

**COUNCIL  
OF THE  
EUROPEAN UNION**  

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**GENERAL SECRETARIAT**  

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**DG H**  
**Justice and Home Affairs**



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***INSTRUMENTS AND TEXTS  
PUBLISHED IN THE OFFICIAL JOURNAL  
OF INTEREST IN THE FIGHT AGAINST  
ORGANIZED CRIME***

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***(VOLUME II)***

**Issued on 13 February 1997**





**Volume I**            1. EC/EU Instruments and other Texts

**Volume II**           2. First Pillar Instruments

(It is to be noted that these instruments are all of relevance to the prevention of crime in general and that mechanisms for their monitoring are foreseen by the Treaties)

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## **2. FIRST PILLAR INSTRUMENTS**





## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 3677/90  
of 13 December 1990**

**laying down measures to be taken to discourage the diversion of certain  
substances to the illicit manufacture of narcotic drugs and psychotropic  
substances**

**THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas on 19 December 1988 a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in Vienna, hereinafter referred to as the 'United Nations Convention'; whereas the United Nations Convention is part of the world-wide efforts to combat drugs; whereas the Community participated in the negotiation of that Convention, showing its political will to act within the limits of its competences;

Whereas the United Nations Convention contains an Article 12 concerning trade in precursors, i.e. substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances; whereas the implementation of this Article represents a contribution by industrialized countries to the effort requested from drug-producing countries, which are generally much poorer than the former; whereas the provisions on trade in such precursors affect the Community rules in customs matters; whereas, on this basis, the United Nations Convention was signed on behalf of the Community on 8 June 1989; whereas, on this basis, the Council decided on 22 October 1990 to conclude the United Nations Convention; whereas it is thus appropriate, in order to concretize this political will, to lay down Community rules on trade between the Community and third countries;

Whereas the provisions of Article 12 of the United Nations Convention are based on a system monitoring trade in the substances in question; whereas most of the trade in these substances is fully legitimate; whereas documentation and possible labelling as regards consignments of these substances have to be sufficiently clear; whereas it is furthermore important, whilst providing competent authorities with the necessary means of action,

to develop, in compliance with the spirit of the United Nations Convention, mechanisms which are based on close cooperation with the economic operators concerned as well as on the development of intelligence gathering;

Whereas a system of pre-notification of consignments of certain substances providing, under certain conditions, for the operations in question to be forbidden, appears most appropriate to the situation; whereas several countries have already obtained very positive results favouring this approach;

Whereas the competent authorities of Member States should have comparable means of action; whereas it is indispensable, therefore, to establish common objectives in the matter at Community level; whereas this aspect is essential with the completion of the internal market in prospect and in order to ensure the homogeneous application of the rules established; whereas it is also important, in this context, that each Member State provide for sufficiently dissuasive penalties;

Whereas machinery for administrative cooperation should be provided for both within the Community and with third countries which are also Parties to the Convention; whereas it is advisable in this respect, as far as the competent authorities in the Community are concerned, to take as a basis Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters<sup>(1)</sup>, as amended by Regulation (EEC) No 945/87<sup>(2)</sup>; whereas particular attention has to be paid to the confidentiality of information received or exchanged;

Whereas, in the spirit of the United Nations Convention, the Community should contribute to efforts to combat drug trafficking by producer countries; whereas, in this connection, special machinery should be introduced for

<sup>(1)</sup> OJ No L 144, 2. 6. 1981, p. 1.

<sup>(2)</sup> OJ No L 90, 2. 4. 1987, p. 3.

monitoring the products listed in Table II of the Annex where they are the subject of trade with those countries, despite the fact that in general these products give rise to much lawful trade; whereas the cooperation of the countries concerned should be sought to ensure better monitoring of such trade

Whereas, in order to examine possible problems concerning the application of this Regulation and to enhance its implementation and the development of administrative cooperation in the matter, it is desirable to provide that the Commission should organize specific meetings,

HAS ADOPTED THIS REGULATION :

## TITLE I

### GENERAL

#### Article 1

1. This Regulation lays down the measures to be taken to monitor trade between the Community and third countries in substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances for the purpose of preventing the diversion of such substances.
2. For the purposes of this Regulation :
  - (a) 'scheduled substance' means any substance listed in the Annex, including mixtures containing such substances. This excludes pharmaceutical preparations or other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means ;
  - (b) 'import' means any physical introduction of scheduled substances into the customs territory of the Community ;
  - (c) 'export' means any physical departure of scheduled substances from the customs territory of the Community which requires a customs export declaration ;
  - (d) 'transit' means any transport of scheduled substances between third countries through the customs territory of the Community and any transshipment in that territory ;
  - (e) 'operator' means any natural or legal person engaged in the manufacture, production, trade or distribution of scheduled substances in the Community or involved in other related activities such as import, export, transit, broking and processing of scheduled substances. This definition includes, in particular, persons pursuing the activity of making customs declarations on a self-employed basis, either as their

principal occupation or as a secondary activity related to another occupation ;

- (f) 'International Narcotics Control Board' means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.

## TITLE II

### MONITORING OF TRADE

#### Article 2

##### Documentation, records and labelling

The import, export and transit of scheduled substances are subject to the following requirements :

1. All import, export and transit operations shall be properly documented. In particular, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall contain sufficient information positively to identify :
  - the name of the scheduled substance as given in the Annex,
  - the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of any substance or substances listed in the Annex,
  - the name and address of the exporter, the importer, the distributor and, if known the ultimate consignee.
2. Where operators affix labels indicating the type of product or its trade name to scheduled substances in import, export or transit operations, such labels must show the names of the substances as given in the Annex.
3. Operators involved in import, export and transit of scheduled substances shall keep detailed records of those activities.
4. The documents and records referred to in points 1 and 3 shall be kept for a period of not less than two years from the end of the calendar year in which the operation referred to in point 1 took place, and must be readily available for inspection by the competent authorities upon request.

#### Article 3

##### Notification

The Member States shall take the necessary measures to establish close cooperation between the competent authorities and operators, so that operators notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving scheduled substances, which suggest that such substances intended for import or export may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

**Article 4****Pre-export notification****Substances listed in Table I of the Annex**

1. Full particulars relating to exports of scheduled substances listed in Table I of the Annex must be supplied in advance to the competent authorities of the Member State in which the customs export formalities are to be completed. In addition to the obligations which arise for them under Article 3, the operators concerned must ensure that those authorities have actually received the particulars in question at least 15 working days before any customs export declaration is lodged.

The competent authorities shall immediately confirm receipt of the particulars referred to in the preceding subparagraph.

2. The particulars referred to in paragraph 1 must contain the following information:

- the name and address of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also of the ultimate consignee if at all known to the operator concerned,
- the name of the scheduled substances as given in Table I in the Annex,
- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of any substance or substances listed in the Annex,
- details of the shipment such as expected date of dispatch, name of the customs office where the customs export formalities will be carried out, transport arrangements and, where known, itinerary, expected point of exit from Community customs territory and, possibly, point of entry into the importing country.

3. Without prejudice to any possible implementation of technical repressive measures, if there are reasonable grounds for suspecting that scheduled substances listed in Table I of the Annex are intended for the illicit manufacture of narcotic drugs or psychotropic substances, the export of such substances shall be forbidden, by written order from the competent authorities, confirmation of receipt of which must be duly provided.

4. A decision must be taken on the particulars supplied by the operators within the period of 15 working days laid down in paragraph 1, where appropriate by issuing an export permit.

Export shall be authorized:

- where, within the said period, there has not been any decision to extend it, any request for further information or any order pursuant to paragraph 3, or
- on presentation of a formal export permit, where the competent authority makes provision for the issue of such a document.

In all cases, the confirmation of receipt referred to in

authority makes provision for the issue of such a permit, must be produced for inspection by the customs authorities when the customs export declaration is lodged.

5. With regard to requests for pre-export notification addressed to the Community by a third country pursuant to Article 12 (1<sup>o</sup>) of the United Nations Convention:

- (a) the Commission shall immediately communicate to the competent authorities of the Member States any such request received;
- (b) the competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the requesting country, supply the information specified in paragraph 2 to the competent authorities of that country. A copy of this reply shall be communicated to the Commission for circulation to the other Member States;
- (c) the authority furnishing such information may require that the authority in the third country receiving the information ensures the confidentiality of any trade, industrial, commercial or professional secret or any trade process referred to therein.

**Article 5****Specific export machinery****Substances listed in Table II of the Annex**

For the purposes of supplementing the arrangements for monitoring international trade in scheduled substances between the Community and third countries, Article 4 shall apply *mutatis mutandis* to exports of scheduled substances listed in Table II of the Annex wherever they appear to be intended, directly or indirectly, for any country which has informed the Commission, that it wishes to be notified in advance of any shipment to it of the said products because they might be used for the illicit manufacture of narcotic drugs or psychotropic substances in its territory.

**TITLE III****CONTROL MEASURES****Article 6****Legal powers of competent authorities**

1. In order to ensure the correct application of Articles 2, 4 and 5, each Member State shall adopt within the framework of its domestic law the measures necessary to enable the competent authorities:

- (a) to obtain information on any orders for or operations involving scheduled substances;
- (b) to enter operators' business premises in order to

2. Without prejudice to the measures laid down in Article 4 (3), Article 5 and paragraph 1 of this Article the customs authorities or other competent authorities of each Member State may prohibit the introduction of scheduled substances into Community territory or their departure from it, if there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

#### TITLE IV

#### ADMINISTRATIVE COOPERATION

##### *Article 7*

For the purposes of applying this Regulation and without prejudice to Article 10, the provisions of Regulation (EEC) No 1468/81 and in particular those on confidentiality shall apply *mutatis mutandis*. Each Member State shall communicate to the other Member States and to the Commission the name of the competent authorities appointed to act as correspondents in accordance with Article 2 (2) of Regulation (EEC) No 1468/81.

#### TITLE V

#### FINAL PROVISIONS

##### *Article 8*

Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

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

Done at Brussels, 13 December 1990.

*For the Council*  
*The President*  
P. ROMITA

##### *Article 9*

1. To permit any necessary adjustments to the arrangements for monitoring trade in scheduled substances between the Community and third countries, the competent authorities in each Member State shall each year communicate to the Commission all relevant information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture.

2. On the basis of the communications made pursuant to paragraph 1, the Commission shall, pursuant to Article 12 (12) of the United Nations Convention and in consultation with the Member States, draw up an annual report to be submitted to the International Narcotics Control Board.

##### *Article 10*

The Commission shall organize meetings with the representatives of the Member States in order to examine any questions concerning the application of this Regulation raised either on its own initiative or at the request of a Member State.

##### *Article 11*

Each Member State shall inform the Commission of the measures it takes pursuant to this Regulation.

The Commission shall communicate this information to the other Member States.

##### *Article 12*

This Regulation shall enter into force on 1 January 1991.

It shall apply from 1 July 1991.

## ANNEX

TABLE I

- Ephedrine,
- Ergometrine,
- Ergotamine,
- Lysergic acid,
- 1-phenyl-2-propanone,
- Pseudoephedrine.

The salts of the substances listed in this table whenever the existence of such salts is possible.

TABLE II

- Acetic anhydride,
- Acetone,
- Anthranilic acid,
- Ethyl ether,
- Phenylacetic acid,
- Piperidine.

The salts of the substances listed in this table whenever the existence of such salts is possible.

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EC, EURATOM) No 2988/95  
of 18 December 1995**

**on the protection of the European Communities financial interests**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

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

Having regard to the opinion of the European Parliament (2),

Whereas the general budget of the European Communities is financed by own resources and administered by the Commission within the limit of the appropriations authorized and in accordance with the principle of sound financial management; whereas the Commission works in close cooperation with the Member States to that end;

Whereas more than half of Community expenditure is paid to beneficiaries through the intermediary of the Member States;

Whereas detailed rules governing this decentralized administration and the monitoring of their use are the subject of differing detailed provisions according to the Community policies concerned; whereas acts detrimental to the Communities' financial interests must, however, be countered in all areas;

Whereas the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies;

Whereas irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation;

Whereas the aforementioned conduct includes fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests;

Whereas Community administrative penalties must provide adequate protection for the said interests; whereas it is necessary to define general rules applicable to these penalties;

Whereas Community law has established Community administrative penalties in the framework of the common agricultural policy; whereas such penalties must be established in other fields as well;

Whereas Community measures and penalties laid down in pursuance of the objectives of the common agricultural policy form an integral part of the aid systems; whereas they pursue their own ends which do not affect the assessment of the conduct of the economic operators concerned by the competent authorities of the Member States from the point of view of criminal law; whereas their effectiveness must be ensured by the immediate effect of Community rules and by applying in full Community measures as a whole, where the adoption of preventive measures has not made it possible to achieve that objective;

Whereas not only under the general principle of equity and the principle of proportionality but also in the light of the principle of *ne bis in idem*, appropriate provisions must be adopted while respecting the *acquis communautaire* and the provisions laid down in specific Community rules existing at the time of entry into force of this Regulation, to prevent any overlap of Community financial penalties and national criminal penalties imposed on the same persons for the same reasons;

(1) OJ No C 216, 6. 8. 1994, p. 11.

(2) OJ No C 89, 10. 4. 1995, p. 83 and opinion delivered on 30 November 1995 (not yet published in the Official Journal).

Whereas, for the purposes of applying this Regulation, criminal proceedings may be regarded as having been completed where the competent national authority and the person concerned come to an arrangement;

Whereas this Regulation will apply without prejudice to the application of the Member States' criminal law;

Whereas Community law imposes on the Commission and the Member States an obligation to check that Community budget resources are used for their intended purpose; whereas there is a need for common rules to supplement existing provisions;

Whereas the Treaties make no provision for the specific powers necessary for the adoption of substantive law of horizontal scope on checks, measures and penalties with a view to ensuring the protection of the Communities' financial interests; whereas recourse should therefore be had to Article 235 of the EC Treaty and to Article 203 of the EAEC Treaty;

Whereas additional general provisions relating to checks and inspections on the spot will be adopted at a later stage,

HAS ADOPTED THIS REGULATION:

#### TITLE I

#### General principles

##### Article 1

1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. 'Irregularity' shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

##### Article 2

1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide

adequate protection for the Communities' financial interests.

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

4. Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

#### Article 3

1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1 (1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

†

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6 (1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.

TITLE II

Administrative measures and penalties

Article 4

1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage :

— by an obligation to pay or repay the amounts due or wrongly received,

— by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.

Article 5

1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties :

(a) payment of an administrative fine ;

(b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate ; this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent ;

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage ;

(d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity ;

(e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme ;

(f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released ;

(g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.

Article 6

1. Without prejudice to the Community administrative measures and penalties adopted on the basis of the sectoral rules existing at the time of entry into force of this Regulation, the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.

