ENGLISH

COMPLETING THE INTERNAL MARKET

CURRENT STATUS 1 JANUARY 1992

CONDITIONS FOR BUSINESS COOPERATION

Company law

Intellectual property

Company taxation

PUBLIC PROCUREMENT

COMMISSION OF THE EUROPEAN COMMUNITIES

Volume 3

JANUARY 1992

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

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

In June 1991, the Commission issued its 'Sixth 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 booklet is one of a series of six publications.

The complete series of booklets covers

A common market for services

The elimination of frontier controls

Conditions for business cooperation
Public procurement

A new Community standards policy

Veterinary and plant health controls

Community social policy

These booklets will be updated and reissued at regular intervals. Details of availability are given on the inside back cover.

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CONDITIONS FOR BUSINESS COOPERATION PUBLIC PROCUREMENT

How to use this booklet

This series of booklets sets out:

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

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

(iii) to provide an initial guide to the content and current status of each proposal which the Commission has drafted with a view to completing the internal market in 1992.

This booklet contains:

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

(ii) a general introduction to the issues and problems to which the establishment of a single market gives rise as regards business cooperation and public procurement;

(iii) specific introductions to the approach being taken in individual sectors of business cooperation and public procurement;

(iv) a brief summary of each measure regarding business cooperation and public procurement which has been adopted or proposed with a view to establishing the internal market. Where a measure has been proposed but not yet adopted, the summary also gives details of the European Parliament's opinion and of the current status of the proposal. Where the measure has been adopted, the summary gives the deadline for implementing the legislation in the Member States, together with details of any follow-up work and of the implementing measures taken by the Commission.

The reader should:

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

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

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

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 sales offices listed inside the back cover.

Note to the reader

This publication provides a snapshot, as at 1 January 1992, of a situation which is evolving all the time.

The reader should understand that the text is provisional, also from a linguistic and terminological point of view. It will be revised and consolidated as and when measures are adopted in their definitive form.

HOW THE EUROPEAN COMMUNITY MAKES LAWS
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 booklet 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 booklet 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 booklet are Council Directives.

EEC legislation from start to finish (directives and regulations)

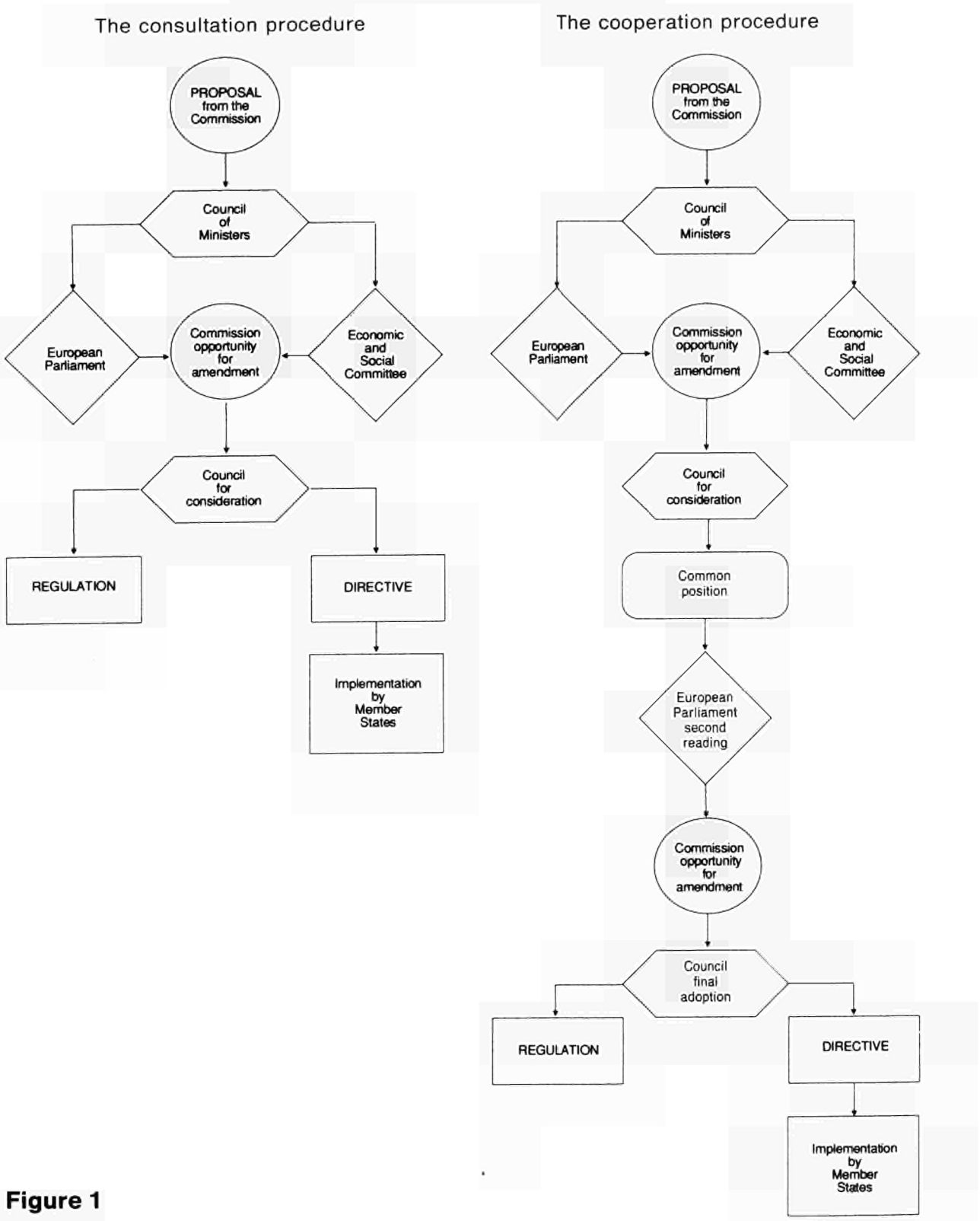

Figure 1

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 has 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 booklet. 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 booklet. 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 booklet 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 Offical Journal 'C' series references for the Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee, if published by 31 December 1991.

CONDITIONS FOR BUSINESS COOPERATION

PUBLIC PROCUREMENT

1. PUBLIC PROCUREMENT

INTRODUCTION
WHAT CONDITIONS FOR BUSINESS 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 some 282 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 which entered into force on 1 July 1987, confirmed the objective of achieving a single European market by 1992 and the timetable set out in the 1985 White Paper.

It established the Community's decision-making procedures and increased the scope for qualified 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.

1991 — Current situation

In the field of company law, the rate of progress has been slow and all the proposals which are essential from the point of view of strengthening the means of cooperation between businesses (structure of public limited companies, statute for a European company and takeover and other general bids) are still on the Council table.

In the industrial and intellectual property field, the results have been less than satisfactory. Although a Directive on the legal protection of computer programs has been adopted, work on the Community trade mark and the Community patent is making little headway.

As far as company taxation is concerned, 1991 did see some progress in that the Council began discussing the proposal to abolish withholding taxes on interest and royalty payments between parent companies and subsidiaries in different Member States. It did not, however, continue its examination of the proposal to abolish indirect taxes on transactions in securities.

1992 — Single market

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

Business cooperation

The measures and proposals summarized 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 free 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. In its November 1990 communication, the Commission took the view that, with markets becoming increasingly globalized and competition from the Community's industrial partners intensifying, the time had come to present a coherent industrial policy blueprint to the Member States.

As far as company law is concerned, a genuine internal market requires that firms should be able to cooperate, set up subsidiaries or merge and, in general, be spared any unnecessary red tape. The Community has adopted a number of additional measures that predate the White Paper: the first Directive, which relates to the disclosure, the validity of obligations entered into by, and the nullity of companies with limited liability, lays the foundations of European company law; the second, third and sixth Directives deal with the formation of public limited companies; the fourth, seventh and eighth Directives relate to companies with limited liability, and the twelfth to single-member companies. A Directive exempting small and medium-sized enterprises from certain accounting requirements has also been adopted.

The Regulation creating the European economic interest grouping (EEIG) came into force in 1989. Nevertheless, despite the adoption of the first Community measures doing away with certain forms of double taxation on businesses, only some of the necessary conditions for business cooperation are in place.

Progress remains to be achieved in the intellectual property field, where 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 from different Member States. In a single market, goods should be able to benefit from a single system of legal protection in the interests of both industry and consumers. Although important measures have been adopted, key pieces in the jigsaw are still missing: the Community trade mark and the Community patent. The introduction of the former is dependent on a decision being reached on the location of the Trade Mark Office. The Community Patent Convention has, for its part, yet to be ratified by the Member States.

In the field of company taxation, two Directives and a Convention were adopted on 23 July 1990 which should enable businesses to take advantage of the benefits flowing from the internal market. One of the Directives concerns the relations between parent companies and subsidiaries and the other the tax arrangements applicable to mergers, divisions, transfers of assets and exchanges of shares between companies established in different Member States. The Convention provides for an arbitration procedure in the event of a dispute between

national tax administrations concerning a cross-border transaction. None of the Member States has ratified it yet, although a number of them have set the necessary procedures in motion.

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

Building a unified internal market also involves creating the conditions under which enterprises from different Member States can cooperate and locate their operations anywhere in the Community.

The Treaty of Rome, the EEC's founding charter, mentions in Article 3(b) the 'approximation of the laws of Member States' as being one of the principal means of attaining its objectives, including as these do the completion of the internal market.

In connection with the right of establishment, Article 54(3)(g) of the Treaty empowers the Community institutions 'to coordinate to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community'. Article 58 defines 'companies or firms' as companies or firms constituted under civil or commercial law.

The Community's activities in the company law field were therefore centred initially on the approximation of Member States' laws and were aimed first of all at attaining the fullest possible mobility between one country and another and at organizing freedom of establishment for enterprises.

The first Directive (summary 1.1) governs disclosure, and the validity of obligations entered into by, and the nullity of, companies with limited liability. The second Directive (summary 1.2), the first in a series of Directives devoted to public limited liability companies, deals with the formation of such companies and questions relating to their capital.

The fourth, seventh and eighth Directives (summaries 1.6, 1.7 and 1.10) together form an embryonic 'European accountancy code'. The three Directives harmonize the financial information published by companies with a view to making it equivalent and comparable. They apply to companies with limited liability.

The third Directive (summary 1.3) harmonizes the rules on mergers between public limited liability companies from the same Member State, that is to say domestic mergers. It is complemented by the sixth Directive (summary 1.5) on the division of public limited liability companies.

Gradually, however, the Community's sights have been set higher, going beyond mobility. The object is to find legal formulas which permit restructurings between groups from different Member States. The creation of a Community legislative framework for cross-border activities by enterprises and for cooperation between enterprises from different Member States, will make it easier for European enterprises to pool the resources that are available in several Member States and hence be competitive not only in Europe, but also then in the world at large. It is no longer the mere alignment of domestic laws that is being sought, but the creation of a truly European company law. The measures provided for in the White Paper in the company law field form part of this design.

The Regulation on the European economic interest grouping (summary 1.15) has made available the status of a new type of association which makes it easier for separate businesses from different Member States to undertake a specified range of joint activities, without having to merge or set up a jointly owned subsidiary. The proposal on the European company (summary 1.16) sets out to create a European legislative framework which will allow existing companies to restructure across frontiers without being impeded by differences between national laws.

Also covered by the White Paper are the proposal for a fifth Directive concerning the structure of public limited companies and the powers and obligations of their organs (summary 1.13), a proposal aimed at harmonizing the laws on cross-border mergers (summary 1.4) and a proposal for a Directive harmonizing Member States' laws on takeover and other general bids (summary 1.14). A Directive concerning disclosure requirements in respect of branches (summary 1.11) was adopted in December 1989, as was a Directive permitting the formation of single-member private limited liability companies (1.12).

Substantial progress has been made since the White Paper was published. The European economic interest grouping (EEIG) form of association has met with an enthusiastic response. The 11th Directive (disclosure requirements in respect of branches) and the 12th Directive (single-member companies) have been adopted.

Nevertheless, progress in a number of important areas is still being held up by lack of agreement on the social aspects of the proposals (fifth Directive on company structure; 10th Directive on cross-border mergers). The European company, which is the subject of two new, separate Commission proposals, one of which concerns the involvement of employees, is currently being discussed by the Council and Parliament.

1. COMPANY LAW

1.1. Disclosure and the validity of obligations entered into by, and the nullity of companies with limited liability: first Directive

(1) Objective

To coordinate Member States' provisions concerning disclosure, the power of representation of the organs and the nullity of companies with limited liability. To ensure thereby the protection of the interests of members and others.

