ENGLISH

INTERNAL MARKET

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CONDITIONS FOR BUSINESS COOPERATION

Company law

Intellectual property

Company taxation

PUBLIC PROCUREMENT

INTERNAL MARKET FOR ENERGY

EUROPEAN COMMISSION

Volume 3

JULY 1994

This booklet is one of a series of six publications on the internal market.

The complete series of booklets covers

A common market for services

The elimination of frontier controls

Conditions for business cooperation
Public procurement
Internal market for energy

A new Community standards policy

Veterinary and plant health controls

Community social policy

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CONDITIONS FOR BUSINESS COOPERATION PUBLIC PROCUREMENT INTERNAL MARKET FOR ENERGY

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.

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, public procurement and energy;

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

(iv) a brief summary of each measure regarding business cooperation, public procurement and energy 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 ix) 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 July 1994, of a situation which is evolving all the time. It was designed as a documentary tool and does not bind the Commission in any way.

EUROPEAN COMMUNITY LEGISLATIVE PROCEDURES

SUMMARY

To gain a better understanding of the information contained in the summaries, it is worthwhile learning about the Community's legislative procedures. Each summary refers to a specific measure desgned to facilitate the creation of the single market. In brief:

(i) the Commission, which enjoys decision-making and implementing powers, has a right of initiative: it draws up proposals, which it submits to the Council;

(ii) the Council consists of members representing each Member State at ministerial level. Jointly with Parliament and the Commission, the Council adopts Community instruments on the basis of these proposals;

(iii) the European Parliament (elected by the citizens of the Community) examines these proposals and participates, within the limits of its powers, in the adoption of Community acts;

(iv) the Economic and Social Committee (consisting of representatives of employers, trade unions and other interest groups) must be consulted on some of these proposals;

(v) the Committee of the Regions, consisting of representatives of local and regional authorities, also has a consultative role in some fields.

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 EC 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

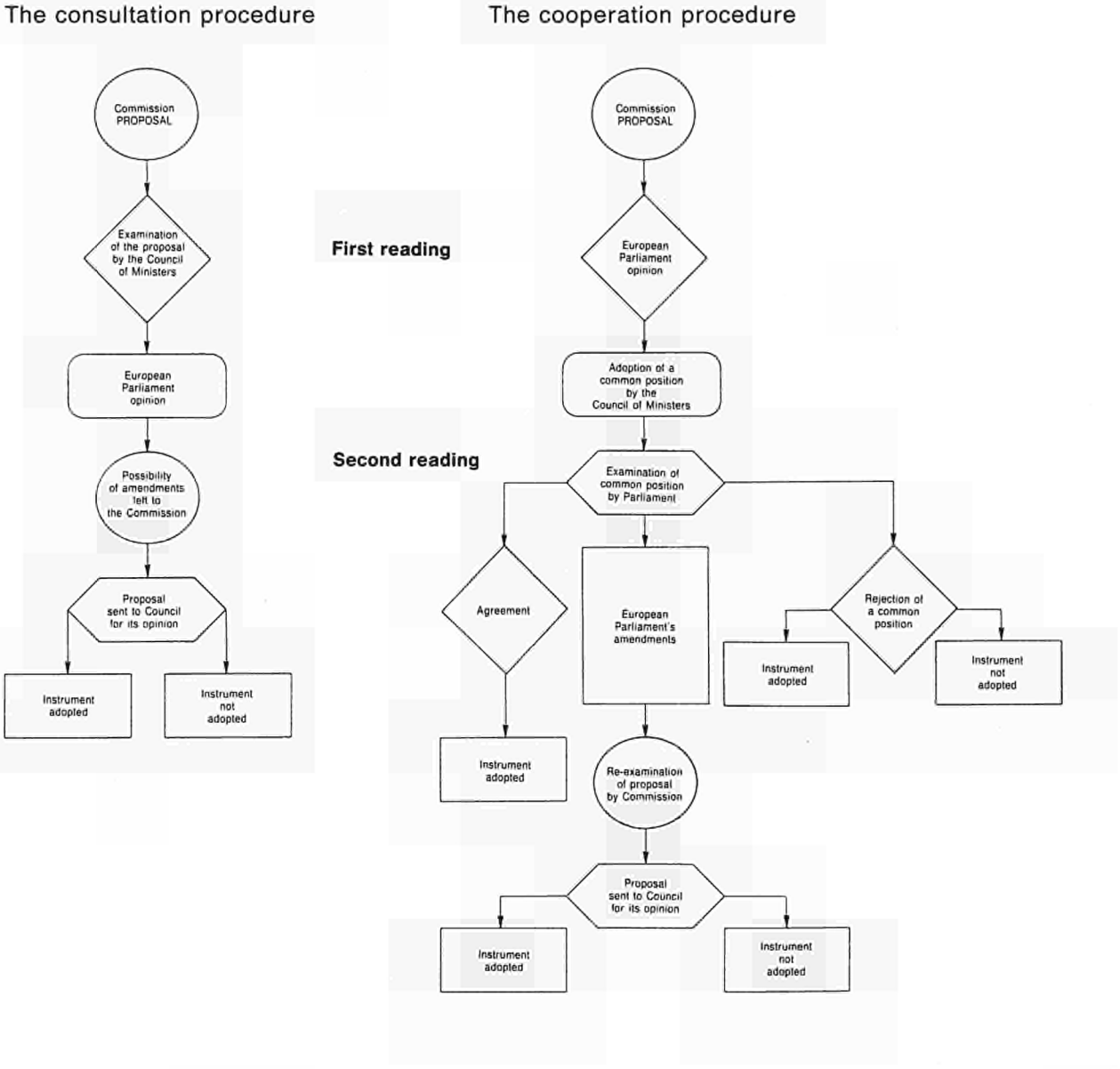
A decision is binding entirely on those to whom it is addressed. No national implementing legislation is required. The decisions summarized in this booklet are Council decisions although in certain cases the Commission has the power to adopt Commission decisions.

Recommendations

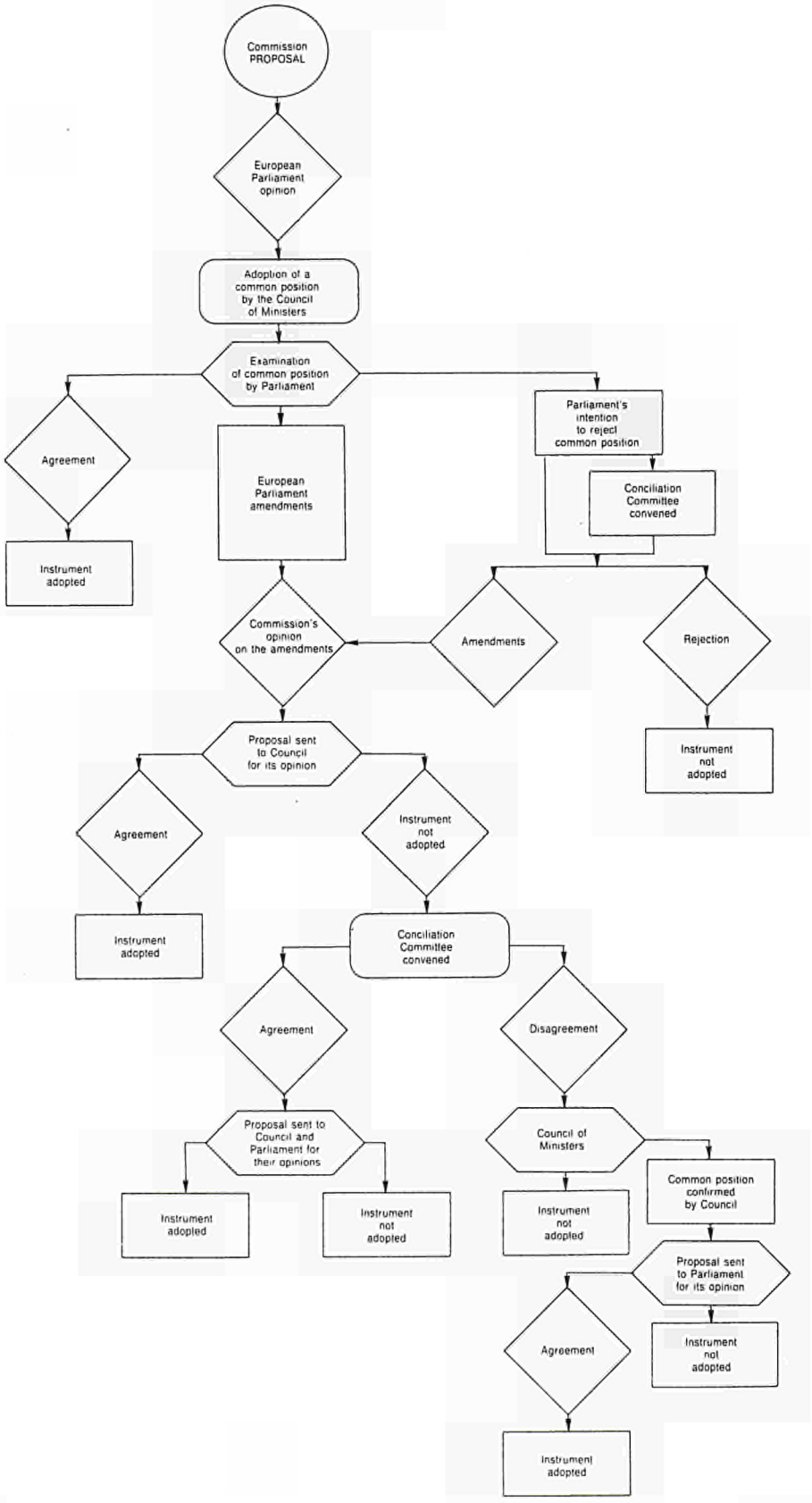
A recommendation has no binding effect (it is not a law). Recommendations can be adopted by both the Council and the Commission.

The majority of the measures included in this booklet are Council directives.

EC legislation from start to finish (directives and regulations)



Co-decision procedure



2. LEGISLATIVE PROCEDURES

The best way of illustrating the Community decision-making procedures is to describe the route leading to the adoption of a legislative instrument. The following text should be read in conjunction with the charts set out above.

Since the Treaty on European Union entered into force on 1 November 1993, four different procedures have existed for the adoption of a legislative instrument: the consultation procedure, the assent procedure, the cooperation procedure and the co-decision procedure.

The procedure to be followed is determined by the article of the EC Treaty on which the proposal is based and each Council instrument starts from a proposal addressed by the Commission to the Council.

Under the consultation procedure, the Council seeks the opinion of the European Parliament and, in most cases, that of the Economic and Social Committee. Once these opinions have been delivered, the Commission may amend its proposal, if it so wishes. The proposal is then examined by the Council, which may adopt it as it stands or after amending it. It can happen that the Council does not reach agreement, in which case the proposal remains 'on the table'.

Parliamentary approval is obligatory in all cases subject to the assent procedure — as regards the exercise of Community citizens' rights of free movement and residence. The instrument is either adopted or rejected. Where it is rejected, the Council has to re-examine the proposal until such time as Parliament gives its assent. Although unable to amend the text submitted to it, Parliament thus enjoys to all intents and purposes a right of veto.

The cooperation procedure allows Parliament to amend a proposal submitted to it not on one, but on two occasions. After consulting Parliament and the Economic and Social Committee and, where appropriate, the Committee of the Regions, the Council has to adopt a common position. This is then transmitted to Parliament, which has three months in which to accept it, reject it or propose amendments in second reading. The Commission re-examines its proposal in the light of Parliament's amendments and sends it to the Council, which has to take a final decision within three months. In the absence of a decision, the proposal will lapse.

The co-decision procedure is a three-phase procedure enabling Parliament to veto the proposals placed before it. It follows the same course as the cooperation procedure up to the second parliamentary reading. It differs from the latter procedure only in so far as it allows for the convening of a committee to elucidate certain aspects of the Council's position in cases where Parliament intends to reject the common position. This committee, which is known as the Conciliation Committee, consists of representatives of the Council and Parliament and involves the Commission in its work. Where Parliament has proposed amendments to the common position, the Commission issues its opinion on those amendments and the text is forwarded to the Council. Within three months (third phase), the Council either adopts the act or convenes the Conciliation Committee, which then has six weeks in which to negotiate a compromise between Parliament and the Council. If an agreement is found, Parliament and the Council can only approve or reject the text. Where there is disagreement, there are two possibilities:

(i) either the proposal lapses;

(ii) or Parliament adopts or rejects the initial common position as reaffirmed, and possibly amended, by the Council.

Prior to the entry into force of the Treaty on European Union, most matters now subject to this procedure were covered by the cooperation procedure: this was the case, for example, with the harmonization of legislation relating to the internal market, the free movement of workers and the mutual recognition of qualifications. The following table provides a full list of the areas falling within the scope of the co-decision procedure.

Scope of co-decision procedure

- Free movement of workers
- Freedom of establishment
- Mutual recognition of qualifications
- Services
- Harmonization of legislation on the internal market
- Education (incentive measures)
- Culture (incentive measures)
- Health (incentive measures)
- Consumer protection
- Trans-European networks (guidelines)
- Research (multiannual framework programme)
- Environment (action programme of a general nature)

The voting procedure within the Council (qualified majority or unanimous vote) depends on the article of the Treaty on which the proposal is based. There are some instances where Council unanimity is automatically required, namely:

(i) where amendments are made to the proposal on the Council's own initiative except in the case of the co-decision procedure Conciliation Committee;

(ii) where amendments are being made which have been proposed by Parliament but not endorsed by the Commission;

(iii) where a measure is being accepted after Parliament has rejected the Council's common position adopted under the cooperation procedure.

Only a limited number of decisions are summarized in this brochure. The European Parliament delivers an opinion on some of them, as do the Economic and Social Committee and the Committee of the Regions.

The same is true of recommendations, the list of which is also limited. In some cases, the European Parliament delivers an opinion before they are adopted and the Economic and Social Committee and the Committee of the Regions are consulted.

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 30 June 1994.

CONDITIONS FOR BUSINESS COOPERATION

PUBLIC PROCUREMENT

1. PUBLIC PROCUREMENT

INTERNAL MARKET FOR ENERGY

1. INTERNAL MARKET FOR ENERGY

INTRODUCTION

WHAT CONDITIONS FOR BUSINESS COOPERATION?

1957 — Treaty of Rome

The Treaty of Rome 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.

Some progress had been made towards creating an environment conducive to cooperation between businesses in different Member States. However, such cooperation was hampered by excessive legal, tax and administrative problems, along with occasional problems due to differing mentalities and habits.

1985 — White Paper

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 partners, creditors and associated enterprises in other Member States.

The Commission published a White Paper entitled 'Completing the internal market'. The White Paper set out to achieve freedom of movement for persons, services, capital and goods; its aim was to establish a new regulatory framework for business that would facilitate the development of large industrial groupings and of cooperation between businesses of all sizes.

In particular, it laid down a programme for harmonization in the fields of company law, double taxation in cross-border groups, and industrial and intellectual property. There were also to be rules requiring the opening-up of public contracts to tenders from businesses in other Member States, in order to facilitate industrial synergy and to improve transparency.

1987 — Single European Act

The Single European Act, which entered into force on 1 July 1987 and amended the EEC Treaty, confirmed the objective of completing an area without frontiers by 1992 according to the timetable set out in the 1985 White Paper.

It adapted the Community's decision-making procedures and increased the scope for voting by qualified majority (as opposed to unanimous voting) in the Council. It has facilitated the adoption of the White Paper measures.

The clauses dealing with company law and with industrial and intellectual property nevertheless include provisions on direct taxation and on the establishment of a Community trade mark that are not covered by the qualified-majority rule.

1993 — Treaty on European Union

The Union Treaty, which came into effect on 1 November 1993, continues the single market process. It will enable common policies and measures to be implemented in support of economic integration by extending the Community's fields of responsibility (environment, trans-European networks, consumer protection, education, culture, vocational training), supplementing and adjusting the range of available legislative procedures and transferring to the European Community responsibility for certain matters currently dealt with at intergovernmental level.

The harmonization of national rules on the establishment and operation of the internal market now comes under the co-decision procedure introduced by the Treaty.

General situation

Business cooperation

The measures and proposals summarized below have created an environment conducive to the development of cooperation between individual businesses in the Community. 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 a single market and will confer enormous benefits on suppliers and consumers of goods and services. The single market will create opportunities and incentives for cooperation between businesses in different Member States, for example by opening up new markets for which firms will need to find partners or by removing obstacles to the production or marketing of goods or services. Such cooperation could take a variety of forms ranging from mergers or the formation of joint subsidiaries to cooperation on specific projects. The benefits would not be felt only within the Community itself. They would also strengthen the position of European businesses competing on world markets.

As far as company law is concerned, the objective is to facilitate collaboration between companies either by harmonizing the law of the Member States or by enacting specific Community legislation to govern cooperation between them.