2. If the criminal proceedings are not continued, the suspended administrative proceedings shall be resumed.

3. When the criminal proceedings are concluded, the suspended administrative proceedings shall be resumed, unless that is precluded by general legal principles.

4. Where the administrative procedure is resumed, the administrative authority shall ensure that a penalty at least equivalent to that prescribed by Community rules is imposed, which may take into account any penalty imposed by the judicial authority on the same person in respect of the same facts.

5. Paragraphs 1 to 4 shall not apply to financial penalties which form an integral part of financial support systems and may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.

Article 7

Community administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers legal capacity who have committed the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed.



## TITLE III

## Checks

*Article 8*

1. In accordance with their national laws, regulations and administrative provisions, the Member States shall take the measures necessary to ensure the regularity and reality of transactions involving the Communities' financial interests.

2. Measures providing for checks shall be appropriate to the specific nature of each sector and in proportion to the objectives pursued. They shall take account of existing administrative practice and structures in the Member States and shall be determined so as not to entail excessive economic constraints or administrative costs.

The nature and frequency of the checks and inspections on the spot to be carried out by the Member States and the procedure for performing them shall be determined as necessary by sectoral rules in such a way as to ensure uniform and effective application of the relevant rules and in particular to prevent and detect irregularities.

3. The sectoral rules shall include the provisions necessary to ensure equivalent checks through the approximation of procedures and checking methods.

*Article 9*

1. Without prejudice to the checks carried out by the Member States in accordance with their national laws,

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

Done at Brussels, 18 December 1995.

regulations and administrative provisions and without prejudice to the checks carried out by the Community institutions in accordance with the EC Treaty, and in particular Article 188c thereof, the Commission shall, on its responsibility, have checks carried out on :

- (a) the conformity of administrative practices with Community rules ;
- (b) the existence of the necessary substantiating documents and their concordance with the Communities' revenue and expenditure as referred to in Article 1 ;
- (c) the circumstances in which such financial transactions are carried out and checked.

2. In addition, it may carry out checks and inspections on the spot under the conditions laid down in the sectoral rules.

Before carrying out such checks and inspections, in accordance with the rules in force, the Commission shall inform the Member State concerned accordingly in order to obtain any assistance necessary.

*Article 10*

Additional general provisions relating to checks and inspections on the spot shall be adopted later in accordance with the procedures laid down in Article 235 of the EC Treaty and Article 203 of the EAEC Treaty.

*Article 11*

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

*For the Council*

*The President*

J. BORRELL FONTELLES

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE 92/109/EEC

of 14 December 1992

on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas some Member States have adopted measures to monitor the manufacture and the placing on the market of certain substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances; whereas other Member States are about to adopt measures of this kind; whereas it is therefore necessary to establish common rules at Community level in anticipation of the completed internal market in order to avoid distortion of competition in lawful trading and to ensure uniform application of the rules adopted;

Whereas on 19 December 1988 a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, hereinafter referred to as the 'United Nations Convention', was adopted in Vienna; whereas the United Nations Convention is part of the world-wide efforts to combat drugs; whereas the Community participated in the negotiation of that Convention, showing its political will to act within the limits of its competences;

Whereas the requirements of Article 12 of the United Nations Convention, in respect of trade in precursors, (i.e.

substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, are implemented as far as trade between the Community and third countries is concerned by Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances <sup>(4)</sup>;

Whereas Article 12 of the United Nations Convention envisages adoption of appropriate measures to monitor manufacture and distribution of precursors; whereas, by decisions taken at its 35th session, the United Nations Commission on Narcotic Drugs included additional substances in the tables of the Annex to the Convention; whereas corresponding provisions should be laid down in this Directive in order to detect possible cases of illicit diversion of drugs in the Community or to counter fraudulent imports into the Community and to ensure that common monitoring rules are applied in the Community market;

Whereas the provisions of Article 12 of the United Nations Convention are based on a system of monitoring trade in the substances in question; whereas most trade in these substances is fully licit; whereas the documentation and labelling of consignments of these substances must be sufficiently explicit; whereas it is furthermore important, whilst providing competent authorities with the necessary means of action, to develop within the spirit of the United Nations Convention mechanisms based on close cooperation with the operators concerned and on the development of intelligence gathering, exchange and exploitation;

<sup>(1)</sup> OJ No C 21, 29. 1. 1991, p. 17.

<sup>(2)</sup> OJ No C 125, 13. 5. 1992, p. 195; and Decision of 18 November 1992 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 159, 17. 6. 1991, p. 58.

<sup>(4)</sup> OJ No L 357, 20. 12. 1990, p. 1. Regulation as last amended by Regulation (EEC) No 900/92 (OJ No L 96, 10. 4. 1992, p. 1).

Whereas, since diversion patterns are constantly changing, it is considered at international level that the procedures provided for in Article 12 of the United Nations Convention should be strengthened to combat effectively the diversion of the substances concerned;

Whereas the Commission and seven Member States participated in the work of the Chemical Action Task Force established by the G7 Economic Summit in Houston on 10 July 1990 to develop effective procedures to prevent diversion of precursor and essential chemicals to illicit drugs manufacture; whereas throughout this work there has been coordination at Community level and close consultation with representatives of trade and industry;

Whereas the Final Report of the Chemical Action Task Force was approved by the G7 Economic Summit in London on 15 July 1991;

Whereas this Final Report, in recognizing the United Nations Convention as the basic instrument of international cooperation in chemical diversion matters, contains a number of recommendations for reinforcing national and international measures on the basis of that Convention;

Whereas it must be ensured that the manufacture or use of the scheduled substances in category 1 of Annex I to this Directive is subject to possession of a licence; whereas the supply of such substances must in addition be authorized only where the persons to whom they are to be supplied are specifically authorized, either generally or individually, to be supplied with, possess or handle such substances;

Whereas measures should be adopted to establish close cooperation with the operators concerned so that the latter notify suspicious transactions to the competent authorities;

Whereas it is important to establish machinery for administrative cooperation; whereas it is desirable in this connection that the competent authorities in the Community base their actions on Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters<sup>(1)</sup>; whereas particular attention must be paid to the confidentiality of the information received and exchanged;

Whereas each Member State should introduce penalties sufficiently dissuasive to forestall infringements of the provisions adopted in implementation of this Directive,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### General

#### Article 1

1. The purpose of this Directive is to establish intra-Community monitoring of certain substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances with a view to preventing the diversion of such substances.
2. For the purposes of this Directive:
  - (a) 'scheduled substance' means any substance specified in Annex I, including mixtures containing such substances. This excludes medicinal products or other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means;
  - (b) 'placing on the market' means any supply against payment or free of charge to third parties of scheduled substances manufactured in the Community or put into free circulation in the Community;
  - (c) 'operator' means any natural or legal person engaged in the manufacture, processing, trade or distribution of scheduled substances in the Community or involved in other related activities such as the brokering and storage of scheduled substances;
  - (d) 'International Narcotics Control Board' means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.

## TITLE II

### MONITORING OF PLACING ON THE MARKET

#### Article 2

##### Documentation and labelling

Each Member State shall take all the measures necessary to ensure that the placing on the market of scheduled substances is subject to the following requirements:

1. all transactions leading to the placing on the market of scheduled substances in categories 1 and 2 of Annex I shall be properly documented;

<sup>(1)</sup> OJ No L 144, 2. 6. 1981, p. 1. Regulation as amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).

(a) in particular, commercial documents such as invoices, cargo manifests, administrative documents, transport and other shipping documents shall contain sufficient information positively to identify:

- the name of the scheduled substance as given in categories 1 and 2 of Annex I,
- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of the mixture as well as the quantity and weight or the percentage of any substance or substances specified in categories 1 and 2 of Annex I which are contained in the mixture,
- the name and address of the supplier, distributor and of the consignee;

(b) the documentation must furthermore contain a declaration from the customer which shows the specific uses of the substances. The detailed rules for implementing this provision will be determined in accordance with the procedure laid down in Article 10 (2). When these detailed rules are examined, due account shall be taken of the possibility for a regular customer obtaining from a supplier a scheduled substance specified in category 2 of Annex I to provide a single declaration covering all transactions involving that substance over a period of one year;

2. however, the obligations under paragraph 1 shall not apply to transactions concerning scheduled substances in category 2 of Annex I where the quantities involved do not exceed those indicated in Annex II;
3. operators shall ensure that labels are affixed to scheduled substances in categories 1 and 2 of Annex I before they are placed on the market. Such labels must show the names of the substances as given in Annex I. Operators may in addition affix their customary labels;
4. operators shall keep such detailed records of their activities as are required to comply with their obligations under paragraph 1;
5. the documentation referred to in paragraphs 1 and 4 shall be kept for a period of not less than three years from the end of the calendar year in which the operation referred to in paragraph 1 took place, and must be readily available for inspection by the competent authorities upon request.

### Article 3

Each Member State shall designate the competent authority or authorities responsible for ensuring the application of this Directive.

It shall inform the Commission of the competent authority or authorities thus designated.

### Article 4

#### Scheduled substances in Categories 1 and 2 of Annex I

1. Member States shall take all appropriate measures to ensure that the manufacture or placing on the market in the Community of scheduled substances in category 1 of Annex I is subject to possession of a licence issued by the competent authorities.

2. In considering whether to grant a licence, the competent authorities shall take into account in particular the competence and integrity of the applicant.

The licence may be suspended or revoked by the competent authorities whenever there are reasonable grounds for belief that the holder is no longer a fit and proper person to hold a licence, or that the conditions under which the licence was issued are no longer fulfilled.

3. Member States shall take all appropriate measures to ensure that any operator holding the licence referred to in paragraph 1 shall supply scheduled substances specified in category 1 of Annex I only to persons specifically authorized, either generally or individually, to be supplied with, possess or handle such substances.

4. Operators engaged in the manufacture or placing on the market of scheduled substances in category 2 of Annex I shall be required to register and update with the competent authorities the addresses of the premises from which they manufacture or trade in these substances.

### Article 5

#### Cooperation

Member States shall take the necessary measures to establish close cooperation between the competent authorities and operators, so that operators:

- notify the competent authorities immediately of any circumstances, such as unusual orders or transactions involving scheduled substances, which suggest that such substances to be placed on the market or manufactured, as the case may be, may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances,
- provide the competent authorities in summary form with such information about their transactions involving scheduled substances as the competent authorities may require.

## TITLE III

## CONTROL MEASURES

## Article 6

## Powers of competent authorities

1. In order to ensure the correct application of Articles 2 and 4, each Member State shall adopt, within the framework of its national law, the measures necessary to enable the competent authorities:
- (a) to obtain information on any orders for scheduled substances or operations involving scheduled substances;
  - (b) to enter operators' business premises in order to obtain evidence of irregularities.

## TITLE IV

## ADMINISTRATIVE COOPERATION

## Article 7

For the purposes of applying this Directive and without prejudice to Article 10, the provisions of Regulation (EEC) No 1468/81 and in particular those on confidentiality shall apply *mutatis mutandis*. Each Member State shall communicate to the other Member States and to the Commission the names of the competent authorities appointed to act as correspondents in accordance with Article 2 (2) of that Regulation.

## TITLE V

## FINAL PROVISIONS

## Article 8

Each Member State shall determine the penalties to be applied for infringement of the provisions adopted in implementation of this Directive. The penalties shall be sufficient to promote compliance with those provisions.

## Article 9

1. To permit any necessary adjustments to the arrangements for monitoring scheduled substances, the competent authorities in each Member State shall each year communicate to the Commission all relevant information on the implementation of the monitoring measures laid down in this Directive, in particular as regards substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture.

2. On the basis of the communications made pursuant to paragraph 1, the Commission shall, in accordance with Article 12 (12) of the United Nations Convention and in consultation with the Member States, draw up an annual report to be submitted to the International Narcotics Control Board.

## Article 10

1. The Commission shall be assisted by the Committee set up pursuant to Article 10 of Regulation (EEC) No 3677/90. The Committee shall examine any matter concerning the application of this Directive raised by its chairman either on his own initiative or at the request of a representative of a Member State.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event the Commission shall defer application of the measures which it has decided for three months from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the period referred to in the previous subparagraph.

3. The procedure laid down in paragraph 2 shall be followed in particular for:

- (a) the determination, where appropriate, of the conditions relating to the documentation and labelling of mixtures and preparations of substances in category 2 of Annex I as provided for in Article 2;
- (b) the amendment of the Annexes to this Directive, in cases where the tables of the Annex to the United Nations Convention are amended;
- (c) the amendment of the thresholds specified in Annex II.

## Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 7 and 10 before 1 January 1993 and with the other Articles before 1 July 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The method of making such a reference shall be determined by the Member States.

2. Member States shall communicate to the Commission the main provision of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

*Article 12*

This Directive is addressed to the Member States.

Done at Brussels, 14 December 1992.

*For the Council*

*The President*

N. LAMONT

## ANNEX I

## CATEGORY 1

Substance	CN code
Ephedrine	2939 40 10
Ergometrine	2939 60 10
Ergotamine	2939 60 30
Lysergic acid	2939 60 50
1-phenyl-2-propanone	2914 30 10
Pseudoephedrine	2939 40 30
N-acetyl-anthranilic acid	2924 29 50
3,4-methylenedioxyphenyl propan-2-one	2932 90 77

The salts of the substances listed in this category whenever the existence of such salts is possible.

## CATEGORY 2

Substance	CN code
Acetic anhydride	2915 24 00
Anthranilic acid	ex 2922 49 90
Phenylacetic acid	2916 33 00
Pipendine	2933 39 30
Isosafrole (cis + trans)	2932 90 73
Piperonal	2932 90 75
Safrole	2932 90 71

The salts of the substances listed in this category whenever the existence of such salts is possible.

## CATEGORY 3

Substance	CN code
Acetone (*)	2914 11 00
Ethyl ether (*)	2909 11 00
Methyl ethyl ketone (MEK) (*)	2914 12 00
Toluene (*)	2902 30 10/90
Potassium permanganate (*)	2841 60 10
Sulphuric acid	2807 00 10
Hydrochloric acid	2806 10 00

(\*) The salts of the substances listed in this category whenever the existence of such salts is possible.