(2) Community measures

First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

(3) Contents

1. The Directive applies to all companies with limited liability. It establishes the principle of compulsory disclosure. This concerns information of a legal nature, notably the instrument of constitution, the statutes if contained in a separate instrument, the amount of the subscribed capital, any transfer of the seat of the company, any declaration of nullity of the company by the courts, and any instrument or decision concerning the duration, winding-up or liquidation of the company.
2. Compulsory disclosure extends also to the appointment, termination of office and particulars of the persons who, either as a body constituted by law or as members of any such body, are authorized to represent the company in dealings with third parties and in legal proceedings. The same applies to persons who take part in the administration, supervision or control of the company. It must be clear from the disclosure whether the persons authorized to represent the company may do so alone or must act jointly.
3. The means of disclosure are threefold: firstly, the opening of a file on every company in an official register; secondly, publication in a national official gazette; and thirdly, an indication, on all business documents, of the legal form and registered place of business of the company and the register in which the file on the company is kept, together with the number of the company in that register.
4. In the event of non-disclosure, the particulars omitted may not be relied on against third parties. This rule is qualified in two cases. First of all, if the company proves that the third parties had knowledge of the omitted particulars, the particulars may be relied on against them. Conversely, if third parties prove that it was impossible for them to have had knowledge of the published particulars during the first 15 days following publication, the particulars may not be relied on against them.
5. The Directive governs the validity of obligations entered into by a company. Several sets of circumstances are envisaged here. Firstly, if the powers of the organs are limited by law, the limits may be relied on against third parties ('ignorance of the law is no excuse'). Secondly, if the limits arise under the statutes or from a decision of the general meeting of shareholders, they may never be relied on against third parties. Thirdly and lastly, if the disputed act is outside the objects of the company, it is nevertheless binding on the company unless the

	relevant national law authorizes the company to establish that the third party had knowledge of the misuse of powers. 6. The Directive contains a set of rules on nullity. Nullity may not be automatic, a court judgment being required. 7. An exhaustive list is given of the circumstances in which nullity may be ordered (for example, no instrument of constitution was executed or the requisite legal formalities were not complied with; the objects of the company are unlawful or contrary to public policy; or the rules concerning the minimum amount of capital to be paid up were not complied with). Nullity is not retroactive: its consequences are the same as those of a winding-up.
(4) Deadline for implementation of the legislation in the Member States	11.9.1969
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 65, 14.3.1968
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.2. The formation of public limited liability companies and the maintenance and alteration of their capital: second Directive

(1) Objective

To coordinate Member States' provisions concerning the formation of public limited liability companies and the maintenance and alteration of their capital.

(2) Community measures

Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

(3) Contents

1. The Directive applies to public limited liability companies.
2. As regards formation, the Directive lists the minimum information that must be given in the statutes. Some of the information may appear in a separate document. Where the law of a Member State provides that a company may not commence business without official authorization, that Member State must lay down rules concerning the validity of liabilities incurred by the company prior to the grant of authorization. Where the relevant law requires a company to be formed by more than one member, the fact that the number of members has fallen below the legal minimum may not lead to the automatic dissolution of the company.
3. Capital may not be less than ECU 25 000 for the purposes of forming a company or obtaining authorization to commence business. Rules are laid down to ensure the reality and sincerity of the contributions in cash or in kind.
4. The distribution of fictitious dividends is prohibited.
5. In the event of a serious loss of subscribed capital, a general meeting of shareholders must be called to consider what measures should be taken.
6. Rules are laid down governing share ownership. The shares of a company may not be subscribed for by the company itself. Where the law of a Member State permits a company to acquire its own shares, such acquisition is subject to a series of strict conditions listed in the Directive. Where the acquisition takes place in a lawful manner, the shares transferred are, as long as they are held by the company, subject to certain special arrangements.
7. Further rules cover increases in capital. It is the general meeting that decides on any such increase. Shares issued in the course of an increase in capital must be at least 25% paid. Where shares are issued otherwise than for cash, the consideration must be transferred in full within five years. Shareholders have a right of pre-emption. The amount of the increase may not be more than that of the subscription.
8. In the event of a reduction in capital, the protection of existing creditors, based on the right to obtain security, is ensured. The Directive also provides that the capital may not be reduced to below the legal minimum, and lays down rules concerning transactions which

	are akin to a reduction, such as redemption or the compulsory withdrawal of shares, where permitted by the law of a Member State.
(4) Deadline for implementation of the legislation in the Member States	16.12.1978
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 26, 30.1.1977
(7) Follow-up work	On 20 December 1990, the Commission presented a new proposal for a Council Directive amending the Directive 77/91/EEC on the formation of public limited liability companies and the maintenance and alteration of their capital (COM(90) 631 final, Official Journal C 8, 12.1.1991). This Directive provides that it should be possible for any interested person to acquaint himself with the basic particulars of a company at the time of its incorporation, including the exact composition of its capital.
(8) Commission implementing measures	

1. COMPANY LAW

1.3. Mergers between public limited liability companies: domestic mergers (third Directive)

(1) Objective	To lay down rules concerning mergers between public limited liability companies from the same Member State, that is to say domestic mergers. To ensure thereby adequate protection for members and third parties.
(2) Community measures	Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies.
(3) Contents	1. To fall within the scope of the Directive, a merger must fulfil two conditions. Firstly, it must be between two or more public limited liability companies satisfying one of the criteria of the second paragraph of Article 58 of the Treaty. However, cooperatives and companies which are insolvent (if the merger will cause them to cease to exist) may be excluded by any Member State from the Directive's scope. Secondly, it must result either in the acquisition of one or more companies by another, or in the formation of a new company. 2. The merger process consists of three stages: — stage one: the drawing-up of draft terms of merger, an instrument negotiated by the administrative or management bodies of the merging companies. The draft terms of merger must contain a minimum of particulars, including the share exchange ratio and the new rights of shareholders. The draft must be published in the manner prescribed by the law of each Member State; — stage two: a discussion, within each of the companies, by a general meeting of shareholders, ending in a vote on the merger decision. Once it has been taken, the merger decision must also be published; — stage three: the actual merger. This involves the transfer, both as between the companies and as regards third parties, of all the assets and liabilities of the company being acquired to the acquiring company or of the merging companies to the new company. 3. Rules governing the nullity of mergers are laid down in order to protect members and third parties. The cases of nullity are limited to formal illegalities (e.g. lack of judicial or administrative preventive supervision of legality, irregularity vitiating the decision of the general meeting). A series of restrictions are placed on the ordering and enforcement of nullity. 4. A number of specific provisions are laid down with a view to protecting the interests of members and creditors of the companies.
(4) Deadline for implementation of the legislation in the Member States	1.1.1986
(5) Date of entry into force (if different from the above)	

(6) References	Official Journal L 295, 20.10.1978
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.4. Mergers between public limited companies: cross-border mergers (proposal for a 10th Directive)

(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 domestic mergers, for those aspects of cross-border mergers which differ from domestic mergers (due to different legal systems applying). To protect shareholders, creditors and employees when all the assets and liabilities of a company are transferred to another company in another Member State.
(2) Proposal	Proposal for a 10th 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' of public limited companies. 2. Obligation on the managers of the merging companies to draw up draft terms of merger as required by the Member States involved and this Directive. Information additional to that already required by the Directive on domestic 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 Economic and Social Committee opinion — Official Journal C 303, 25.11.1985

1. COMPANY LAW

1.5. Division of public limited liability companies: sixth Directive

(1) Objective

To lay down rules concerning divisions of public limited liability companies from the same Member State and afford the interests of members and third parties adequate protection.

(2) Community measures

Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies.

(3) Contents

1. The Directive governs division by acquisition, division by the formation of new companies and division under the supervision of a judicial authority.
2. A division by acquisition is an operation whereby, after being wound up, but without going into liquidation, a company transfers all its assets and liabilities to more than one company. The shareholders of the company being divided are allocated shares in the companies receiving contributions as a result of the division ('recipient companies').
3. Division by the formation of new companies is an operation whereby, after being wound up, but without going into liquidation, a company transfers all its assets and liabilities to more than one newly formed company. The shareholders of the company being divided are allocated shares in the recipient companies.
4. The following rules apply to divisions by acquisition and divisions by the formation of new companies:
5. Draft terms of division, an instrument negotiated by the administrative or management bodies of the companies involved in a division, must be drawn up. The draft must contain a minimum of particulars, including the share exchange ratio and the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares. It must be published in the manner prescribed by the law of each Member State.
6. A division requires at least the approval of a general meeting of each company involved in the division.
7. The administrative or management bodies of a company being divided must supply certain information to the general meeting of that company and to the administrative or management bodies of the recipient companies.
8. Strict safeguards ensure the protection of shareholders and, in particular, creditors. As regards the latter, the main safeguard consists in the joint and several liability of the recipient companies where one of them does not discharge an obligation transferred to it under the division. The Member States may provide that the recipient companies will be jointly and severally liable for the obligations of the company being divided.
9. Division under the supervision of a judicial authority is a division operation subject to the supervision of a judicial authority having the power to call a general meeting of shareholders of the company being divided in order to decide upon the division, to call any meeting of

	creditors of each of the companies involved, in order to decide upon the division. 10. Where the judicial authority establishes that no prejudice would be caused to shareholders or creditors, it may relieve the companies involved in the division from applying certain rules applicable to divisions by acquisition and divisions by the formation of new companies.
(4) Deadline for implementation of the legislation in the Member States	1.1.1986
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 378, 31.12.1982
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.6. Annual accounts of companies with limited liability: fourth Directive

(1) Objective

To coordinate Member States' provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used therein and their publication in respect of all companies with limited liability.

(2) Community measures

Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies.

(3) Contents

1. The Directive applies to all companies with limited liability. Member States may, however, exempt banks and other financial institutions and insurance companies. The Directive does not apply to consolidated accounts, which are dealt with in a separate Directive (see, in this Chapter, the seventh Directive on consolidated accounts — summary 1.7).
2. Rules governing the presentation of the balance sheet: the Directive provides for two balance sheet layouts, leaving it to the Member States to prescribe one or both of them. There follow a number of special provisions relating to certain balance sheet items (e.g. 'prepayments and accrued income', 'land and buildings').
3. Several layouts are proposed for the profit and loss account, from which Member States are free to choose. There follow a number of special provisions relating to certain items in the profit and loss account.
4. The Directive also contains valuation rules based on such general principles as prudence, consistency in the application of the methods of valuation, etc.
5. The notes to the accounts must contain *inter alia* the valuation methods, information on undertakings in which the company holds a certain percentage of capital, the amount of the company's debts, the total amount of any financial commitments that are not included in the balance sheet, etc.
6. The annual report must include a fair review of the development of the company's business and of its position. It must also give an indication of any important events that have occurred since the end of the financial year, the company's likely future development and activities in the field of research and development.
7. The Directive lays down certain rules on publication.
8. Lastly, the Directive provides for a system of auditing under which companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts. Such person or persons must also verify that the annual report is consistent with the annual accounts for the same financial year.
9. Exemptions are provided for small and medium-sized companies. These exemptions concern the amount of information to be published and the auditing of the accounts by a qualified person. Small and medium-sized companies are defined by reference to three criteria: balance sheet total, turnover and number of employees.

	10. Small companies are companies which, on their balance sheet dates, do not exceed the limits of two of the following three criteria: — balance sheet total: ECU 1 000 000, — net turnover: ECU 2 000 000, — number of employees: 50; 11. In the case of medium-sized companies, these criteria are: — balance sheet total: ECU 4 000 000, — net turnover: ECU 8 000 000, — number of employees: 250; 12. By a Directive of 27 November 1984 the amounts expressed in ecus were increased in the light of economic and monetary trends in the Community. The new amounts are: for small companies: — balance sheet total: ECU 1 550 000, — net turnover: ECU 3 200 000, — number of employees: 50; for medium-sized companies: — balance sheet total: ECU 6 200 000, — net turnover: ECU 12 800 000, — number of employees: 250.
(4) Deadline for implementation of the legislation in the Member States	31.7.1980
(5) Date of entry into force (if different from the above)	31.1.1982
(6) References	Official Journal L 222, 14.8.1978
(7) Follow-up work	On 8 November 1990 the Council adopted two Directives amending the fourth and seventh Directives with respect to the scope of those Directives, the exemptions for small and medium-sized companies and the publication of accounts in ecus (Council Directives 90/604/EEC and 90/605/EEC published in Official Journal L 317, 16.11.1990 — summaries 1.8 and 1.9).
(8) Commission implementing measures	

1. COMPANY LAW

1.7. Consolidated accounts of companies with limited liability: seventh Directive

(1) Objective

To coordinate national laws on consolidated (i.e. group) accounts. To ensure thereby the comparability and equivalence of financial information.