— The Community has adopted a number of measures independently of the White Paper: the first company law Directive, which relates to disclosure, the validity of obligations entered into, and nullity, 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 company accounts; the 12th Directive concerns single-member companies.

— As far as the introduction of specific Community legislation to facilitate cooperation is concerned, the only measure so far adopted is that introducing the European Economic Interest Grouping (EEIG). The introduction of the European company form, which would be a major step forward, is still being considered by the Council. The successes here must not be allowed to obscure the difficulties. The most important proposals are still before the Council (the fifth company law Directive, dealing particularly with the structure of limited companies and the powers and obligations of their management bodies) or Parliament (the 10th company law Directive on cross-border mergers).

In the intellectual property field, there was a danger that with the advances being made in technology, particularly in the areas of computer software, microcircuits and biotechnology, the separate intellectual property systems might adapt in different ways. This would have created uncertainty about the extent to which innovation could be protected, uncertainty which would have acted 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.

The approach followed seeks, on the one hand, to harmonize the law of the Member States and, on the other, to make provision at Community level for a Community patent and a Community trade mark. The work is not yet complete, but since 1985 considerable progress has been made; until 1985 Member States had maintained that these areas fell outside the Community's competence.

The harmonization of national law has seen legislation enacted on trade marks, copyright protection for microcircuits, software, and rental and lending rights and the duration of the protection of this copyright. Work is continuing on both copyright (television broadcasts, etc.) and patents (biotechnology products).

The Community has put in place a system of Community trade marks to be managed by a Community Office. In the field of patents, there are two conventions. The first one, the European Patent Convention, signed in Munich in 1973, enables firms to obtain patents for a number of countries by lodging a single application with the European Patent Office. All Member States are now party to this Convention. The second one, the Luxembourg Convention, signed in 1989, harmonizes the effects of European patents applied for within the territory of the Community. This Convention has so far been ratified only by Denmark, France, Germany and Greece.

In the field of company taxation, priority has been given to eliminating the double taxation of companies which conduct business internationally. The measures adopted prevent double taxation in dealings between a parent company and its subsidiaries, as well as in the event of a merger, division or transfer of assets. Difficulties regarding the tax revenue accruing to each of the Member States concerned are to be resolved by means of an arbitration procedure to be established by a convention not yet ratified by the Member States. There are recent but important proposals still before the Council on the carry-over and aggregation of losses and on the taxation of royalties, particularly in respect of patents.

On 18 March 1992 the Ruding Committee delivered a report on corporation tax in a developing single market. The Committee accepted that Community action in the corporation tax field should be limited, in view of the principle of subsidiarity and the importance of taxation to national sovereignty. It stressed the desirability of eliminating double taxation and drew attention to the effects of various tax breaks designed to attract foreign capital and which can lead to erosion of revenue and distortion of competition.

In the light of this report, the Commission on 26 June 1992 sent the Council and Parliament a communication in which it assigns priority to tackling problems associated with the taxation of cross-border income flows.

The communication has led to two proposals for broadening the scope of the 'mergers' and 'parent companies and subsidiaries' Directives.

Public contracts

The single market would not have been complete if public administrations and utilities had continued to pursue their existing procurement policies, which generally benefited national champions. International competition also required that firms in the industries concerned should be placed in an environment which would ensure their competitiveness.

Work in this area is now complete: all public administrative bodies, whether national, regional or local, and all utilities belonging to or controlled by government must, when they contract for goods, services or public works, comply with Community rules on procedural transparency and selection criteria; effective and rapid remedies must be available to firms harmed by any decisions breaching these rules.

Energy

The energy industry, which has a fundamental role to play in the economy, has also been opened up so as to ensure balanced operation of the single market as a whole. To achieve a single market in energy, the Commission has adopted a three-stage approach. The first stage, requiring price transparency and the unimpeded transit of electricity and gas, has already been achieved; the second stage, which is to see the liberalization of the market in gas, electricity and hydrocarbons, is well in hand now that a number of obstacles have been overcome; the third stage will be defined in detail in the light of experience.

1. COMPANY LAW

Current position and outlook

Bringing about the single market involves more than removing internal barriers and introducing freedom of movement for goods, individuals, services and capital. Steps must also be taken to create an environment favourable to the development of, and cooperation between, enterprises so as to reinforce the industrial and commercial fabric of that single market.

The Community's activities in the company law field initially centred on the approximation of Member States' laws. They were aimed at providing equivalent protection for shareholders and third parties, and thus facilitating freedom of establishment for companies.

The first Directive adopted governed disclosure and the validity of obligations entered into by, and the nullity of, companies with limited liability (summary 1.1).

The second Directive, the first in a series devoted to public limited liability companies, dealt with the formation of such companies and questions relating to their capital (summary 1.2).

The third Directive harmonized the rules on mergers between public limited liability companies from the same Member State, that is to say domestic mergers (summary 1.4). It was complemented by the sixth Directive on the division of public limited liability companies (summary 1.6).

The fourth and seventh Directives as amended (summaries 1.7 and 1.8) and the eighth Directive (summary 1.9) together formed an embryonic 'European accountancy code'. They aimed to harmonize the financial information published by companies with a view to making it equivalent and comparable.

The Directive concerning disclosure requirements in respect of branches was adopted in December 1989 (summary 1.10), as was the Directive permitting the formation of single-member private limited liability companies (summary 1.11). Proposals still awaiting adoption are the proposal for a fifth Directive concerning the structure of public limited companies and the powers and obligations of their organs (summary 1.3), a proposal aimed at harmonizing the laws on cross-border mergers (summary 1.5) and a proposal for a Directive on takeover and other general bids (summary 1.12).

Attention has been focusing more and more on the search for legal formulas which permit restructurings between groups from different Member States. The creation of a legislative framework facilitating cross-border activities would enable European enterprises to pool the resources that are available in several Member States and so to become more competitive, first in Europe and 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 body of truly European company law.

In pursuit of that objective, the Regulation on the European Economic Interest Grouping (EEIG) has created a new type of association which enables separate businesses from different Member States to develop certain joint activities without having to merge or set up a jointly owned subsidiary (summary 1.13). The proposals on the European company, association, cooperative society and mutual society (summaries 1.14 to 1.17) set out to create a European legislative framework which will allow existing companies and societies to restructure across frontiers. The draft multiannual programme (1994-96) of Community measures to assist these entities is designed to reinforce the priority fields of action likely to satisfy immediately the adjustment needs of enterprises in a period of uncertainty.

While real progress has been made, therefore, much remains to be done before we can actually speak of a European body of company law.

The main difficulties which have arisen with the proposal for a fifth Directive and with the proposals on European companies and other organizations have to do with the equivalence of employee participation schemes. The 10th Directive, on cross-border mergers, is still before the European Parliament. Consideration of the 13th Directive, on public share bids, has been suspended after disagreement arose between Member States on a number of fundamental questions, such as the obligation to bid for all the shares and the restrictions imposed on the powers of the board while a bid is open. The Commission is currently studying the possibility of amendments to the proposal which might secure the Member States' approval.

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 the Regulations concerning the disclosure, the power of representation of the organs and the nullity of companies with limited liability.

(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.

Amended by the following measure:
Council Decision 73/101/EEC of 1 January 1973.

(3) Contents

1. The following text contains a consolidation of existing Directives in the field of required safeguards of companies for the protection of the interests of members and others.
2. The Directives apply to all companies with limited liability. They establish 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, the balance sheet and the profit and loss account for each financial year, 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.
3. Compulsory disclosure also extends 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.
4. 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.
5. 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.
6. As a general rule acts done by the organs or officers of a company (its directors, etc.) may be relied upon by third parties. There are exceptions. Such acts are not binding if they exceed the powers which the law allows to be conferred on the organs. An act outside the

objects of the company may be relied on by a third party unless the relevant national law allows the company to prove that the third party in the case knew it was outside the objects of the company or could not have been unaware of that fact.
7. The Directives contain a set of rules on nullity. Nullity may not be automatic, a court judgment being required.
8. 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

— Directive 68/151/EEC: 11.9.1969
— Decision 73/101/EEC: not required

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

(6) References

Official Journal L 65, 14.3.1968
Official Journal L 2, 1.1.1973

(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.

Amended by the following measures:
Council Regulation (EEC) No 3308/80 of 16 December 1980;
Council Directive 92/101/EEC of 23 November 1992.

(3) Contents

1. The following text contains a consolidation of existing Directives in this field.
2. These Directives apply to public limited companies. They impose a number of requirements intended to protect members and others.
3. They set out information which must appear in the statutes or the instrument of incorporation of the company (type and name of the company, objects etc.).
4. They list certain other information which must be made public (registered office, types of shares, subscribed capital etc.).
5. Formation:
— amount and composition of the minimum subscribed capital;
— rules governing the issue and the price paid for shares;
— the form of consideration acceptable.
6. Distributions to shareholders: no distribution may be made when on the closing date of the last financial year the net assets are lower than the amount of the subscribed capital and reserves. There is an exemption for investment companies with fixed capital.
7. There is a definition of a serious loss of the subscribed capital, in which event a general meeting must be called.
8. Subscription by a company of its own shares:
— principle and exemptions;
— cross-holdings.
9. Loans made and security provided by a company: principle and exemptions.
10. Increases and reductions in capital.
11. Redemption of shares by the company.

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

— Directive 77/91/EEC: 16.12.1978
— Regulation (EEC) No 3308/80: not required
— Directive 92/101/EEC: 1.1.1994

(5) Date of entry into force (if different from the above)	— Regulation (EEC) No 3308/80: 1.1.1981 — Directive 92/101/EEC: 1.1.1995	
(6) References		Official Journal L 26, 30.1.1977 Official Journal L 345, 20.12.1980 Official Journal L 347, 28.11.1992
(7) Follow-up work		
(8) Commission implementing measures		

1. COMPANY LAW

1.3. Structure of public limited companies: proposal for a fifth Directive

(1) Objective

To coordinate the laws of the Member States relating to the structure of public limited companies and the powers and obligations of their organs.

(2) Proposal

Proposal for a fifth Council Directive designed to coordinate the 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 as regards 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

First reading: 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.

(5) Current status of the proposal

Cooperation procedure

The Commission presented the proposal on 9 October 1972.

First reading: On 14 June 1982 Parliament approved the Commission proposal subject to amendments. The Commission has accepted some of the amendments.

The Commission presented a first amended proposal on 19 August 1983, a second amended proposal on 13 December 1990 and a third one on 20 November 1991.

The third amended proposal is currently before the Council for 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

1.4. Domestic mergers of public limited liability companies: third Directive

(1) Objective	To lay down rules concerning mergers between public limited liability companies from the same Member State.
(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. The Directive applies to public limited companies. Any Member State may choose not to apply it to cooperatives in company form or where the merger would result in the disappearance of a company which is the subject of insolvency proceedings. To fall within the scope of the Directive a merger must result in the full absorption of one or more companies by another, or in the formation of a new company. 2. Whether the merger is by acquisition or by the formation of a new company, the 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 required 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 employees, members and creditors of the companies.
(4) Deadline for implementation of the legislation in the Member States	13.10.1981
(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

1.5. Cross-border mergers of public limited companies: proposal for a 10th Directive

(1) Objective	To harmonize the laws on cross-border mergers of public limited companies.
(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 delivered.
(5) Current status of the proposal	Consultation procedure The proposal has been sent to the European Parliament for its opinion.
(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

1.6. 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.

(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

1.7. 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.

Amended by the following measures:
Council Regulation (EEC) No 3308/80 of 16 December 1980;
Council Directive 83/349/EEC of 13 June 1983;
Council Directive 84/569/EEC of 27 November 1984;
Council Directive 89/666/EEC of 21 December 1989;
Council Directive 90/604/EEC of 8 November 1990;
Council Directive 90/605/EEC of 8 November 1990;
Council Directive 94/08/EC of 21 March 1994.

(3) Contents

1. The following text contains a consolidation of existing Directives on annual accounts of companies with limited liability.
2. These Directives apply to all limited companies, except that Member States may exempt banks, other financial institutions and insurance companies. They also apply to certain types of partnership.
3. The annual accounts are to comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents constitute a composite whole. The Directives lay down the principles which govern the drawing up of these documents.
4. The balance sheet: the Directives provide for two balance sheet layouts, leaving it to the Member States to choose. It then lists the balance sheet items and comments on them.
5. The profit and loss account: two layouts are proposed, from which Member States are free to choose. The Directives provide a commentary on certain items here too.
6. The Directives state general principles for the valuation of items in the annual accounts, such as prudence, consistency in the application of the methods of valuation, etc. They also supply specific valuation rules. These are based on the principle of purchase price or production cost.
7. The Directives list the information which must be provided in the notes to the accounts: the valuation methods applied to the various items, undertakings in which the company holds a certain percentage of the capital, the company's debts, financial commitments not included in the balance sheet, etc.
8. The annual report must include a fair review of the development of the company's business and of its position. It must also provide information on 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.
9. The Directives lay down certain rules on publication (documents which must be published etc.).

10. Lastly, the Directives provide 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 a person or persons must also verify that the annual report is consistent with the annual accounts for the same financial year.
11. Less severe rules are laid down for small and medium-sized companies. Member States may lighten their obligations in respect of the publication of annual accounts, or dispense small companies from the requirement that the annual accounts be audited. '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 2 million;
— net turnover: ECU 4 million;
— number of employees: 50.
The corresponding figures for 'medium-sized' companies are:
— balance sheet total: ECU 8 million;
— net turnover: ECU 16 million;
— number of employees: 250.

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

— Directive 78/660/EEC: 31.7.1980
— Regulation (EEC) No 3308/80: not required
— Directive 83/349/EEC: 1.1.1988
— Directive 84/569/EEC: not communicated
— Directive 89/666/EEC: 1.1.1992
— Directive 90/604/EEC: 31.12.1992
— Directive 90/605/EEC: 31.12.1992
— Directive 94/08/EC: 25.3.1994

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

Regulation (EEC) No 3308/80: 1.1.1981

(6) References

Official Journal L 222, 14.8.1978
Official Journal L 345, 20.12.1980
Official Journal L 193, 18.7.1983
Official Journal L 314, 4.12.1984
Official Journal L 395, 30.12.1989
Official Journal L 317, 16.11.1990
Official Journal L 317, 16.11.1990
Official Journal L 82, 25.3.1994

(7) Follow-up work

(8) Commission implementing measures

On 1 September 1993 the Commission presented a proposal for a Directive amending Council Directive 78/660/EEC as regards the revision of amounts expressed in ecus (COM(93) 390 final).
This Directive changes the thresholds defining small and medium-sized companies. For small companies these become:
— balance sheet total: ECU 2 500 000;
— net turnover: ECU 5 million;
and for medium-sized companies:
— balance sheet total: ECU 10 million;
— net turnover: ECU 20 million.

1. COMPANY LAW

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

(1) Objective

To coordinate national laws on consolidated (i.e. group) accounts.

(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.

Amended by the following measures:
Council Directive 89/666/EEC of 21 December 1989;
Council Directive 90/604/EEC of 8 November 1990;
Council Directive 90/605/EEC of 8 November 1990.

(3) Contents

1. The following text contains a consolidation of existing Directives on consolidated accounts of companies with limited liability.
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. These Directives define the circumstances in which consolidated accounts are to be drawn up. 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. They may provide for exemption from this obligation. The figures given in ecus in Directive 78/660/EEC serve as thresholds for defining the small groups which can be exempted completely from the consolidated accounts requirement (summary 1.7).
4. The Directive sets out the methods of drawing up consolidated accounts:
— 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.
— 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.
— The consolidated accounts must be drawn up on the same date and by the same methods as the annual accounts of the parent company.
5. Contents of the notes: certain information must be provided in the notes, on such things as valuation methods, the names and the registered offices of the undertakings included in the consolidation, total debts etc.
6. The Directives also regulate the contents of the consolidated annual report. This must include at least a fair review of the development of business and the position of the undertakings included in the

consolidation taken as a whole, and certain indications for each of those undertakings (number and nominal value of shares etc.).
7. The Directives establish a system of auditing, under which 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 accounts for the same financial year.
8. The Directives lay down rules on disclosure. 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

— Directive 83/349/EEC: 1.1.1988
— Directive 89/666/EEC: 1.1.1992
— Directive 90/604/EEC: 31.12.1992
— Directive 90/605/EEC: 31.12.1992

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

(6) References

Official Journal L 193, 18.7.1983
Official Journal L 395, 30.12.1989
Official Journal L 317, 16.11.1990
Official Journal L 317, 16.11.1990

(7) Follow-up work

(8) Commission implementing measures

On 1 September 1993 the Commission presented a proposal for a Council Directive amending Directive 78/660/EEC so as to revise the amounts expressed in ecus (COM(93) 390 final).
This Directive amends the amounts used to define small groups which can be exempted completely from the obligation to draw up consolidated accounts (summary 1.6).

1. COMPANY LAW

1.9. 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, defining 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

1.10. Disclosure requirements in respect of branches: 11th Directive

(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.
(2) Community measures	11th 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.
(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

1.11. 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	12th 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 (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

1.12. Takeover and other general bids: proposal for a 13th Directive

(1) Objective

To guarantee 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.