## ANNEX II

Substance	Threshold
Acetic anhydride	20 l
Anthranilic acid and its salts	1 kg
Phenylacetic acid and its salts	1 kg
Piperidine and its salts	0,5 kg
Isosafrole (cis + trans)	0
Piperonal	0
Safrole	0



## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 10 June 1991

on prevention of the use of the financial system for the purpose of money laundering

(91/308/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2), first and third sentences, and Article 100a thereof,

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

In cooperation with the European Parliament (2),

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

Whereas when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as 'money laundering'), the soundness and stability of the institution concerned and confidence in the financial system as a whole could be seriously jeopardized, thereby losing the trust of the public;

Whereas lack of Community action against money laundering could lead Member States, for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market; whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial

area involves, if certain coordinating measures are not adopted at Community level;

Whereas money laundering has an evident influence on the rise of organized crime in general and drug trafficking in particular; whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, which constitutes a particular threat to Member States' societies;

Whereas money laundering must be combated mainly by penal means and within the framework of international cooperation among judicial and law enforcement authorities, as has been undertaken, in the field of drugs, by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (hereinafter referred to as the 'Vienna Convention') and more generally in relation to all criminal activities, by the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime, opened for signature on 8 November 1990 in Strasbourg;

Whereas a penal approach should, however, not be the only way to combat money laundering, since the financial system can play a highly effective role; whereas reference must be made in this context to the recommendation of the Council of Europe of 27 June 1980 and to the declaration of principles adopted in December 1988 in Basle by the banking supervisory authorities of the Group of Ten, both of which constitute major steps towards preventing the use of the financial system for money laundering;

(1) OJ No C 106, 28. 4. 1990, p. 6; and

OJ No C 319, 19. 12. 1990, p. 9.

(2) OJ No C 324, 24. 12. 1990, p. 264; and

OJ No C 129, 20. 5. 1991.

(3) OJ No C 332, 31. 12. 1990, p. 86.

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised; whereas measures exclusively adopted at a national level, without taking account of international coordination and cooperation, would have very limited effects;

Whereas any measures adopted by the Community in this field should be consistent with other action undertaken in other international fora; whereas in this respect any Community action should take particular account of the recommendations adopted by the financial action task force on money laundering, set up in July 1989 by the Paris summit of the seven most developed countries;

Whereas the European Parliament has requested, in several resolutions, the establishment of a global Community programme to combat drug trafficking, including provisions on prevention of money laundering;

Whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism), the Member States should, within the meaning of their legislation, extend the effects of the Directive to include the proceeds of such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis;

Whereas prohibition of money laundering in Member States' legislation backed by appropriate measures and penalties is a necessary condition for combating this phenomenon;

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, exceeding certain thresholds, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities; whereas such provisions must also be extended, as far as possible, to any beneficial owners;

Whereas credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions or copies thereof similarly admissible in court proceedings under the applicable national legislation for use as evidence in any investigation into money laundering;

Whereas ensuring that credit and financial institutions examine with special attention any transaction which they

regard as particularly likely, by its nature, to be related to money laundering is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon; whereas to this end they should pay special attention to transactions with third countries which do not apply comparable standards against money laundering to those established by the Community or to other equivalent standards set out by international fora and endorsed by the Community;

Whereas, for those purposes, Member States may ask credit and financial institutions to record in writing the results of the examination they are required to carry out and to ensure that those results are available to the authorities responsible for efforts to eliminate money laundering;

Whereas preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in such cases; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the abovementioned authorities without alerting the customers concerned, is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt credit and financial institutions, their employees and their directors from responsibility for breaching restrictions on disclosure of information;

Whereas the information received by the authorities pursuant to this Directive may be used only in connection with combating money laundering; whereas Member States may nevertheless provide that this information may be used for other purposes;

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and categories of undertakings, Member States must extend the provisions of this Directive in whole or in part, to include those professions and undertakings whose activities are particularly likely to be used for money laundering purposes;

Whereas it is important that the Member States should take particular care to ensure that coordinated action is taken in the Community where there are strong grounds

for believing that professions or activities the conditions governing the pursuit of which have been harmonized at Community level are being used for laundering money;

Whereas the effectiveness of efforts to eliminate money laundering is particularly dependent on the close coordination and harmonization of national implementing measures; whereas such coordination and harmonization which is being carried out in various international bodies requires, in the Community context, cooperation between Member States and the Commission in the framework of a contact committee;

Whereas it is for each Member State to adopt appropriate measures and to penalize infringement of such measures in an appropriate manner to ensure full application of this Directive,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

For the purpose of this Directive:

- 'credit institution' means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC<sup>(1)</sup>, as last amended by Directive 89/646/EEC<sup>(2)</sup>, and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices outside the Community,
- 'financial institution' means an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list annexed to Directive 89/646/EEC, or an insurance company duly authorized in accordance with Directive 79/267/EEC<sup>(3)</sup>, as last amended by Directive 90/619/EEC<sup>(4)</sup>, in so far as it carries out activities covered by that Directive; this definition includes branches located in the Community of financial institutions whose head offices are outside the Community,
- 'money laundering' means the following conduct when committed intentionally:
  - the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,
- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
- participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.

Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were perpetrated in the territory of another Member State or in that of a third country.

- 'Property' means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets.
- 'Criminal activity' means a crime specified in Article 3 (1) (a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State.
- 'Competent authorities' means the national authorities empowered by law or regulation to supervise credit or financial institutions.

#### Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

#### Article 3

1. Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when offering safe custody facilities.

2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to ECU 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.

<sup>(1)</sup> OJ No L 322, 17. 12. 1977, p. 30.

<sup>(2)</sup> OJ No L 386, 30. 12. 1989, p. 1.

<sup>(3)</sup> OJ No L 63, 13. 3. 1979, p. 1.

<sup>(4)</sup> OJ No L 330, 29. 11. 1990, p. 50.

3. By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ECU 1 000 or where a single premium is paid amounting to ECU 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the ECU 1 000 threshold, identification shall be required.

4. Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.

5. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the credit and financial institutions shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

6. Credit and financial institutions shall carry out such identification, even where the amount of the transaction is lower than the threshold laid down, wherever there is suspicion of money laundering.

7. Credit and financial institutions shall not be subject to the identification requirements provided for in this Article where the customer is also a credit or financial institution covered by this Directive.

8. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment for the transaction is to be debited from an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

#### Article 4

Member States shall ensure that credit and financial institutions keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, a copy or the references of the evidence required, for a period of at least five years after the relationship with their customer has ended,

- in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions.

#### Article 5

Member States shall ensure that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

#### Article 6

Member States shall ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering:

- by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering,
- by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

The information referred to in the first paragraph shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution forwarding the information is situated. The person or persons designated by the credit and financial institutions in accordance with the procedures provided for in Article 11 (1) shall normally forward the information.

Information supplied to the authorities in accordance with the first paragraph may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes.

#### Article 7

Member States shall ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions concerned shall apprise the authorities immediately afterwards.

*Article 8*

Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 or that a money laundering investigation is being carried out.

*Article 9*

The disclosure in good faith to the authorities responsible for combating money laundering by an employee or director of a credit or financial institution of the information referred to in Articles 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the credit or financial institution, its directors or employees in liability of any kind.

*Article 10*

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

*Article 11*

Member States shall ensure that credit and financial institutions:

1. establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering,
2. take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognize operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

*Article 12*

Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes.

*Article 13*

A contact committee (hereinafter referred to as 'the Committee') shall be set up under the aegis of the Commission. Its function shall be:

- (a) without prejudice to Articles 169 and 170 of the Treaty, to facilitate harmonized implementation of this Directive through regular consultation on any practical problems arising from its application and on which exchanges of view are deemed useful;
- (b) to facilitate consultation between the Member States on the more stringent or additional conditions and obligations which they may lay down at national level;
- (c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary, in particular to harmonize the effects of Article 12;
- (d) to examine whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money laundering.

2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.

3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The secretariat shall be provided by the Commission. The chairman shall be a representative of the Commission. It shall be convened by its chairman, either on his own initiative or at the request of the delegation of a Member State.

*Article 14*

Each Member State shall take appropriate measures to ensure full application of all the provisions of this Directive and shall in particular determine the penalties to be applied for infringement of the measures adopted pursuant to this Directive.

*Article 15*

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering.

*Article 16*

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive before 1 January 1993 at the latest.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

*Article 17*

One year after 1 January 1993, whenever necessary and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

*Article 18*

This Directive is addressed to the Member States.

Done at Luxembourg, 10 June 1991.

*For the Council*

*The President*

J.-C. JUNCKER

**Statement by the representatives of the Governments of the Member States meeting  
within the Council**

The representatives of the Governments of the Member States, meeting within the Council,

Recalling that the Member States signed the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances, adopted on 19 December 1988 in Vienna;

Recalling also that most Member States have already signed the Council of Europe Convention on laundering, tracing, seizure and confiscation of proceeds of crime on 8 November 1990 in Strasbourg;

Conscious of the fact that the description of money laundering contained in Article 1 of Council Directive 91/308/EEC (\*) derives its wording from the relevant provisions of the aforementioned Conventions;

Hereby undertake to take all necessary steps by 31 December 1992 at the latest to enact criminal legislation enabling them to comply with their obligations under the aforementioned instruments.

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(\*) See page 77 of this Official Journal.

**COUNCIL REGULATION (EURATOM, EC) No 2185/96  
of 11 November 1996**

**concerning on-the-spot checks and inspections carried out by the Commission  
in order to protect the European Communities' financial interests against fraud  
and other irregularities**

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

- (1) Whereas it is essential, for the credibility of the Community, to step up the efforts to counter fraud and other irregularities committed against the Community budget;
- (2) Whereas Article 209a of the Treaty establishing the European Community makes it clear that the protection of the Communities' financial interests is primarily the responsibility of the Member States, without prejudice to other provisions of the Treaty;
- (3) Whereas Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests <sup>(3)</sup> established a common legal framework for all the fields of the Communities' activity;
- (4) Whereas Article 1 (2) of the said Regulation includes a definition of 'irregularity' and whereas the sixth recital of that Regulation stipulates that irregular conduct includes fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests <sup>(4)</sup>;
- (5) Whereas Article 10 of that Regulation provided for subsequent adoption of additional general provisions relating to on-the-spot inspections and checks;
- (6) Whereas, without prejudice to the checks carried out by the Member States in accordance with Article 8 of the Regulation (EC, Euratom) No 2988/95 and in the interests of efficiency, it is appropriate to adopt additional general provisions concerning on-the-spot checks and inspections by the Commission that do

not affect the application of Community sectoral rules as referred to in Article 9 (2) of the said Regulation;

- (7) Whereas implementation of the provisions of this Regulation is subject to identification of the objectives that justify their application, especially where, owing to the scale of fraud, which is not confined to one country and frequently involves organized rings, or where, on account of the special nature of the situation in a Member State, those objectives cannot, in view of the seriousness of the damage done to the Communities' financial interests or to the credibility of the Union, be fully realized by the Member States alone and can therefore be better achieved at Community level;
- (8) Whereas on-the-spot checks and inspections may not exceed what is necessary to ensure the correct application of Community law;
- (9) Whereas they shall also be carried out without prejudice to the provisions applicable in each Member State relating to the protection of the essential interests of State security;
- (10) Whereas, in accordance with the principle of sincere cooperation of the Community implicit in Article 5 of the EC Treaty and in the light of the case-law of the Court of Justice of the European Communities, it is important that Member States' administrations and Commission departments cooperate genuinely and provide one another with the necessary assistance in the preparation and performance of on-the-spot checks and inspections;
- (11) Whereas it is necessary to define the conditions under which Commission inspectors are to exercise their powers;
- (12) Whereas those on-the-spot checks and inspections are carried out with due regard to the fundamental rights of the persons concerned and to the rules on professional secrecy and the protection of personal data; whereas in that regard it is important that the Commission ensure that its inspectors comply with Community and national provisions on the protection of personal data, in particular those laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(5)</sup>;

<sup>(1)</sup> OJ No C 84, 21. 3. 1996, p. 10.

<sup>(2)</sup> OJ No C 166, 10. 6. 1996, p. 102 and Opinion delivered on 23 October 1996 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 312, 23. 12. 1995, p. 1.

<sup>(4)</sup> OJ No C 316, 27. 11. 1995, p. 48.

<sup>(5)</sup> OJ No L 281, 23. 11. 1995, p. 31.



- (13) Whereas, if action to combat fraud and irregularities is to be effective, the Commission must carry out inspections on the premises of those economic operators who may have been involved, directly or indirectly, in the irregularity in question and on the premises of other economic operators who might be concerned by that irregularity; whereas, in the event of the application of this Regulation, the Commission should ensure that those economic operators are not simultaneously subjected, in respect of the same acts, to similar checks and inspections carried out by the Commission or by the Member States on the basis of Community sectoral rules or national legislation;
- (14) Whereas the Commission inspectors must have access to all the information on the transactions concerned on the same terms as national administrative inspectors; whereas the reports by the Commission inspectors, signed, if appropriate, by the national inspectors, must be drawn up taking into account the procedural requirements laid down in the law of the Member State concerned; whereas they must be admitted as evidence in the administrative and judicial proceedings of the Member State where it proves necessary to use them and have an identical value to the reports drawn up by national administrative inspectors;
- (15) Whereas, in cases where there is a risk of evidence disappearing, or where economic operators oppose on-the-spot checks or inspections by the Commission, it is for the Member States to take the necessary precautionary or implementing measures in accordance with their legislation;
- (16) Whereas this Regulation affects neither Member States' powers regarding the prosecution of criminal offences nor the rules governing mutual assistance between Member States on criminal matters;
- (17) Whereas the Treaties contain no powers for the adoption of this Regulation other than those provided for in Article 235 of the EC Treaty and Article 203 of the Euratom Treaty,

HAS ADOPTED THIS REGULATION:

#### Article 1

This Regulation lays down the additional general provisions within the meaning of Article 10 of Regulation (EC, Euratom) No 2988/95 which are applicable to on-the-spot administrative checks and inspections carried out by the Commission in order to protect the financial interests of the Communities against irregularities as defined in Article 1 (2) of the said Regulation.

Without prejudice to the provisions of the Community sectoral rules, this Regulation shall apply to all areas of the Communities' activity.

This Regulation shall not affect Member States' powers regarding the prosecution of criminal offences or the rules

governing mutual assistance in criminal matters between Member States.

#### Article 2

The Commission may carry out on-the-spot checks and inspections pursuant to this Regulation:

- for the detection of serious or transnational irregularities or irregularities that may involve economic operators acting in several Member States, or
- where, for the detection of irregularities, the situation in a Member State requires on-the-spot checks and inspections to be strengthened in a particular case in order to improve the effectiveness of the protection of financial interests and so to ensure an equivalent level of protection within the Community, or
- at the request of the Member State concerned.

#### Article 3

Where the Commission decides to carry out on-the-spot checks and inspections under this Regulation, it shall ensure that similar checks and inspections are not being carried out at the same time in respect of the same facts with regard to the economic operators concerned on the basis of Community sectoral regulations.

In addition, it shall take into account the inspections in progress or already carried out in respect of the same facts with regard to the economic operators concerned, by the Member State on the basis of its legislation:

#### Article 4

On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the competent authorities of the Member State concerned, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the Member State concerned may participate in the on-the-spot checks and inspections.

In addition, if the Member State concerned so wishes, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Member State's competent authorities.