(2) Community measures

Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts.

(3) Contents

1. Any company (parent company) which legally controls another company (subsidiary company) is under a duty to prepare consolidated accounts. In most cases, legal control takes the form of the holding of a majority of voting rights. Member States may also require consolidated accounts to be prepared in other cases where a parent company has only a minority shareholding but exercises *de facto* control.
2. A parent company and all its subsidiaries are companies to be consolidated where either the parent company or one or more subsidiaries is established as a company with limited liability.
3. Consolidated accounts comprise the consolidated balance sheet, the consolidated profit and loss account and the notes to the accounts. These documents constitute a composite whole. Consolidated accounts must give a true and fair view of the assets, liabilities, financial position and profit or loss of the companies included therein taken as a whole.
4. Consolidated accounts must show the assets, liabilities, financial position and profit or loss of the companies included therein as if those companies were a single company.
5. The book values of shares in the capital of companies included in a consolidation must be set off against the proportion which they represent of the capital and reserves of those companies. Such set-off must be effected on the basis of book values as at the date on which the companies are included in the consolidation for the first time.
6. Consolidated accounts must be drawn up at the same date as the annual accounts of the parent company.
7. A company which prepares consolidated accounts must have them audited by one or more persons authorized to audit accounts under the laws of the Member State which govern that company. The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated acounts for the same financial year.
8. The consolidated accounts, the consolidated annual report and the auditor's report must be published in accordance with the provisions of the first Directive.

(4) Deadline for implementation of the legislation in the Member States

1.1.1988

(5) Date of entry into force (if different from the above)	1.1.1990
(6) References	Official Journal L 193, 18.7.1983
(7) Follow-up work	On 8 November 1990 the Council adopted two Directives amending the fourth and seventh Directives with respect to the scope of those Directives, the exemptions for small and medium-sized companies and the publication of accounts in ecus (Council Directives 90/604/EEC and 90/605/EEC published in Official Journal L 317, 16.11.1990 — summaries 1.8 and 1.9).
(8) Commission implementing measures	

1. COMPANY LAW

1.8. Annual accounts and consolidated accounts: exemptions for small and medium-sized companies

(1) Objective

To simplify the administrative procedures with which small and medium-sized companies have to comply. To render less onerous the accounting obligations imposed on small companies.

(2) Community measures

Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecus.

(3) Contents

1. The Directive adopted differs appreciably from the Commission's proposal and amends Directive 78/660/EEC as follows:
— the thresholds defining small and medium-sized companies are raised (29% in the case of the balance sheet total and 25% in that of turnover);
for small companies:
— balance sheet total: ECU 2 000 000,
— net turnover: ECU 4 000 000,
— number of employees: 50;
for medium-sized companies:
— balance sheet total: ECU 8 000 000,
— net turnover: ECU 16 000 000,
— number of employees: 250;
— exemption of small companies from the obligation to give certain information in the notes to their accounts;
— exemption of small companies from the obligation to prepare annual reports;
— exemption of all companies from the obligation to publish certain information concerning the remuneration of managers or directors where that information makes it possible to identify the position of a specific individual.
2. The Directive also permits companies to publish their accounts in ecus.
3. Companies which, on their balance sheet dates, do not exceed the limits of two of the following three criteria:
— balance sheet total: ECU 2 000 000,
— net turnover: ECU 4 000 000,
— number of employees during the financial year: 50,
may draw up abridged balance sheets containing only some of the items provided for in Council Directive 78/660/EEC (Official Journal L 222, 14.8.1978).
4. Companies may prepare and publish their annual accounts and consolidated accounts in ecus, translated at the exchange rate prevailing on the balance sheet date.

(4) Deadline for implementation of the legislation in the Member States

1.1.1993

(5) Date of entry into force (if different from the above)	Member States may provide that the Directive shall only apply for the first time to accounts for the financial year beginning on 1 January 1995 or during the calendar year 1995.
(6) References	Official Journal L 317, 16.11.1990
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.9. Annual accounts and consolidated accounts: extension of scope

(1) Objective	To extend Community legislation relating to annual company accounts and consolidated accounts to partnerships. This will ensure that certain types of partnership, all of whose unlimited members are constituted as limited liability companies, do not avoid corporate disclosure.
(2) Community measures	Council Directive 90/605/EEC of 8 November 1990 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 the scope of the accounts Directives to cover certain types of partnership. 2. The Directive permits Member States to require a limited liability company which is an unlimited member to prepare and publish accounts. This is to take account *inter alia* of the situation in those Member States which do not have a system of registration of partnerships. 3. The Directive also permits Member States to include partnerships in consolidated accounts.
(4) Deadline for implementation of the legislation in the Member States	1.1.1993
(5) Date of entry into force (if different from the above)	Member States may provide that the Directive shall only apply for the first time to accounts for the financial year beginning on 1 January 1995 or during the calendar year 1995.
(6) References	Official Journal L 317, 16.11.1990
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.10. Qualifications of persons responsible for carrying out the statutory audits of accounting documents: eighth Directive

(1) Objective

To complete the series of Directives concerning company accounts; to define the qualifications of persons responsible for carrying out the statutory audits of the accounting documents required by the fourth and seventh Directives.

(2) Community measures

Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents.

(3) Contents

1. Persons responsible for carrying out audits of accounting documents may, depending on the law of each Member State, be natural or legal persons or other types of company, firm or partnership.
2. The Directive applies to persons responsible for carrying out:
— statutory audits of the annual accounts of companies and firms and verifying that the annual reports are consistent with those annual accounts in so far as such audits and such verification are required by Community law;
— statutory audits of the consolidated accounts of bodies of undertakings and verifying that the consolidated annual reports are consistent with those consolidated accounts in so far as such audits and such verification are required by Community law.
3. Persons responsible for carrying out audits of accounting documents must be of good repute and may not engage in any activity incompatible with the auditing of such documents.
4. A natural person may be approved to carry out statutory audits of accounting documents only after:
— having attained university entrance level;
— completed a course of theoretical instruction;
— undergone practical training; and
— passed an examination of professional competence of university, final examination level organized or recognized by the State.
5. Member States may nevertheless approve persons who do not satisfy some of the above conditions if those persons can show either:
— that they have, for 15 years, engaged in professional activities which have enabled them to acquire sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence;
— that they have, for seven years, engaged in professional activities in those fields and have, in addition, undergone practical training and passed the examination of professional competence.
6. Member States must ensure that approved persons are liable to appropriate sanctions if they do not carry out audits honestly and independently.
7. Member States must ensure that the names and addresses of all natural persons and firms of auditors approved by them to carry out statutory audits of accounting documents are made available to the public.

(4) Deadline for implementation of the legislation in the Member States	1.1.1988
(5) Date of entry into force (if different from the above)	1.1.1990
(6) References	Official Journal L 126, 12.5.1984
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.11. Disclosure requirements in respect of branches

(1) Objective	To lay down rules concerning the disclosure requirements imposed in a Member State in respect of branches of companies governed by the law of another State, in order to provide an equivalent level of protection for shareholders and third parties and facilitate exercise of freedom of establishment.
(2) Community measures	Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company 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. Branches of companies from another Member State must publish documents which include the following information: — the address of the branch; — the activities of the branch; — the company's place of registration and registration number; — particulars of the company directors. The branch no longer needs 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 established in a non-EC country but having a legal form comparable to that of Community companies must publish documents which include the information required of branches of EC companies, together with the following particulars: — the law of the State by which the company is governed; — the company's memorandum and articles of association; — 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 in such a way 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 must provide appropriate penalties for failure to disclose the information required. 4. The provisions of the Directive dealing with the disclosure of accounting documents are not applicable to branches of banks and other financial institutions and need not be applied to branches of insurance companies. As regards the former, a separate Directive has been adopted (summary 1.8); as regards the latter, a Directive will be proposed.
(4) Deadline for implementation of the legislation in the Member States	1.1.1992

(5) Date of entry into force (if different from the above)	1.1.1993
(6) References	Official Journal L 395, 30.12.1989
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.12. Single-member private limited liability companies: 12th Directive

(1) Objective	To create a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community.
(2) Community measures	Twelfth Council Directive 89/667/EEC of 21 December 1989 on single-member private limited liability companies.
(3) Contents	1. The coordination measures prescribed by the Directive apply to Member States' provisions concerning private limited companies. 2. A company may have a single member by virtue of its being formed, or by virtue of all its shares coming to be held, by a single person (single-member company). 3. Where a company becomes a single-member company because all its shares have come to be held by a single person, that fact, together with the identity of the single member, must either be entered in a register kept by the company and accessible to the public or be recorded in the file or entered in the register within the meaning of Council Directive 68/151/EEC (Official Journal L 65, 14.3.1968 — summary 1.1). 4. The single member exercises the powers of a general meeting of the company. Decisions taken by the single member and contracts between him and his company as represented by him must be recorded in minutes or drawn up in writing. 5. Where Member States allow single-member companies in the case of public limited companies as well, the Directive applies.
(4) Deadline for implementation of the legislation in the Member States	1.1.1992
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 395, 30.12.1989
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.13. Structure of public limited companies

(1) Objective

To harmonize the structures of public limited companies with a view to affording equivalent protection to the interests of shareholders and others. To ensure employee participation in the supervision of the management of such companies.

(2) Proposal

Proposal for a fifth Directive based 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 such types of company as:
— United Kingdom: the public limited company;
— France: la société anonyme;
— Germany: die Aktiengesellschaft;
and their equivalents in the other Member States. Member States have the option of excluding 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 will be required by the management body or executive members for decisions relating to:
— the closure or transfer of all or part of the company;
— substantial extension or reduction in the activities of the company;
— important organizational changes; and
— the establishment or ending of long-term cooperation with other firms.
4. In companies with fewer than 1 000 employees, the members of the supervisory body will 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:
— members of supervisory bodies in the two-tier system;
— non-executive members of boards in the one-tier system.
A maximum of two thirds of the supervisory body or non-executive members will be appointed by the general meeting. A minimum of one third (maximum of one half) will be appointed by the employees. Alternatively, members of the supervisory body may be appointed by co-option by the board itself. However, the general meeting of shareholders or the employees' representatives may object to such an appointment on certain specified grounds. Another alternative is for Member States to provide for employee participation through a works council or through a collective agreement system. No person may be a member of the management body and the supervisory body at the same time. To ensure a wide measure of participation in the company's activities, it will be necessary:
— to strengthen the position of shareholders regarding the exercise of their voting rights, which should be proportionate to the shareholder's stake in the company capital;

— to impose limits on the issue of preference shares without voting rights.

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 administrative body or shareholders (providing the latter represent a certain minimum proportion of the share capital). The annual accounts, annual report and the auditors' report must be made available to every shareholder. Except in special circumstances, resolutions of general meetings can be passed only by absolute majority except in special circumstances. Minutes have to be prepared of every general meeting. The memorandum or articles of association may not confer on the holders of a particular category of shares an exclusive right to put forward nominations for a majority of those members of the supervisory organ whose appointment is a matter for the general meeting.

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. 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. The memorandum or articles of association may not confer on the holders of a particular category of shares an exclusive right to put forward nominations for a majority of those members of the administrative organ whose appointment is a matter for the general meeting

8. After a specified period the Commission will have to submit a report to the Council and Parliament on how the Directive is working.

9. Certain derogations from the Directive are allowed, e.g. for companies with political, religious, charitable or educational objectives.

(4) Opinion of the European Parliament

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 500 to 1 000 the threshold for obligatory employee participation and increasing the choice of forms of participation. The Commission included these amendments in its amended proposal.

First reading: Parliament approved the Commission's second amended proposal (COM(90) 629 final) subject to certain amendments. The Commission accepted some of these amendments.

(5) Current status

The third amended proposal is currently before the Council in view 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
Amended proposal COM(90) 629 final	Official Journal C 7, 11.1.1991
Amended proposal COM(91) 372 final	Official Journal C 321, 12.12.1991
European Parliament opinion	Official Journal C 149, 14.6.1982
First reading	Official Journal C 240, 16.9.1991
Economic and Social Committee opinion	Official Journal C 109, 19.9.1974 Official Journal C 269, 14.10.1991

1. COMPANY LAW

1.14. Takeover and other general bids

(1) Objective

The Directive introduces a series of basic rules guaranteeing equal treatment of shareholders, providing for the necessary disclosure and clarity of information, and governing the defensive measures that may be adopted once a bid is announced.