(5) Current status of the proposal	Cooperation procedure The Commission presented the proposal on 19 January 1989. First reading: On 17 January 1990 Parliament approved the Commission proposal subject to amendments. The Commission has accepted most of the amendments. The Commission presented an amended proposal on 10 September 1990. The amended proposal is currently before the Council for 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

1.13. European Economic Interest Grouping (EEIG)

(1) Objective

To create a new legal entity based on Community law to facilitate and encourage cross-border cooperation.

(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	
(5) Date of entry into force (if different from the above)	1.8.1989
(6) References	Official Journal L 199, 31.7.1985
(7) Follow-up work	
(8) Commission implementing measures	

1. COMPANY LAW

1.14. Statute for a European Company

(1) Objective

To create a European company with its own legislative framework while avoiding the legal and practical constraints arising from the existence of 12 different legal systems.

(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:

— any investment project requiring an amount more than the percentage of subscribed capital fixed in accordance with the final point below;

— 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 the final point below;

— 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 the final point below;

— 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 the final point below;

— 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: firstly, 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: The European Parliament approved the Commission's proposals subject to certain amendments. These were designed primarily to expand and ease the conditions governing the formation of a European company (authorization for private limited companies to take the form of a European company by establishing a holding company; possibility for public limited companies to transform themselves into European companies provided that they have a subsidiary or establishment in a Member State other than that of their central administration; list of rules determining in a uniform manner in the Regulation the moment at which the European company acquires legal personality; etc.).
(5) Current status of the proposal	Cooperation procedure The Commission presented the proposals on 25 August 1989. First reading: On 24 January 1991 Parliament approved the Commission proposals subject to amendments. The Commission has accepted many of these amendments. The Commission presented some amended proposals. The amended proposals are currently before the Council for 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

1. COMPANY LAW

1.15. Statute for a European Association (EA)

(1) Objective

To enable associations and foundations to operate throughout the Community, by providing for a legal form to be known as a European association (EA). To provide for the involvement of employees in the European association so that they can play their proper part in the organization.

(2) Proposal

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

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

(3) Contents

Proposal for a Council Regulation on the Statute for a European Association

1. A European association (EA) is to be a body whose members pool their knowledge or their activities either for a purpose in the general interest or in order directly or indirectly to promote the interests of particular professions or groups.
2. An EA is to have legal personality from the day of its registration in the Member State in which it has its registered office.
3. An EA may be set up directly either by any two or more legal entities formed under the law of a Member State, provided at least two of them have their registered offices and central administrations in different Member States, or by at least 21 natural persons, being nationals of and resident in at least two Member States.
4. An association which has been formed in accordance with the law of a Member State may set up an EA by converting into EA form if it has an establishment in a Member State other than that of its registered office. It must be able to show that it is carrying on a genuine cross-border activity.
5. The EA's registered office, which is to be specified in its rules, must be within the Community, and must be in the same place as its central administration.
6. The rules of the EA must provide for a general meeting and for an executive committee.
7. A general meeting is to be held at least once a year, not more than six months after the end of the financial year. Meetings may be convened at any time either by the executive committee on its own initiative or at the request of at least 25% of the members; the rules may set a lower proportion.
8. Every member is entitled to one vote. Decisions are to be taken by a majority of the votes of the members present or represented. The general meeting has sole power to amend the rules of the EA; any such resolution is to be passed by a majority of two-thirds of the votes of the members present or represented.
9. The member or members of the executive committee have the power to represent the EA in dealings with third parties and in legal proceedings. They are to be appointed and removed by the general meeting.

10. Members of the executive committee are to be appointed for a period which may not exceed six years. They may be reappointed at the end of the six-year period.

11. The EA is to draw up a budget for the forthcoming financial year.

12. An EA may be wound up either by a decision of the general meeting, in particular where the period fixed in the rules has expired or where no accounts have been disclosed as required in the EA's last three financial years, or by the courts, in particular where the registered office has been transferred outside the Community.

13. As regards liquidation, insolvency and suspension of payments, the EA is to be subject to the laws of the State in which it has its registered office.

Proposal for a Council Directive complementing the Statute for a European association with regard to the involvement of employees

1. No EA may be registered until a model of participation or an information and consultation system has been chosen.

2. The Directive refers back to domestic rules governing the participation of employees in the supervisory or administrative boards of domestic companies and societies in general. If the Member State in which the EA has its registered office has no rules on the participation of employees, or does not wish to apply such rules to the EA, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

3. The Directive describes the procedure to be followed for the adoption of information and consultation arrangements in EAs with at least 50 employees.

4. In the event of direct formation by natural persons, the arrangements chosen must be submitted to the general meeting called to approve the formation of the EA.

5. The executive committee must inform and consult the employees in good time; the Directive supplies a minimum list of areas in which information and consultation are required, including any proposals which might significantly affect the interests of the employees and any question concerning conditions of employment.

6. The Directive lays down certain basic principles concerning election procedures and the performance of their functions by elected representatives. The representatives of the employees are to be elected, and not appointed, and are to represent the employees of all the EA's establishments, plants and facilities, even if they are employed part time.

(4) Opinion of the European Parliament

First reading: Parliament approved the Commission's proposals subject to certain amendments. Where the proposal on the statute for a European association is concerned, the amendments relate in particular to the following aspects of such entities: designation, establishment criteria, procedures for convening general meetings, powers of general meetings, legal status and financial arrangements. As regards the involvement of employees in these entities, the amendments relate to the arrangements for informing and consulting employees and for their participation in decisions taken.

(5) Current status of the proposal

Cooperation procedure

The Commission presented the proposals on 18 December 1991.

First reading: On 20 January 1993 Parliament approved the Commission proposals subject to amendments. The Commission has accepted some of the amendments.

The Commission presented some amended proposals on 6 July 1993.

The amended proposals are currently before the Council for a common position.

(6) References

Commission proposals	
COM(91) 273/I and II final	Official Journal C 99, 21.4.1992
Amended proposals	
COM(93) 252 final	Official Journal C 236, 31.8.1993
European Parliament opinion	
First reading	Official Journal C 42, 15.2.1993
Economic and Social Committee opinion	Official Journal C 223, 31.8.1992

1. COMPANY LAW

1.16. Statute for a European Cooperative Society (SCE)

(1) Objective

To facilitate cooperatives wishing to engage in cross-border business, by making legislative provision which takes account of their specific features. To provide for the involvement of employees in the European cooperative society (EEC) so that employees can play their proper part in the organization.

(2) Proposal

Proposal for a Council Regulation on the Statute for a European Cooperative Society.

Proposal for a Council Directive supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

(3) Contents

Proposal for a Council Regulation on the Statute for a European Cooperative Society

1. A European cooperative society (SCE — the abbreviation is based on a Latin form of words) is to be a private-law body with legal personality. The members' contributions are to form a capital, divided into shares which carry entitlement to a return. The SCE is to have legal personality from the day of its registration in the State in which it has its registered office.
2. The SCE's registered office, which is to be specified in its rules, must be within the Community and must be in the same place as its central administration.
3. An SCE may be set up by any two or more legal entities formed under the law of a Member State, provided at least two of them have their registered offices and central administrations in different Member States.
4. A cooperative society with an establishment or subsidiary in a Member State other than that of its central administration may form an SCE by converting into SCE form, provided it can show that it is carrying on a genuine cross-border activity.
5. The capital of an SCE may not be less than ECU 100 000 or the equivalent in national currency.
6. The capital may be increased or reduced without amending the rules, and without any public announcement, provided the minimum level is observed and that the amount of the capital is disclosed annually. The general meeting is to pass a resolution each year recording the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.
7. The rules of the SCE must provide for a general meeting and for either a management board, with a supervisory board monitoring its activities (the two-tier system), or for an administrative board (the one-tier system).
8. A general meeting must be held at least once a year, not later than six months after the end of the financial year. Meetings are to be convened by the management board or administrative board on its own initiative or at the request of at least 25% of the members.
9. In the two-tier system a management board is to manage the SCE. The members of the management board have power to represent the SCE in dealings with third parties and in legal proceedings. They are to be appointed and removed by the supervisory board. The same

person may not serve on both boards of the same SCE at the same time. The supervisory board may nominate one of its members to occupy a vacancy on the management board. The member concerned then ceases to exercise his functions on the supervisory board.

10. In the one-tier system a single administrative board is to manage the SCE. The member or members of the administrative board have power to represent the SCE in dealings with third parties and in legal proceedings. The administrative board may delegate powers of management, but not other powers, to one or more of its members.

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

— any investment project costing more than the percentage of subscribed capital fixed in accordance with the last point below;

— the setting-up, acquisition, disposal or closing down of undertakings, establishments or parts of establishments, where the purchase price or the proceeds of disposal account for more than the percentage of subscribed capital fixed in accordance with the last point below;

— 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 the last point below;

— the conclusion of supply and performance contracts where the total turnover provided for is more than the percentage of turnover for the previous financial year fixed in accordance with the last point below;

— the percentage referred to here is to be determined by the rules of the SCE; it may not be less than 5% nor more than 25%.

12. The SCE may offer 'investor' shares, carrying no voting rights, for subscription by interested parties. To offset these disadvantages such shares may be given preferential entitlements. Where the rules authorize persons who do not expect to use the SCE's services to subscribe for voting shares, they make special provision for the benefit of such non-user members with regard to the distribution of surpluses.

13. As regards the drawing-up, auditing and disclosure of its annual accounts, and its consolidated accounts if any, the SCE is to be subject to the law of the State in which it has its registered office giving effect to the Community legislation in force.

14. An SCE may be wound up either by a decision of the general meeting, in particular where the period fixed in the rules has expired or where the subscribed capital has been reduced below the minimum capital laid down in the rules, or by the courts, in particular where the registered office has been transferred outside the Community.

15. As regards liquidation, insolvency and suspension of payments, the SCE is to be subject to the laws of the State in which it has its registered office.

Proposal for Council Directive complementing the Statute for a European Cooperative Society with regard to the involvement of employees

1. This Directive sets out to align the laws, regulations and administrative provisions in force in the Member States so as to cater for the involvement of employees in the running of the SCE.

2. No SCE may be registered until a model of participation or an information and consultation system has been chosen.

3. The Directive refers back to the domestic rules governing the participation of employees in the supervisory or administrative boards of domestic companies and societies in general. If the Member State in which the SCE has its registered office has no rules on the participation of employees, or does not wish to apply such rules to the SCE, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

4. Where most of an SCE's employees are members of the cooperative it is exempted from this procedure, and from the information and consultation requirement, as de facto they participate in shaping the strategies of the SCE in their capacity as members.

5. The Directive describes the procedure to be followed for the adoption of information and consultation arrangements in SCEs with at least 50 employees.

6. The management board or administrative board of the SCE must inform and consult the employees in good time; the Directive supplies a minimum list of areas in which information and consultation are required, including any proposals which might significantly affect the interests of the employees and any question concerning conditions of employment.

7. The Directive lays down certain basic principles concerning election procedures and the performance of their functions by elected representatives. The representatives of the employees of the SCE are to be elected, and not appointed, and are to represent the employees of all the SCE's establishments, plants and facilities, even if they are employed part time.

(4) Opinion of the European Parliament

First reading: Parliament approved the Commission's proposals subject to certain amendments. Where the proposal on the statute for a European cooperative society is concerned, the amendments relate in particular to the following aspects of such entities: designation, establishment criteria, procedures for convening general meetings, powers of general meetings, legal status and financial arrangements. As regards the involvement of employees in these entities, the amendments relate to the arrangements for informing and consulting employees and for their participation in decisions taken.

(5) Current status of the proposal

Cooperation procedure

The Commission presented the proposals on 18 December 1991.

First reading: On 20 January 1993 Parliament approved the Commission proposals subject to amendments. The Commission has accepted some of the amendments.

The Commission presented some amended proposals on 6 July 1993.

The amended proposals are currently before the Council for a common position.

(6) References

Commission proposals	
COM(91) 273/III and IV final	Official Journal C 99, 21.4.1992
Amended proposals	
COM(93) 252 final	Official Journal C 236, 31.8.1993

European Parliament opinion First reading	Official Journal C 42, 15.2.1993
Economic and Social Committee opinion	Official Journal C 223, 31.8.1992

1. COMPANY LAW

1.17. Statute for a European Mutual Society (ME)

(1) Objective

To facilitate mutual societies wishing to engage in cross-border business, taking account of their specific features, and in particular of the fact that they operate in the general interest. To provide for the participation of employees in the European mutual society so that they can play their proper part in the organization.

(2) Proposal

Proposal for a Council Regulation on the Statute for a European Mutual Society.

Proposal for a Council Directive supplementing the Statute for a European Mutual Society with regard to the involvement of employees.

(3) Contents

Proposal for a Council Regulation on the Statute for a European Mutual Society

1. A European mutual society (ME) is to be a grouping of natural or legal persons, or both, which guarantees its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorized by its rules (whether concerned with providence, insurance, health assistance, credit, or otherwise). The ME is to have legal personality from the day it is registered in the State in which it has its registered office.
2. The Regulation does not affect obligatory social security schemes which in certain Member States are managed by provident mutual societies, nor the freedom of Member States to decide whether and in what circumstances to entrust the management of such schemes to MEs.
3. An ME may be set up by domestic legal entities. The founder members must satisfy themselves that the ME has a cross-border dimension at the time of its formation; they must check that the founding societies or other entities are formed under the law of a Member State, and that they have their registered office and central administration in at least two Member States.
4. Provision is also made for formation by conversion of an existing society, without the society being wound up or a new legal person being created, provided it has an establishment or subsidiary in a Member State other than that of its central administration, and can show that it is carrying on a genuine cross-border activity.
5. The ME is to have a formation fund of no less than ECU 100 000 or the equivalent in national currency.
6. The ME's registered office, which is to be specified in its rules, must be within the Community and must be in the same place as its central administration.
7. The rules of the ME must provide for a general meeting of the members and either a management board, with a supervisory board monitoring its activities (the two-tier system), or an administrative board (the one-tier system).
8. A general meeting is to be held at least once a year, not more than six months after the end of the financial year. Meetings may be convened by the management board or administrative board on its own initiative or at the request of at least 25% of the members.

9. In the two-tier system a management board is to manage the ME. The member or members of the management board have power to represent the ME in dealings with third parties and in legal proceedings. They are to be appointed and removed by the supervisory board. The same person may not serve on both boards of the same ME at the same time. The supervisory board may appoint one of its members to occupy a vacancy on the management board. The member concerned will then cease to perform his functions on the supervisory board.

10. In the one-tier system a single administrative board is to manage the ME. The member or members of the administrative board have power to represent it in dealings with third parties and in legal proceedings. The administrative board may delegate powers of management, but not other powers, to one or more of its members.

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

— closing or transferring a large establishment or a substantial part of such an establishment;
— substantially reducing, extending or altering the activities of the ME;
— making substantial organizational changes within the ME;
— establishing cooperation with other legal persons which is both long-term and of importance to the activities of the ME, or terminating such cooperation;
— raising loans in respect of operations in excess of the ceiling laid down in the rules, issuing securities and assuming or guaranteeing liabilities of a third party.

12. As regards the drawing-up, auditing and disclosure of its annual accounts, and its consolidated accounts if any, the ME is to be subject to the law of the State in which it has its registered office giving effect to the fourth Council Directive (78/660/EEC) on annual accounts (summary 1.7), the seventh Council Directive (83/349/EEC) on consolidated accounts (summary 1.8), the eighth Council Directive (84/253/EEC) on the approval of persons responsible for carrying out the statutory audits of accounting documents (summary 1.9), and Council Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (see the chapter on free movement of labour and the professions in Volume 1).

13. An ME may be wound up either by a decision of the general meeting, in particular where the period fixed in the rules has expired or where the formation fund has dropped below the minimum laid down in the rules, or by the courts, in particular where the registered office has been transferred outside the Community.

14. As regards liquidation, insolvency and suspension of payments, the ME is to be subject to the laws of the State in which it has its registered office.