#### Article 5

On-the-spot checks and inspections shall be carried out by the Commission on economic operators to whom Community administrative measures and penalties pursuant to Article 7 of Regulation (EC, Euratom) No 2988/95 may be applied, where there are reasons to think that irregularities have been committed.

In order to make it easier for the Commission to carry out such checks and inspections, economic operators shall be required to grant access to premises, land, means of transport or other areas, used for business purposes.

Where strictly necessary in order to establish whether an irregularity exists, the Commission may carry out on-the-spot checks and inspections on other economic operators concerned, in order to have access to pertinent information held by those operators on facts subject to on-the-spot checks and inspections.

#### Article 6

1. On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the Member States as national experts on secondment may assist in such checks and inspections.

Commission inspectors shall exercise their powers on production of a written authorization showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection.

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the Member State concerned.

2. Subject to the agreement of the Member State concerned, the Commission may seek the assistance of officials from other Member States as observers and call on outside bodies acting under its responsibility to provide technical assistance.

The Commission shall ensure that the aforementioned officials and bodies give every guarantee as regards technical competence, independence and observance of professional secrecy.

#### Article 7

1. Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of

- materials used and work done, and bank statements held by economic operators,

- computer data,

- production, packaging and dispatching systems and methods,

- physical checks as to the nature and quantity of goods or completed operations,

- the taking and checking of samples,

- the progress of works and investments for which financing has been provided, and the use made of completed investments,

- budgetary and accounting documents,

- the financial and technical implementation of subsidized projects.

2. Where necessary, it shall be for the Member States, at the Commission's request, to take the appropriate precautionary measures under national law, in particular in order to safeguard evidence.

#### Article 8

1. Information communicated or acquired in any form under this Regulation shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions.

Such information may not be communicated to persons other than those within the Community institutions or in the Member States whose functions require them to know it nor may it be used by Community institutions for purposes other than to ensure effective protection of the Communities' financial interests in all Member States. Where a Member State intends to use for other purposes information obtained by officials participating under its authority as observers, in accordance with Article 6 (2), in on-the-spot checks and inspections, it shall seek the agreement of the Member State where that information was obtained.

2. The Commission shall report as soon as possible to the competent authority of the State within whose territory an on-the-spot check or inspection has been performed any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the aforementioned authority of the result of such checks and inspections.

3. Commission inspectors shall ensure that in drawing up their reports account is taken of the procedural requirements laid down in the national law of the Member State concerned. The material and supporting documents as referred to in Article 7 shall be annexed to the said reports. The reports thus prepared shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in

the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports. Where an inspection is carried out jointly, pursuant to the second subparagraph of Article 4, the national inspectors who took part in the operation shall be asked to countersign the report drawn up by the Commission inspectors.

4. The Commission shall ensure that, when implementing this Regulation, its inspectors comply with Community and national provisions on the protection of personal data, in particular those laid down in Directive 95/46/EC of the European Parliament and of the Council.

5. Where on-the-spot checks or inspections are performed outside Community territory, reports shall be prepared by Commission inspectors in conditions which would enable them to constitute admissible evidence in

administrative or judicial proceedings of the Member State in which their use proves necessary.

#### *Article 9*

Where the economic operators referred to in Article 5 resist an on-the-spot check or inspection, the Member State concerned, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

It shall be for the Member States to take any necessary measures, in conformity with national law.

#### *Article 10*

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

It shall apply from 1 January 1997.

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

Done at Brussels, 11 November 1996.

*For the Council*

*The President*

R. QUINN

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 19 December 1977

concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation

(77/799/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas practices of tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of conditions of competition; whereas they therefore affect the operation of the common market;

Whereas, for these reasons the Council adopted on 10 February 1975 a resolution on the measures to be taken by the Community in order to combat international tax evasion and avoidance <sup>(3)</sup>;

Whereas the international nature of the problem means that national measures, whose effect does not

extend beyond national frontiers, are insufficient; whereas collaboration between administrations on the basis of bilateral agreements is also unable to counter new forms of tax evasion and avoidance, which are increasingly assuming a multinational character;

Whereas collaboration between tax administrations within the Community should therefore be strengthened in accordance with common principles and rules;

Whereas the Member States should, on request, exchange information concerning particular cases; whereas the State so requested should make the necessary enquiries to obtain such information;

Whereas the Member States should exchange, even without any request, any information which appears relevant for the correct assessment of taxes on income and on capital, in particular where there appears to be an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages, or where tax has been or may be evaded or avoided for any reason whatever;

Whereas it is important that officials of the tax administration of one Member State be allowed to be present in the territory of another Member State if both the States concerned consider it desirable;

<sup>(1)</sup> OJ No C 293, 13. 12. 1976, p. 34.

<sup>(2)</sup> OJ No C 56, 7. 3. 1977, p. 66.

<sup>(3)</sup> OJ No C 35, 14. 2. 1975, p. 1.

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so that the basic rights of citizens and enterprises are safeguarded; whereas it is therefore necessary that the Member States receiving such information should not use it, without the authorization of the Member State supplying it, other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the receiving State; whereas it is also necessary that the receiving States afford the information the same degree of confidentiality which it enjoyed in the State which provided it, if the latter so requires;

Whereas a Member State which is called upon to carry out enquiries or to provide information shall have the right to refuse to do so where its laws or administrative practices prevent its tax administration from carrying out these enquiries or from collecting or using this information for its own purposes, or where the provision of such information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where the Member State for which the information is intended is unable for practical or legal reasons to provide similar information;

Whereas collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the pooling of experience in the fields considered, and in particular in the field of the artificial transfer of profits within groups of enterprises, with the aim of improving those procedures and of preparing appropriate Community rules,

HAS ADOPTED THIS DIRECTIVE:

### Article 1

#### General provisions

1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital.

2. There shall be regarded as taxes on income and on capital, irrespective of the manner in which they are levied, all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of

wages or salaries paid by enterprises, as well as taxes on capital appreciation.

2. The taxes referred to in paragraph 2 are at present, in particular:

#### *in Belgium:*

Impôt des personnes physiques/Personenbelasting  
 Impôt des sociétés/Vennootschapsbelasting  
 Impôt des personnes morales/Rechtspersonenbelasting  
 Impôt des non-résidents/Belasting der niet-verblijfhouders

#### *in Denmark:*

Indkomstskaten til staten  
 Selskabsskat  
 Den kommunale indkomstskat  
 Den amtskommunale indkomstskat  
 Folkepensionsbidragene  
 Somandsskatten  
 Den særlige indkomstskat  
 Kirkeskatten  
 Formueskatten til staten  
 Bidrag til dagpengefonden

#### *in Germany:*

Einkommensteuer  
 Körperschaftsteuer  
 Vermögensteuer  
 Gewerbesteuer  
 Grundsteuer

#### *in France:*

Impôt sur le revenu  
 Impôt sur les sociétés  
 Taxe professionnelle  
 Taxe foncière sur les propriétés bâties  
 Taxe foncière sur les propriétés non bâties

#### *in Ireland:*

Income tax  
 Corporation tax  
 Capital gains tax  
 Wealth tax

*in Italy:*

Imposta sui redditi delle persone fisiche  
 Imposta sui redditi delle persone giuridiche  
 Imposta locale sui redditi

*in Luxembourg:*

Impôt sur le revenu des personnes physiques  
 Impôt sur le revenu des collectivités  
 Impôt commercial communal  
 Impôt sur la fortune  
 Impôt foncier

*in the Netherlands:*

Inkomstenbelasting  
 Vennootschapsbelasting  
 Vermogensbelasting

*in the United Kingdom:*

Income tax  
 Corporation tax  
 Capital gains tax  
 Petroleum revenue tax  
 Development land tax

4. Paragraph 1 shall also apply to any identical or similar taxes imposed subsequently, whether in addition to or in place of the taxes listed in paragraph 3. The competent authorities of the Member States shall inform one another and the Commission of the date of entry into force of such taxes.

5. The expression 'competent authority' means:

*in Belgium:*

De minister van financiën or an authorized representative  
 Le ministre des finances or an authorized representative

*in Denmark:*

Ministeren for skatter og afgifter or an authorized representative

*in Germany:*

Der Bundesminister der Finanzen or an authorized representative

*in France:*

Le ministre de l'économie or an authorized representative

*in Ireland:*

The Revenue Commissioners or their authorized representative

*in Italy:*

Il Ministro per le finanze or an authorized representative

*in Luxembourg:*

Le ministre des finances or an authorized representative

*in the Netherlands:*

De minister van financiën or an authorized representative

*in the United Kingdom:*

The Commissioners of Inland Revenue or their authorized representative

**Article 2****Exchange on request**

1. The competent authority of a Member State may request the competent authority of another Member State to forward the information referred to in Article 1 (1) in a particular case. The competent authority of the requested State need not comply with the request if it appears that the competent authority of the State making the request has not exhausted its own usual sources of information, which it could have utilized, according to the circumstances, to obtain the information requested without running the risk of endangering the attainment of the sought after result.

2. For the purpose of forwarding the information referred to in paragraph 1, the competent authority of the requested Member State shall arrange for the conduct of any enquiries necessary to obtain such information.

**Article 3****Automatic exchange of information**

For categories of cases which they shall determine under the consultation procedure laid down in Article 9, the competent authorities of the Member States shall regularly exchange the information referred to in Article 1 (1) without prior request.

**Article 4****Spontaneous exchange of information**

1. The competent authority of a Member State shall without prior request forward the information

referred to in Article 1 (1), of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

- (a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- (b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- (c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- (d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- (e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

2. The competent authorities of the Member States may, under the consultation procedure laid down in Article 9, extend the exchange of information provided for in paragraph 1 to cases other than those specified therein.

3. The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1 (1) of which they have knowledge.

#### Article 5

##### Time limit for forwarding information

The competent authority of a Member State which, under the preceding Articles, is called upon to furnish information, shall forward it as swiftly as possible. If it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall forthwith inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal.

#### Article 6

##### Collaboration by officials of the State concerned

For the purpose of applying the preceding provisions, the competent authority of the Member State providing the information and the competent authority of the Member State for which the information is intended may agree, under the consultation procedure laid down in Article 9, to authorize the presence in the first Member State of officials of the tax administration of the other Member State. The details for applying this provision shall be determined under the same procedure.

#### Article 7

##### Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its domestic legislation.

In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,
- may in addition be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgments if the competent authority of the Member State supplying the information raises no objection,
- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practice lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State, if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

#### *Article 8*

##### **Limits to exchange of information**

1. This Directive shall impose no obligation to have enquiries carried out or to provide information if the Member State, which should furnish the information, would be prevented by its laws or administrative practices from carrying out these enquiries or from collecting or using this information for its own purposes.

2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

3. The competent authority of a Member State may refuse to provide information where the State concerned is unable, for practical or legal reasons, to provide similar information.

#### *Article 9*

##### **Consultations**

1. For the purposes of the implementation of this Directive, consultations shall be held, if necessary in a Committee, between:

- the competent authorities of the Member States concerned at the request of either, in respect of bilateral questions,
- the competent authorities of all the Member States and the Commission, at the request of one of those authorities or the Commission, in so far

as the matters involved are not solely of bilateral interest.

2. The competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may by mutual agreement permit authorities designated by them to communicate directly with each other in specified cases or in certain categories of cases.

3. Where the competent authorities make arrangements on bilateral matters covered by this Directive other than as regards individual cases, they shall as soon as possible inform the Commission thereof. The Commission shall in turn notify the competent authorities of the other Member States.

#### *Article 10*

##### **Pooling of experience**

The Member States shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Directive and shall pool their experience, especially in the field of transfer pricing within groups of enterprises, with a view to improving such cooperation and, where appropriate, drawing up a body of rules in the fields concerned.

#### *Article 11*

##### **Applicability of wider-ranging provisions of assistance**

The foregoing provisions shall not impede the fulfilment of any wider obligations to exchange information which might flow from other legal acts.

#### *Article 12*

##### **Final provisions**

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive not later than 1 January 1979 and shall forthwith communicate them to the Commission.

2. Member States shall communicate to the Commission the texts of any important provisions of



national law which they subsequently adopt in the field covered by this Directive.

Done at Brussels, 19 December 1977.

*Article 13*

This Directive is addressed to the Member States.

*For the Council*

*The President*

G. GEENS

**COUNCIL DECISION**

of 24 July 1995

**accepting Resolution No 49 on short-term measures to ensure the security and the efficient functioning of the TIR transit regime**

(95/285/EC)

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Resolution No 49 contains measures both to ensure the correct implementation of the 1975 TIR Convention and to prevent and detect fraud in goods transported under the TIR regime;

Whereas, by virtue of its content and pending revision of the TIR Convention, the said Resolution is of the greatest to the Community; whereas, it should therefore be accepted with immediate effect,

**HAS DECIDED AS FOLLOWS:***Article 1*

Resolution No 49 on short-term measures to ensure the security and the efficient functioning of the TIR transit regime, adopted on 3 March 1995 by the Working Party

of the UN Economic Commission for Europe on Customs Questions affecting Transport, is hereby accepted on behalf of the Community with immediate effect.

The text of the Resolution is attached to this Decision.

*Article 2*

The President of the Council shall designate the person empowered to notify the Executive Secretary of the Economic Commission for Europe of the Community's acceptance, with immediate effect, of the Resolution referred to in Article 1.

Done at Brussels, 24 July 1995.