(2) Proposal

Proposal for a 13th Council Directive based on Article 54(3)(g) of the Treaty on company law, concerning takeover and other general bids.

(3) Contents

1. The Directive applies to takeover and other general bids for the securities of a company governed by the law of a Member State where these securities are admitted to trading on a market in one or more Member States which is regulated and supervised by officially recognized bodies, operates regularly and is accessible, directly or indirectly, to the public. After a period of five years from the date of entry into force of the provisions transposing the Directive, the scope of the Directive may be reviewed.

2. Definitions of the terms 'takeover or other general bid', ('bid'), 'offeree company', etc.

3. Obligation to make a bid: any person who, as a result of acquisition, holds securities amounting to one third or more of the voting rights existing at the date of acquisition, irrespective of his initial holding, must make a bid in accordance with the Directive. Nevertheless, Member States may fix a threshold of less than one third of the voting rights. The supervisory authority may grant exemptions from the obligation to make a bid.

4. Supervisory authority: Member States must designate an authority responsible for ensuring that all parties to a bid discharge their obligations. The authority competent for supervising the drawing-up and publication of the offer document is that of the Member State in which the offeree company has its registered office. The authority has three working days from the time of lodging of the document within which to take a decision. If it fails to take a decision within that period, approval is deemed to be granted.

5. Principles are laid down governing performance of the supervisory authority's functions; the authority must seek to ensure that:

— all holders of securities of an offeree company who are in the same position are treated equally;
— the addressees of a bid have sufficient time and information to enable them to reach a properly informed decision on the bid;
— the board of an offeree company cannot frustrate the bid;
— false markets are not created in the securities of the companies concerned;
— offeree companies are not hindered in the conduct of their affairs beyond a reasonable time.

6. Procedure prior to publication of the offer document: as soon as the offeror decides to make a bid he must inform the competent supervisory authority and the offeree company's board. The Directive specifies the procedures for publicizing the intention to make a bid.

7. Restriction of the powers of the board of the offeree company: the board of the offeree company may not have the company acquire its own shares without the authorization of the general meeting of shareholders. The board may call a general meeting of shareholders.

8. Offer document: to enable the addressees to reach a properly informed decision on the bid, the document must be specific; it must provide the names of the persons responsible for the offer document, together with a declaration that its particulars are correct. The document must state the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire. The offeror must indicate any consequences of the financing of the bid for the offeree company and for the offeror. If the offeror is acting in his own name but on behalf of another person, the information in the document is to refer to the latter. Where the consideration offered comprises tradable securities, the offer document is to be accompanied by the listing particulars published for the admission of securities to official stock exchange listing. The supervisory authority may require the inclusion in the offer document of additional information.

9. Forms of disclosure: where the same bid is to be made public in more than one Member State, the law of each Member State is to govern disclosure there. The result of the bid must be made public immediately.

10. Opinion of the board of the offeree company: the board of the offeree company must draw up a document setting out its opinion on the bid, together with the reasons on which it is based.

11. Revision of bids: Member States may take steps to ensure that successive revisions of the bid do not improperly impede the operation of the offeree company.

12. Provision of information to the supervisory authority: throughout the period for acceptance of the bid, all parties to the bid must provide the authority, on request, with all relevant information. There are rules requiring information on fresh acquisitions by persons owning large holdings (with 5% or more of the voting rights) and acquisitions of more limited significance giving the acquirer 0.5% or more of the voting rights.

13. Information for representatives of employees of the offeree company: immediately after they have been made public, the offer document and other relevant information must be communicated to the employees' representatives. All information concerning the revision, withdrawal and result of the bid must also be communicated.

14. Competing bids: the Member States must ensure that persons who have already accepted a prior bid nevertheless qualify for a subsequent competing bid. Member States may make an exception if their legislation permits irrevocable acceptance; they may also take steps to ensure that the existence of competing bids does not improperly impede the operation of the offeree company and of the market.

(4) Opinion of the European Parliament

First reading: Parliament has approved the proposal subject to certain amendments. These are designed to strengthen the social provisions (information for employees' representatives), make it easier for the offeree company to defend itself against a hostile bid, and increase the transparency of bids. The Commission has accepted most of the amendments.

(5) Current status	The proposal is currently before the Council with a view to the adoption of a common position.	
(6) References	Commission proposal COM(88) 823 final	Official Journal C 64, 14.3.1989
	Amended proposal COM(90) 416 final	Official Journal C 240, 26.9.1990
	Europan Parliament opinion First reading	Official Journal C 38, 19.2.1990
	Economic and Social Committee opinion	Official Journal C 298, 27.11.1989

1. COMPANY LAW

1.15. European economic interest grouping (EEIG)

(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 pursue certain activities in common.

(2) Community measures

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 must be formed in accordance with the rules described below.
2. The purpose of the grouping is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This will produce better results than the members acting alone. It is not intended that the grouping should make profits for itself. If it does make any profits, they will be apportioned among the members and taxed accordingly. Its activities must 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 entities governed by public or private law which have been formed in accordance with the law of a Member State and which have their registered office in the Community. It can also 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 linked to different Member States.
5. The contract for the formation of an EEIG must include its name, its official address and objects, the name, registration number and place of registration, if any, of each member of the grouping and the duration of the grouping, except where this is indefinite. The contract must be filed at the registry designated by each Member State. Registration confers full legal capacity on the EEIG throughout the Community.
6. When a grouping is formed or liquidated, details must be published in the *Official Journal of the European Communities* (C and S series).
7. A grouping's official address must be within the Community. It may be transferred from one Member State to another subject to certain conditions.
8. Each member of an EEIG has 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 lists those decisions for which unanimity is required.
9. The EEIG must have at least two organs: the members acting collectively and the manager or managers. The managers represent and bind the EEIG in its dealings with third parties even where their acts do not fall within the objects of the grouping.
10. An EEIG may not invite investment by the public.
11. An EEIG does not necessarily have to be formed with capital. Members are free to use alternative means of financing.
12. The profits of an EEIG will be deemed to be the profits of its members and will be apportioned either according to the relevant clause in the contract or, failing such a clause, in equal shares. The

	profits or losses of an EEIG will be taxable only in the hands of its members. As a counterweight to the contractual freedom which is at the basis of the EEIG and the fact that members are not required to provide a minimum amount of capital, each member of the EEIG has unlimited joint and several liability for its debts.
(4) Deadline for implementation of the legislation in the Member States	31.6.1989
(5) Date of entry into force (if different from the above)	3.8.1989
(6) References	Official Journal L 199, 31.7.1985
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.16. European company statute

(1) Objective

To create a European company with its own legislative framework. This will allow companies incorporated in different Member States to merge or form a holding company or joint subsidiary, while avoiding the legal and practical constraints arising from the existence of 12 different legal systems. To arrange for the involvement of employees in the European company and recognize their place and 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 a Council Regulation on the Statute for a European company

1. The statute provides four ways of forming a European company (Latin: 'Societas Europaea', 'SE'): merger, formation of a holding company, formation of a joint subsidiary, or conversion of a public limited company previously formed under national law. Formation by merger is available only to public limited companies from different Member States. Formation of an SE holding company is available to public and private limited companies with their registered offices in different Member States, or having subsidiaries or branches in Member States other than that of their registered office. Formation of a joint subsidiary is available under the same circumstances to any legal entities governed by public or private law.

2. The SE must have a minimum capital of ECU 100 000. Where a Member State requires a larger capital for companies exercising certain types of activity, the same requirement will also apply to an SE with its registered office in that Member State.

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 true centre of operations.

4. The order of precedence of the laws applicable to the SE is clarified.

5. The registration and completion of the liquidation of an SE must be disclosed for information purposes in the *Official Journal of the European Communities*. Every SE must be registered, in the State where it has its registered office, in a register designated by the law of that State.

6. 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).

7. Under the two-tier system the SE is managed by a management board. The member or members of the management board have the power to represent the company in dealings with third parties and in legal proceedings. They are appointed and removed by the supervisory board. No person may be a member of both the management board and the supervisory board of the same company at the same time. But

the supervisory board may appoint one of its members to exercise the functions of a member of the management board in the event of a vacancy. During such a period the function of the person concerned as a member of the supervisory board shall be suspended.

8. Under the single-tier system, the SE is managed by an administrative board. The member or members of the administrative board have the power to represent the company in dealings with third parties and in legal proceedings. Under the single-tier system the administrative board may delegate the power of management to one or more of its members.

9. The following operations require the authorization of the supervisory board or the deliberation of the administrative board:

(a) any investment project requiring an amount more than the percentage of subscribed capital fixed in accordance with (e);

(b) the setting up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital fixed in accordance with (e);

(c) the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or suretyship for a third party where the total money value in each case is more than the percentage of subscribed capital fixed in accordance with (e);

(d) the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year fixed in accordance with (e);

(e) the percentage referred to above is to be determined by the statutes of the SE. It may not be less than 5% nor more than 25%.

10. Detailed provisions on the powers of the general meeting and the rights of shareholders.

11. The SE must draw up annual accounts comprising the balance sheet, the profit and loss account and the notes to the accounts, and an annual report giving a fair view of the company's business and of its position; consolidated accounts may also be required.

12. Winding-up, liquidation, insolvency and suspension of payments are in large measure to be governed by national law. An SE which transfers its registered office outside the Community must be wound up on application by any person concerned or any competent authority.

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 agreed between the management or administrative boards of the founder companies and the employees or their representatives in those companies, the level of information and consultation being the same as in the case of the second model. The

	general meeting may not approve the formation of an SE unless one of the models of participation defined in the Directive has been chosen. 3. The employees' representatives must be provided with such financial and material resources and other facilities as enable them to perform their duties properly.	
(4) Opinion of the European Parliament	First reading: Parliament approved the Commission's proposal subject to certain amendments. The Commission accepted many of these amendments.	
(5) Current status	Amended proposals are currently before the Council, awaiting the adoption of a common position.	
(6) References	Commission proposal COM(89) 268/I and II final	Official Journal C 263, 16.10.1989
	Amended proposals COM(91) 174/I and II final	Official Journal C 176, 8.7.1991
	European Parliament opinion First reading	Official Journal C 48, 25.2.1991
	Economic and Social Committee opinion	Official Journal C 124, 21.5.1990

2. INTELLECTUAL PROPERTY

Current problems and 1992 objectives

Differences between Member States' intellectual property laws have an adverse effect on intra-Community trade and on the ability of firms to treat the common market as a single environment for their activities.

To some extent, the EEC Treaty reduces the severity of these problems. Articles 30 to 36, which deal with the free movement of goods, have thus been interpreted by the Court of Justice of the European Communities as preventing intellectual property rights from being used to partition off Member States' markets from each other and impede the free movement of goods.

Similarly, Articles 85 and 86, dealing with competition, have been applied by the Commission, in its capacity as enforcement agency under EEC competition law, and interpreted by the Court of Justice in such a way as to prevent intellectual property rights from being exercised in a manner which prevents, restricts or distorts competition in the context of intra-Community trade.

Furthermore, in order 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 concerning licences without the parties having to seek individual clearance from the Commission. In 1988 it adopted a similar Regulation on know-how licensing (Commission Regulation (EEC) No 4087/88 — Official Journal L 359, 28.12.1988).

1. Community trade mark

In the field of trade marks, the existence of different national systems (including the combined Benelux system) and of cumbersome and costly administrative and legal procedures is an obstacle to Community-wide marketing. 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 secure recognition for a single trade mark valid in all 12 Member States on the basis of one application to a Community Trade Mark Office (summary 2.1). The proposal is accompanied by a proposal for an implementing Regulation (summary 2.2).

The Community also needs uniformity between national trade mark systems for the many companies which, though not trading throughout the Community, carry on commercial activities in more than one Member State.

The Council has adopted a Directive which seeks to harmonize Member States' legislation in this area (summary 2.3).

In addition, the Commission has adopted a proposal for a Regulation on fees payable to the Community Trade Mark Office (summary 2.4). This proposal is also accompanied by a proposal for an implementing Regulation (summary 2.5).

2. Patents

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.

In reality, however, the Convention merely simplifies the procedure for obtaining certain national patents. The operation of a single market requires a single Community patent valid in all Member States.

And so, the nine Member States negotiated, in 1975, the Convention for the European Patent for the Common Market (Community Patent Convention).

This Convention has not yet 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.