Proposal for a Council Directive supplementing the Statute for a European Mutual Society with regard to the involvement of employees

1. No ME may be registered until a model of participation or an information and consultation system has been chosen.

2. The Directive refers back to the domestic rules governing the participation of employees in the supervisory or administrative boards of domestic companies and societies in general. If the Member State in which the ME has its registered office has no rules on the participation of employees, or does not wish to apply such rules to the ME, it must

	nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees. 3. The Directive describes the procedure to be followed for the adoption of information and consultation arrangements in MEs with at least 50 workers. 4. The management board or administrative board of the ME must inform and consult the employees in good time; the Directive supplies a minimum list of areas in which information and consultation are required, including any proposals which might significantly affect the interests of the employees and any question concerning conditions of employment. 5. The Directive lays down certain basic principles concerning election procedures and the performance of their functions by elected representatives. The representatives of the employees of the ME are to be elected, and not appointed, and are to represent the employees of all the ME's establishments, plants and facilities, even if they are employed part time.
(4) Opinion of the European Parliament	First reading: Parliament approved the Commission's proposals subject to certain amendments. Where the proposal on the Statute for a European Mutual Society is concerned, the amendments relate in particular to the following aspects of such entities: designation, establishment criteria, procedures for convening general meetings, powers of general meetings, legal status and financial arrangements. As regards the involvement of employees in these entities, the amendments relate to the arrangements for informing and consulting employees and for their participation in decisions taken.
(5) Current status of the proposal	Cooperation procedure The Commission presented the proposals on 18 December 1991. First reading: On 20 January 1993 Parliament approved the Commission proposals subject to amendments. The Commission has accepted some of the amendments. The Commission presented some amended proposals on 6 July 1993. The amended proposals are currently before the Council for a common position.
(6) References	Commission proposals COM(91) 273/V and VI final — Official Journal C 99, 21.4.1992 Amended proposals COM(93) 252 final — Official Journal C 236, 31.8.1993 European Parliament opinion First reading — Official Journal C 42, 15.2.1993 Economic and Social Committee opinion — Official Journal C 223, 31.8.1992

2. INTELLECTUAL PROPERTY

Current position and outlook

Differences between national laws in the intellectual property field can be exploited by governments in order to create protectionist barriers to the free movement of goods and services and to distort competition, thereby undermining the single market. For example, a Member State with extremely strict counterfeiting laws could easily take action for counterfeiting against products coming from a Member State whose laws were less stringent.

The protection of intellectual property is, of course, governed by many international conventions (e.g. the Paris, Berne and Munich Conventions). The corresponding commitments made by some or all of the Member States are leading to some standardization of national laws in specific fields.

This does not, however, provide an adequate basis for completing the single market. The Commission therefore decided to strive for harmonization of national laws in different areas and for stronger effective protection of intellectual property throughout the world.

Attention was initially focused on the Community trade mark. The measures adopted are designed, on the one hand, to establish a Community trade mark and, on the other, to harmonize laws on national trade marks. The first instrument enables firms holding a Community trade mark to market their products throughout the Community under the protection conferred by a single set of rules (summary 2.1). Since the basic Regulation on the Community trade mark was adopted by the Council on 20 December 1993, the detailed arrangements will be laid down under the committee procedure by an implementing regulation (summary 2.2), a regulation setting the fees payable (summary 2.4) and a regulation establishing the procedure to be followed before the Boards of Appeal instituted within the Office for harmonization in the internal market, the body responsible for trade works and designs (summary 2.5), which is to be based in Alicante (Spain). The languages of the Office will be German, English, Spanish, French and Italian; the Office will have applications translated into the other languages of the European Union and will publish them in all of those languages. The second instrument concerns the harmonization of national laws. National trade mark laws are the subject of a Directive which harmonizes the conditions for registering a national trade mark and the rights conferred by such a trade mark, in conformity with the relevant provisions of the Regulation on the Community trade mark (summary 2.3).

A similar approach has been taken towards designs. There are two proposals currently on the table, one aimed at introducing a Community design (summary 2.14) and the other at approximating national laws and bringing them into line with the rules on Community designs (summary 2.15).

In the patents field there are two conventions. The first, the Munich Convention on the European Patent, which was signed in 1973 by a number of Member States and non-EC countries in Europe, provides for patents to be obtained for a number of countries through a single application to the European Patent Office. All the Member States are now party to this Convention. The second one, the Luxembourg Convention, was signed in 1989. It aims to give unitary effect to European patents applied for in respect of Community territory. This Convention has so far only been ratified by Denmark, Germany, France and Greece. Ratification by all Member States is necessary before it can come into force.

In the field of copyright and related rights, the Commission examined the most pressing problems requiring action at Community level in a Green Paper (COM(88) 172 final)

published in June 1988. On the basis of that document, it adopted in December 1990 a communication on its work programme in this field.

In order to adapt existing intellectual property systems to the technological changes that have occurred in a number of fields, particularly in connection with software, microcircuits and biotechnology, five Directives have been adopted by the Council. The first, on the legal protection of topographies of semiconductor products (summary 2.6), is designed to guarantee that the legal protection against reproduction of a chip topography is based from the outset on common principles. The second, on the legal protection of computer programs (summary 2.8), aims firstly to ensure that Member States protect programs which are regarded as literary works for copyright purposes and secondly to base that protection on common principles. The third, adopted on 19 November 1992, concerns rental right and lending right and certain rights related to copyright in the intellectual property field (summary 2.11); the fourth deals with satellite broadcasting and cable retransmission (summary 2.12); and the fifth harmonizes the term of protection afforded by the rules on copyright and related rights (summary 2.13).

A number of other Commission proposals for Directives are currently being examined. They include a Directive on the legal protection of biotechnological inventions (summary 2.7), the adoption of which should take place within the next few months, and one on the legal protection of databases (summary 2.9) which is currently before the Council. In addition, a proposal for a decision has been transmitted to the Council concerning the accession of the Member States to the Berne and Rome Conventions (summary 2.10).

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.

(2) Community measures

Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

(3) Contents

1. This Regulation provides for the introduction of Community trade marks. A Community trade mark is created through registration at the Office for harmonization in the internal market (trade marks and design).
2. Definition of the grounds for refusal to register a trade mark, for example if the sign consists exclusively of the shape which results from the nature of the goods themselves or if the trade mark is likely to be confused with an existing mark. Trade marks may be owned by nationals of Member States, of States party to the Paris Convention or of other States, provided that they are domiciled or have their seat in one of the aforementioned States, and by nationals of any other State which guarantees nationals of Member States the same protection as it guarantees its own nationals.
3. Effects of Community trade marks: rights conferred and limits to those rights; for example, the proprietor of a trade mark may prevent any third party from using a sign which is identical to that Community trade mark in relation to goods or services which are identical to those for which it is registered, but he may not prohibit a third party from using in the course of trade his name or address if such use is in accordance with honest practices in industrial or commercial matters.
4. Use of Community trade marks: trade marks should be used within a period of five years following registration.
5. Community trade marks as objects of property: dealing with Community trade marks as national trade marks; provisions relating to transfers of trade marks; rights in rem; levy of execution; bankruptcy; licensing and effects *vis-à-vis* third parties.
6. Applications for Community trade marks: filing of applications and conditions with which they must comply; six-month right of priority for filing Community trade mark applications for proprietors of national trade marks; claiming the seniority of a national trade mark.
7. Registration procedure: examination of application (conditions of filing, grounds for refusal, etc.); search for earlier trade marks; publication of application; observations and opposition to registration by third parties; withdrawal, restriction and amendment of application; registration.
8. Duration, renewal and alteration of Community trade marks: duration (10 years but renewable for further periods of 10 years); renewal (within a period of six months, etc.); alteration (conditions governing alteration of names and addresses of proprietors, etc.).
9. Surrender, revocation and invalidity: surrender (conditions); revocation and invalidity (grounds, consequences and proceedings).

	10. Appeals (decisions subject to appeal, persons entitled to appeal, time limit and form of appeal, interlocutory revision, examination of appeals, decisions in respect of appeals and actions before the Court of Justice). 11. Community collective marks (conditions, regulations governing use, grounds for revocation, grounds for invalidity). 12. Procedural provisions (general provisions, costs, information for the public and authorities in the Member States, representation before the Office). 13. Jurisdiction and procedure in legal actions relating to Community trade marks (application of the Convention on jurisdiction and enforcement, courts and their jurisdiction, applicable law, sanctions, provisional and protective measures, specific rules on related actions and further appeals). 14. Effects on the laws of the Member States (civil actions on the basis of more than one trade mark, ban on the use of Community trade marks, conversion into a national trade mark application). 15. The Office (general provisions, management, administrative board, implementation of procedures, budget and financial control).
(4) Deadline for implementation of the legislation in the Member States	Not required.
(5) Date of entry into force (if different from the above)	14.3.1994
(6) References	Official Journal L 11, 14.1.1994
(7) Follow-up work	
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

2.2. Trade mark: implementing Regulation

(1) Objective	To lay down rules implementing the Regulation on the Community trade mark.
(2) Proposal	Proposal for a Council Regulation implementing Regulation (EC) No 40/94 of 20 December 1993 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. 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 of the proposal	Consultation procedure The Commission presented the proposal on 27 January 1986. The proposal has been sent to the European Parliament and the Economic and Social Committee for their opinions.
(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.

Council Decision 92/10/EEC of 19 December 1991 concerning the date of entry into force of the national legislative measures of Directive 89/104/EEC 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	31.12.1992
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 40, 11.2.1989 Official Journal L 6, 11.1.1992
(7) Follow-up work	
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

2.4. Community Trade Marks Office: fees

(1) Objective	To specify the fees payable to the Community Trade Marks Office (which will be entitled the Harmonization in the internal market office (trade marks and design)).
(2) Proposal	Proposal for a Council Regulation on fees payable to the Community Trade Marks 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 Marks 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 of the proposal	Consultation procedure The Commission presented the proposal on 23 February 1987. The proposal has been sent to the European Parliament and the Economic and Social Committee for their opinions.
(6) References	Commission proposal COM(86) 742 final — Official Journal C 67, 14.3.1987

2. INTELLECTUAL PROPERTY

2.5. Community Trade Marks 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 Marks Office (which will be entitled the Harmonization in the internal market office (trade marks and design)).
(2) Proposal	Proposal for a Regulation on the rules of procedure of the Boards of Appeal instituted by the 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 of the proposal	Consultation procedure The Commission presented the proposal on 23 December 1986. The proposal has been sent to the European Parliament and the Economic and Social Committee for their opinions.
(6) References	Commission proposal COM(86) 731 final — Not yet published

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.

(2) Community measures

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

Council Decision 90/510/EEC of 9 October 1990 on the extension of the legal protection of topographies of semiconductor products to persons from certain countries and territories.

Council Decision 93/16/EEC of 21 December 1992 on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories.

Council Decision 93/17/EEC of 21 December 1992 amending Decision 90/510/EEC on the extension of the legal protection of topographies of semiconductor products to persons from certain countries and territories.

Council Decision 93/520/EEC of 27 September 1993 amending Decision 93/16/EEC on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories.

Council Decision 94/4/EC of 20 December 1993 on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America.

(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, in accordance with the provisions of the Directive, 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. Under certain conditions, protection must also be granted to natural persons, companies or other legal persons who first commercially exploit within a Member State a topography which has not yet been exploited commercially anywhere in the world and who have been exclusively authorized to commercially exploit the topography by the person entitled to dispose of it.
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. The exclusive right to authorize or prohibit reproduction does not aply to the 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 for protection, 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.

8. Council Decisions 93/16/EEC, 93/520/EEC and 94/4/EC extend on an interim basis the same protection to persons from the United States and certain British territories. Council Decisions 90/510/EEC and 93/17/EEC extend on a permanent basis protection to persons from the EFTA countries, Australia, Japan and certain French overseas territories.

(4) Deadline for implementation of the legislation in the Member States	Directive 87/54/EEC: 7.11.1987	
(5) Date of entry into force (if different from the above)	Decision 90/510/EEC: 8.11.1990 Decision 93/16/EEC: 1.1.1993 Decision 93/17/EEC: 1.1.1993 Decision 93/520/EEC: 1.11.1993 Decision 94/4/EC: 1.1.1994	
(6) References		Official Journal L 24, 27.1.1987 Official Journal L 285, 17.10.1990 Official Journal L 11, 19.1.1993 Official Journal L 11, 19.1.1993 Official Journal L 246, 2.10.1993 Official Journal L 6, 8.1.1994
(7) Follow-up work		
(8) Commission implementing measures	Decision 94/142/EC — Official Journal L 61, 4.3.1994 Commission Decision of 25 February 1994 in accordance with Council Decision 94/4/EC determining the United States of America as a	

country for the companies or other legal persons to which legal protection of topographies of semiconductor products is extended. The Decision finds that the United States of America fulfils the condition of reciprocity for protection of companies and other legal persons falling within the scope of Article 1(2) of Decision 94/4/EC. It is applicable from 1 January 1994 until 1 July 1994.
The Decision is supplemented by Council Decision 94/373/EC of 27 June 1994 and aims to extend until 1 July 1995 the protection not only of natural persons but also of companies and other legal persons of the United States which have a real and effective industrial or commercial establishment in that country (Official Journal L 170, 5.7.1994).

2. INTELLECTUAL PROPERTY

2.7. Legal protection: biotechnological inventions

(1) Objective

To define and protect biotechnological inventions in order to foster the innovatory potential and competitiveness of Community science and industry in this important field of modern technology.

(2) Proposal

Proposal for a European Parliament and 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 biological material, 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 will not be unpatentable for the sole reason that it is composed of, uses or is applied to biological material.
3. Inventions are unpatentable where publication or exploitation would be contrary to public policy or morality (examples being the human body or parts of it, and certain processes for modifying its genetic identity).
4. Patents will be available for the following:
— biological material, including plants and animals and parts of plants and animals, but not plant and animal varieties as such;
— plant and animal material which does not constitute a variety as such;
— uses of plant or animal varieties and processes for their production, other than essentially biological processes for the production of plants or animals;
— microbiological processes, including processes consisting of a succession of steps provided at least one essential step of the process is microbiological.
5. Essentially biological processes for the production of plants or animals are not patentable.
6. The protection conferred by a patent on a biological material possessing, as a result of the invention, specific characteristics extends to any biological material derived from that biological material through multiplication or propagation in an identical or different form and possessing those same characteristics.
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. Only surgical and diagnostic methods as such will be excluded from patentability if they are practised for a therapeutic purpose.
10. 'Biological material' means any matter containing genetic information and capable of self-replicating or capable of being replicated through a biological system.

11. There is an exemption clause for farmers which restricts the protection conferred by a patent on propagating material, such as seed, in order to allow them to use part of their harvest to resow their fields.

(4) Opinion of the European Parliament

First reading: Parliament approved the Commission's proposal subject to 40 amendments. The amendments were concerned mainly with the ethical dimension of biotechnological invention and with what is known as 'farmer's privilege'.
Second reading: Parliament approved the Council's common position subject to certain amendments. These are designed chiefly to emphasize the specificity of the subject-matter of biotechnological inventions: living matter.

(5) Current status of the proposal

Co-decision procedure

The Commission presented the proposal on 20 October 1988.

First reading: On 20 October 1992 Parliament approved the Commission proposal subject to amendments. The Commission has accepted some of the amendments.

The Commission presented an amended proposal on 16 December 1992.

On 7 February 1994 the Council adopted its common position.

Second reading: On 5 May 1994 Parliament approved the Council's common position subject to amendments. The Commission has accepted some of the amendments.

On 9 June 1994 the Commission presented its opinion on the amendments with an amended proposal incorporating some of the amendments it accepted.

The amended proposal is currently before the Council for adoption.

(6) References

Commission proposal	
COM(88) 496 final	Official Journal C 10, 13.1.1989
Amended proposal	
COM(92) 589 final	Official Journal C 44, 16.2.1993
Opinion and amended proposal	
COM(94) 245 final	Not yet published
European Parliament opinion	
First reading	Official Journal C 305, 23.11.1992
Second reading	Not yet published
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. Legal protection: databases

(1) Objective

To protect the intellectual property of database creators and prevent the unauthorized retrieval and re-use of the contents.

(2) Proposal

Proposal for a Council Directive on the protection of databases.

(3) Contents

1. This Directive covers databases defined as 'a collection of works or material arranged, stored and accessed by electronic means'.
2. The Directive does not apply to software used in the creation or operation of the database (summary 2.8) or to the works and material contained therein. Nor does it affect the legal provisions covering, in particular, patents, marks, designs and models or unfair competition.
3. Protection of a database under copyright law, as defined by the Berne Convention (summary 2.10), is accorded when the latter constitutes, by virtue of the choice or arrangement of the material, an intellectual creation particular to its author.
4. The creator of a database has the exclusive right to carry out or authorize the reproduction, processing, translation and distribution of the databases and to provide services associated therewith.
5. The legitimate user of a database may perform all the actions referred to in point 4 that are necessary for using the base.
6. In addition to the copyright arrangements, provision has also been made for another set of arrangements *sui generis*. Under these arrangements, the creator of a database, be he a natural or legal person, shall be empowered to prohibit the unauthorized retrieval and re-use of the contents for commercial purposes. An employer shall enjoy the rights associated with a database, if the latter was created by one of his employees.
7. If the data contained in a database cannot be obtained from an alternative source, the rights of retrieval and re-use for commercial purposes shall be subject to a licensing procedure.
8. A user may retrieve and re-use, without authorization and for commercial purposes, non-essential parts of works (i.e. parts the reproduction of which cannot be regarded as prejudicial to the exclusive rights of the creator of the database in the exploitation of his work), provided that the source is acknowledged.
9. The right to prevent the unauthorized retrieval of the contents of a database shall apply for a period of 10 years with effect from the date on which the base was made available to the public.
10. Protection against unauthorized retrieval or re-use is accorded to databases whose creator is a national, a company or an undertaking resident in or having his/its registered office, central administration or principal place of business in the Community.