*For the Council**The President*

P. SOLBES MIRA

**SHORT-TERM MEASURES TO ENSURE THE SECURITY AND THE EFFICIENT  
FUNCTIONING OF THE TIR TRANSIT REGIME****Resolution No 49**

adopted on 3 March 1995 by the UN/ECE Working Party on Customs Questions affecting Transport

**Resolution No 49**

The Working Party on Customs Questions affecting Transport,

Emphasizing the importance of the smooth and efficient functioning of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975) to facilitate international transport and trade;

Concerned about the amount of customs fraud and smuggling in the framework of the TIR transit system which may endanger the facilitation measures provided for in the TIR Convention, 1975;

Determined to safeguard the TIR transit system which facilitates the development of trade, in particular the international movement of goods;

Convinced that the TIR transit system can only be safeguarded through joint and concerted action by all parties of the TIR transit system (customs authorities, national guaranteeing and carnet issuing associations and the IRU, and insurance companies), whereby an open exchange of information on all aspects of the system is considered to be essential;

Whilst awaiting the revision of the TIR Convention, 1975, decides unanimously on the following short-term measures to be implemented as soon as possible by the competent authorities of Contracting Parties to the TIR Convention, 1975:

1. In order to facilitate the detection of fraudulently discharged TIR carnets and to accelerate the discharge procedure, Contracting Parties may wish to create, as far as possible and in line with national requirements, centralized offices or procedures for the administration of TIR carnets;
2. Contracting Parties should institute accelerated discharge and search procedures for the transport of sensitive goods;
3. Contracting Parties and the IRU shall take all necessary steps to ensure the early re-introduction of the 'Tobacco/Alcohol' TIR carnets together with guarantees in a fixed sum which reflects the potential charges at risk;
4. Contracting Parties ensure, through appropriate national regulations, that customs offices of destination or exit return TIR carnet vouchers No 2 to centralized offices or customs offices of departure or entry as soon as possible and no later than five working days following the completion of the TIR operation;
5. in order to facilitate customs control for tobacco and alcohol consignments, Contracting Parties may wish to limit, in line with national administrative practices, the number of customs offices authorized to accept 'Tobacco/Alcohol' TIR carnets;
6. Contracting Parties ensure that for the transport of tobacco and alcohol as well as for other sensitive goods as determined by the competent authorities, advance information on the transport of such goods under customs seal is forwarded immediately by the customs office of departure or entry to the customs office of destination or exit;
7. in accordance with Article 20 of the TIR Convention, 1975, Contracting Parties prescribe time limits and, to the extent possible, routes to be followed for road vehicles and containers in case of transport under customs seal of tobacco and alcohol as well as of other sensitive goods as determined by the competent authorities. Contracting Parties are urged to apply sanctions, in line with national law, in case of non-respect of such prescriptions;

8. Contracting Parties ensure that the provisions of Article 38 of the TIR Convention, 1975, should be applied, which provide the possibility to exclude temporarily or permanently from the operation of the TIR Convention, 1975, any person guilty of a serious offence against national customs laws or the regulations applicable to the international transport of goods ;
9. Contracting Parties take all necessary measures to avoid the theft and misuse of customs stamps and may provide for the use of new technologies, such as special security ink, to impede the falsification of customs stamps ;
10. Contracting Parties request that IRU and national guaranteeing associations apply strictly agreed criteria and administrative controls when issuing TIR carnets, with a view to ensuring, as far as possible, the reliability and integrity of transport operators ;
11. Contracting parties of the TIR transit regime intensify the exchange of information and intelligence concerning the TIR transit system amongst themselves, in accordance with national legislation. For that purpose they establish focal points for the combat of fraud within the competent authorities. Addresses, including telephone and telefax numbers of such focal points will be transmitted, as soon as possible, to the UN/ECE Secretariat for the setting up of an international directory,

Invites Contracting Parties to study carefully the IRU proposals on the introduction of electronic data interchange systems for the administration of TIR carnets which will be transmitted to them by the UN/ECE Secretariat with a view to their possible introduction ;

Requests the Contracting Parties to the TIR Convention, 1975, to notify the Executive Secretary of the United Nations Economic Commission for Europe (UN/ECE) by 1 June 1995, whether they accept the present Resolution ;

Requests the Executive Secretary of the United Nations Economic Commission for Europe (UN/ECE) to inform all Contracting Parties to the TIR Convention, 1975, about the acceptance of this Resolution.

## COUNCIL REGULATION (EEC) No 1319/85

of 23 May 1985

on the reinforcement of supervision of the application of Community rules on fruit and vegetables

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas the Community rules on fruit and vegetables, and in particular Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables <sup>(3)</sup>, as last amended by Regulation (EEC) No 1332/84 <sup>(4)</sup>, contain provisions on the supervision of conformity with quality standards and the recording of prices which it is particularly necessary to apply correctly and uniformly in order to ensure smooth market management;

Whereas conformity with Community rules in the matter of quality standards and the recording of prices must be subjected to thorough inspections; whereas, in addition to the inspections carried out by the Member States on their own initiative which remain essential, provision should be made for inspections to be carried out by servants of the Commission and for the latter to call on the services of the Member States;

Whereas the competence of the servants of the Commission and the limits within which they may operate should be defined,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Without prejudice to inspections carried out by the authorities of the Member States, the Commission may decide to have inspections carried out, together with officials of the Member State concerned, in the following areas:

— inspection of the conformity with quality standards of products marketed fresh within the Community and traded with third countries,

— inspection of the conformity with quality standards, or certain quality requirements of products listed in Annex II to Regulation (EEC) No 1035/72 which are withdrawn from the market in accordance with Articles 15 and 15a or bought in in accordance with Articles 19 and 19a of the said Regulation,

— inspection of the quality of fruit and vegetables supplied to the processing industries in cases where common quality standards or classes have been adopted for such products, in particular for the purposes of granting Community aid,

— verification of the recording of the prices referred to in Articles 17 and 24 of the said Regulation.

2. The Commission decision shall indicate the subject and purpose of the inspection and shall fix the date on which it will begin.

*Article 2*

The Commission shall give due warning, before the beginning of the inspection operations referred to in Article 1, to the Member State in whose territory these operations will take place. It shall indicate the most appropriate places where the inspections must be carried out and shall determine the practical arrangements in cooperation with the competent authorities of the Member State.

*Article 3*

1. For the purpose of carrying out the inspections together with officials of the Member State concerned, the Commission inspectors shall produce a written authorization specifying their identity and status together with the subject and purpose of such inspections.

2. In carrying out their duties, in accordance with Article 1, the Commission inspectors shall have the following rights and powers:

(a) they shall have access to all premises, sites, plants and means of transport which the inspection operations may concern;

(b) they may request any explanations from the operators concerned;

(c) they shall have access as necessary to documents relating to the products and to the prices referred to in Article 1.

3. The Commission inspectors shall:

(a) in the course of the inspections, adopt an attitude compatible with the rules and practices which officials of the Member States have to follow;

(b) be bound by professional secrecy.

<sup>(1)</sup> OJ No C 67, 14. 3. 1985, p. 38.

<sup>(2)</sup> OJ No C 94, 15. 4. 1985.

<sup>(3)</sup> OJ No L 118, 20. 5. 1972, p. 1.

<sup>(4)</sup> OJ No L 130, 16. 5. 1984, p. 1.

*Article 4*

1. Producers of fruit and vegetables, their organizations and associations of their organizations, traders in fruit and vegetables and any organization concerned with buying and selling fruit and vegetables shall be required to submit to the verification referred to in Article 1.

2. For the purpose of carrying out the inspections jointly, in accordance with Article 3 (1), officials of the competent authority of the Member State in whose territory the inspection is to be carried out shall assist the Commission inspectors in the performance of their duties.

*Article 5*

Detailed rules for the application of this Regulation shall, where necessary, be adopted by the Council, acting on a proposal from the Commission, in accordance with the

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

Done at Brussels, 23 May 1985.

voting procedure laid down in Article 43 (2) of the Treaty.

*Article 6*

At the conclusion of the inspections carried out on the basis of this Regulation, the Commission shall forward a report on its findings to the Member States in whose territory the inspection has been carried out, at the latter's request.

Before 1 July each year the Commission shall present to the European Parliament and the Council a report on the inspections carried out pursuant to this Regulation.

*Article 7*

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

*For the Council*  
*The President*  
C. SIGNORILE

## COUNCIL REGULATION (EEC) No 4045/89

of 21 December 1989

on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas, under Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(3)</sup>, as last amended by Regulation (EEC) No 2048/88 <sup>(4)</sup>, the Member States take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence;

Whereas scrutiny of the commercial documents of undertakings receiving or making payments can be a very effective means of surveillance of transactions forming part of the system of financing by the Guarantee Section of the EAGGF; whereas this scrutiny supplements other inspections already carried out by the Member States; whereas, furthermore, national provisions relating to scrutiny which are more extensive than those provided for in the Regulation are not affected by this Regulation;

Whereas Member States must be encouraged to reinforce the scrutiny of commercial documents of undertakings receiving or making payments which they have carried out in accordance with Directive 77/435/EEC <sup>(5)</sup>;

Whereas the implementation by Member States of the rules arising from Directive 77/435/EEC has disclosed the need for certain provisions of that Directive to be amended on the basis of experience gained; whereas in view of the nature of the provisions concerned the amendments should be included in a Regulation;

Whereas the documents used as a basis for such scrutiny should be determined in such a way as to enable a full scrutiny to be carried out;

Whereas the undertakings to be scrutinized must be selected on the basis of the nature of the transactions carried out on their responsibility and the breakdown of the undertakings receiving or making payments according to their financial importance in the system of financing by the Guarantee Section of the EAGGF;

Whereas, furthermore, it is necessary to provide for a minimum number of inspections of commercial documents; whereas this number must be determined by a method which precludes substantial differences between the Member States by virtue of differences in the structure of their expenditure under the Guarantee Section of the EAGGF; whereas this method may be established by referring to the number of undertakings of a certain importance in the system of financing by the Guarantee Section of the EAGGF;

Whereas the powers of the officials responsible for scrutiny and the obligations on undertakings to make commercial documents available to such officials for a specified period and to supply such information as may be requested by them should be defined; whereas it should also be stipulated that commercial documents may be seized in certain cases;

Whereas it is necessary to organize cooperation among the Member States on account of the international structure of agricultural trade and with a view to the completion of the internal market; whereas it is also necessary for a centralized documentation system concerning undertakings receiving or making payments established in third countries to be set up at Community level;

Whereas, while it is the responsibility of the Member States in the first instance to adopt their scrutiny programmes, it is necessary that these programmes be communicated to the Commission so that it can assume its supervisory and coordinating role and to ensure that the programmes are adopted on the basis of appropriate criteria; whereas scrutiny can thus be concentrated on sectors or undertakings where the risk of fraud is high;

Whereas the departments carrying out scrutiny pursuant to this Regulation must be organized independently of the departments carrying out scrutiny prior to payment;

Whereas it is essential that each Member State have a special department responsible for monitoring the application of this Regulation and for coordinating the scrutiny carried out in accordance with this Regulation; whereas the officials belonging to that department may make inspections of undertakings in accordance with this Regulation;

<sup>(1)</sup> OJ No C 192, 29. 7. 1987, p. 15.

<sup>(2)</sup> OJ No C 291, 20. 11. 1989, p. 105.

<sup>(3)</sup> OJ No L 94, 28. 4. 1970, p. 13.

<sup>(4)</sup> OJ No L 185, 15. 7. 1988, p. 1.

<sup>(5)</sup> OJ No L 172, 12. 7. 1977, p. 17.

Whereas encouragement for reinforcing the departments responsible for the application of this Regulation should be provided in the form of a temporary, degressive Community contribution towards the expenditure incurred by Member States in engaging extra staff and towards the costs of training staff and equipping the departments;

Whereas it is necessary for an estimate to be made of the amount of the Community financing required for implementing this measure; whereas such amount forms part of the financial forecast appearing in point II of the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure<sup>(1)</sup> of 29 June 1988; whereas the appropriations actually available will be determined under the budgetary procedure in compliance with that agreement;

Whereas information collected during the scrutiny of commercial documents must be protected by professional secrecy;

Whereas arrangements should be made for an exchange of information at Community level so that the results of the application of this Regulation can be used to greater effect,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. This Regulation relates to scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the system of financing by the Guarantee Section of the EAGGF, hereinafter called 'undertakings', in order to ascertain whether transactions forming part of the system of financing by the Guarantee Section of the EAGGF have actually been carried out and have been executed correctly.

2. For the purposes of this Regulation 'commercial documents' means all books, registers, vouchers and supporting documents, accounts and correspondence relating to the undertaking's business activity, as well as commercial data, insofar as these documents relate directly or indirectly to the transactions referred to in paragraph 1.

#### Article 2

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinized. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities under the system of financing by the Guarantee Section of the EAGGF. *Inter alia* the selection shall take account of the financial importance of the undertakings in that system and other risk factors.

2. The scrutiny referred to in paragraph 1 shall apply, for each period of scrutiny referred to in paragraph 4 to a

number of undertakings which may not be less than half the undertakings whose receipts or payments, or the sum thereof, under the system of financing by the Guarantee Section of the EAGGF, amounted to more than ECU 60 000 for the calendar year preceding the beginning of the period of scrutiny in question.

For the period of scrutiny beginning in 1990 the amount of ECU 60 000 quoted in the first subparagraph shall be replaced by ECU 100 000 and by ECU 90 000 for that beginning in 1991.

It shall be compulsory for undertakings the sum of whose receipts or payments amounted to more than ECU 200 000 and which were not scrutinized in accordance with this Regulation during the preceding scrutiny period to be scrutinized.

Undertakings the sum of whose receipts or payments amounted to less than ECU 10 000 shall be scrutinized in accordance with this Regulation only for specific reasons to be indicated by the Member States in their annual programme as referred to in Article 10 or by the Commission in any proposed amendment to that programme.

3. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with which undertakings within the meaning of Article 1 are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 3.

4. The scrutiny period shall run from 1 July to 30 June of the following year.

Scrutiny shall cover at least the calendar year preceding the scrutiny period; it may be extended for a period to be determined by the Member State which precedes that calendar year as well as the period between the 1 January of the year in which the period of control commenced and the effective date of control of an undertaking.

5. The scrutiny carried out pursuant to this Regulation shall not prejudice the inspections undertaken pursuant to Article 6 of Regulation (EEC) No 283/72<sup>(2)</sup> or those undertaken pursuant to Article 9 of Regulation (EEC) No 729/70.

#### Article 3

1. The accuracy of primary data under scrutiny shall be verified in appropriate cases by an adequate number of cross-checks, including, *inter alia*:

- comparisons with the commercial documents of suppliers, customers, carriers and other third parties directly or indirectly connected with transactions carried out within the financing system by the EAGGF Guarantee section,
- physical checks upon the quantity and nature of stocks, and

<sup>(1)</sup> OJ No L 185, 15. 7. 1988, p. 33.

<sup>(2)</sup> OJ No L 36, 10. 2. 1972, p. 1.



— comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGGF Guarantee section.

2. In particular, where undertakings are required to keep particular book records of stock in accordance with Community or national provisions, scrutiny of these records shall, in appropriate cases include a comparison with the commercial documents and, where appropriate, with the actual quantities in stock.

#### Article 4

Undertakings shall keep the commercial documents referred to in Articles 1 (2) and 3 for at least three years, starting from the end of the year in which they were drawn up.

The Member States may prescribe a longer period for the retention of these documents.

#### Article 5

1. The persons responsible for the undertakings shall ensure that all commercial documents and additional information requested are supplied to the officials responsible for the scrutiny or to the persons empowered for that purpose.

2. The officials responsible for the scrutiny or the persons empowered for that purpose may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

#### Article 6

1. Member States shall ensure that officials responsible for the scrutiny shall be entitled to seize commercial documents, or have them seized. This right shall be exercised with due regard for relevant national provisions and shall not affect the application of rules governing proceedings in criminal matters concerning the seizure of documents.

2. Member States shall adopt appropriate measures to penalize natural or legal persons who fail to fulfil their obligations under this Regulation.

#### Article 7

1. Member States shall assist each other for the purposes of carrying out the scrutiny provided for in Articles 2 and 3 where an undertaking is established in a Member State other than that in which payment of the amount in question has or should have been made or received.