A consultative document entitled Green Paper on the Legal Protection of Industrial Design was published in July 1991.

3. Copyright and neighbouring rights

On 5 December 1990 the Commission adopted a Communication on its work programme in the field of copyright and neighbouring rights (COM(90) 584 final). In it the Commission establishes, in the light of the discussions which took place following publication in June 1988 of the Green Paper on Copyright and the Challenge of Technology (COM(88) 172 final), a general policy programme outlining the steps it proposes to take in respect of copyright and neighbouring rights. Other areas have been added to those covered by the Green Paper to satisfy the need for a comprehensive approach.

In the wake of the Green Paper on Copyright and the Challenge of Technology and the work programme in the field of copyright and neighbouring rights, the Ministers for Cultural Affairs, meeting within the Council, adopted on 7 June 1991 conclusions on copyright and neighbouring rights.

The Ministers welcomed the comprehensive approach advocated by the Commission in its work programme but asked that, in connection with the harmonization of copyright and similar rights, the capacity of Member States to preserve the balance of creative and artistic activity, particularly in limited geographical or linguistic distribution areas, should not be jeopardized.

They stressed the need to make allowance for the consequences which the adoption of legislation on the conditions governing the exercise of the rights granted would have for the holders of those rights. Lastly, they requested that the cultural content of copyright and neighbouring rights be taken into account in negotiations with non-member countries.

The Commission believes that new technologies such as microcircuits, biotechnology and computer software should be given adequate protection. These new technologies have brought with them the internationalization of questions of copyright and neighbouring rights. These rights provide a basis for intellectual creation and are playing an increasing role in the Community economy. On such economic grounds and for cultural reasons, too, the Commission considers that the protection of these rights needs to be strengthened as a matter of urgency. The Commission also believes there should be a minimum level of copyright protection at world level to prevent creative work produced in the Community from being pirated in non-member countries.

To that end, the Community has taken action in the following areas:

— legal protection of semiconductors (summary 2.6);
— legal protection of biotechnological inventions (summary 2.7);
— legal protection of computer programs (summary 2.8);
— accession of the Member States to the Berne (Paris Act) and Rome Conventions (summary 2.9);
— rental rights, lending rights and certain rights related to copyright (summary 2.10);

— coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission (summary 2.11).

On 23 September 1991 the Council adopted two Decisions, one on the Community's participation in preparatory work and in a future diplomatic conference on the settlement of intellectual property disputes between States, and the other on such participation in the work of the committee of experts on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

In addition, the Commission still has to present proposals on:

— home copying of sound and audiovisual recordings;

— the legal protection of databases;

— the term of protection for copyright and certain neighbouring rights.

2. INTELLECTUAL PROPERTY

2.1. 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

First reading: 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 amended proposal is currently before the Council for a common position.

(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 First reading	Official Journal C 307, 14.11.1983
	Economic and Social Committee opinion	Official Journal C 310, 30.11.1981

2. INTELLECTUAL PROPERTY

2.2. Trade mark: 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 Mark 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 commercial 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 such equipment.
4. The filing of applications for Community trade marks will be simplified by allowing blanket authorizations in the case of agencies. 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. Approximation of the trade mark laws of the Member States

(1) Objective

To ensure that registered trade marks enjoy the same protection under the laws of all the Member States.

(2) Community measures

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 applies to trade marks in respect of goods or services which are the subject of registration or of an application in a Member State for registration.
2. The following may not be registered, or if registered are liable to be declared invalid:
— signs which cannot constitute a trade mark;
— trade marks which are devoid of any distinctive character;
— trade marks which are liable to mislead or are contrary to public policy or accepted principles of morality;
— trade marks which are of such a nature as to deceive the public;
— a trade mark which is identical with or similar to an earlier trade mark, where the goods or services which it represents are identical with or similar to those represented by the earlier mark.
3. A registered trade mark confers on its proprietor exclusive rights therein. The proprietor is entitled to prevent all third parties not having his consent from using it in the course of trade.
4. Where the proprietor of an earlier trade mark has acquiesced, for a period of five successive years, in the use of a later registered trade mark, he is no longer entitled either to apply for a declaration that the later trade mark is invalid or to oppose the use of the later trade mark in respect of the goods or services for which the later trade mark has been used, unless registration of the later trade mark was applied for in bad faith.
5. Unless there are proper reasons for non-use, the proprietor of a trade mark may have his rights forfeited if:
— within a period of five years following the date of completion of the registration procedure, he has not put the trade mark to genuine use in the Member State concerned in connection with the goods or services in respect of which it is registered; or
— if, during an uninterrupted period of five years, the trade mark has not been put to genuine use.
6. The proprietor of a trade mark may also have his rights forfeited where, in consequence of his acts or inactivity, the mark has become the common name in the trade for a product or service in respect of which it is registered or where, in consequence of the use made of it by the proprietor or with his consent, the trade mark is liable to mislead the public.

(4) Deadline for implementation of the legislation in the Member States

28.12.1991

(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 40, 11.2.1989
(7) Follow-up work	On 19 December 1991 the Council adopted a Decision concerning the postponement of the date from which the legislative measures of the Member States must conform to Directive 89/104/EEC. This Decision will postpone the deadline of 28 December 1991 to 31 December 1992 for the implementation of this measure in the Member States.
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

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 an 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

2. INTELLECTUAL PROPERTY

2.5. Community Trade Mark Office: rules of procedure of the Boards of Appeal

(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 lay down common basic principles, to be applied by all Member States, covering the persons and things protected, the exclusive rights conferred, the exceptions to those rights and the duration of protection, with other matters being able for the time being to be decided by national law.

(2) Community measures

Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products.

(3) Contents

1. Definitions of 'semiconductor product', 'topography' and 'commercial exploitation'.
2. Obligation on Member States to adopt legislation to protect topographies in so far as they are the result of their creator's own intellectual effort and are not commonplace in the semiconductor industry. The right to protection is granted to the person who is the topography's creator, subject to that person being a natural person who is a national of a Member State or ordinarily resident there, but Member States may specify to whom the right is granted where a topography is created in the course of the creator's employment or under a contract other than a contract of employment.
3. The Directive lays down the procedure for extending the right to protection to persons not covered by the Directive.
4. Member States may refuse or remove protection in respect of the topography of a semiconductor product where an application for registration in due form has not been filed with a public authority within two years of its being commercially exploited for the first time. They may require that material identifying or exemplifying the topography be deposited. However, they must ensure that material deposited is not made available to the public where it is a trade secret.
5. The rights granted are exclusive rights. They include the right to authorize or prohibit reproduction of a protected topography and the right to authorize or prohibit commercial exploitation or the importation for that purpose of a topography or of a semiconductor product manufactured using the topography. They do not extend to reproduction for the purpose of analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself.
6. Where registration of the topography is a condition for the coming into existence of exclusive rights, those rights will come into existence on the date on which the application for registration is filed or on the date on which the topography is first commercially exploited anywhere in the world, whichever comes first. If registration is not a condition, the rights will come into existence when the topography is first commercially exploited anywhere in the world or when it is first fixed or encoded.
7. The exclusive rights 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. Where registration is required, the 10-year period is calculated from the end of the calendar year in which the application for registration was filed or from the end of the calendar

	year in which the topography was first commercially exploited anywhere in the world, whichever comes first.
(4) Deadline for implementation of the legislation in the Member States	7.11.1987
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 24, 27.1.1987
(7) Follow-up work	The Council adopted on 9 October 1990 two Decisions which extend the protection conferred by Directive 87/54/EEC to natural and legal persons who are nationals of certain listed countries and territories, on a reciprocal basis (Council Decisions 90/510/EEC and 90/511/EEC published in Official Journal L 285, 17.10.1990). These two new Decisions replace provisional Decisions which expired on 7 November 1990. Under the second Council Decision only, protection for legal persons from each of the countries concerned is conditional on Community legal persons benefiting from an acceptable level of protection in those countries. Protection for natural persons is not subject to such a condition. The Commission has determined which countries satisfy the condition and has informed the Member States accordingly (Commission Decision 90/541/EEC published in Official Journal L 307, 7.11.1990).
(8) Commission implementing measures	Commission Decision of 12 December 1991 amending Decision 90/541/EEC determining the countries to the companies or other legal persons of which legal protection of topographies of semiconductor products is extended.

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:
— micro-organisms;
— biological classifications other than plant or animal varieties which are protectable under plant variety protection law;
— plant and animal material which is not a variety;
— uses of plant or animal varieties and processes for their production;
— microbiological processes, including processes consisting of a series of steps provided the essence of the invention involves one or more microbiological 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 Directive 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 patentees 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 an institution 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 microbiological 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 European Parliament for its opinion.	
(6) References	Commission proposal COM(88) 496 final	Official Journal C 10, 13.1.1989
	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 States' legislation regarding the protection of computer programs in order to create a legal environment which will afford a degree of security against unauthorized reproduction of such programs.

(2) Community measures

Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs.

(3) Contents

1. Obligation on Member States to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.
2. The ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright. A computer program is protected if it is original in the sense that it is the author's own intellectual creation.
3. In general, the author of a computer program is the natural or legal person or group of natural persons who created it. Where collective works are recognized by the legislation of a Member State, the person considered by the legislation of that Member State to have created the work is deemed to be its author. In the case of a program created by a group of natural persons, the exclusive rights are owned jointly. Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer alone will be entitled to exercise all economic rights in the program, unless otherwise provided for by contract.
4. Protection is accorded on the basis of residence, nationality and first publication as laid down by the relevant Member State.
5. The exclusive rights of the author include the right to perform or to authorize:
— the reproduction of a computer program;
— the translation, adaptation, arrangement and other alteration of a computer program;
— the distribution, including the rental, of a computer program or of copies thereof.
6. The Directive provides for certain exceptions to these restricted acts. In the absence of specific contractual provisions, the acts referred to in Article 4(a) and (b) do not require authorization by the rightholder where they are necessary for the use of the computer program by the acquirer, including for error correction. Moreover, the making of a back-up copy by a person having a right to use the computer program may not be prevented by contract in so far as it is necessary for that use. A person having a right to use a copy of a computer program is entitled to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the programe if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the programe which he is entitled to perform.
7. There is also provision for a derogation which would allow the decompilation of a program under certain limited conditions and with

the aim of achieving the interoperability of an independently created computer program.
8. Special protection measures will be taken against a person committing any of the acts listed below:
— any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
— the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
— any act of putting into circulation or the possession for commercial purposes of any means the intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.
9. Copyright protection is granted for the life of the author and for 50 years after his death or after the death of the last surviving author. Where the computer program is an anonymous or pseudonymous work, or where a legal person is designated as the author, the term of protection is 50 years from the time that the computer program is first lawfully made available to the public.
10. The provisions of this Directive are without prejudice to any other legal provisions on the protection of intellectual property, such as those concerning patent rights, trade marks, unfair competition, trade secrets, protection of semiconductor products, or contracts.
11. The provisions of the Directive apply also to programs created before 1 January 1993 without prejudice to any acts concluded and rights acquired before that date.