(4) Opinion of the European Parliament

First reading: Parliament approved the Commission's proposal subject to certain amendments. The amendments sought among other things to specify who is entitled to copyright protection, to clarify certain definitions and to increase from 10 to 15 years the period during which protection is granted against unauthorized retrieval.

(5) Current status of the proposal	Cooperation procedure The Commission presented the proposal on 13 May 1992. First reading: On 23 June 1993 Parliament approved the Commission proposal subject to amendments. The Commission has accepted some of the amendments. The Commission presented an amended proposal on 4 October 1993. The amended proposal is currently before the Council for a common position.	
(6) References	Commission proposal COM(92) 24 final	Official Journal C 156, 23.6.1992
	Amended proposal COM(93) 464 final	Official Journal C 308, 15.11.1993
	European Parliament opinion First reading	Not yet published
	Economic and Social Committee opinion	Official Journal C 19, 25.1.1993

2. INTELLECTUAL PROPERTY

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

(1) Objective	To guarantee a minimum level of protection for authors and artists.
(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 proposal subject to certain technical amendments.
(5) Current status of the proposal	Cooperation procedure The Commission presented the proposal on 11 January 1991. First reading: On 20 November 1991 Parliament approved the Commission proposal subject to amendments. The Commission has accepted all the proposed amendments. The Commission presented an amended proposal on 14 February 1992. The amended proposal is currently before the Council for adoption. On 14 May 1992 the Council adopted a resolution on increased protection for copyright and neighbouring rights (Official Journal C 138, 28.5.1992). In its resolution, the Council notes that the Member States, in so far as they have not already done so, undertake, subject to their constitutional provisions, to become by 1 January 1995, parties to the Paris Act of the Berne Convention and the Rome Convention and to introduce national legislation to ensure effective compliance with those two Conventions.
(6) References	Commission proposal COM(90) 582 final — Official Journal C 24, 31.1.1991 Amended proposal COM(92) 10 final — Official Journal C 57, 4.3.1992 European Parliament opinion First reading — Official Journal C 326, 16.12.1991 Economic and Social Committee opinion — Official Journal C 269, 14.10.1991

2. INTELLECTUAL PROPERTY

2.11. Rental right and lending right

(1) Objective

To harmonize the law relating to rental right, lending right and certain rights related to neighbouring rights so as to provide a high level of protection of literary and artistic property.

(2) Community measures

Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

(3) Contents

1. Member States are to provide 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 direct or indirect economic or commercial advantage; 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.
2. The holders of the rental right and lending right are the authors, including the principal directors of films, performing artists, phonogram producers or producers of films. The transfer of the rights of performing artists appearing in films is governed by special rules.
3. Where an author or performing artist has transferred or assigned his rental right concerning a phonogram or an original or copy of a film, he is to retain the right to obtain an equitable remuneration for the rental. This right cannot be waived, but its administration may be entrusted to collecting societies representing authors or performing artists.
4. Member States may derogate from the exclusive lending right, provided that at least authors obtain a remuneration for such lending. Member States are free to determine this remuneration taking account of their cultural promotion objectives. Where they derogate from the exclusive lending right as regards phonograms, films and computer programs, they are to introduce, at least for authors, a remuneration.
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. Rental, lending, distribution and reproduction rights are presumed to have been assigned in certain circumstances.
6. Member States are to provide an exclusive right of broadcasting and communication to the public for performing artists in respect of their live performances. The broadcasting or communication to the public of a phonogram published for commercial purposes is to entitle the performing artists and producers to remuneration. Broadcasting organizations are to have an exclusive right to authorize or prohibit the rebroadcasting and communication to the public of their broadcasts. Member States are to provide for performing artists, phonogram producers, producers of the first fixations of films and broadcasting organizations an exclusive right to make available to the public fixations of their performances, their phonograms, the original and copies of their films and fixations of their broadcasts. This distribution right is exhausted within the Community where the first sale of these objects is made by the rightholder or with his consent.

	7. Rental rights, lending rights and rights related to copyright may be transferred, assigned or subject to the granting of contractual licences. 8. Member States may provide for limitations to related rights in respect of private use, use of short excerpts or certain other uses. 9. 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. 10. Protection of copyright-related rights under the Directive must in no way affect the protection of copyright.
(4) Deadline for implementation of the legislation in the Member States	1.7.1994
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 346, 27.11.1992
(7) Follow-up work	
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

2.12. Copyright and related 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.
(2) Community measures	Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and related rights of copyright 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 related 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 also lays down rules governing the impact of the new provisions on existing situations, with special reference to current contracts and arbitration systems for disputes over the cable retransmission of broadcasts.
(4) Deadline for implementation of the legislation in the Member States	1.1.1995

(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 248, 6.10.1993
(7) Follow-up work	
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

2.13. Copyright and related rights: term of protection

(1) Objective	To lay down the term of protection for copyright and related rights in the Community.
(2) Community measures	Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.
(3) Contents	1. The Directive sets the duration of copyright in a literary or artistic work at 70 years after: — the death of the author of the work; — the date on which the work was lawfully made available to the public, in the case of an anonymous or pseudonymous work. 2. It sets the term of protection for cinematographic or audiovisual works at 70 years after the death of the last of the following persons to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work. 3. It sets the term of protection for related rights at 50 years. This period is to be calculated, according to the circumstances, from the date of the performance, the date of the publication or communication of the fixation, or the date of the broadcast. 4. The term of protection starts to run at the same time in every Member State. It is calculated from the first day of January of the year following the event which gives rise to it. 5. If the work originated in a third country or the author is not a Community national, the protection granted by the Member States expires on the same date as the protection granted in the country of origin of the work, but must never exceed the term laid down in the Community. 6. The Member States are required to notify the Commission immediately of any plan to grant new related rights. They are also required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive.
(4) Deadline for implementation of the legislation in the Member States	1.7.1995
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 290, 24.11.1993
(7) Follow-up work	
(8) Commission implementing measures	

2. INTELLECTUAL PROPERTY

2.14. Community design

(1) Objective

To introduce a Community system of design protection in order to obviate the need to apply for registration in different Member States according to different national procedures, as is the case at present.

(2) Proposal

Proposal for a Parliament and Council Regulation on the Community design.

(3) Contents

1. The Regulation would make it possible to confer on designers a right which would be valid throughout the Community. As in the case of trade marks, this Community system would coexist, at least temporarily, with national protection systems, which would themselves have been extensively harmonized (summary 2.15).
2. The Regulation provides for two forms of protection:
— without any formalities, as an 'unregistered Community design';
— as a 'registered Community design', if the design is registered with the Community Design Office.
3. Definition of what is meant by 'design' for the purposes of the Regulation. Enumeration of designs excluded from protection, e.g. designs the publication of which is contrary to public policy.
4. To qualify for protection, a design would have to be new and have an individual character.
5. Fixing of the duration and scope of protection, distinguishing between designs which are registered and those which are not. A registered design would be protected for a minimum of five years and a maximum of 25 years, and registration would confer on the designer the exclusive right to use the design and to prevent any third party from using it. An unregistered design would confer three years' protection against copying and would only make it possible to prevent third parties from using the design.
6. Limits to, and exhaustion of, the rights conferred by a Community design. Such rights would not extend, for example, to acts done for experimental purposes.
7. Rules governing the invalidity of designs. Preconditions and grounds for, and effects of, invalidity. Rules governing the surrender of registered designs.
8. Rules governing the ownership of Community designs: dealing with Community designs as national designs, transfer, rights in rem on a design (giving as security, etc.), levy on execution, bankruptcy, licensing and effects *vis-à-vis* third parties (possibility of enforcing one's rights against third parties).
9. Rules governing applications: filing of applications and their forwarding to the Office, conditions which applications must fulfil, date of filing and right of priority.
10. Rules governing the registration procedure: examination as to whether the application satisfies the formal requirements, registration and publication.
11. Appeals against decisions of the Office: decisions subject to appeal, persons entitled to appeal and to be parties to appeal proceedings, time limit for, and form of, appeal, etc.

	12. Procedure before the Office: obligation to state the reasons on which decisions are based, obligation to notify decisions, exchange of publications with Member States' central industrial property offices, etc. 13. Jurisdiction and procedure in legal actions relating to Community designs. 14. The Community Design Office: organization, administration, allocation of duties within the Office, etc.
(4) Opinion of the European Parliament	Not yet given.
(5) Current status of the proposal	Co-decision procedure The Commission presented the proposal on 3 December 1993. The proposal has been sent to the European Parliament for its opinion.
(6) References	Commission proposal COM(93) 342 final — Official Journal C 29, 31.1.1994 Economic and Social Committee opinion — Not yet published

2. INTELLECTUAL PROPERTY

2.15. Approximation of Member States' legislation on design

(1) Objective	To approximate national laws on the protection of designs and to make national protection compatible with that which is to be afforded at Community level by the Regulation on the Community design.
(2) Proposal	Proposal for a European Parliament and Council Directive on the legal protection of design.
(3) Contents	1. The Directive would apply to design rights registered: — with Member States' central industrial property offices; — at the Benelux Design Office; — under international arrangements which have effect in a Member State. 2. Definition of what is meant by 'design' for the purposes of the Directive. Enumeration of designs excluded from protection, e.g. designs the publication of which is contrary to public policy. 3. To qualify for protection, a design would have to be new and have an individual character. 4. Fixing of the duration and scope of protection. A design would be protected for a minimum of five years and a maximum of 25 years, and registration would confer on the designer the exclusive right to use the design and to prevent any third party from using it. 5. Limits to, and exhaustion of, the rights conferred by a design right. Such rights would not extend, for example, to acts done for experimental purposes. 6. Rules governing the nullity of the registration of a design. A design right could be declared invalid even after it had lapsed or been surrendered. 7. If in a Member State designs are protected by legal provisions concerning copyright, trade marks, patents, etc., those provisions would still apply side by side with the specific legislation on the protection of designs.
(4) Opinion of the European Parliament	Not yet delivered.
(5) Current status of the proposal	Co-decision procedure The Commission presented the proposal on 3 December 1993. The proposal has been sent to the European Parliament for its opinion.
(6) References	Commission proposal COM(93) 344 final — Official Journal C 345, 23.12.1993 Economic and Social Committee opinion — Not yet published

3. COMPANY TAXATION

Current position and outlook

The differences which exist between Member States regarding company taxation stem from the fact that differing types of national laws unilaterally govern the taxation of company activities. This poses a serious problem as regards the location of investment and threatens to distort competition. The Community accordingly intends to lay the bases for a modern system of taxation in Europe that encourages economic efficiency and facilitates investment and innovation. This approach is central to the efficient allocation of resources and activities in the single market.

In the company taxation field, the Community has focused on two types of measure: those necessary for completing the internal market and those needed to improve the tax environment for businesses after 1 January 1993.

As part of the essential measures to remove tax barriers to cross-border business activity, two Directives have been adopted to enable Community firms to benefit from the single market without being penalized through the double taxation of their cross-border operations.

The first Directive concerns the common tax arrangements applicable to parent companies and subsidiaries of different Member States (summary 3.1). It seeks to eliminate the double taxation of dividends distributed by subsidiaries to their parent companies in another Member State. The second Directive concerns the common tax arrangements applicable to mergers, divisions, transfers of assets and exchanges of shares between companies in different Member States (summary 3.3). It establishes a common system of taxation under which any capital gains arising from mergers, divisions, transfers of assets or exchanges of shares will not be taxed at the time of the operation in question but only when those gains are actually realized.

At the same time, the representatives of Member States' governments signed a convention on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises (summary 3.2). This convention introduces an arbitration procedure designed to prevent any double taxation that may occur as a result of differing interpretations by Member States of the transfer prices used by associated enterprises for their joint operations. Two Member States have yet to ratify the convention, which can then enter into force.

In this field, the Council has continued to work on proposals for Directives on a common system of taxation applicable to interest and royalty payments (summary 3.6) and on the taking into account by enterprises of the losses of their permanent establishments and subsidiaries situated in other Member States (summary 3.7). Despite Parliament's support for these proposals, continuing differences between the Member States are holding up their adoption by the Council.

With regard to the improvement of the tax environment for companies following completion of the single market, the Commission set up a high-level committee of experts on company taxation chaired by Mr Ruding, a former Dutch Minister for Finance, to advise it on the approach to be taken.

The Report submitted by this committee on 18 March 1992 assesses the impact of taxation on company behaviour and the risks of distortion of competition or of business relocation that may arise from the coexistence of differing tax policies within a single market.

On the basis of that Report, the Commission transmitted a communication to the Council and to Parliament on 26 June 1992 in which it sets out new guidelines for the direct taxation of companies in the context of the further development of the internal market.

The communication has served to initiate discussion in the Council and in the European Parliament. Priority is given in it to problems relating to the taxation of cross-border income flows. Particular attention is paid in this connection to the general problems of transfer pricing and to the coordination with Member States of bilateral tax agreements. The communication also deals with other fundamental aspects of corporation tax (tax base, tax system). The Commission has also followed it up with two proposals for extending the scope of the 'mergers' and 'parent companies/subsidiaries' Directives. Following the publication of the strategic programme for the internal market on 22 December 1993, the Commission also adopted a communication and a recommendation on improving the fiscal environment of small and medium-sized enterprises (SMEs). The aim is twofold: (i) to initiate discussions with those concerned so as to find the best way of taxing SMEs in a manner compatible with the economic objectives set out in the White Paper on growth, competitiveness and employment, and (ii) to improve the self-financing capacity of SMEs by alleviating the tax drawbacks they often face as a result of their legal form or the progressive nature of income tax.

3. COMPANY TAXATION

3.1. Common system of taxation for parent companies and their subsidiaries

(1) Objective

To establish, for groups of companies from different Member States, tax rules that are neutral with regard to competition.

(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	On 26 July 1993 the Commission put forward a proposal for a Council Directive amending Directive 90/435/EEC on the common system of taxation applicable to parent companies and their subsidiaries in different Member States (COM(93) 293 final, Official Journal C 225, 20.8.1993). The aim of this Directive is to extend the scope of Directive 90/435/EEC to all enterprises subject to corporation tax, irrespective of their legal form. It will also ensure that double taxation is completely eliminated where a subsidiary redistributes to its parent company profits derived from its own subsidiary. On 19 April 1994 Parliament approved the Commission's proposal subject to certain amendments.
(8) Commission implementing measures	

3. COMPANY TAXATION

3.2. Elimination of double taxation (arbitration procedure)

(1) Objective	To eliminate double taxation of profits in connection with the adjustment of transfers of profits between associated undertakings.
(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	To introduce a common system of taxation for cross-border restructuring operations.
(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 exchanges 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	On 26 July 1993 the Commission put forward a proposal for a Council Directive amending Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (COM(93) 293 final, Official Journal C 225, 20.8.1993).

The aim of this Directive is to extend the scope of Directive 90/434/EEC to all enterprises subject to corporation tax, irrespective of their legal form. It will also make the concept of 'holding' consistent with that of 'minimum holding' in Directive 90/435/EEC on the common system of taxation applicable to parent companies and their subsidiaries in different Member States (summary 3.1).
On 19 April 1994 Parliament approved the Commission's proposal without amendment.

(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.

(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:
  — l'impôt sur le revenu;
  — l'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

Parliament has approved the Commission's proposal subject to certain amendments, including a recommendation that the period for the carry-back of profits be extended from two years to three.

(5) Current status of the proposal

Consultation procedure

The Commission presented the proposal on 11 September 1984.

On 17 January 1985 Parliament approved the Commission proposal subject to amendments. The Commission has accepted some of the amendments.

The Commission presented an amended proposal on 25 June 1985.

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 harmonize indirect taxation on transactions in securities.
(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	Parliament approved the Commission's proposal without amendment.
(5) Current status of the proposal	Consultation procedure The Commission presented the proposal on 2 April 1976. On 27 October 1987 Parliament approved the Commission proposal without amendments. The proposal is currently before the Council for adoption.
(6) References	Commission proposal COM(76) 124 final — Official Journal C 133, 14.6.1976 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.

(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

(5) Current status of the proposal

Consultation procedure

The Commission presented the proposal on 24 January 1991.

Parliament approved the Commission proposal subject to amendments. The Commission has accepted some of the amendments.

The Commission presented an amended proposal on 10 June 1993.

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

(6) References

Commission proposal COM(90) 571 final	Official Journal C 53, 28.2.1991
Amended proposal COM(93) 196 final	Official Journal C 178, 30.6.1993
European Parliament opinion	Not yet published
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.

(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

(5) Current status of the proposal

Consultation procedure

The Commission presented the proposal on 24 January 1991.

Parliament approved the Commission proposal subject to amendments. The Commission has not accepted the amendments.

The proposal is currently before the Council for adoption.