2. During the first quarter of the year following the year of payment, Member States shall send a list of the undertakings referred to in paragraph 1 to each Member State in which such an undertaking is established; the list shall contain all the details necessary to enable the Member State of destination to identify the undertakings. A copy of each list shall be sent to the Commission.

The Member State receiving or making the payment may ask the Member State in which the business is established to inspect that business as a matter of priority, in accordance with Article 2, indicating specific reasons for the request. A copy of each request is to be sent to the Commission.

3. During the first quarter of the year following the year of payment, Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.

#### Article 8

1. Information collected in the course of scrutiny as provided for in this Regulation shall be protected by professional secrecy. It may not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Communities, are required to have knowledge thereof for the purposes of performing those duties.

2. This Article shall not prejudice national provisions relating to legal proceedings.

#### Article 9

1. Before 1 January following the scrutiny period Member States shall send the Commission a detailed report on the application of this Regulation.

2. The report must set out any difficulties encountered and the measures taken to overcome them and put forward, where appropriate, suggestions for improvements.

3. The Member States and the Commission shall have regular exchanges of views on the application of this Regulation.

4. The Commission will evaluate annually the progress achieved, in its annual report on the administration of the funds referred to in Article 10 of Regulation (EEC) No 729/70.

5. The Commission shall submit before 31 December 1991 a report on the application of this Regulation. Within the framework of this report, the Commission shall examine the specific situation that could result for certain Member States from the application of this Regulation and, where appropriate, it shall make appropriate proposals.

*Article 10*

1. Member States shall draw up programmes for scrutinies to be carried out pursuant to Article 2 during the subsequent scrutiny period.
2. Each year, before 15 April, the Member States shall send the Commission their programme as referred to in paragraph 1 and shall specify:
  - the number of undertakings to be scrutinized and their breakdown by sector on the basis of the amounts relating to them,
  - the criteria adopted for drawing up the programme.
3. The programmes established by the Member States and forwarded to the Commission, shall be implemented by the Member States, if, within six weeks, the Commission has not made known its comments.
4. Amendments made by the Member States to the programmes shall be subject to the same procedure.
5. Exceptionally, at any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of one or more Member States.
6. For the first year of application, the scrutiny programmes established by the Member States shall be forwarded to the Commission not later than 1 May 1990 and shall be implemented if the Commission has not made known its comments before 15 June 1990.

*Article 11*

1. In each Member State not later than 1 January 1991 a special department is to be made responsible for monitoring the application of this Regulation and for,
  - the performance of the scrutiny provided for herein by officials employed directly by that special department, or
  - the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.

Member States may also provide that scrutinies to be carried out pursuant to this Regulation are allocated between the special department and other national departments, provided that the former is responsible for their coordination.

2. The department or departments responsible for the application of this Regulation must be organized in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny carried out prior to payment.
3. In order to ensure that this Regulation is properly applied the special department referred to in paragraph 1 shall take all the measures necessary.

4. The special department shall be responsible in addition for:
  - training the national officials responsible for carrying out the scrutiny referred to in this Regulation, in order to enable them to acquire sufficient knowledge for performing their duties,
  - administering the scrutiny reports and any other documents relating to the scrutinies carried out and provided for under this Regulation,
  - the preparation and communication of the reports referred to in Article 9 (1) and the programmes referred to in Article 10.

5. The special department shall be entrusted by the Member State concerned with all the powers necessary to perform the tasks referred to in paragraphs 3 and 4.

It shall consist of a sufficient number of officials who are suitably trained to carry out those tasks.

6. This Article shall not apply when the minimum number of undertakings to control, in accordance with Article 2 (2), is less than 10.

*Article 12*

The Community shall participate under the conditions set out in Articles 13, 14 and 15 in the financing of the additional expenditure actually incurred by the Member States and linked to:

- the reduction of the threshold for calculating the number of scrutiny checks to be carried out,
- the mobilization of means intended to improve the quality of scrutiny.

*Article 13*

1. The Community shall contribute towards the expenditure actually incurred by Member States in remunerating additional personnel recruited as from 1 January 1990 and intended to be employed only:

- on the staff of the special department referred to in Article 11, or
- on the staff of other national departments, provided that such personnel is employed solely in performing the scrutiny provided for in this Regulation.

2. The Community financial contribution shall be at the rate of 50 % for the first three years and 25 % for the fourth and fifth years, for a period of five years starting from 1 January 1990, up to an overall amount of:

- ECU 500 000 per year for the first three years and ECU 250 000 for the fourth and fifth years in the case of Germany, Spain, France, Italy, the Netherlands and the United Kingdom.

- ECU 250 000 per year for the first three years and ECU 125 000 for the fourth and fifth years in the case of Belgium, Denmark, Greece, Ireland and Portugal, and
- ECU 50 000 per year for the first three years and ECU 25 000 for the fourth and fifth years in the case of Luxembourg.

3. For the purposes of this Regulation 'remuneration' means the salaries after tax, of the officials responsible for the application of this Regulation and the travel costs necessitated by the performance of their duties.

The Community contribution to the remuneration expense of staff shall be decided for each Member State at a fixed rate.

#### Article 14

The Community shall contribute towards the expenditure incurred by Member States in training the staff of the departments responsible for the application of this Regulation at the rate of 50% for the first three years and 25% for the fourth and fifth years, for a period of five years with effect from 1 January 1990, up to an overall amount of:

- ECU 100 000 per year for the first three years and ECU 50 000 for the fourth and fifth years in the case of Germany, Spain, France, Italy, the Netherlands and the United Kingdom,
- ECU 50 000 per year for the first three years and ECU 25 000 for the fourth and fifth years in the case of Belgium, Denmark, Greece, Ireland and Portugal, and
- ECU 10 000 per year for the first three years and ECU 5 000 for the fourth and fifth years in the case of Luxembourg.

#### Article 15

The Community shall contribute towards the expenditure actually incurred by the Member States in respect of the purchase of data processing and office equipment required by the departments responsible for the application of this Regulation, at the rate of 100% up to a maximum amount of:

- ECU 100 000 for Germany, Spain, France, Italy, the Netherlands and the United Kingdom,
- ECU 60 000 for Belgium, Denmark, Greece, Ireland and Portugal, and
- ECU 20 000 for Luxembourg.

#### Article 16

1. The maximum amount of Community expenditure deemed necessary for carrying out the measure introduced by

this Regulation shall be ECU 6 080 000 for the first year, ECU 5 160 000 for the second and third years and ECU 2 580 000 for the fourth and fifth years.

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

#### Article 17

The annual amount of expenditure borne by the Community shall be fixed by the Commission on the basis of data provided by the Member States.

#### Article 18

The amounts in ecus appearing in this Regulation shall be converted into national currencies by applying the rate of exchange operating on the first working date of the year when the scrutiny period begins and published in the C series of the *Official Journal of the European Communities*.

#### Article 19

Detailed rules for the application of this Regulation shall be adopted where necessary, in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70.

#### Article 20

Article 9 of Regulation (EEC) No 729/70 shall apply to the scrutiny of specific expenditure financed by the Community under this Regulation.

#### Article 21

In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organized under this Regulation and to the data held, including those stored in the data processing systems.

#### Article 22

1. Directive 77/435/EEC shall be repealed with effect from 1 January 1990. The scrutiny carried out from that date under that Directive shall be deemed to be carried out in accordance with this Regulation.

2. References made to Directive 77/435/EEC shall be deemed to be made to this Regulation.

#### Article 23

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

It shall apply with effect from 1 January 1990.

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

Done at Brussels, 21 December 1989.

*For the Council*  
*The President*  
E. CRESSON

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## COUNCIL REGULATION (EEC) No 2048/89

of 19 June 1989

## laying down general rules on controls in the wine sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine <sup>(1)</sup>, as last amended by Regulation (EEC) No 1236/89 <sup>(2)</sup>, and in particular Article 79 <sup>(2)</sup> thereof,

Having regard to the proposal from the Commission <sup>(3)</sup>,

Having regard to the opinion of the European Parliament <sup>(4)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(5)</sup>,

Whereas, for the purposes of uniform application of the wine provisions, there is a need for rules designed to improve the control procedures already in force at Community and national level and to strengthen cooperation between the authorities responsible for the controls in the wine sector provided for until now in Regulation (EEC) No 359/79 <sup>(6)</sup>;

Whereas general rules are also required for the introduction and operation of a Community structure comprising a body of officials specialized in controls in the wine sector, responsible, at Community level, for ensuring uniform application of Community rules;

Whereas provisions should be laid down under which the national authorities and the Commission must provide mutual assistance with a view to ensuring proper application of the wine rules, in particular through preventive action and the detection of infringements or behaviour suspected of infringing the rules; whereas those provisions are not an obstacle to the application of specified rules relating to Community expenditure, the downgrading of quality wines, criminal law or administrative penalties; whereas Member States must ensure that application of specific rules on the two latter subjects does not undermine either the aim of this Regulation or the effectiveness of the controls laid down therein;

Whereas the measures adopted by the Member States to ensure compliance with the wine rules have revealed the

limits to their effectiveness, notably on the occasions of fraud which seriously disrupted the wine sector both in 1985 and in 1986; whereas the Member States should therefore be invited to adopt provisions that can ensure proper application of the rules;

Whereas it is appropriate to define particularly sensitive areas in which an improvement of controls is necessary, without excluding the possibility of improving controls in other areas of the wine rules, where called for;

Whereas each Member State must ensure that the work of control agencies is more effective and whereas, for this purpose, it shall designate an authority to liaise between the Member States and the Commission; whereas it is, moreover, essential that the control work is coordinated between the competent authorities in all Member States in which wine control work is carried out by more than one authority;

Whereas all the authorities responsible for control in the wine sector must be aware of the measures, decisions or interpretations relating to the application of the wine rules in a Member State if there is to be proper harmonization of legislation at Community level; whereas a permanent flow of relevant information on this subject must be introduced between the Member States as well as between them and the Commission;

Whereas to help make the application of the rules uniform throughout the Community, the Member States should, in particular, take the necessary action to ensure that the staff of the competent authorities have sufficient technical competence comparable with that of corresponding staff in the other Member States, and that they have the minimum essential investigative powers to ensure compliance with the rules; whereas the powers of the Member States' control officials should be defined;

Whereas the development of trade in wine between the various Member States, in particular the steady expansion in the number of multinational companies in this sector, and the scope provided by the management rules to have carried out or to transfer operations, whether or not aided, to places different from those in which the product has been grown reflect the interdependence of the wine markets; whereas this situation necessitates greater harmonization of control methods and closer cooperation between the various control authorities;

Whereas the immense damage which fraud can cause to consumers and producers, whether as regards health or business operations, therefore makes it imperative to

<sup>(1)</sup> OJ No L 84, 27. 3. 1987, p. 1.

<sup>(2)</sup> OJ No L 122, 3. 5. 1989, p. 31.

<sup>(3)</sup> OJ No C 24, 29. 1. 1988, p. 8.

<sup>(4)</sup> OJ No C 94, 11. 4. 1988, p. 209.

<sup>(5)</sup> OJ No C 95, 11. 4. 1988, p. 9.

<sup>(6)</sup> OJ No L 54, 5. 3. 1979, p. 136.

improve the cohesion of the authorities responsible for controls, in particular by the creation of a body of officials specifically assigned to this type of work; whereas the cost of setting up a body of specific officials of the Commission and that of the control activities carried out by them must be financed by the Community;

Whereas the work of the specific officials of the Commission responsible for collaborating in controls in the wine sector must comply with the absolute need to ensure uniform application of the rules and effective assistance to the corresponding national staffs; whereas, to this end, their control work could be dovetailed into programmes adopted jointly with the Member States;

Whereas where the specific officials of the Commission encounter, in carrying out their work, repeated and unjustified difficulties, the Commission must be able to call upon the Member State concerned not only for an explanation but also for the facilities enabling the work to be completed; whereas the Member State concerned must then ensure the execution of its obligations deriving from this Regulation, by facilitating the execution of these officials' tasks;

Whereas, with a view to ensuring that collaboration between Member States for the application of provisions in the wine sector is effective, the competent authority of one Member State must be able to collaborate, on request, with the competent authorities of another Member State, as a general rule, by means of their respective liaison authorities; whereas rules should be established for such collaboration;

Whereas, in view of the complex nature of some cases and the need for urgent action, it is essential that where a competent authority has submitted a request for assistance it should, in agreement with the requested competent authority, be able to involve its own designated officials, where appropriate on the spot, in the execution of the investigations;

Whereas, in cases of serious risk of fraud, or of fraud involving more than one Member State or a single Member State, the various authorities concerned must automatically implement the spontaneous assistance procedure provided for in this Regulation;

Whereas, in order to ensure the objective nature of the controls, it is important that specific officials of the Commission or officials of a competent authority of a Member State may request a competent authority of another Member State to collect samples; whereas the applicant official must be able to hold the samples collected and in particular determine the laboratory where they are to be submitted for examination;

Whereas, in view of the nature of the information exchanged pursuant to this Regulation, it should be covered by the requirements of commercial or professional secrecy;

Whereas, in order to contribute to the harmonization of the analytical controls throughout the Community, it is appropriate for the Commission to be able to participate in the financing of the control instruments necessary to achieve

the objectives pursued by this Regulation and to set up a data bank for the wine-sector products at the Joint Research Centre; whereas the Commission should make reference materials available to the Member States in order to coordinate the calibration of the apparatus used for certain analyses;

Whereas, in view of the importance of ensuring that the organization of the controls referred to in this Regulation is effective, there should be regular discussions, in the context of the Management Committee for Wine, between the representatives of the various national authorities concerned; whereas such discussions should cover topical points relating to actual or presumed infringements and, more generally, the application of this Regulation, in order to contribute to uniform implementation of its provisions throughout the Community;

Whereas Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member State and cooperation between the latter and the Commission to ensure correct application of the law on customs or agricultural matters <sup>(1)</sup>, as amended by Regulation (EEC) No 945/87 <sup>(2)</sup>, provides explicitly that in the wine sector the specific rules laid down regarding cooperation in Regulation (EEC) No 359/79 are to apply;

Whereas account should be taken of the experience gained in the field of cooperation between control authorities, and the scope of such cooperation should be extended to cover, in particular, the introduction at Community level of a structure which will henceforth be competent in this field; whereas Regulation (EEC) No 359/79 should therefore be repealed in order to revise the rules governing relations between authorities;

Whereas, as a consequence, new cooperation procedures should be established in the wine sector which, while respecting the sector's special nature, which is linked in particular to the existence of a Community control structure the powers of which should be laid down, must fall within the framework defined in Regulation (EEC) No 1468/81,

HAS ADOPTED THIS REGULATION:

## TITLE I

### PRELIMINARY PROVISIONS

#### Article 1

#### Principles

1. This Regulation lays down rules for the improvement of controls in the wine sector.

It sets up a Community structure enabling specific officials of the Commission to intervene in this sector in cooperation

<sup>(1)</sup> OJ No L 144, 2. 6. 1981, p. 1.