(4) Deadline for implementation of the legislation in the Member States — 1.1.1993

(5) Date of entry into force (if different from the above)

(6) References — Official Journal L 122, 17.5.1991

(7) Follow-up work

(8) Commission implementing measures

2. INTELLECTUAL PROPERTY

2.9. Accession of the Member States to the Berne and Rome Conventions

(1) Objective	To guarantee a minimum level of protection for authors and artists by requiring all the Member States to accede to the Berne Convention (Paris Act 1971) and the Rome Convention. To provide a common basis so as to simplify further Community harmonization of specific aspects aimed at improving protection of these rights. To help to combat piracy of audio-visual works.
(2) Proposal	Proposal for a Council Decision concerning the accession of the Member States to the Berne Convention for the Protection of Literary and Artistic Works, as revised by the Paris Act of 24 July 1971, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) of 26 October 1961.
(3) Contents	The Member States are to accede to the two Conventions by 31 December 1992: to the Berne Convention for the protection of Literary and Artistic Works (Paris Act) and to the Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.
(4) Opinion of the European Parliament	First reading: Parliament approved the Commission's proposal subject to certain amendments. The Commission accepted all of the proposed amendments.
(5) Current status	An amended proposal including Parliament's amendments withheld by the Commission is awaited.
(6) References	Commission proposal COM(90) 582 final — Official Journal C 24, 31.1.1991 European Parliament opinion First reading — Not yet published. Economic and Social Committee opinion — Official Journal C 269, 14.10.1991

2. INTELLECTUAL PROPERTY

2.10. Rental right and lending right

(1) Objective	To harmonize the law relating to rental right, lending right and certain rights related to copyright, which currently varies greatly from one Member State to another, so as to provide a high level of protection of literary and artistic property. To combat piracy more effectively.
(2) Proposal	Proposal for a Council Directive on rental right, lending right, and on certain rights related to copyright.
(3) Contents	1. Member States agree to a right to authorize or prohibit the rental and lending of originals and copies of copyright works. 'Rental' means making available for use for a limited period of time and for profit-making purposes; 'lending' means making available for use for a limited period of time and not for direct profit-making purposes, through institutions which are accessible to the public. 2. The holders of the rental and lending right are to be authors, performing artists, and producers of phonograms or films. 3. If the rightholders authorize to a third party against payment the rental or lending of a sound recording, visual recording or visual and sound recording, then each of the rightholders shall retain the right to obtain an adequate part of the said payment. This right to obtain an adequate part of the payment cannot be waived, but its administration may be assigned. 4. Member States may derogate from the exclusive lending right for one or more categories of objects provided that at least authors obtain an equitable remuneration and such derogation measures comply with Community law. 5. As regards rights related to copyright, Member States shall provide for performing artists, producers of phonograms and films, and broadcasting organizations exclusive rights of fixation, reproduction and distribution. 6. The limitations to these related rights which are permitted by the Directive are in line with those provided for in Article 15 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. 7. Pending further harmonization of the duration of author's rights and related rights, the Directive confines itself to a reference to the Berne Convention for the Protection of Literary and Artistic Works and the Rome Convention for the protection of related rights.
(4) Opinion of the European Parliament	Not yet published.
(5) Current status	The proposal is currently before Parliament for its opinion.
(6) References	Commission proposal COM(90) 586 final — Official Journal C 53, 28.2.1991 Economic and Social Committee opinion — Official Journal C 269, 14.10.1991

2. INTELLECTUAL PROPERTY

2.11. Copyright and neighbouring rights: satellite broadcasting and cable retransmission

(1) Objective	To fill the gaps in the protection of programmes broadcast across borders where satellite broadcasting or cable retransmission are involved. To provide the legal and economic underpinning for European creative activity in the cultural sphere.
(2) Proposal	Proposal for a Council Directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission.
(3) Contents	1. The proposal gives definitions of 'satellite', 'communication to the public by satellite', 'cable retransmission', 'broadcasting' and 'collecting society'. 2. The satellite broadcasting of copyright works requires the authorization of the rightholder. The right may be acquired from the rightholder only by agreement. 3. The performer's authorization is needed in order to: — broadcast live performances by satellite; — fix (record) an unfixed performance; — reproduce a fixation of a performance. Where a phonogram is used for a satellite broadcast, an equitable remuneration is to be paid to the performers, or to the producers of phonograms, or to both. Broadcasting organizations have exclusive rights over the retransmission, fixation and reproduction of fixations of their broadcasts. 4. Member States may limit these rights to authorize or prohibit, for example in the case of private use or the use of short excerpts in connection with the reporting of current events. 5. Member States may provide for more far-reaching protection than that required by the Directive. 6. Cable retransmission of broadcasts is to be governed by copyright and neighbouring rights in the Member States and by agreements between copyright owners, holders of neighbouring rights and cable operators. 7. These rights to authorize or prohibit the cable retransmission of a broadcast are to be exercised through a collecting society, except where they are exercised by a broadcasting organization in respect of its own transmissions. 8. Where no agreement is reached allowing cable retransmission of a broadcast, the parties may call upon the assistance of one or more mediators. The mediators have the task of providing assistance with negotiation and may also submit non-binding recommendations to the parties. 9. The Directive is without prejudice to Community and national competition law.
(4) Opinion of the European Parliament	Not yet delivered.
(5) Current status	The proposal is currently before Parliament and the Economic and Social Committee for their opinions.

(6) References	Commission proposal COM(91) 276 final	Official Journal C 255, 1.10.1991

3. COMPANY TAXATION

Current problems and 1992 objectives

The current differences in company taxation between Member States can influence investment decisions and distort competition.

A major problem in cross-border operations as compared with those within a Member State is that of additional costs or double taxation due to differences in national tax laws.

In this field, the Community's activities have covered the following:

— common tax arrangements applicable to parent companies and their subsidiaries (summary 3.1);

— common tax arrangements applicable to mergers, divisions and transfers of assets (summary 3.3);

— common tax arrangements applicable to interest and royalty payments (summary 3.6);

— tax treatment of the carry-over of losses (summary 3.4);

— arrangements for the taking into account by undertakings of the losses of their permanent establishments and subsidiaries (summary 3.7);

— elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings (summary 3.2);

— indirect taxes on transactions in securities (summary 3.5).

In addition, following its communication of 18 April 1990 on the guidelines it intends to follow as regards company taxation, the Commission has set up a high-level committee to examine company taxation following completion of the single market.

This committee, which is chaired by Mr Ruding, a former Dutch Minister of Finance, held its inaugural meeting in Brussels on 21 January 1991. It is to submit within a year a report dealing with the impact of taxation on company behaviour and with the risks of distortion of competition or of business relocation that may arise from the coexistence of differing tax policies in a single market.

3. COMPANY TAXATION

3.1. Common system of taxation for 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:
— withholding tax on dividends;
— corporation tax in the hands of the parent company.

(2) Community measures

Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable to parent companies and their subsidiaries in different Member States.

(3) Contents

1. The Directive is applied by each Member State to:
— distributions of profits received by companies of that State which come from their subsidiaries of other Member States, and
— distributions of profits by companies of that State to companies of other Member States of which they are subsidiaries.
2. The Directive does not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.
3. Definition of the term 'company of a Member State'.
4. Member States may:
— replace the criterion of a holding in the capital by that of a holding of voting rights;
— not apply the Directive to those of their companies which do not maintain holdings qualifying them as parent companies or to those of their companies in which a company of another Member State does not maintain such a holding.
5. Where a parent company receives distributed profits other than when its subsidiary is liquidated, the Member State of the parent company either exempts the dividends or taxes them subject to deduction of the tax paid by the subsidiary.
6. Member States retain the option of providing that any charges relating to the holding and any losses resulting from the distribution of the profits of the subsidiary may not be deducted from the taxable profits of the parent company.
7. Profits distributed by a subsidiary company to its parent company are exempt from withholding tax.
8. Temporary derogations are granted to the Federal Republic of Germany, Greece and Portugal in respect of the ban on applying a withholding tax to dividends distributed by subsidiary companies established on their territories to parent companies located in other Member States.
9. The Member State of a parent company may not charge withholding tax on the profits which such a company receives from a subsidiary.

(4) Deadline for implementation of the legislation in the Member States

1.1.1992

(5) Date of entry into force (if different from the above)

(6) References

Official Journal L 225, 20.8.1990

(7) Follow-up work

(8) Commission implementing measures

3. COMPANY TAXATION

3.2. Elimination of double taxation (arbitration procedure)

(1) Objective	To eliminate the double taxation that arises when the tax authorities in a Member State adjust a company's taxable profits upwards because they consider that transactions with an associated firm in another Member State are not at arms' length, without the profits of the associated firm being correspondingly reduced.
(2) Community measures	Convention 90/436/EEC, on the elimination of double taxation in connection with the adjustment of transfers of profits between associated undertakings.
(3) Contents	1. There is at present no formal obligation on Member States to eliminate double taxation (bilateral conventions merely require the parties to make every effort to do so). 2. When double taxation arises, the firm affected presents its case to the tax authorities concerned; if those authorities cannot solve the problem satisfactorily, they endeavour to reach mutual agreement with the authorities of the Member State where the associated firm is taxed. 3. If no agreement can be reached, the authorities present the case to an advisory commission, which suggests a way of solving the problem. 4. Although the tax authorities may subsequently adopt, by mutual agreement, a solution different from that suggested by the advisory commission, they are bound to adopt the commission's advice if they cannot reach agreement. 5. The commission consists of a chairman, two representatives from each of the tax authorities concerned, and an even number of independent members.
(4) Deadline for implementation of the legislation in the Member States	
(5) Date of entry into force (if different from the above)	The convention comes into force on the first day of the third month following the lodging of the last ratification.
(6) References	Official Journal L 225, 20.8.1990
(7) Follow-up work	
(8) Commission implementing measures	

3. COMPANY TAXATION

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

(1) Objective	The Directive introduces a common system of taxation for cross-border restructuring operations within the Community; capital gains arising from mergers, divisions and exchanges of shares are not taxed at the time; taxation of such gains is postponed until they are actually realized.
(2) Community measures	Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanging of shares concerning companies of different Member States.
(3) Contents	1. Each Member State applies the Directive to mergers, divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved. 2. Definitions of the terms 'merger', 'division', 'transfer of assets', 'exchanges of shares', 'transferring company', 'receiving company', 'acquired company', etc. 3. A merger or similar operation does not give rise to any taxation of capital gains — calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes — at the time of the operation in question but only when such gains are actually realized. 4. Member States are required to take the necessary measures to ensure that provisions or reserves partly or wholly exempt from tax may be carried over by the permanent establishments of the receiving company which are situated in the Member State of the transferring company. 5. The allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company must not give rise to any taxation of the income, profits or capital gains of that shareholder. 6. Where the assets transferred in a merger, a division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the latter State must renounce any right to tax that permanent establishment.
(4) Deadline for implementation of the legislation in the Member States	1.1.1992 1.1.1993: Portugal
(5) Date of entry into force (if different from the above)	

(6) References

Official Journal L 225, 20.8.1990

(7) Follow-up work

(8) Commission implementing measures

3. COMPANY 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 amended proposal is currently before the Council 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. COMPANY 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	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 amended 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

3. COMPANY TAXATION

3.6. Common system of taxation: interest and royalty payments

(1) Objective	To abolish withholding tax on interest and royalty payments made between parent companies and subsidiaries established in different Member States. To place, from a tax viewpoint, Community subsidiaries on the same level as subsidiaries within a single Member State. To remove an obstacle to transnational cooperation between firms from different Member States.
(2) Proposal	Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States.
(3) Contents	1. Exemption from any withholding tax for interest and royalty payments made between parent companies and subsidiaries in different Member States. 2. Definitions of 'interest' as income from debt-claims of every kind and of 'royalties' as payments of any kind received for various uses or concessions. 3. The Directive applies to companies with share capital that are subject to the laws of a Member State and to corporation tax in a Member State. 4. Definitions of 'parent company' and 'subsidiary'. 5. The Directive applies to interest and royalty payments made to a permanent establishment of the recipient company located in the Member State of the debtor company only if that Member State does not apply withholding tax to payments of the kind made between parent companies and subsidiaries established on its territory. 6. Member States may take the necessary steps to combat fraud and abuse effectively. 7. Annex listing the companies covered by the Directive. 8. The deadline for implementing the Directive in the Member States is 1 January 1993. A derogation is to be granted to Greece and Portugal, countries which are major net importers of capital and technology, for up to seven years following the date of application of the Directive.
(4) Opinion of the European Parliament	Not yet delivered.
(5) Current status	The proposal has been submitted to the European Parliament for its opinion.
(6) References	Commission proposal COM(90) 571 final — Official Journal C 53, 28.2.1991 Economic and Social Committee opinion — Official Journal C 120, 6.5.1991

3. COMPANY TAXATION

3.7. Arrangements for taking losses into account

(1) Objective

To enable undertakings to deduct from their profits the losses incurred by permanent establishments and subsidiaries situated in Member States other than those in which they are resident for tax purposes. To prevent undertakings which operate in two or more Community countries from being penalized on tax grounds.

(2) Proposal

Proposal for a Council Directive concerning arrangements for the taking into account by undertakings of the losses of their permanent establishments and subsidiaries situated in other Member States.

