC to cover some new contractual forms, e.g. promotion contracts and management contracts.
2. Definitions include public works concession, open procedures, restricted procedures and negotiated procedures.
3. Obligation on Member States to ensure that contracting authorities financing more than 50% of works contracts which they do not intend to award themselves nevertheless comply with the provisions of the Directive.
4. Provisions concerning concession contracts awarded to third parties and the minimum percentage of work assigned by them to sub-contractors.
5. Obligation on contracting authorities to inform any tenderer who so requests of the reasons for the rejection of his tender within 15 days. Obligation on contracting authorities to draw up a written report identifying the contracting authority, the successful participants and the reason for their selection, the unsuccessful participants and the reason for their rejection and the successful tenderer and reasons for his selection. This report shall be communicated to the Commission if it should so request.
6. The provisions of the Directive shall apply to public works contracts whose estimated net value is not less than ECU 5 million.
7. Reduction of the use of private contracts by introducing a negotiating procedure with a prior call for competition and at least three candidates. Limited cases in which a contracting authority may use the negotiating procedure without a prior call for competition.
8. Obligation on the contracting authorities to define technical specifications by reference to European standards or European harmonization documents.
9. Obligation on the contracting authorities to publish the main elements of the contract after it has been awarded.
10. Time limits for receipt of requests for participation in restricted and negotiated procedures with prior call for competition to be not less than 37 days from the day the invitation to tender was sent out. In restricted procedures, the time limit for receipt of tenders shall be not less than 40 days from the date a written invitation to tender was sent out and in

	open procedures it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender. 11. Exemption until 31 December 1992 for certain existing national provisions which aim to reduce regional disparities and to promote job creation in areas where development is lagging behind. 12. More specific requirements for establishing reports and statistics.	
(4) Deadline for implementing Member State legislation	19.7.1990 (Greece, Spain and Portugal 1.4.1992)	
(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)		
(7) References	Council Adoption	Official Journal L 210, 21.7.1989

1. PUBLIC PROCUREMENT

1.3. Remedies

(1) Objective	To increase substantially the guarantees of openness and non-discrimination in public procurement. To ensure that any offences committed during the tender award procedures are effectively and rapidly censured.	
(2) Community measure	Council Directive 89/XXX/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.	
(3) Contents	1. The Directive seeks to guarantee firms which have suffered discrimination by reason of an infringement of Community law in the field of public procurement or national rules implementing that law access to effective and rapid remedies in all Member States. Such remedies must include, *inter alia,* the possibility of taking interim measures (such as suspension of the offending award procedure), the setting aside or correction of unlawful decisions or discriminatory technical specifications, and the compensation of injured parties. 2. A special procedure has been introduced whereby the Commission, when it considers that a clear and manifest infringement has been committed, may quickly inform the Member State and the contracting authority concerned of its reasons for taking that view and request that the infringement be terminated. The Member State will have 21 days in which to reply. If the Commission is not satisfied with the Member State's reply, it will initiate infringement proceedings under Article 169 of the EEC Treaty and, where necessary, apply to the Court of Justice for the adoption of interim measures. 3. The Directive must be viewed as an essential complement to and means of ensuring the effective application of the Community measures concerning the transparency and harmonization of award procedures and will make it possible to ensure genuine compliance therewith. It will also provide firms with the same level of legal safeguards in respect of remedies in all Member States.	
(4) Deadline for implementing Member State legislation	Two years from the date of adoption of the Directive (21.12.1989).	
(5) Application date (if different from 4)		
(6) Date for further coordinating proposal (if specified)		
(7) References	Adoption by the Council	Not yet published.

1. PUBLIC PROCUREMENT

1.4. Public services: water, energy, transport and telecommunications services

(1) Objective

To bring the water, energy, transport and telecommunications sectors, which were previously excluded from the scope of the Community rules governing public procurement, within their scope thereby ensuring that decisions in those areas are taken on the best commercial grounds. Consequently, to increase the openness of award procedures and improve the provision of information, offering greater opportunities for participation to interested firms and establishing a better basis for pursuing infringements.