<sup>(2)</sup> OJ No L 90, 2. 4. 1987, p. 3.

with the authorities instructed by the Member States to carry out controls in the wine sector. It lays down rules for such cooperation.

It also lays down measures regarding relations between the authorities of the various Member States referred to in the second subparagraph and between them and the Commission with a view to preventing and detecting any infringement of the Community provisions in question and of national provisions laid down pursuant thereto.

2. The provisions of this Regulation shall not apply in so far as they overlap with those relating to:

- Community verification of expenditure, in particular that laid down in Article 9 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(1)</sup>, as last amended by Regulation (EEC) No 2048/88 <sup>(2)</sup>,
- scrutiny of accounts such as laid down in Council Directive 77/435/EEC of 27 June 1977 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund <sup>(3)</sup>,
- the Community system provided for by Council Decision 89/45/EEC of 21 December 1988 on a Community system for the rapid exchange of information on dangers arising from the use of consumer products <sup>(4)</sup>.

This Regulation shall not affect the Community provisions regarding the downgrading of quality wines produced in specified regions, whereby the decision to downgrade a quality wine psr, including such a decision concerning the quality wine psr in question based on an organoleptic test, falls within the competence of the Member State of origin of the quality wine psr in question, without prejudice to the derogations provided for small quantities.

This Regulation shall not affect the application in the Member States of:

- specific provisions governing relations between Member States in combating fraud in the wine sector in so far as they are such as to facilitate the application of this Regulation,
- rules relating to:
  - criminal proceedings or mutual assistance among Member States at judicial level in criminal matters,

- the administrative penalties procedure.

## Article 2

### Definitions

For the purposes of this Regulation:

- (a) '*rules in the wine sector*' shall mean all the Community wine-sector provisions and national provisions laid down for their application;
- (b) '*competent authority*' shall mean each of the authorities or each of the departments designated by the Member State to ensure compliance with the rules in the wine sector;
- (c) '*liaison authority*' shall mean the competent body or authority designated by the Member State to liaise as appropriate with the liaison authorities of other Member States or with the Commission.

## TITLE II

### IMPROVEMENT OF CONTROLS TO BE CARRIED OUT BY MEMBER STATES

## Article 3

### Principles

1. Member States shall take the necessary measures to improve control of compliance with the rules in the wine sector notably in the particular fields listed in the Annex.
2. The controls in the areas referred to in the Annex shall be carried out either systematically or by sampling. In the case of sampling, Member States shall ensure by their number, nature and frequency that controls are representative of the whole of their territory and correspond to the scale of the wine-sector products marketed or held with a view to their marketing.

Member States shall ensure that the competent authorities have a sufficient number of suitably qualified and experienced staff to carry out efficiently the wine controls referred to in the Annex in particular.

## Article 4

### Control authorities

1. Where a Member State designates several competent authorities, it shall ensure the coordination of the work of those authorities.

<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 13.

<sup>(2)</sup> OJ No L 185, 15. 7. 1988, p. 1.

<sup>(3)</sup> OJ No L 172, 12. 7. 1977, p. 17.

<sup>(4)</sup> OJ No L 17, 21. 1. 1989, p. 51.

2. Each Member State shall designate a single liaison authority. The authority designated shall:

- forward the applications for cooperation with a view to implementing this Regulation to the liaison authorities of other Member States or, where appropriate, to the Commission,
- receive such applications from the latter authorities or, where appropriate, the Commission, and forward them to the competent authority or authorities of the Member State under which it comes,
- represent that Member State *vis-à-vis* other Member States or the Commission in the context of the cooperation covered by Titles III and IV,
- notify the Commission of the measures taken pursuant to Article 3,
- forward to the Commission national provisions and administrative and judicial decisions of particular relevance to the uniform application of the rules in the wine sector in the Community.

3. The Commission shall establish a documentation centre on the basis of the information described in the fifth indent of paragraph 2 and shall use it in replying to requests for information from the liaison authorities.

#### Article 5

##### Powers of control officials

Each Member State shall take all appropriate measures to facilitate the work of the officials of its competent authority or authorities. It shall ensure in particular that such officials, where appropriate in conjunction with officials of other departments which it authorizes for the purpose:

- have access to the vineyards, wine-making and storage installations, installations for processing wine-sector products and vehicles for transporting those products,
- have access to the commercial premises (or warehouses) and vehicles of anyone holding, with a view to sale, marketing or transporting wine-sector products or products which may be intended for use in the wine sector,
- may undertake a survey of wine-sector products and substances or products which may be used for the preparation of such products,
- may take samples of products held with a view to sale, marketed or transported,
- may examine accounts or other documents for the purposes of controls and may take copies or extracts thereof,
- may take appropriate protective measures regarding the preparation, holding, transport, description,

presentation and marketing of a wine-sector product or a product intended for use in the preparation of such a product, if there is reason to believe that there has been a serious infringement of Community provisions, in particular in the case of fraudulent treatment or risks to public health.

#### TITLE III

##### COMMUNITY CONTROL STRUCTURE

#### Article 6

##### Body of specific officials of the Commission

1. The Commission shall set up a body of specific officials to collaborate with the competent authorities of the Member States in on-the-spot checks in order to ensure the uniform application of the rules in the wine sector and in particular in the areas referred to in Article 3.

The Commission shall ensure that such officials possess the technical expertise and appropriate experience to carry out the checks referred to in the first subparagraph.

2. The Commission shall establish suitable links with the liaison authorities of the Member States to draw up programmes of joint control activities. The Member States shall cooperate with the Commission to assist it in the accomplishment of its tasks.

3. The specific Commission officials may collaborate in controls provided for by the competent authorities of the Member States.

The Commission may request the liaison authorities of the Member States to carry out controls in which its specific officials may collaborate.

The officials of the Member States shall at all times be in charge of carrying out the control operations referred to in the first and second subparagraphs.

The Commission:

- may ask the Member States for information concerning their proposed checks,
- shall, in good time before the start of the joint control operations referred to in the first and second subparagraphs, inform the liaison authority of the Member State on the territory of which these operations will take place.

4. For the purpose of collaborating in the controls referred to in paragraph 3, the Commission's specific officials shall produce written authorization specifying their identity and status.



In carrying out their duties, the Commission's specific officials shall have the rights and powers set out in the first, second, third and fifth indents of Article 5 without prejudice to the limits imposed by the Member States on their own officials in carrying out the controls concerned.

The Commission's specific officials shall, in the course of controls, adopt an attitude compatible with the rules and practices which officials of the Member State must follow.

Where the Commission's specific officials encounter difficulties in the performance of their duties, the Member State concerned shall make available to them the resources necessary to enable them to carry out their work properly.

5. After the execution of each control operation as referred to in paragraph 3, the Commission shall forward a communication on the work of its specific officials to the liaison authority of the Member State concerned; that communication shall record any difficulties encountered or infringements noted of the provisions in force.

#### Article 7

##### Financial provisions

Expenditure on setting up the Commission's body of specific officials and on the control activities carried out by them shall be financed by the Community. Appropriations for this purpose shall be set aside within the framework of the budgetary procedure.

#### TITLE IV

##### ASSISTANCE BETWEEN CONTROL AUTHORITIES

#### Article 8

##### Assistance on request

1. Where a competent authority of a Member State undertakes control activities on its territory, regarding in particular:

- operations involving the marketing of wine-sector products originating in another Member State or a third country, or
- verification by cross-checking of documents or qualities of products held with a view to marketing or marketed,

it may request information from the Commission or from the competent authority of another Member State liable to be involved directly or indirectly in the marketing of such products.

The Commission shall be notified whenever the product which is the subject of the control activities referred to in the first subparagraph originates in a third country, and if the marketing of this product may be of specific interest to other Member States.

The requested party shall provide the applicant competent authority with all such information as may enable the latter to carry out its duties.

2. As the reasoned request of the applicant competent authority, the requested party shall perform or take necessary steps to perform special surveillance or controls enabling the desired objectives to be achieved.

3. The requested competent authority as referred to in paragraphs 1 and 2 shall act as if on its own account or at the request of an authority in its own country.

4. In agreement with the requested competent authority, the applicant competent authority may designate its own officials or officials of another competent authority of the Member State it represents:

- either to obtain, on the premises of the administrative authorities coming under the Member State in which the requested authority has its seat, information relating to the application of the rules in the wine sector or to control activities, including the making of copies of transport and other documents or extracts from the registers,
- or to be present during activities requested pursuant to paragraph 2.

The copies referred to in the first indent may be made only with the agreement of the requested competent authority.

5. An applicant competent authority which wishes to send to a Member State an official designated in accordance with paragraph 4, first subparagraph, to be present at the control operations referred to in the second indent of that subparagraph shall advise the requested competent authority accordingly in good time before the start of those operations.

The officials of the requested competent authority shall at all times be in charge of carrying out control operations.

The officials of the applicant competent authority shall:

- produce written authorization specifying their identity and status,
- have, without prejudice to the limits imposed by the Member State of the requested competent authority on its own officials in carrying out the controls concerned:
  - the rights of access provided for in the first and second indents of Article 5,

- the right to be informed of the results of controls carried out by the officials of the requested competent authority pursuant to the third and fifth indents of Article 5,
- adopt, in the course of controls, an attitude compatible with the rules and practices which must be followed by officials of the Member State within the territory of which the control operations are carried out.

6. The reasoned requests referred to in this Article shall be forwarded to the requested competent authority of the Member State in question via the liaison authority of that Member State. The same shall apply for:

- the answers to those requests, and
- communications concerning the application of paragraphs 2, 4 and 5.

By way of derogation from the first subparagraph and in the interests of quicker and more effective cooperation between them, Member States may, in certain appropriate cases, permit a competent authority to:

- make its reasoned request or communication directly to a competent authority of another Member State,
- reply directly to reasoned requests or communications received from a competent authority of another Member State.

#### Article 9

##### Spontaneous assistance

1. Where a competent authority of a Member State has grounds for suspicion or learns:

- that a product listed in Article 1 (2) of Regulation (EEC) No 822/87 does not comply with the wine-sector rules or has been the subject of fraudulent action to obtain or market such a product, and
- that such failure to comply with the rules is of specific interest to one or more other Member States and is such as to lead to administrative measures or legal action,

that competent authority shall, via the liaison authority under which it comes, notify the liaison authority of the Member State concerned and the Commission without delay.

2. Where the Commission has grounds for suspicion or has knowledge of the facts referred to in paragraph 1, it shall inform the liaison authorities of all the Member States without delay.

#### Article 10

##### Common provisions

1. The information referred to in Article 8 (1) and Article 9 shall be accompanied by documents or other evidence and

details of any administrative measures or legal action and shall relate in particular to:

- composition and organoleptic characteristics,
- description and presentation,
- compliance with the rules laid down for preparation and marketing of the product in question.

2. The Commission shall, when informed of the cooperation between Member States referred to in Articles 8 and 9, provide where appropriate the necessary coordination for the proper organization of the action planned, in particular by making available to the national authorities all the rapid-access information facilities available to it.

3. The liaison authorities concerned by a case for which the mutual assistance procedure referred to in Articles 8 and 9 is initiated shall inform each other without delay of:

- the progress of investigations, particularly in the form of reports and other documents or information media, and
- any administrative or legal action taken subsequent to the operations concerned.

4. Travel costs incurred in the application of Article 8 (2) and (4) shall be borne by:

- the Member State which has appointed an official for the measures referred to in the aforementioned paragraphs, or
- the Community budget at the request of the liaison authority of that Member State if the Commission has formally recognized in advance the Community interest of the control activity in question.

5. This Article shall not prejudice national provisions concerning the secrecy of legal proceedings.

## TITLE V

### GENERAL PROVISIONS

#### Article 11

##### Coordination of control activities

The Commission may convene representatives of the liaison authorities of several Member States, together, if appropriate, with representatives of the competent authorities, in order to coordinate a control activity which concerns them.

*Article 12***Collection of samples**

In the context of the application of Titles III and IV the specific officials of the Commission or the officials of the competent authority of a Member State may request the competent authority of another Member State to collect samples in accordance with the relevant provisions in that Member State.

The applicant official shall hold the samples collected pursuant to the first subparagraph and shall determine *inter alia* the laboratory to which they are to be submitted for examination.

*Article 13***Analyses**

The laboratories designated to carry out analyses pursuant to this Regulation shall be chosen from those referred to in Article 79 (1) of Regulation (EEC) No 822/87.

The methods of analysis shall be those referred to in Article 74 of the same Regulation.

*Article 14***Information obtained pursuant to this Regulation — conclusive force**

1. Information forwarded pursuant to this Regulation, in whatever form, shall be confidential. Information shall be covered by professional or commercial secrecy and shall qualify for the protection conferred by the national law of the Member State which received it on information of the same type and by the corresponding provisions applying at Community level.

The information referred to in the first subparagraph may not in particular be transmitted to persons other than those who, in the Member State or Community institutions, need to know such information for the purposes of their work. Nor may it be used for purposes other than those provided for by this Regulation, unless the authority which provided it has given explicit consent and provided that the provisions in force in the Member State where the authority which received it has its seat do not prevent such notification or utilization.

2. This Regulation shall not prevent the use, in the course of court proceedings or prosecutions started subsequently for failure to comply with agricultural or financial requirements, of information obtained pursuant to this Regulation.

3. The findings of the specific officials of the Commission or of the competent authorities of a Member State in the

course of application of this Regulation may be invoked by the competent authorities of the other Member States or by the Commission. In such cases, they shall have no less value because of the fact that they do not come from the Member State in question.

*Article 15***Persons subject to controls**

Natural or legal persons and groups of such persons whose activities may be the subject of the controls referred to in this Regulation shall not obstruct such controls and shall be required to facilitate them at all times.

*Article 16***Control instruments**

1. The Commission may participate in the financing of the control instruments necessary for the achievement of the objectives of this Regulation.

2. The Commission shall set up an analytical data bank for wine-sector products at the Joint Research Centre, with the aim of coordinated and uniform application of the methods of analysis referred to in Article 74 of Regulation (EEC) No 822/87, in particular those based on nuclear magnetic resonance.

Each Member State shall forward to the Joint Research Centre the samples and analysis reports to be determined for the establishment of this data bank.

3. The Commission shall make reference materials available to the Member States in order to coordinate the calibration of the apparatus used to carry out certain analyses in the wine sector.

*Article 17***Information regarding application of this Regulation**

1. Each quarter until 31 December 1990 and at least once a year thereafter, the Commission shall, in the context of the Management Committee for Wine, organize meetings with representatives of the liaison authorities, together if appropriate with representatives of the competent authorities, with a view to implementing this Regulation.