(6) References

Commission proposal COM(90) 595 final	Official Journal C 53, 28.2.1991
European Parliament opinion	Official Journal C 94, 13.4.1992
Economic and Social Committee opinion	Official Journal C 120, 6.5.1991

3. COMPANY TAXATION

3.8. Indirect taxes on the raising of capital

(1) Objective

To harmonize the laws relating to duty chargeable on contributions of capital to capital companies and to stamp duty on securities representing capital, shares and bonds in order to reduce discrimination, double taxation and barriers to the movement of capital within the single market.

(2) Community measures

Council Directive 69/335/EEC of 17 July 1969 relating to the approximation of the laws of the Member States concerning indirect taxes on the raising of capital.

Amended by the following measures:
Council Directive 73/79/EEC of 9 April 1973;
Council Directive 74/553/EEC of 7 November 1974;
Council Directive 85/303/EEC of 10 June 1985.

(3) Contents

1. The following text contains a consolidation of existing Directives in the field of indirect taxes on the raising of capital.
2. These Directives chiefly concern duty chargeable on contributions of capital to capital companies and stamp duty on securities representing capital, shares and bonds.
3. In order to reduce the risk of discrimination and double taxation, and more generally to improve the movement of capital within the single market, these Directives harmonize capital duty and abolish stamp duty.
4. As far as capital duty is concerned, harmonization is complete since the Directives define:
— the Member State in which transactions are taxable (i.e. in which the effective centre of management, registered office or branch is situated, as the case may be);
— the person liable to pay tax (capital companies enumerated by the Directive);
— taxable transactions (the formation of a capital company, an increase in capital, the conversion into a capital company of a company, etc.);
— the basis of assessment (taxable value);
— the rate of the duty, which may not exceed 1%;
— the conditions for exemption from capital duty.
5. The Directives abolish all other taxes on the raising of capital.
6. The Directives also abolish stamp duty on securities representing capital, shares and bonds.

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

— Directive 69/335/EEC: 1.1.1972
— Directive 73/79/EEC: 11.4.1973
— Directive 74/553/EEC: not communicated
— Directive 85/303/EEC: 1.1.1986

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

(6) References

Official Journal L 249, 3.10.1969
Official Journal L 103, 18.4.1973
Official Journal L 303, 13.11.1974
Official Journal L 156, 15.6.1985

(7) Follow-up work

(8) Commission implementing measures

1. PUBLIC PROCUREMENT

Current position and outlook

Public procurement plays a significant role in the economy: worth ECU 595 billion in 1990, it was equivalent to 14.4% of Community GDP. Before Community legislation was enacted, only 2% of public contracts in the Community were awarded to firms from a Member State other than that in which the invitation to tender was issued. This lack of open and effective competition was one of the most obvious and anachronistic obstacles to the completion of the single market. As well as pushing up costs for contracting authorities, the lack of intra-Community competition in certain key industries (e.g. telecommunications) inhibited the development of European firms which were competitive on world markets.

Opening public procurement to competition is first and foremost a matter of aligning the procurement procedures followed in different countries: an open single market will be achieved only when all firms can compete for contracts on an equal footing. Alignment has in fact taken place, thanks to four Directives on the subject, covering works contracts (summary 1.2), supply contracts (summary 1.1), service contracts (summary 1.3) and finally the 'utilities', that is to say water, energy, transport and telecommunications (summary 1.4).

The Directives on supplies and works were followed up in December 1989 by a Directive regulating review procedures in these areas (summary 1.5); it was extended to cover services in 1992. The Review Procedures Directive ensures that there is a proper remedy for any infringement committed during contract-award procedures.

The Utilities Directive covers contracts for supplies, works or services concluded by undertakings operating in the water, energy, transport and telecommunications sectors. The Directive takes account of the specific nature of such enterprises and of the different ways the sectors are structured in the Community (summary 1.4).

Here too there is a Directive regulating review procedures (summary 1.6). It ensures that an aggrieved contractor has proper access to review machinery if he feels that the Community rules have been infringed.

Taken together these Directives form a body of Community public procurement legislation which is based on:

— clear rules ensuring transparency in competition for public contracts, with preference being given to open or restricted tendering procedures, and clear criteria for the selection of tenders for all supply, works and service contracts awarded by any public authority, or by undertakings holding special or exclusive rights in the water, energy, transport or telecommunications sectors;

— effective and rapid review of decisions taken by contracting authorities or other entities which infringe Community public procurement law.

All of these measures require contracting entities to use the same format for tender notices, which they publish in the *Official Journal of the European Communities* (S series).

The Commission has not confined itself to preparing legislation on award and review procedures. It has taken other steps to improve transparency, in such areas as the training of responsible officers in public authorities or undertakings, the standardization of the details to be published and the improvement of information on public procurement.

To make it easier for information on public procurement to be translated, circulated, read and understood, the Commission is encouraging the use of standardized forms so that the

tender notices which have to be published under the Directives can be made more uniform.

In order to speed up the transmission of essential information the Commission has also placed at the public's disposal a database known as TED which every day provides the full text of the S supplement to the Official Journal. For more information on this database please contact ECHO, customer service department, BP 2373, L-1023 Luxembourg (tel.: (352)/488041).

The Commission is also seeking to improve the quality and reliability of information and to extend the scope of the data available on public procurement by setting up an information system for public procurement (SIMAP). A test stage could begin shortly with pilot operations carried out by several suppliers of information from different countries who already possess the technological infrastructure required.

The Commission has published a Guide to public procurement in the Community (currently being updated), which is addressed to all those operating in the public procurement field; it seeks to make them more aware of their rights and obligations, by explaining how the principles of the EC Treaty apply to public procurement, and by describing the main characteristics of the Community Directives.

1. PUBLIC PROCUREMENT

1.1. Public supply contracts

(1) Objective

To coordinate national procedures for the award of public supply contracts in order to open up these contracts to effective Community-wide competition.

(2) Community measures

Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts.

(3) Contents

1. The Directive consolidates Council Directive 77/62/EEC coordinating procedures for the award of public supply contracts, as amended by Council Directives 80/767/EEC, 88/295/EEC and 92/50/EEC.
2. Scope: the Directive applies to contracts involving the purchase, lease, rental or hire purchase, with or without option to buy, of products between a supplier and a contracting authority.
3. Exclusions: the Directive does not apply to contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 or fulfilling the conditions laid down in Article 6(2) of Directive 90/531/EEC on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, which must be awarded in accordance with specific rules laid down in that Directive. Neither does this Directive apply to certain products in the field of defence, which are listed exhaustively, to supplies which are declared secret or where the protection of the Member State's basic interests so requires. Lastly, certain types of contract governed by an international agreement or the particular procedure of an international organization are also excluded.
4. Thresholds and estimation of contract value: the Directive applies to public supply contracts whose estimated value net of VAT is not less than ECU 200 000 (except for contracts awarded by entities subject to the GATT Agreement, for which a different threshold applies). The value of the threshold in national currencies and the threshold laid down by the GATT Agreement expressed in ecus are normally revised every two years with effect from 1 January 1988.
5. Award procedures: contracting authorities have a free choice between the open procedure (in which all interested suppliers may submit tenders) and the restricted procedure (in which only those suppliers so invited by the contracting authority may submit tenders). They may also, in the cases listed exhaustively in the Directive (products manufactured purely for the purpose of research or experiment, extreme urgency brought about by unforeseen events, etc.), rely on the negotiated procedure (whereby the contracting authority consults suppliers of its choice and negotiates the terms of the contract with one or more of them).
6. Common rules in the technical field: obligation on contracting authorities to give the technical specifications for the supplies in the general or contractual documents relating to each contract. These technical specifications are to be defined with reference to national standards transposing European standards, to European technical approvals or to common technical specifications.
7. Common advertising rules: contracting authorities must publish a notice giving certain items of information on the contract. Notices must comply with prescribed models and deadlines.

8. Common rules on participation: the Directive lays down rules on the selection of suppliers and the award of contracts. The criteria for selecting suppliers have to do with their good repute (suppliers may be excluded if they are bankrupt, if they are not in good standing with the tax authorities, etc.) and technical capability (product conformity certificates, list of principal deliveries effected in the past three years, etc.). The criteria for awarding contracts must be either the lowest price or the most economically advantageous tender (in terms of price, delivery date, cost-effectiveness, etc.).
9. 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 on each contract awarded, identifying the contracting authority, the successful applicants or tenderers and the reason for their selection, the unsuccessful applicants or tenderers and the reason for their rejection, the successful bidder and the reason why his tender was chosen. The report is to be communicated to the Commission at its request.

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

The Directive does not require any further transposition.

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

14.6.1994

(6) References

Official Journal L 199, 9.8.1993

(7) Follow-up work

On 10 May 1993 the Council adopted Decision 93/323/EEC concerning the conclusion of an Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement (Official Journal L 125, 20.5.1993).
This Agreement is designed to open up to tenderers in signatory states supply, works and service contracts awarded by central governments. It also provides for the elimination of discrimination in respect of purchases made by entities in the electrical power sector.

(8) Commission implementing measures

1. PUBLIC PROCUREMENT

1.2. Public works contracts

(1) Objective

To coordinate national procedures for the award of public works contracts in order to open up these contracts to effective Community-wide competition.

(2) Community measures

Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts.

(3) Contents

1. The Directive consolidates Council Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts, as amended by Council Directives 89/440/EEC, 90/531/EEC and 93/4/EEC.
2. Scope: the Directive applies to contracts which have as their object either the execution, or both the execution and design, of works involving certain professional activities (building, civil engineering, installation or building completion work), or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority.
3. Exclusions: the Directive does not apply to contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC, namely contracts concerning the production, transport and distribution of drinking water, contracts awarded by entities whose main activity is to produce or distribute energy, and contracts relating to telecommunications. Neither does this Directive apply to works contracts which are declared secret or where the protection of the Member State's basic interests so requires. Lastly, certain types of contract governed by an international agreement or the particular procedure of an international organization are also excluded.
4. 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.
5. Thresholds and estimation of contract value: the Directive applies to contracts whose estimated value net of VAT is not less than ECU 5 million. The value of this threshold in national currencies is revised every two years with effect from 1 January 1992.
6. Award procedures: contracting authorities have a free choice between the open procedure (in which all interested contractors may submit tenders) and the restricted procedure (in which only those contractors so invited by the contracting authority may submit tenders). They may also, in the cases listed exhaustively in the Directive (works carried out for the purposes of research or experiment, extreme urgency brought about by unforeseen events, etc.), rely on the negotiated procedure (whereby the contracting authority consults contractors of its choice and negotiates the terms of the contract with one or more of them).
7. Common rules in the technical field: obligation on contracting authorities to give the technical specifications for the works in the general or contractual documents relating to each contract. These technical specifications are to be defined with reference to national standards transposing European standards, to European technical approvals or to common technical specifications.

8. Common advertising rules: contracting authorities must publish a notice giving certain items of information on the contract. Notices must comply with prescribed models and deadlines.
9. Common rules on participation: the Directive lays down rules on the selection of contractors and the award of contracts. The criteria for selecting contractors have to do with their good repute (contractors may be excluded if they are bankrupt, if they are not in good standing with the tax authorities, etc.) and technical capability (educational and professional qualifications, list of works carried out over the past five years, etc.). The criteria for awarding contracts must be either the lowest price or the most economically advantageous tender.
10. 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 on each contract awarded, identifying the contracting authority, the successful applicants or tenderers and the reason for their selection, the unsuccessful applicants or tenderers and the reason for their rejection, the successful bidder and the reason why his tender was chosen. The report is to be communicated to the Commission at its request.

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

The Directive does not require any further transposition.

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

28.8.1993

(6) References

Official Journal L 199, 9.8.1993

(7) Follow-up work

On 10 May 1993 the Council adopted Decision 93/323/EEC concerning the conclusion of an Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement (Official Journal L 125, 20.5.1993).
This Agreement is designed to open up to tenderers in signatory states supply, works and service contracts awarded by central governments. It also provides for the elimination of discrimination in respect of purchases made by entities in the electrical power sector.

The Council has adopted a statement concerning Article 7(4) of Directive 93/37/EEC (Official Journal L 111, 30.4.1994). This Council and Commission statement stipulates that in open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, are ruled out.

(8) Commission implementing measures

1. PUBLIC PROCUREMENT

1.3. Public service contracts

(1) Objective

To coordinate procedures for the award of public service contracts in so far as such procurement is not already covered by procedures for the award of public works contracts and public supply contracts.

(2) Community measures

Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

(3) Contents

1. The Directive defines the terms 'public service contracts', 'contracting authorities', 'service provider', 'open procedures', 'restricted procedures', 'negotiated procedures' and 'design contests'.
2. The Directive applies to public service contracts the estimated value of which is not less than ECU 200 000, net of VAT, including the estimated total remuneration of the service provider. It covers contracts for services and goods or supplies together if the value of the services exceeds that of the goods or the supplies.
The Directive does not apply to:
— public contracts governed by certain international agreements or to be awarded under the specific procedure of an international organization;
— services which are declared secret or the execution of which must be accompanied by special security measures;
— public service contracts awarded on the basis of an exclusive right enjoyed under national provisions compatible with the Treaty.
3. The Directive provides for two-tier application: full application for the 'priority' services listed in Annex IA, and minimum requirements for the 'other' services listed in Annex IB.
4. For all services:
— contracting authorities must define technical specifications by reference to national standards implementing European standards, to European technical approvals or to common technical specifications, subject to a number of exceptions set out in the Directive;
— a notice of the results of the award procedure is to be sent to the Official Publications Office of the European Communities.
5. For 'priority' services, listed in Annex IA, the following additional rules also apply:
— Choice of award procedures and rules governing design contests: as a general rule, contracting authorities are to follow an open procedure or a restricted procedure. Open procedures are national procedures whereby any interested service provider may submit a tender. Restricted procedures are national procedures whereby only those invited by the contracting authority may submit a tender. By way of exception, contracting authorities may, in certain cases listed in the Directive, follow a negotiated procedure, whereby they consult service providers of their choice and negotiate the terms of a contract with one or more of them. A contracting authority may also decide to organize a design contest. The jury must be composed exclusively of natural persons who are independent of participants in the contest;

— Common advertising rules: contracting authorities are to make known the contracts they propose to award, by whatever procedure, by means of a notice. These notices are to be drawn up in accordance with models and are subject to deadlines laid down by the Directive. Urgent cases are also accommodated;
— Common rules on participation and the award of contracts: the Directive lays down common rules on participation and provides that contracts are to be awarded on the basis of stated criteria. Various criteria relating to the contract are possible, such as quality, technical merit, aesthetic and functional characteristics, price, etc., or the sole criterion of lowest price may apply;
— Criteria for qualitative selection: the contracting authority may exclude any service provider who is bankrupt or being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, etc.

6. The Directive amends Directive 89/665/EEC in that it extends the scope of the latter to cover the services governed by it.

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

1.7.1993

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

(6) References

Official Journal L 209, 24.7.1992

(7) Follow-up work

On 10 May 1993 the Council adopted Decision 93/323/EEC concerning the conclusion of an Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement (Official Journal L 125, 20.5.1993).
This Agreement is designed to open up to tenderers in signatory states supply, works and service contracts awarded by central governments. It also provides for the elimination of discrimination in respect of purchases made by entities in the electrical power sector.

(8) Commission implementing measures

1. PUBLIC PROCUREMENT

1.4. Water, energy, transport and telecommunications sectors

(1) Objective

To coordinate the national procurement procedures of entities operating in the water, energy, transport and telecommunications sectors in order to ensure genuine Community-wide competition between operators in these sectors.

(2) Community measures

Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

(3) Contents

1. This Directive is a consolidated text covering the procedures for the award of public supply, works and service contracts in the water, energy, transport and telecommunications sectors. Directive 90/531/EEC will therefore cease to have effect as from the date on which this Directive is applied by the Member States, but this shall be without prejudice to the obligations of the Member States concerning the deadlines laid down in Article 37 of Directive 90/531/EEC.
2. Scope: the Directive governs supply, works and services contracts (for the definitions of these three types of contracts, see summaries 1.1 to 1.3) and design contests awarded or organized by contracting entities as part of their activities within the scope of the Directive. The activities referred to by the Directive are the following:
(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heat, or the supply of the above to such networks;
(b) the exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels or the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;
(c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable;
(d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.
3. The Directive applies not only to public authorities and public undertakings, but also to private entities whose activities include one or more of the activities described in the Directive and who enjoy special or exclusive rights granted by a Member State to operate in these sectors of activity.
4. Exemptions: the Directive lists the activities (bus transport where other entities are free to provide this service, contracts for fuels intended for power generation), contracts (contracts concluded for purposes other than the pursuit of their activities pursuant to the Directive) and the other circumstances (contracts declared confidential by the Member States or where protection of essential national interests requires) to which the Directive does not apply.
5. Contract thresholds and estimated values: the Directive applies to contracts of an estimated value (net of VAT) of not less than:
— ECU 400 000 in the case of supply and service contracts relating to the activities referred to in points 1(a), (b) and (c);

— ECU 600 000 in the case of supply and service contracts relating to the activities referred to in point 1(d);

— ECU 5 000 000 in the case of works contracts.