(2) Proposal

Amended proposal for a Council Directive on the procurement procedures of entities operating in the water, energy, transport and telecommunications services.

(3) Contents

1. Definitions of public authorities, public undertakings, supply and works contracts, open, restricted and negotiated procedures, etc.
2. Activities covered:
(i) the supply or management of networks providing the service to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat;
(ii) the exploitation of a geographical area for the purpose of extracting oil, gas, coal or other solid fuels or the provision of airport, maritime, inland port or other terminal facilities;
(iii) the management of railway, tramway, trolleybus or bus services;
(iv) the operation of public telecommunications networks or the provision of one or more telecommunications services to the public.
3. The Directive also applies to private entities where it is established that they are protected from competition e.g. because they operate on the basis of special or exclusive rights or have to obtain prior authorization from a Member State to operate in the sector in question.
4. Situations in which the Directive will not apply, e.g. contracts whose execution must be accompanied by special national security measures.
5. The Directive will apply to supply and telecommunications software service contracts worth not less than ECU 200 000 before VAT and works contracts worth not less than ECU 5 million before VAT.
6. Contracting entities must define technical specifications by reference to national standards implementing European standards or to common technical specifications. Certain exceptions to the obligation are allowed. If no European standards or common technical specifications exist, the technical specifications may be defined by reference to other documents, such as national standards implementing international standards; national standards of the country of the contracting authority; or any other standards.

7. Possibility for contracting entities to use either open, restricted or negotiated procedures to award contracts, provided that a call for competition has been published in the manner provided for in the Directive. The contracting authority has the choice between three ways of calling for competition: publishing a tender notice in the Official Journal; using a list of qualified suppliers, the existence of which is indicated in a notice published in the Official Journal; or publishing a periodic notice (see point 8 below), where the planned contract effectively corresponds to the information conveyed in the notice. Contracting entities may use the negotiated procedure without a prior call for competition in certain specified cases (e.g. supply, works and telecommunications software service contracts for the sole purpose of research and development.
8. Obligation to publish at least once a year a periodic notice setting out the supply and works contracts worth not less than ECU 750 000 and ECU 5 million respectively that the contracting entity expects to award in the year ahead.
9. Obligation on a contracting entity which has awarded a contract to publish the results of the procedure in the Official Journal. In certain cases, however, the contents of the notice may be limited.
10. In open procedures, the time limit for receipt of tenders must be not less than 40 days from the date of publication of the notice. In restricted or negotiated procedures with a prior call for competition, the time limit must normally be at least three weeks and, at all events, not less than ten days (from the date of publication of the tender notice) in the case of notices published in the Official Journal (see above); where it is not possible to reach agreement on the time limit for receipt of tenders, the latter 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. Requests to participate in contracts and invitations to tender may be made by letter, telegram, telex, telefax or telephone.
11. 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. The contract documents and any supporting documents must be sent to the suppliers by the contracting entities within six working days of receiving their application.
12. The qualification and selection of suppliers must be based on criteria that are objective and non-discriminatory. Contracting entities must not impose obligations on some suppliers only and must not require tests or proof that duplicate objective is already available. They must lay down and make available to interested suppliers the criteria and rules according to which they will make their decision.
13. The criteria for awarding contracts are either the lowest prices offered or the most economically advantageous tender.

(4) Opinion of the European Parliament	First reading: Parliament approved both original proposals, subject to certain amendments some of which were accepted by the Commission. The Commission agreed in particular to Parliament's request that it amalgamate the two initial proposals and put forward an amended proposal covering the four sectors.	
(5) Current status	An amended proposal, incorporating the amendments requested by Parliament and amalgamating both original proposals into a single one, is currently before the Council with a view to adoption by the latter of a common position.	
(6) References	Commission Proposal COM(88) 377 final	Official Journal C 319, 12.12.1988
	Commission Proposal COM(88) 378 final	Official Journal C 40, 17.2.1989
	Amended Proposal COM(89) 380 final	Official Journal C 264, 16.10.1989
	European Parliament Opinion First reading	Official Journal C 158, 26.6.1989
	Economic and Social Committee Opinion	Official Journal C 139, 5.6.1989

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