(3) Contents

1. Undertakings of a Member State may take into account the losses incurred by permanent establishments and subsidiaries situated in other Member States.
2. Definitions of the concepts of 'undertaking of a Member State', 'permanent establishment' and 'subsidiary'. An undertaking of a Member State must be resident for tax purposes in that State. Permanent establishment means any fixed place of business through which an undertaking of a Member State carries on all or part of its activity. Subsidiary means any company in the capital of which an undertaking of a Member State has a minimum holding of 75% and a majority of the voting rights. Member States may, however, stipulate a lower minimum holding.
3. List of the taxes to which undertakings, permanent establishments and subsidiaries must be subject in order to come under the provisions of the Directive.
4. Member States may extend application of the Directive to permanent establishments and subsidiaries situated outside the Community provided that the conditions are not more favourable than those applicable within the Community.
5. Member States may apply to losses incurred by permanent establishments either the credit method or the method of deducting losses and reincorporating subsequent profits. The credit method consists in including in the undertaking's results at head-office level both the positive and the negative results of its permanent establishments situated abroad. The method of deducting losses and reincorporating subsequent profits allows foreign losses to be deducted and the permanent establishment's profits to be taxed subsequently by being reincorporated, to the extent of the amounts deducted, into the head office's results.
6. The method laid down for taking into account the losses of subsidiaries is identical to the deduction method applied to permanent establishments except that each subsidiary is considered separately.
7. Provision is made for deductible losses to be reincorporated automatically in cases where:
— reincorporation has not occurred by the end of the fifth year following that during which the loss became deductible;
— the permanent establishment or subsidiary is sold, wound up or transformed into a subsidiary or permanent establishment;
— the undertaking's holding in the capital of the subsidiary falls below the minimum level laid down.

	8. Member States may apply provisions laid down by national law or under agreements to prevent tax evasion or abuse. 9. The deadline for implementing the legislation in the Member States is 1 January 1993.
(4) Opinion of the European Parliament	Not yet delivered.
(5) Current status	The proposal has been submitted to the European Parliament for its opinion.
(6) References	Commission proposal COM(90) 595 final — Official Journal C 53, 28.2.1991 Economic and Social Committee opinion — Official Journal C 120, 6.5.1991

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1. PUBLIC PROCUREMENT

Current problems and 1992 objectives

The total value of public procurement, including contracts awarded by firms in the public sector, is estimated at some ECU 600 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 in which the invitation to tender was issued.

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 contracting authorities, 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.

In the public procurement field, two Directives in force since the 1970s aim to open up national tendering procedures to competition from firms from other Member States. One concerns public supply contracts, the other public works contracts (e.g. building and road construction).

The one dealing with public supply contracts was amended by a Directive which has been in force in nine of the 12 Member States since 1 January 1989 (summary 1.1). This new Directive will substantially strengthen and improve existing provisions by demarcating more closely the field of application, setting in place new contract award procedures, introducing compulsory references to common technical standards and extending time-limits. The Directive amending Council Directive 71/305/EEC (Official Journal L 185, 16.8.1971) concerning public works contracts has been in force in nine of the 12 Member States since 19 July 1990 (summary 1.2).

Directive 89/665/EEC on the application of review procedures to the award of public supply and public works contracts was adopted in December 1989 (summary 1.5). It is designed to ensure that any infringements committed during contract award procedures are effectively penalized.

In September 1990 the Commission adopted a new proposal for opening up public service contracts based on rules governing Community-wide invitations to tender and on the application of non-discriminatory contract award procedures. This proposed Directive will apply to all public service contracts (summary 1.7). However, contracts for certain types of service are subject to only a monitoring mechanism so that a decision can be taken at a later date on the full application of the contract award arrangements.

In September 1990 the Council adopted a Directive on supply and works contracts awarded by entities operating in the water, energy, transport and telecommunications sectors. This Directive takes account of the specific nature of such entities and the diversity of structures in these sectors within the Community (summary 1.3 and 1.4). A new proposal for a Directive on the application of review procedures to the award of contracts in the water, energy, transport and telecommunications sectors has also been presented by the Commission (summary 1.6). This aims to establish Community rules designed to guarantee effective means of redress in contract award procedures in the excluded sectors.

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 in previous Directives, they require an opinion to be published in the *Official Journal of the European Communities*.

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 — Clients Service, BP 2373, L-1023 Luxembourg (telephone: 352/48 80 41).

Given the recent decision of the Council 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 projects and programmes part-financed by the structural Funds, the Commission plans to create a new 'public procurement' questionnaire. The aim of the questionnaire, which would be completed by the tendering authority, would be to provide the Commission with a simple method of checking that the Community rules on public procurement are being observed.

The Commission has also published a 'Guide to the Community rules on open government procurement' 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. A new edition is planned for 1991.

1. PUBLIC PROCUREMENT

1.1. Public supply contracts

(1) Objective

The objective of Directive 77/62/EEC was to open up public supply contracts, to make procedures and practices for awarding public supply contracts more transparent, to develop the conditions of effective competition in public procurement markets and, to this end, to define the scope of exemptions for each sector of activity. The objective of the current Directive is to improve and extend the scope of the existing Directives, to make use of the open procedure rule, to introduce a negotiated procedure with a view to limiting use of the single-tendering procedure, to lay down all applicable thresholds in one provision, to incorporate into Community rules the amendments to the GATT concerning public contracts.

(2) Community measures

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 repealing certain provisions of Directive 80/767/EEC.

(3) Contents

1. Definitions of the terms:
— 'public supply contracts': contracts for purchase, lease, rental or hire purchase;
— 'open procedures': procedures which allow all interested suppliers to present an offer;
— 'restricted procedures': procedures which allow only those suppliers invited by the contracting authorities to submit tenders;
— 'negotiated procedures': procedures whereby contracting authorities consult suppliers of their choice and negotiate the terms of the contract with one or several of them.
2. The Directive covers certain parts of the defence sector. It does not apply to contracts awarded by land, air, sea or inland-waterway carriers. Also excluded are contracts awarded by contracting authorities where such contracts concern the production, transport and distribution of drinking water and by contracting authorities whose principal activity lies in the production and distribution of energy or telecommunications services. Nor does the Directive apply to supplies which are declared secret or when their delivery must be accompanied by special security measures, in accordance with provisions in force in the Member State concerned, or when the protection of the basic interests of that State's security so require.
3. Thresholds below which the Community rules will not apply, and rules for calculating the estimated value of certain contracts (ECU 130 000 or 200 000, depending on the status of the authority). The value of the thresholds in national currencies and the ecu equivalent of the GATT threshold are revised in principle every two years from 1 January 1988.
4. Basis for calculating the estimated value of contracts for the lease, rental or hire-purchase of products, and of renewable contracts in separate parts or carrying option clauses.
5. Obligation on contracting authorities to use the open procedure for public supply contracts. In justified cases where it is necessary to maintain a balance between contract value and procedural costs, where the specific nature of the products to be procured so requires,

the restricted procedure may be used. Contracting authorities may also award their supply contracts by negotiated procedure in the case of irregular tenders or in the case of tenders which are unacceptable under national provisions, and in certain cases prior publication of a tender notice is required. There are a number of exceptions to the publication rule in certain specified cases.

6. Obligation on contracting authorities to draw up a written report explaining why a restricted or negotiated procedure is used and giving the minimum contract information.

7. Obligation on contracting authorities to use the technical specifications defined in Annex II to the Directive in the general or contractual documents relating to each contract. Such specifications are defined by the contracting authorities by reference to national standards implementing European standards or to common technical specifications. In the absence of European standards or common technical specifications, the technical specifications may be defined by reference to:

— national standards implementing international standards accepted in the country of the contracting authority;

— other national standards of the country of the contracting authority;

— any other standard.

8. Requirement for contracting authorities to make known, after the beginning of their budgetary year, indicative notices giving intended procurement by product area during the coming 12 months which has an estimated value of at least ECU 750 000. Obligation for the results of the tender procedure to be published, except in cases where this:

— would impede law enforcement;

— would be contrary to the public interest or would prejudice the legitimate commercial interests of public or private firms or fair competition between suppliers.

9. Time-limits for receipt of requests to participate in restricted or negotiated procedures with a prior invitation to tender may not be less than 37 days from the date of dispatch of the tender notice. In restricted procedures, the time-limit for receipt of tenders may not be less than 40 days from the date of dispatch of the written invitation. In open procedures, it may not be less than 52 days from the date of dispatch of the notice. In cases of urgency, the time-limit for requests to participate may not be less than 15 days from the date of dispatch of the tender notice, while that for receipt of tenders may not be less than 10 days from the date of the 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 the most disadvantaged areas and in declining industrial areas.

11. Obligation on Member States to communicate to the Commission, not later than 31 October each year, a statistical report relating to contracts awarded the previous year.

(4) Deadline for implementation of the legislation in the Member States

1.1.1989

1.3.1992: Greece, Spain and Portugal, as regards the amendments covered by Directive 88/295/EEC. However, these countries are required to apply Council Directives 77/62/EEC and 80/767/EEC (Official Journal L 215, 18.8.1980).

(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 127, 22.3.1988
(7) Follow-up work	The Commission will shortly be proposing a consolidated version of the relevant directives.
(8) Commission implementing measures	Recommendation 91/561/EEC — Official Journal L 305, 6.11.1991 Commission Recommendation of 24 October 1991 on the standardization of notices of public contracts. The aim is to ensure that contracting authorities make optional use, for advertising public contracts in the *Official Journal of the European Communities*, of standard forms for notices.

1. PUBLIC PROCUREMENT

1.2. Public works contracts

(1) Objective

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

(2) Community measures

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 scope of Council Directive 71/305/EEC (Official Journal L 185, 16.8.1971) to cover new contractual forms of awarding tenders, such as promotion contracts and management contracts.
2. Definitions include 'public works concessions', 'open procedures', 'restricted procedures' and 'negotiated procedures'.
3. Obligation on Member States to ensure that contracting authorities financing more than 50% of a works contract awarded by another entity still comply with the provisions of the Directive.
4. Provisions concerning works concession contracts awarded to third parties and the minimum percentage of work assigned by them to subcontractors.
5. Obligation on the contracting authority to inform within 15 days any unsuccessful applicant or tenderer who so requests, of the reasons for the rejection of his application or tender. Obligation on contracting authorities to draw up a written report identifying the contracting authority, the successful applicants or tenderers and the reason for their selection, the unsuccessful applicants or tenderers and the reasons for their rejection, the successful bidder and the reason why its tender was chosen. The report shall be communicated to the Commission if it should so request.
6. The Directive applies 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 negotiated procedure with publication of a tender notice and the participation of at least three candidates. Limited cases in which a contracting authority may use the negotiated procedure without prior publication of a tender notice.
8. Obligation on contracting authorities to define technical specifications with reference to national standards transposing European standards, to European technical approvals or common technical specifications.
9. Obligation on the contracting authorities to publish the main elements of the contract after it has been awarded.
10. The time-limit 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 date 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 was sent out. In open procedures it shall not be less than 52 days from the date of dispatch of the notice. In cases of urgency, the time-limit for requests to participate shall be not less than 15 days from the date of sending

	the notice, and the time-limit for the receipt of tenders not less than 10 days from the date of the 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 or which are affected by industrial decline. 12. Obligation on Member States to send the Commission a report on, and a statistical survey of, contracts awarded.
(4) Deadline for implementation of the legislation in the Member States	19.7.1990 1.3.1992: Greece, Spain and Portugal
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 210, 21.7.1989
(7) Follow-up work	
(8) Commission implementing measures	Decision 90/380/EEC — Official Journal L 187, 19.7.1990 Commission Decision of 13 July 1990 concerning the updating of Annex 1 to Council Directive 89/440/EEC. Annex 1 lists bodies and categories of bodies governed by public law. Date of entry into force: 19.7.90. Recommendation 91/561/EEC — Official Journal L 305, 6.11.1991 Commission Recommendation of 24 October 1991 on the standardization of notices of public contracts. The aim is to ensure that contracting authorities make optional use, for advertising public contracts in the *Official Journal of the European Communities,* of standard forms for notices.

1. PUBLIC PROCUREMENT

1.3. Water, energy, transport and telecommunications services

(1) Objective

Directives 88/295/EEC (summary 1.1) and 89/440/EEC (summary 1.2) concern supply and works contracts awarded by public authorities. The present Directive concerns the same contracts awarded by enterprises providing a service to the public in connection with the production and distribution of water and energy and in the fields of transport and telecommunications. Account is taken, in the way in which the rules on the transparency of award procedures are drafted, of the specific nature of such enterprises and the diversity of structures in these sectors within the Community.

(2) Community measures

Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

(3) Contents

1. Definitions of certain concepts such as 'public authorities', 'public undertakings', 'supply and works contracts', 'open', 'restricted and negotiated procedures', etc.

2. Activities covered:

(a) the supply or operation of networks providing the service to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat;

(b) ground workings aimed at extracting oil, gas, coal or other solid fuels or the providing of airport, maritime, inland port or other terminal facilities;

(c) the operation of networks providing railway, tramway, trolleybus or bus services;

(d) the establishment or 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 does not apply, e.g. contracts whose execution must be accompanied by special national security measures.