6. Common technical rules: contracting entities must include the technical specifications in the general documents or the contract documents relating to each contract. These specifications shall be defined by reference to European specifications where they exist or, in their absence, to other standards in use within the Community.

7. Award procedures: the Directive allows contracting entities to choose between the open procedure (in which all interested suppliers, contractors or service providers may submit tenders), the restricted procedure (in which only candidates invited by the contracting entity may submit tenders) or the negotiated procedure (in which the contracting entity consults the candidates of its choice and negotiates the terms of the contract with one or more of them) to award contracts, provided that a call for competition has been published in the form of a notice in the *Official Journal of the European Communities*. The contracting entities may use a procedure without a prior call for competition in certain specified cases (e.g. contracts for the 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 in the first two cases and ECU 5 million in the third case. This notice must be published no more than 12 months before the call for competition.

9. The call for competition may be made by means of an ad hoc notice on the award of the contract by open, restricted or negotiated procedure, by means of a periodic indicative notice as described above or by means of a notice referring to the existence of a qualification system. The Directive specifies the form and content of these notices.

10. Obligation on a contracting entity which has awarded a contract to inform the Commission of the outcome of the award procedure by means of a notice of a format specified in the Directive.

11. The notices shall be published in the *Official Journal of the European Communities*.

12. The time-limits for receipt of tenders are laid down in the Directive.

13. Common rules on participation: for the selection of participants the Directive has introduced a new formula whereby contracting entities can lay down and administer their own selection criteria; these must be objective and non-discriminatory. 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	1.7.1994
(5) Date of entry into force (if different from the above)	— 1.1.1997: Spain — 1.1.1998: Greece and Portugal
(6) References	Official Journal L 199, 9.8.1993

(7) Follow-up work

On 3 March 1993 the Commission presented a report describing the stage reached in the multilateral and bilateral negotiations concerning access by Community enterprises to third-country markets in the fields covered by Directive 90/531/EEC (COM(93) 80 final).
The report mentions the agreements that have already been signed, namely the EEA Agreement and the agreements with Poland, Czechoslovakia and Hungary, and describes the stage reached in the current negotiations within GATT and with the United States.

On 10 May 1993 the Council adopted Decision 93/323/EEC concerning the conclusion of an Agreement in the form of a Memorandum of Understanding between the European Economic Community and the United States of America on government procurement (Official Journal L 125, 20.5.1993).
This Agreement is designed to open up to tenderers in signatory states supply, works and service contracts awarded by central governments. It also provides for the elimination of discrimination in respect of purchases made by entities in the electrical power sector.
The Community and the United States signed the Agreement on 25 May 1993 and it entered into force on that date (Official Journal L 140, 11.6.1993).
The Memorandum of Understanding to which the Agreement refers is published in the *Official Journal of the European Communities* (Official Journal C 173, 24.6.1993).

In this connection, the Council adopted, on 10 May 1993, Decision 93/324/EEC concerning the extension of the benefit of the provisions of Council Directive 90/531/EEC in respect of the United States of America (Official Journal L 125, 20.5.1993).
This Decision extends the scope of Directive 90/531/EEC to the United States in the case of public services in the electrical power sector.

The Council has adopted a statement concerning Article 20 of Directive 93/38/EEC (Official Journal L 111, 30.4.1994).
This Council and Commission statement stipulates that in open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, are ruled out.

(8) Commission implementing measures

Decision 93/676/EC — Official Journal L 316, 17.12.1993
Commission Decision of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined in Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive.

1. PUBLIC PROCUREMENT

1.5. Review procedures: supply, works and service contracts

(1) Objective

To ensure greater transparency and non-discrimination in the award of public supply, public works and public service contracts in the Community.

(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.

Amended by:
Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.

(3) Contents

1. The Directives seek 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 likely to 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 Directives supplement the other Community Directives on public contracts, containing as they do specific measures for ensuring their effective application. Whether supplies, works or services are concerned, they 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

— Directive 89/665/EEC: 21.12.1991
— Directive 92/50/EEC: 1.7.1993

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

(6) References	Official Journal L 395, 30.12.1989 Official Journal L 209, 24.7.1992
(7) Follow-up work	
(8) Commission implementing measures	

1. PUBLIC PROCUREMENT

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

(1) Objective

To guarantee the existence of effective and rapid procedures for the review of contract awards in the 'excluded' sectors.

(2) Community measures

Council Directive 92/13/EEC of 25 February 1992 coordinating the laws; Regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

(3) Contents

1. The Directive has four main sets of provisions, their purpose being:
— to adapt, in the excluded sectors, the review procedures provided for in Directive 89/665/EEC (summary 1.5) in respect of contracts awarded by public authorities;
— to introduce an attestation system 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 review procedures, the Directive permits Member States to choose between two options: they must provide for powers:
— either to intervene directly in contract-award procedures by suspending the procedure or setting aside certain decisions;
— or to exert an indirect influence on contracting entities, in particular by imposing financial penalties for infringement.

In both cases, the aim is twofold: to ensure that infringements of law are corrected, and to protect the interests concerned. Irrespective of the option chosen, the Directive also provides for the possible award of damages to injured parties.

3. The purpose of the attestation system is to provide for the procurement procedures and practices applied by contracting entities to be examined by independent persons with a view to establishing that they comply with Community law. Contracting entities may include such attestations in notices published in the Supplement to the Official Journal.

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' (summary 1.5).

5. The Directive establishes a conciliation procedure under which disputes between an interested party and a contracting entity can be settled amicably. This procedure is to be conducted, in agreement with the two parties to the dispute, by a conciliator designated by the Commission and two conciliators appointed one each by the two sides. The conciliators are to endeavour to find a solution to the dispute which is in accordance with Community law. They are to report their findings to the Commission.

(4) Deadline for implementation of the legislation in the Member States	— 1.1.1993 — 30.6.1995: Spain — 30.6.1997: Greece and Portugal
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 76, 23.3.1992
(7) Follow-up work	
(8) Commission implementing measures	

1. INTERNAL MARKET FOR ENERGY

Current position and outlook

To ensure smooth operation of the internal market as a whole, energy undertakings must be allowed to supply energy on a competitive basis in order to push down production costs. However, the completion of the internal market must take account of the distinctive features of the energy sector: measures must be taken to ensure the continuity of supply, to protect the environment and to defend the interests of small consumers. These unique features do not mean that that the industry can operate efficiently without market forces.

The internal market in petroleum products and coal is now a reality, restrictions on free movement having been abolished by direct application of the provisions of the Treaty of Rome.

The situation is more complex for gas and electricity which cannot be transported and distributed without a network, the operation of which has to be preserved by clearly defined rules. Work is therefore concentrated on this area, the two main concerns being to bring the operation of the national systems into line with the principles of the internal market and to protect the public service functions of the gas and electricity networks.

— The first stage was to arrange to allow the transit of gas and electricity through a network to supply a third network (summaries 1.2 and 1.3).

— The second stage was to introduce greater price transparency (summary 1.1) and consists of creating a transparent procedure for granting licences and authorizations for oil and gas production.

— Lastly, the Commission has proposed introducing competition in electricity generation and the negotiated access to the network for the supply of electricity and gas to major consumers and to distribution undertakings.

As in other sectors of industry, technical harmonization is needed for the energy industry to prevent national energy saving measures from obstructing the operation of the market. Two categories of measures have been adopted:

— technical rules for boilers;
— labelling rules to promote energy savings.

Finally, to back up the integrated operation of the gas and electricity markets, the Commission has now put before the Council proposals for master plans for networks and projects of common interest eligible for Community funding.

1. INTERNAL MARKET FOR ENERGY

1.1. Gas and electricity: price transparency

(1) Objective	To improve the transparency of gas and electricity prices charged to industrial end-users in order to increase consumers' freedom of choice without creating obstacles to confidentiality.
(2) Community measures	Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users.
(3) Contents	1. The Member States must ensure that gas and electricity undertakings communicate to the Statistical Office of the European Communities (SOEC) their prices, details of the price systems in use and the breakdown of consumers, under the conditions laid down by the Directive. 2. The undertakings must assemble the data on prices and price systems twice a year and send them to the SOEC and the Member States within two months. The information on the breakdown of consumers need only be submitted once every two years. The first such notification will concern the situation on 1 January 1991. 3. The SOEC must keep the data confidential and may publish it only in an aggregate form which makes it impossible to identify individual commercial transactions. 4. Should the SOEC detect any statistically significant anomalies in the data transmitted, it may ask the national authorities for fuller details. 5. 'Industrial end-users' are defined in an annex to the Directive, to which the Commission will make the changes necessitated by any specific problems identified. An advisory committee will assist the Commission in this task. 6. The Commission is required to present a summary report on the operation of the Directive to the European Parliament, the Council and the Economic and Social Committee.
(4) Deadline for implementation of the legislation in the Member States	— 1.7.1991 — (in countries where no natural gas is available on the national market) five years after the introduction of natural gas on the market.
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 185, 17.7.1990
(7) Follow-up work	
(8) Commission implementing measures	Report from the Commission to the Council on the operation of Directive 90/377/EEC on the transparency of gas and electricity prices for industrial end-users (COM(93) 666 final). The Commission's assessment of the operation of Directive 90/377/EEC is generally positive, although Spain has not yet transposed the

Directive into national law. The only negative point emerging from the assessment concerns the breakdown of consumers by category: the information communicated to the Statistical Office of the European Communities is incomplete.

1. INTERNAL MARKET FOR ENERGY

1.2. Transit of electricity through transmission grids

(1) Objective	To facilitate transit of electricity between high-voltage grids in order to increase the opportunities for transfers of electricity.
(2) Community measures	Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids.
(3) Contents	1. The Directive defines the concept of 'transit of electricity through transmission grids'. The grid of origin or final destination must be situated in the Community and the transport operation must involve crossing at least one intra-Community frontier. 2. Contracts for the transit of electricity must be negotiated between the entities responsible for the grids concerned and, where appropriate, with the entities responsible in the Member States for importing and exporting electricity. 3. The conditions of transit must comply with the principle of free movement, without endangering security of supply and quality of service. 4. The Member States must ensure that the entities responsible for the grids notify the Commission and the national authorities concerned of any request for transit in connection with contracts for the sale of electricity of a minimum of one year's duration and of the conclusion of any transit contract. They must also inform them of the reasons should the negotiations fail to result in the conclusion of a contract within 12 months of submission of the request. 5. The conditions of transit may be referred to a conciliation body chaired by the Commission. If the reasons given for any failure to reach agreement on a given request for transit appear unjustified or insufficient, the Commission may implement the procedures provided for by Community law.
(4) Deadline for implementation of the legislation in the Member States	1.7.1991
(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 313, 13.11.1990
(7) Follow-up work	
(8) Commission implementing measures	

1. INTERNAL MARKET FOR ENERGY

1.3. Transit of natural gas through grids

(1) Objective	To facilitate the transit of natural gas between high-pressure transmission grids in order to increase transfers of gas between the grids without ignoring the need for security and quality of supply.
(2) Community measures	Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids.
(3) Contents	1. The Directive defines what is meant by the transit of natural gas between grids. The grid of origin or final destination must be situated in the Community, the transport involving the crossing of at least one intra-Community frontier. 2. The transit contracts are negotiated between the entities responsible for the grids and, where appropriate, the entities responsible in the Member States for importing and exporting natural gas. 3. The conditions of transit have to conform to the principle of free movement of goods without endangering security of supply or quality of service. 4. The Member States ensure that the entities responsible for the grids notify the Commission and the national authorities concerned of any request for transit and of the conclusion of a transit contract. They also inform them of the reasons should the negotiations fail to result in the conclusion of a contract within 12 months following communication of the request. 5. The conditions of transit may be made subject to conciliation by a body chaired by the Commission. If the reasons for the absence of agreement on a request for transit appear unjustified or insufficient, the Commission may implement the procedures provided for by Community law.
(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 147, 12.6.1991
(7) Follow-up work	
(8) Commission implementing measures	

1. INTERNAL MARKET FOR ENERGY

1.4. Common rules for the internal market in electricity

(1) Objective

To ensure the free movement of electricity, to improve security of supply and to increase industrial competitiveness.

(2) Proposal

Proposal for a European Parliament and Council Directive concerning common rules for the internal market in electricity.

(3) Contents

1. The Directive establishes common rules for the production, transmission and distribution of electricity. It defines detailed rules on the organization and functioning of the electricity sector, market access, the criteria and procedures that apply to calls for tender, the granting of licences, together with the operation of systems.
2. Electricity undertakings must be operated on a commercial basis and may not be the object of discrimination as regards their rights or obligations. The Member States may impose public service obligations on them as regards the security, regularity, quality and price of supplies.
3. Access to the market.
Prior authorization from the Member State concerned is required in order to build, operate, purchase or sell a generating plant. Such authorization must be granted on the basis of objective and non-discriminatory criteria relating exclusively to the security and safety of the installation, environmental protection, land use and the technical and financial capacity of the applicant undertaking. In addition, criteria concerning the building, operation and safety of transmission or distribution lines and public ground use also apply. By 1 January 1995 at the latest each Member State must adopt a transparent, non-discriminatory procedure for dealing with applications for authorization. Reasons must be given for any refusal to grant a licence and an appeal procedure must be established. The Member States must ensure that any customer, including electricity producers' and suppliers' own premises and subsidiaries, can be supplied by a direct line in the same Member State or via the interconnected system in another.
4. Production and transmission.
The Member States determine the public service obligations assigned to production and transmission companies. Authorization to construct new production and transmission capacity must be granted on the basis of objective, transparent and non-discriminatory criteria. Parallel to this system of licences, the Member States may launch invitations to tender for new production and transmission capacity, including replacement capacity. Member States may opt for either system. However, autoproducers and independent producers are not obliged to apply the tender procedure and may, in any case, make use of a licencing system.
A system operator designated by the Member States is responsible for operation, maintenance and development of the transmission system and its interconnectors. Operation of the transmission system must be managed separately from the generation and distribution activities to maintain a secure, reliable and efficient electricity system. The transmission system operator must prepare and publish an annual estimate covering a period of at least 10 years. By 1 July 1995 the

system operator must develop and publish technical rules addressing at least the voltage and frequency performance requirements, the conditions for connection and the operating procedures and requirements. The operator must consult the parties concerned before implementation of the technical rules, which must be approved by the Member State concerned and notified to the Commission.

5. Operation of the distribution system.
A distribution system operator designated by the Member States or by the undertakings responsible for the distribution systems is responsible for operation, maintenance and development of the distribution system. The Member States must define the rights and public service obligations of the distribution companies and the rights and obligations of their customers. The distribution system operator must maintain a secure, reliable and efficient distribution system. This includes preparing an annual report on the quality of supply and the quality of service. By 1 July 1995 the distribution system operator must develop and publish technical rules addressing at least the voltage and frequency performance requirements, the conditions for connection to the distribution system and the operating procedures and requirements. Finally, the operator will enter into agreements with the users or prospective users on connection to and/or use of the interconnected system.

6. Unbundling and transparency of the accounts.
Vertically integrated undertakings must keep separate accounts for their electricity generation, transmission and distribution activities. These accounts are to be published and audited annually in line with the national rules implementing Council Directive 78/660/EEC on the annual accounts of certain types of companies.

7. Access to the system.
Electricity producers and transmitters may, in some circumstances, negotiate access to the system in order to supply final customers, i.e. large-scale industrial consumers and distribution companies, directly. Electricity producers may also negotiate access to the system to supply their own premises, subsidiaries and affiliate companies in the same Member State or in another Member State. Access to the system must be granted where the supply of electricity arises from an invitation to tender for new production capacity. Disputes concerning the negotiation or management of contracts may be referred to an independent authority designated by the Member State.

8. Protective measures may be taken in the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened.

9. The Member States must establish a procedure for settling disputes and a procedure for consulting users on their territory on any matters arising from the measures taken to implement this Directive.

10. The Commission must present a report to the Council and the European Parliament before 31 December 1995, accompanied by any harmonization proposals necessary to ensure the smooth functioning of the internal market in electricity.

(4) Opinion of the European Parliament

First reading: the European Parliament approved the Commission proposal subject to a number of amendments, relating in particular to harmonization of the provisions on the environment and taxation, the Member States' responsibilities concerning the public service mission, maintenance of concessionary rights by States and regional and local authorities, a certain degree of liberalization of electricity production,

and transparency of the accounts. Parliament further proposed replacing regulated third-party access to the system by negotiated access for the direct supply of large-scale industrial consumers.

(5) Current status of the proposal

Co-decision procedure

The Commission presented the proposal on 21 February 1992.

First reading: On 17 November 1993 Parliament approved the Commission proposal subject to amendments. The Commission accepted some of the amendments.

The Commission presented an amended proposal on 8 December 1993.