5. The Directive applies to supply and telecommunications software service contracts worth (before VAT) not less than:

— ECU 400 000 for supply contracts concerning the activities referred to in points 2(a), (b) and (c);

— ECU 600 000 for supply contracts concerning the activities referred to in point 2(d);

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 a choice of 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. This notice must be published no more than 12 months before the invitation to tender.

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 not be 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 is normally at least three weeks and, at all events, not less than 10 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 a few suppliers only and must not require additional tests or proof. 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) Deadline for implementation of the legislation in the Member States

1.7.1992

(5) Date of entry into force (if different from the above)	1.1.1993 1.1.1996: Spain 1.1.1998: Greece and Portugal
(6) References	Official Journal L 297, 29.10.1990
(7) Follow-up work	Extension of these provisions to certain service contracts not already covered by Directive 90/531/EEC — summary 1.4.
(8) Commission implementing measures	

1. PUBLIC PROCUREMENT

1.4. Water, energy, transport and telecommunications services: coverage to be extended to certain service contracts

(1) Objective

Council Directive 90/531/EEC (summary 1.3) is designed to extend the benefits of the internal market to the procurement of supplies and works by entities operating in the water, energy, transport and telecommunications sectors. The present proposal aims to widen the coverage of that Directive to service contracts awarded by those entities.

(2) Proposal

Proposal for a Council Directive amending Directive 90/531/EEC on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

(3) Contents

1. The aim of the proposal is to supplement Directive 90/531/EEC in order to take account of the particular characteristics of service contracts. The necessary amendments have, to a very large extent, already been put forward in connection with the proposal for a Directive relating to service contracts awarded by public entities (summary 1.7), which covers among other things:
— definition of service contracts;
— exclusion of purchases of certain types of service;
— distinction between 'priority' services covered by the Directive as a whole (maintenance and repairs, computer and related services, architectural and engineering services, certain transport and telecommunications services) and 'non-priority' services subject to less strict controls (hotel and restaurant services, education and training, social services, etc.);
— rules governing 'design contests';
— the specific characteristics of contracts for 'know-how' and research and development;
— due consideration of the opening-up of third-country markets.
2. The proposal also provides for an exemption, under certain conditions, for contracts that contracting entities propose to conclude with one of their affiliates. First, the affiliate must be part of the same economic group defined on the basis of either the consolidated accounts of the two enterprises in question or, where appropriate, the criterion of dominant influence. Second, at least 85% of the affiliate's turnover within the Community during the preceding three years must derive from the provision of the services concerned within the group.
3. The Directive will apply as of the estimated values of contracts, which are the same as those laid down for supply contracts.
4. The Directive does not apply to service contracts which are:
— awarded for purposes of resale or renting;
— restricted under national rules to a contracting entity;
— concluded between a contracting entity and one of its affiliates.
5. The Directive applies to service contracts whose estimated value, net of VAT, is that laid down for supply contracts (summary 1.3).
6. Different procedures apply according to whether the services are priority services (maintenance and repairs, telecommunications, etc.) or non-priority services (hotel and restaurant services, rail transport, etc.).

7. Prior publication is not required for contracts for research and development services, provided that this does not adversely affect the putting-up for tender of subsequent contracts such as those for the large-scale production of the results of the research, development or experiment.
8. Where design contests are held as part of a procedure for the award of supply, works or service contracts, the contracting entities must comply with the rules on non-discrimination and the organization of a jury. Where design contests are held as part of a separate procedure, the putting-up for tender at European level and publication are required only if the total amount of prizes and payments to participants is ECU 200 000 or more.
9. Contracting entities must consider tenders submitted by a legal person where they conform to the national rules of the country in which that person is established.
10. Service contracts proposed by third countries may be approved provided that reciprocity applies.
11. By 1 January 1993, the Commission will adopt a Directive consolidating the provisions of the present Directive and Directive 90/531/EEC.

(4) Opinion of the European Parliament	Not yet published.
(5) Current status	The proposal is currently being examined by the European Parliament and the Economic and Social Committee.
(6) References	Commission proposal COM(91) 347 final Official Journal C 337, 31.12.1991

1. PUBLIC PROCUREMENT

1.5. Review procedures: supply and works contracts

(1) Objective	To increase substantially the guarantees of openness and non-discrimination required by the opening-up of public procurement to Community competition. To ensure that there are effective and rapid remedies where Community law on public contracts or national rules transposing such law are infringed.
(2) Community measures	Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.
(3) Contents	1. The Directive seeks to ensure that the review procedures are available at least to any person having or having had an interest in obtaining a given public contract and having been or who might be injured by an alleged infringement. Decisions of the contracting authorities which are in breach of the law must be subject to effective and rapid remedies. In all Member States, such remedies must include, in particular, the possibility of taking interim measures (such as suspension of the award procedure in question), the setting aside of unlawful decisions and discriminatory technical, economic and financial specifications in the invitation to tender, 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 of Community public procurement law has been committed, may notify its reasons to the Member State and the contracting authority concerned and request that the infringement be corrected. The Member State is obliged to reply within 21 days. If the Commission is not satisfied with the reply from the Member State it may initiate the infringement procedure provided for by Article 169 of the Treaty and apply to the Court of Justice to take interim measures where appropriate. 3. The Directive supplements the other Community Directives on public contracts, containing as it does specific measures for ensuring their effective application. It will provide firms with the same level of legal safeguards in respect of remedies in all Member States.
(4) Deadline for implementation of the legislation in the Member States	21.12.1991
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 395, 30.12.1989
(7) Follow-up work	
(8) Commission implementing measures	

1. PUBLIC PROCUREMENT

1.6. Review procedures: water, energy, transport and telecommunications services

(1) Objective

To lay down common rules guaranteeing the existence, at both national and Community level, of effective and rapid review procedures to deal with infringements committed during the award of contracts in the 'excluded sectors'.

(2) Proposal

Proposal for a Council Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

(3) Contents

1. The Directive has four main sets of provisions, their purpose being:
— to adapt for application to the 'excluded sectors' the remedies provided for in Directive 89/665/EEC (summary 1.5) in respect of contracts awarded by public authorities;
— to introduce an attestation procedure which contracting entities may use;
— to provide for a corrective mechanism in order to bolster the measures which may be taken by the Commission when a clear and manifest infringement has been committed;
— to set up a conciliation procedure at Community level.

2. With regard to remedies, the Directive permits Member States to choose between two options: they must provide for powers either to intervene directly in contract award procedures — through the suspension of procedures or the setting aside of certain decisions — or to exert an indirect influence on contracting entities by means of a dissuasive payment. In both cases the aim is to ensure that infringements of law are corrected and that damage to the interests concerned is prevented. Irrespective of the option chosen, the Directive also provides for the possible award of damages to parties harmed by an infringement.

3. The purpose of the attestation procedure is to provide for the procurement procedures and practices applied by contracting entities to be examined by external independent persons, thereby enabling such entities to include, in notices published in the Supplement to the *Official Journal of the European Communities,* confirmation that they are applying correctly the rules governing the award of contracts. Member States must give the entities concerned the opportunity to use this procedure, the implementing rules for which will be the subject of European standards.

4. The Commission may, where it considers that a clear and manifest infringement of Community provisions has been committed during a procurement procedure, invoke the 'corrective mechanism' procedure (summary 1.5).

5. Finally, the Directive establishes a conciliation procedure under which disputes concerning the correct application of the rules governing the award of contracts can be settled amicably. This procedure is conducted, in agreement with the two parties to the dispute, by a conciliator designated by the Commission and two conciliators appointed by the parties to the procedure. The conciliators

	endeavour to find a solution to the dispute which is in accordance with Community law. They report their findings to the Commission.
(4) Opinion of the European Parliament	First reading: Parliament approved the Commission's proposal subject to certain amendments. The Commission accepted some of these amendments.
(5) Current status	The Council adopted a common position on 16 September 1991. Within the framework of the cooperation procedure this is now before Parliament for a second reading.
(6) References	

Commission proposal	
COM(90) 297 final	Official Journal C 216, 31.8.1990
Amended proposal	
COM(91) 158 final	Official Journal C 179, 10.7.1991
European Parliament opinion	
First reading	Not yet published.
Economic and Social Committee opinion	Official Journal C 60, 8.3.1991

1. PUBLIC PROCUREMENT

1.7. Public service contracts

(1) Objective

To complete the Community framework for public procurement. To cover all purchases of services in respect of which the contracts are of a sufficient size to make cross-frontier operations a worthwhile proposition.

(2) Proposal

Proposal for a Directive relating to the coordination of procedures on the award of public service contracts.

(3) Contents

1. 'Public service contracts' are contracts for pecuniary interest concluded in writing between a supplier of services and a contracting authority. All contracts which are neither public supply contracts nor public works contracts are deemed to be service contracts. All service contracts are covered, but in two different ways. The Directive as a whole applies to the purchase of the majority of services while part of it applies to the purchase of other types of service, at least in the first three years of application.

2. Member States must take the necessary measures to ensure that the contracting authorities comply with the Directive when they award public service contracts or public service concessions or hold design contests.

3. The contracting authorities must ensure that there is no discrimination between different suppliers.

4. The Directive does not apply to services which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires. Nor does it apply to contracts whose value is below fixed thresholds which vary according to the type of service concerned.

5. The Directive does not apply to contracts governed by different procedural rules and awarded:
— pursuant to an international agreement concluded between a Member State and one or more third countries and covering services intended for the joint implementation or exploitation of a project by the signatory States;
— to undertakings in a Member State or a third country under an international agreement relating to the stationing of troops;
— pursuant to the particular procedure of an international organization.

6. The provisions of the Directive on award procedures are broadly identical to those for public works contracts. The necessary adjustments have been made to take account of the specific features of service contracts.

7. The normal award procedures are the open procedure and the restricted procedure. Contracting authorities may use the negotiated procedure, with prior publication of a tender notice, where, for example, in exceptional cases, the nature of the services or the risks involved prevent the technical specifications from being established with sufficient precision to permit application of the open or restricted

procedure. The contracting authorities may award public service contracts by negotiated procedure without prior publication of a tender notice where, for example, the contract concerned is the follow-up to a design contest and must, according to the relevant rules, be awarded to one of the winners of that contest.

8. Member States may oblige contracting authorities to award subsequent contracts to one of the winners of a design contest.

9. Contracting authorities must make known, by means of a notice to that effect published as soon as possible after the beginning of their financial year, their projected total procurement in each of the service categories which they envisage awarding during the coming 12 months where the total estimated value is equal to or greater than ECU 750 000.

10. Contracting authorities which have awarded a contract or a public service concession or have held a design contest must send a notice concerning the results of that award procedure to the Office for Official Publications of the European Communities.

11. Tenders may be submitted by groups of suppliers. These groups must not be required to assume a specific legal form in order to submit the tender but the group selected may be required to do so when it has been awarded the contract. The ability of suppliers to provide services may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

12. Proof of the supplier's financial and economic standing may be furnished by one or more references or by any other document which the contracting authorities consider appropriate.

13. Contracts must be awarded on the basis of the criteria laid down. Contracting authorities may take account of variants where the criterion for the award of the contract is that of the economically most advantageous. They must indicate in the contract documents or in the tender notice the award criteria which they intend to apply and the ranking or weighting they intend to use. The criteria for the award of contracts must be without prejudice to national law, regulation or administrative provision on the remuneration of certain services.

14. If, for a given contract, tenders appear to be abnormally low in relation to the transaction, the contracting authority must request, in writing details of the constituent elements of the tender concerned. It must verify those constituent elements, taking account of any explanations received, before deciding on the award of a contract or on the rejection of a tender.

15. In order to permit assessment of the results of applying the Directive, Member States must forward to the Commission a statistical report on the service contracts awarded by authorities by 31 October 1995 at the latest for the preceding year and thereafter by 31 October of every second year.

16. Member States must inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of public service contracts or concessions in third countries. The Directive lays down a well-defined procedure to enable the appropriate decisions to be taken in such cases.

(4) Opinion of the European Parliament

First reading: Parliament approved the Commission's proposal subject to certain amendments. The Commission accepted some of these amendments.

(5) Current status	On 19 December 1991 the Council released a political agreement concerning a common position. The formal adoption of this common position will take place during the next session.	
(6) References	Comission proposal	
	COM(90) 372 final	Official Journal C 23, 31.1.1991
	Amended proposal	
	COM(91) 322 final	Official Journal C 250, 25.9.1991
	European Parliament opinion	
	First reading	Official Journal C 158, 17.6.1991
	Economic and Social	
	Committee opinion	Official Journal C 191, 22.7.1991

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