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

(6) References

Commission proposal	
COM(91) 548/I final	Official Journal C 65, 14.3.1992
Amended proposal	
COM(93) 643 final	Official Journal C 123, 4.5.1994
European Parliament opinion	
First reading	Official Journal C 329, 6.12.1993
Economic and Social Committee opinion	Official Journal C 73, 15.3.1993

1. INTERNAL MARKET FOR ENERGY

1.5. Common rules for the internal market in natural gas

(1) Objective

To ensure the free movement of gas and improve security of supply and industrial competitiveness.

(2) Proposal

Proposal for a European Parliament and Council Directive concerning common rules for the internal market in natural gas.

(3) Contents

1. The Directive establishes common rules on the storage, transmission and distribution of natural gas. It defines detailed rules on the organization and functioning of the natural gas sector, market access, the criteria and procedures that apply to the granting of licences for the transmission, storage, distribution and supply of natural gas, together with the operation of systems.
2. Firms in the natural gas sector must be operated on a commercial basis and may not be the object of discrimination as regards their rights or obligations. Member States may impose public service obligations on them as regards the security, regularity, quality and price of supplies.
3. Access to the market.
The construction and operation of storage facilities, transmission and distribution lines and associated equipment are subject to prior authorization by the Member State concerned. Authorization must be granted on the basis of objective and non-discriminatory criteria concerning the security and safety of pipelines and associated equipment, the environment, land use, public ground use and the technical and financial capacity of the applicant company. These criteria must be published by 1 January 1995 at the latest. Requests for authorization are put through a transparent and non-discriminatory procedure which each Member State must adopt by 1 January 1995. Reasons must be given for any refusal to grant a licence and an appeal procedure must be established. The Member States must ensure that all customers, including gas producers' and suppliers' premises and subsidiaries, can be supplied by a direct line in the same Member State or by means of the interconnected system in another.
4. Storage and transmission.
The operation, security, reliability, efficiency and development of the integrated grid system are the responsibility of each transmission company individually. Every year each company must draw up an estimate of gas demand in its area and the capacity of the transmission system, covering a period of at least 10 years. Before 1 July 1995 each transmission company must prepare and publish technical rules covering at least pressure requirements and the conditions for connection to and operation of the transmission system. Finally, it will enter into agreements with the users or prospective users on connection to or use of its system or of storage facilities which it owns or operates.
5. Operating the distribution system.
The rights and public service obligations assigned to the distribution companies and their customers are defined by the Member States. A distribution system operator designated by the Member State or by undertakings which own or are responsible for distribution systems is

responsible for operation, maintenance and development of the distribution system. The operator must maintain a secure, reliable and efficient distribution system. This includes preparing an annual report on the quality of supply and service. By 1 July 1995 the distribution system operator must develop and publish technical rules addressing at least pressure requirements and the conditions for connection to and use of the distribution system. Finally, the system operator will enter into agreements with the users or prospective users on connection to or use of the interconnected system or of storage facilities which it owns or operates.

6. Unbundling and transparency of the accounts.
The transmission system operator must be independent, at least administratively. Vertically integrated companies must keep separate accounts for their production, transmission and distribution activities. These accounts are to be published and audited annually in accordance with the national rules transposing Council Directive 78/660/EEC on the annual accounts of certain types of companies. Furthermore, the competent authorities in the Member States are entitled to have access to gas companies' books.

7. Access to the system.
Gas companies may, subject to certain conditions, negotiate access to the system in order to supply final consumers, i.e. large-scale industrial customers and distribution companies, direct. Gas producers and suppliers may also negotiate access to the system in order to supply their own premises, subsidiaries and affiliated companies in the same Member State or in another Member State. Disputes surrounding the negotiation or management of contracts on access to the system may be submitted to an independent authority appointed by the Member State.

8. Protective measures may be taken in the event of a sudden crisis in the energy market or if the physical safety or security of persons, apparatus, installations or system integrity is threatened.

9. The Member States must establish a procedure for the settlement of disputes and a procedure allowing the users of the system on their territory to be consulted on the questions raised by the implementation of the Directive.

10. The Commission must present a report to the Council and the European Parliament by 31 December 1995, accompanied by any harmonization proposals needed to ensure the smooth functioning of the internal market in natural gas.

(4) Opinion of the European Parliament

First reading: the European Parliament approved the Commission proposal subject to a number of amendments, relating in particular to harmonization of the provisions on the environment and taxation, the Member States' responsibilities concerning the public service mission, maintenance of concessionary rights by States and regional and local authorities, and transparency of the accounts. Parliament further proposed replacing regulated third-party access to the system by negotiated access for the direct supply of large-scale industrial consumers.

(5) Current status of the proposal

Co-decision procedure

The Commission presented the proposal on 21 February 1992.

First reading: On 17 November 1993 Parliament approved the Commission proposal subject to certain amendments. The Commission accepted some of the amendments.

The Commission presented an amended proposal on 8 December 1993.

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

(6) References

Commission proposal COM(91) 548/II final	Official Journal C 65, 14.3.1992
Amended proposal COM(93) 643 final	Official Journal C 123, 4.5.1994
European Parliament opinion First reading	Official Journal C 329, 6.12.1993
Economic and Social Committee opinion	Official Journal C 73, 15.3.1993

1. INTERNAL MARKET FOR ENERGY

1.6. Conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

(1) Objective	To ensure equal access for all enterprises to the exploitation of hydrocarbons in the Community and to introduce greater competition in this sector.
(2) Community measures	European Parliament and Council Directive 94/22/EC of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons.
(3) Contents	1. The Member States retain the right to determine the areas within their territory to be made available for prospecting, exploring for and producing hydrocarbons. 2. The Directive ensures equal treatment of all the entities set up in the Community as regards access to and exercise of these activities. However, Member States may refuse, on grounds of national security, to allow access to and exercise of these activities to any entity which is effectively controlled by third countries or third country nationals. 3. The Directive describes the procedures to be followed for granting authorizations. 4. The granting of authorizations is based on objective and non-discriminatory criteria. These criteria must be published in the *Official Journal of the European Communities* before the start of the period for submission of applications. The applicant entities are informed in advance of their share of the obligations resulting from the authorization. 5. Member States may not impose upon the entities conditions and obligations other than those required by good mining practice and for reasons of general interest. 6. The Directive provides for the abolition, before 1 January 1997, of any existing provisions in the Member States which reserve to a single entity the right to obtain authorization in a specific geographical area within their territory. 7. The Directive makes certain provisions relating to entities controlled by non-member states for reasons of reciprocity. 8. The Member States are required to submit an annual report to the Commission on implementation of the Directive. In addition, they must notify the Commission, no later than 1 May 1995, of the competent authorities and, thereafter, of any subsequent changes to the list. The Commission will publish this list in the *Official Journal of the European Communities*. 9. Certain exemptions have been allowed for certain authorizations, covering limited periods and areas, granted by Denmark before 31 December 2012.
(4) Deadline for implementation of the legislation in the Member States	1.7.1995, for existing provisions reserving exclusive rights.

(5) Date of entry into force (if different from the above)	
(6) References	Official Journal L 164, 30.6.1994
(7) Follow-up work	
(8) Commission implementing measures	

1. INTERNAL MARKET FOR ENERGY

1.7. Trans-European networks: declaration of interest concerning the transmission of electricity and natural gas

(1) Objective

To facilitate the establishment of trans-European networks, by granting a declaration of European interest to particular projects involving the transmission of electricity or natural gas.

(2) Proposal

Proposal for a Council Regulation (EEC) introducing a declaration of European interest to facilitate the establishment of trans-European networks in the electricity and natural gas domain.

(3) Contents

1. 'Declaration of European interest' is defined as an acknowledgement that implementation of a particular project involving the transmission of electricity or natural gas comes within the series of guidelines established by the Council. Such a declaration of European interest is likely to facilitate private financing of the projects.
2. The Commission must evaluate the projects to see if they satisfy the conditions set out in the annex to the Regulation. If they do, the Commission publishes details of the project in the *Official Journal of the European Communities*. The Member States and any other interested parties may then make known their observations within a specified period.
3. The Commission will grant the declaration of European interest within six months of the date of the invitation to the Member States to make known their views. This declaration creates no right to financing from the Community or the Member States. Funding will be granted following the established procedures.

(4) Opinion of the European Parliament

(5) Current status of the proposal

Co-decision procedure

The Commission presented the proposal on 24 February 1992.

First reading: On 20 November 1992 Parliament approved the Commission proposal subject to amendments. The Commission accepted some of the amendments.

The Commission presented an amended proposal on 19 April 1993.

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

(6) References

Commission proposal COM(92) 15/II final	Official Journal C 71, 20.3.1992
Amended proposal COM(93) 115 final	Official Journal C 124, 6.5.1993
European Parliament opinion First reading	Official Journal C 337, 21.12.1992
Economic and Social Committee opinion	Official Journal C 287, 4.11.1992

1. INTERNAL MARKET FOR ENERGY

1.8. Trans-European networks: general rules for the granting of Community financial aid in the field of trans-European networks

(1) Objective

To lay down general rules for the granting of Community financial aid to the infrastructure projects in the transport, telecommunications and energy sectors identified in the Council's guidelines on trans-European networks.

(2) Proposal

Proposal for a Council Regulation laying down general rules for the granting of Community financial aid in the field of trans-European networks.

(3) Contents

1. This regulation defines the conditions and procedures for granting Community aid to projects of common interest in the field of trans-European networks for transport, energy and telecommunications. It does not affect the specific rules and regulations laid down in the proposal for a Council decision on trans-European data communications networks between administrations (IDA).
2. Eligibility criteria:
— projects of common interest financed by Member States and identified within the framework of the guidelines referred to in Article 129c of the Treaty;
— projects financed by organizations working within an administrative or legal framework that makes them similar to public organizations
— where the abovementioned guidelines have not yet been adopted by the Council, other infrastructure projects which contribute to the achievement of the objectives set out in Article 129b of the Treaty.
The concept of 'project' includes the technically and financially separate stages of projects which form a whole designed to fulfil an economic and technical function.
3. Forms of Community aid:
— cofinancing of feasibility studies (a substantial contribution from the public authorities is required) and preparatory studies, evaluation studies and other technical support measures (may be financed, where necessary and undertaken at the initiative of the Commission, to 100% of the total cost);
— contribution to the premiums of loan guarantees (in whole or in part);
— interest-rate subsidies (maximum 10% of the total cost of the investment in net grant equivalent);
— cofinancing of investment projects (by way of exception).
4. The budgetary authority sets the amount of appropriations for each year and for each area.
5. Common project selection criteria. Community aid is granted on a priority basis to projects according to their contribution:
— to the establishment of trans-European networks;
— to the harmonization of technical standards;
— to the interconnection and interoperability of national networks;
— to the improvement of access to networks;
— to the integration of the various networks;

— to the reliability and safety of the networks.
Other common project selection criteria include their contribution to the smooth running of the internal market, to cohesion policy, environmental protection, etc.
6. Selection criteria particularly concerning energy. Community financial aid is granted on a priority basis according to their contribution:
— to the connection of isolated electricity networks and the interconnection of Member States' electricity networks;
— to greater reliability and safety of electricity networks or to the supply of electricity;
— to the introduction of natural gas to areas without supply and to the connection of isolated or separate natural gas networks;
— to increased transport capacity through natural gas supply, inlet and storage pipelines.
7. Applications for financial aid must be submitted to the Commission through the intermediary of the Member State concerned or by the body directly concerned with the agreement of the Member State. The regulation stipulates the information required for the assessment and identification of applications (e.g. name of the body responsible, the type of assistance envisaged and a description of the project concerned).
8. Financial provisions: eligible expenditure and method of payment.
9. Financial control is carried out by Member States. Without prejudice to this control work, the Commission may send officials or staff to carry out spot checks on the projects financed. The Commission may reduce, suspend or cancel financial aid in the event of irregularities, or if one of the conditions specified in the decision granting the financial aid has not been met.
10. Cooperation to évaluate systematically progress with projects. Every two years, the Commission is to submit a report on the activities carried out under this regulation.
11. In the energy sector, the Commission is assisted in implementing this regulation by the energy committee, which is to be set up as soon as possible by a Council decision. Its role will be that of a management committee.

(4) Opinion of the European Parliament

Not yet delivered.

(5) Current status of the proposal

Cooperation procedure

The Commission presented the proposal on 2 March 1994.

The proposal is currently before Parliament for its opinion.

(6) References

Commission proposal COM(94) 62 final	Official Journal C 89, 26.3.1994
Economic and Social Committee opinion	Not yet published
Committee of the Regions opinion	Not yet published

1. INTERNAL MARKET FOR ENERGY

1.9. Trans-European networks: guidelines on trans-European energy networks

(1) Objective

To define the nature and scope of Community guidelines on trans-European energy networks.

(2) Proposal

Proposal for a European Parliament and Council Decision laying down a series of guidelines on trans-European energy networks.

(3) Contents

1. This decision establishes a series of guidelines covering the objectives, priorities and broad lines of action by the Community on the subject of trans-European energy networks. In addition, it identifies projects of common interest on the trans-European electricity and natural gas networks.
2. By promoting the interconnection, interoperability and development of the networks, together with access to them, the Community is aiming to:
— allow effective operation of the internal market in general and of the internal energy market in particular;
— strengthen economic and social cohesion;
— strengthen the security of the Community's energy supplies.
3. The priorities for action on electricity networks are as follows:
— the connection of isolated electricity networks;
— the development of interconnections between Member States and of internal interconnections where necessary in order to harness the interconnections;
— the development of interconnections with non-Community countries (in Europe and the Mediterranean region), which contribute to improving the reliability and security of the Community's electricity supply networks or to electricity supplies.
The priorities for natural gas networks are:
— the introduction of natural gas to new regions;
— the connection of isolated natural gas networks to the trans-European networks (including the improvements needed to the latter for this purpose), and the connection of the separate gas networks;
— increasing the transmission, reception and storage capacities (needed to satisfy demand) and diversification of supply sources and routes for natural gas.
4. The broad lines of action are twofold:
— identification of projects of common interest;
— creation of a more favourable technical, administrative, legal and financial context for development of these networks.
5. Selection criteria for projects of common interest:
— they fall within the scope of this decision;
— they correspond to the objectives and priorities laid down by this decision;
— they respond to a need and are likely to be economically viable (financial profitability and overall cost/benefit analysis).
The list of projects already identified is given in the annex to the decision. Any application by a Member State or the Commission to amend the list is submitted to a management committee set up by this decision. A project cannot be included in this list unless approved by each Member State whose territory is affected by it. Where a project

	also concerns the territory of a third country, the Commission is charged with making appropriate proposals in order to have the common interest of the project recognized by that country. 6. Member States are asked to facilitate and help speed up the implementation of projects of common interest. 7. Every two years, the Commission has to submit a report on implementation of the decision.
(4) Opinion of the European Parliament	Not yet delivered.
(5) Current status of the proposal	Co-decision procedure The Commission presented the proposal on 8 February 1994. The proposal is currently before Parliament for its opinion.
(6) References	Commission proposal COM(93) 685 final — Official Journal C 72, 10.3.1994 Economic and Social Committee opinion — Not yet published Committee of the Regions opinion — Not yet published

1. INTERNAL MARKET FOR ENERGY

1.10. Trans-European networks: set of actions relating to trans-European networks in the energy sector

(1) Objective

To establish a context more favourable to the development of trans-European networks in the energy sector.

(2) Proposal

Proposal for a Council Decision specifying a set of actions designed to establish a context more favourable to the development of trans-European networks in the energy sector.

(3) Contents

1. The Community intends to support the following actions to help establish a technical, administrative and legal context more conducive to the development of trans-European networks:
— carry out projects of technical cooperation between the operators responsible for the management, control and regulation of the networks;
— promote cooperation between the Member States with a view to simplifying and speeding up authorization procedures for network projects so as to reduce their completion times;
— establish a joint approach for the technical aspects applicable to networks.
Coordination of these three activities has to be assured by the Commission in close collaboration with the Member States.
2. The Commission may give financial support to projects of common interest financed by the Member States. This support may concern, on the one hand, feasibility studies and the execution of identified projects of common interest (summary 1.9) — in the form of interest-rate subsidies or loan guarantees — and, on the other hand, studies and projects aimed at improving technical cooperation on exploiting these networks. The Commission also takes account of these identified projects of common interest in the operations of its funds, intruments and financial programmes applicable to networks.
3. The amounts to be granted pursuant to this decision are entered annually in the general budget of the European Communities.
4. The Commission is assisted in implementing this decision by an 'advisory' committee in respect of the above actions and by a 'management' committee in matters of financial support.

(4) Opinion of the European Parliament

Not yet delivered.

(5) Current status of the proposal

Cooperation procedure

The Commission presented the proposal on 8 February 1994.

The proposal is currently before Parliament for its opinion.

(6) References

Commission proposal COM(93) 685 final	Official Journal C 72, 10.3.1994
Economic and Social Committee opinion	Not yet published
Committee of the Regions opinion	Not yet published

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