These meetings shall in particular concern themselves with:

- carrying out a general review of the way in which mutual assistance between competent authorities operates,
- an exchange of views on the conclusions to be drawn from experience relating to the implementation of cooperation in the wine sector,

— the organization of seminars to increase the knowledge of officials of the Member States and of the Commission with respect to the implementation of this Regulation.

2. Once a year the Commission shall forward to the European Parliament and to the Council a brief report summarizing the communications provided for in Article 6 (5), together, where appropriate, with suggestions for improving the system of controls.

This report shall record any comments by Member States on those communications.

*Article 18*

Regulation (EEC) No 359/79 is hereby repealed.

*Article 19*

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

It shall apply from 1 January 1990.

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

Done at Luxembourg, 19 June 1989.

*For the Council*

*The President*

C. ROMERO HERRERA

## ANNEX

## AREAS OF CONTROL PROVIDED FOR IN ARTICLE 3 (1)

- Harvest, production and stock declarations.
  - The holding and marketing of wine-sector products which are not put up, including the establishment and use of the documents accompanying their transport, and the keeping of registers.
  - The destination and use of concentrated grape musts, whether or not rectified, qualifying for aid.
  - Grubbing, replanting and new planting.
  - The natural alcoholic strength by volume of grapes used for wine-making.
  - Verification of the raw materials used for wine-making.
  - Oenological practices, including the holding and marketing of products used for the processing of wine-sector products.
  - The use of wine obtained from grapes of vine varieties classified as other than wine grape varieties.
  - The enrichment of grapes, musts and wine and the holding and marketing of sucrose, concentrated grape must and rectified concentrated grape must.
  - The preparation of concentrated grape must and rectified concentrated grape must including the production of the basic material employed.
  - The holding, marketing, distillation and destruction of the by-products of wine-making.
  - The distillation and storage of products on which aid is paid.
  - The verification of the composition of wine products.
  - The updating of the vineyard register.
  - Description and presentation of wine-sector products.
-

**COUNCIL REGULATION (EEC) No 595/91**

of 4 March 1991

**concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) No 283/72**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(1)</sup>, as last amended by Regulation (EEC) No 2048/88 <sup>(2)</sup>, and in particular Article 8 (3) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy <sup>(3)</sup>, as last amended by Regulation (EEC) No 2205/90 <sup>(4)</sup>, and in particular Article 2 (4) thereof,

Having regard to the proposal from the Commission <sup>(5)</sup>,

Having regard to the opinion of the European Parliament <sup>(6)</sup>,

Whereas Article 8 of Regulation (EEC) No 729/70 lays down the principles according to which the Community intends to intensify the campaign against irregularities and recover the sums lost and whereas, in accordance with paragraph 3 of that Article, the Council must adopt general rules for the adoption thereof;

Whereas the provisions of Regulation (EEC) No 283/72 <sup>(7)</sup> need to be adjusted in order to harmonize its application in the Member States and intensify the campaign against irregularities in the light of experience; whereas, for reasons of clarity, it is appropriate to replace Regulation (EEC) No 283/72 in its entirety;

Whereas, in order for the Community to be better informed of the measures taken by Member States to combat irregularities, the national provisions to be communicated to the Commission should be specified;

Whereas, with a view to ascertaining the nature of fraudulent practices and the financial effects of irregularities and to recovering sums wrongly paid, provision should be made for irregularities to be communicated to the

Commission every quarter; whereas such communication must be supplemented by information on the progress of judicial or administrative procedures;

Whereas the Commission should be systematically informed of judicial and administrative procedures against persons who have committed irregularities; whereas it would also be advisable to ensure the systematic transmission of information concerning the measures taken by the Member States to safeguard the Community's financial interests;

Whereas the procedures to be followed by the Member States and the Commission in cases where the sums lost through an irregularity cannot be recovered should be specified;

Whereas, in cases where the Commission requests a Member State to institute an inquiry, the Commission must be informed of the preparation for the inquiry and its outcome; whereas the rights of Commission officials participating in such inquiries should be defined;

Whereas national rules relating to criminal proceedings or mutual assistance between Member States at judicial level in criminal matters must not be affected by the provisions of this Regulation;

Whereas provision should be made for a Community contribution to the inquiry and recovery costs based on the sums recovered; whereas it is also appropriate to provide for the possibility of the Community making a contribution to legal costs and to costs arising directly from legal proceedings;

Whereas, in order to prevent irregularities, cooperation between the Member States and the Commission should be reinforced while making sure that such action is conducted with a large measure of discretion;

Whereas the overall results should be communicated to the Committee of the European Agricultural Guidance and Guarantee Fund every quarter and to the European Parliament and the Council annually;

Whereas the minimum threshold above which cases of irregularities must automatically be notified by the Member States should be raised; whereas that threshold is determined, Article 2 (1) of Regulation (EEC) No 1676/85 notwithstanding, in such a way as to obtain a uniform and comparable approach, which can readily be put into effect by the national administrations concerned on the basis of an exchange rate which reflects economic reality;

<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 13.

<sup>(2)</sup> OJ No L 185, 15. 7. 1988, p. 1.

<sup>(3)</sup> OJ No L 164, 24. 6. 1985, p. 1.

<sup>(4)</sup> OJ No L 201, 31. 7. 1990, p. 9.

<sup>(5)</sup> OJ No C 138, 7. 6. 1990, p. 6.

<sup>(6)</sup> OJ No C 324, 24. 12. 1990.

<sup>(7)</sup> OJ No L 36, 10. 2. 1972, p. 1.

Whereas it should be specified that the provisions of this Regulation also apply in cases where a payment which should have been made by an operator within the framework of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, hereinafter referred to as 'the Fund', has not been made as a result of an irregularity,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

The measures referred to in this Regulation shall relate to all expenditure by the European Agricultural Guidance and Guarantee Fund, Guarantee Section.

This Regulation shall continue to apply in the case of irregularities which relate to European Agricultural Guidance and Guarantee Fund, Guidance Section, expenditure and which were notified before 1 January 1989.

This Regulation shall not affect the application, in the Member States, of rules relating to criminal proceedings or mutual assistance between Member States at judicial level in criminal matters.

#### *Article 2*

1. Member States shall communicate to the Commission within three months of the entry into force of this Regulation :

- the provisions laid down by law, regulation or administrative action for the application of the measures provided for in Article 8 (1) of Regulation (EEC) No 729/70, and
- the list of authorities and bodies responsible for the application of those measures and the main provisions relating to the role and functioning of those authorities and bodies and to the procedures which they are responsible for applying.

2. Member States shall communicate forthwith to the Commission any amendments to the information supplied in pursuance of paragraph 1.

3. The Commission shall study Member States' communications and shall inform the Fund Committee of the conclusions which it intends to draw therefrom. It shall keep in contact with the Member States, where appropriate within the Fund Committee, to the extent necessary for the application of this Article.

#### *Article 3*

1. During the two months following the end of each quarter, Member States shall communicate to the Commission a list of irregularities which have been the

subject of the primary administrative or judicial findings of fact.

To this end they shall as far as possible give detailed information concerning :

- the provision which has been infringed,
- the nature and amount of the expenditure ; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the economic operator is guilty of error or negligence detected before payment and not resulting in any administrative or judicial penalty,
- the common organization of the market and the product or products or measure concerned ;
- the period during which, or the moment at which, the irregularity was committed,
- the practices adopted in committing the irregularity,
- the manner in which the irregularity was discovered,
- the national authorities or bodies which recorded the irregularity,
- the financial consequences and possibilities of recovery,
- the date and source of the first information leading to suspicion that an irregularity existed,
- the date on which the irregularity was discovered,
- where appropriate, the Member States and third countries involved,
- the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.

2. Where some of this information, and in particular that concerning the practices adopted in committing the irregularity and the manner in which this was discovered, is not available, Member States shall as far as possible supply the missing information when forwarding subsequent quarterly lists of irregularities to the Commission.

3. If national provisions provide for the confidentiality of investigations, communication of this information shall be subject to the authorization of the competent court.

#### *Article 4*

Each Member State shall forthwith communicate to the other Member States concerned and to the Commission any irregularities that have been discovered or that are suspected which it is feared may have effects outside its territory very quickly or which show that a new fraudulent practice has been adopted.

#### *Article 5*

1. During the two months following the end of each quarter, Member States shall inform the Commission of the procedures instituted following the irregularities noti-

fied under Article 3 and of all important changes resulting therefrom, including :

- the amounts which have been, or are expected to be, recovered,
- the precautionary action taken by Member States to safeguard recovery of sums wrongly paid,
- the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and applying sanctions,
- the reasons for any abandonment of recovery procedures ; the Commission shall, as far as possible, be notified before a decision is taken,
- any abandonment of criminal prosecutions.

Member States shall notify the Commission of administrative or judicial decisions, or the main points thereof, concerning the termination of these procedures.

2. Where a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it shall inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State.

This information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8 (2) of Regulation (EEC) No 729/70. This decision shall be taken in accordance with the procedure laid down in Article 5 of that Regulation.

#### Article 6

1. Where the Commission considers that irregularities have taken place in one or more Member States, it shall inform the Member State or States concerned thereof and that State or those States shall, at the earliest opportunity, hold an inquiry in which officials of the Commission may take part.

For the purposes of this Article, 'inquiry' shall be taken to mean any inspection, verification or action carried out by officials of the national administration with a view to establishing whether there has been an irregularity, with the exception of action carried out at the request or under the direct authority of a court.

2. The Member State shall, as soon as possible, communicate to the Commission the inquiry findings.

Where an inquiry shows that there has been an irregularity, the Member State shall inform the Commission thereof in accordance with Articles 3, 4 and 5 and, where appropriate, the other Member States concerned, in accordance with Article 4.

3. Where officials of the Commission take part in the inquiry, the Member State concerned shall be informed thereof. Except in urgent cases, the Member State shall

communicate the basic facts of the inquiry to the Commission at least one week in advance.

4. Where Commission officials participate in an inquiry, that inquiry shall at all times be conducted by the officials of the Member State ; Commission officials may not, on their own initiative, use the powers of inspection conferred on national officials ; on the other hand, they shall have access to the same premises and to the same documents as those officials.

Insofar as national provisions on criminal proceedings reserve certain acts to officials specifically designated by national law, Commission officials shall not take part in such acts. In any event, they shall not participate in particular in any event in searches of premises or the formal questioning of persons under national criminal law. They shall, however, have access to the information thus obtained.

In order to participate in the inspections referred to in paragraph 1, Commission officials shall produce written instructions stating their identities and their functions.

#### Article 7

1. When the amounts recovered are placed at the Fund's disposal, the Member State may retain 20 % of those amounts where the rules laid down by this Regulation have not been significantly infringed.

2. Where the competent authorities of a Member State decide, at the express request of the Commission, to initiate or continue legal proceedings with a view to recovering amounts wrongly paid, the Commission may undertake to reimburse to the Member State all or part of the legal costs and costs arising directly from the legal proceedings, on presentation of documentary evidence, even if the proceedings are unsuccessful.

#### Article 8

1. The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 3, on the procedures referred to in Article 5, and, in particular, on the possibility of recovery.

2. Without prejudice to such contact, the matter shall be put before the Fund Committee where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other Member States.

3. Furthermore, the Commission shall organize meetings of an informatory nature at Community level for the appropriate representatives of the Member States in order to examine with them the information obtained under Articles 3, 4 and 5 and paragraph 1 above, in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings. As far as necessary, the Commission shall keep the Fund Committee informed of this work



and shall consult the Committee regarding any proposals which it intends to submit to the Council for the prevention of irregularities.

4. At the request of a Member State or, under the arrangements laid down in paragraph 3, of the Commission, the Member States shall consult each other, where appropriate within the Fund Committee or any other competent body, for the purpose of closing any gaps which become apparent in the course of application of provisions in force and which prejudice Community interests.

#### Article 9

The Fund Committee shall be informed every quarter by the Commission of the order of magnitude of the sums involved in the irregularities which have been discovered and of the various categories of irregularity, broken down by type and with a statement of the number. In a special chapter of the annual report on the administration of the Fund, provided for in Article 10 of Regulation (EEC) No 729/70, the Commission shall give the number of cases which have been notified and of those which have been closed, together with the sums recovered and the sums written off.

#### Article 10

1. Member States and the Commission shall take all necessary precautions to ensure that the information which they exchange remains confidential.

2. The information referred to in paragraph 1 may not, in particular, be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it, unless the Member State supplying it has expressly agreed.

3. The names of natural or legal persons may be disclosed to another Member State of Community institution only insofar as this is necessary in order to prevent or prosecute an irregularity or to establish whether an alleged irregularity has taken place.

4. Information communicated or acquired in any form under this Regulation shall be covered by professional confidentiality and be protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions.

In addition, that information may not be used for any purposes other than those provided for in this Regulation unless the authorities that have provided it have given their express consent and provided that the provisions in force in the Member State in which the authority that has received it is located do not prohibit such communication or use.

5. Paragraphs 1 to 4 shall not impede the use, in any legal actions or proceedings subsequently instituted in

respect of non-compliance with the law on agricultural matters, of information obtained pursuant to this Regulation. The competent authority of the Member State which supplied this information shall be informed forthwith of such use.

6. Where a Member State notifies the Commission that a natural or legal person whose name has been communicated to the Commission under this Regulation proves on further inquiry not to be involved in irregularity, the Commission shall forthwith inform all those to whom it disclosed that name under this Regulation of that fact. Such person shall thereupon cease to be treated, on account of the earlier notification, as a person involved in the irregularity in question.

#### Article 11

In cases of co-financing by the Fund and a Member State, the amounts recovered shall be shared by that Member State and the Community in proportion to their respective expenditure.

#### Article 12

1. Where the irregularities relate to sums of less than ECU 4 000, Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter expressly requests it.

2. The amount referred to in paragraph 1 shall be converted into national currency by applying the exchange rates published in the *Official Journal of the European Communities*, C series, which are valid on the first working day of the year in which the information on the irregularities is communicated.

#### Article 13

The provisions of this Regulation shall be applicable *mutatis mutandis* in cases where the payment of a sum to the fund has not been made in accordance with the provisions in question.

#### Article 14

1. Regulation (EEC) No 283/72 is hereby repealed.
2. References to Regulation (EEC) No 283/72 shall be deemed to be references to this Regulation.

#### Article 15

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

The last four indents of the second subparagraph of Article 3 (1) shall be applicable as from the date of the communication concerning the second quarter of 1991.

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

**Done at Brussels, 4 March 1991.**

*For the Council*

*The President*

**R. STEICHEN**

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## I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EC) No 1469/95****of 22 June 1995****on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,Having regard to the opinion of the European Parliament <sup>(2)</sup>,Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, at its meetings in June 1993 in Copenhagen and December 1994 in Essen, the European Council stressed the importance of pursuing the campaign against fraud and irregularities affecting the Community budget; whereas there should be a reinforcement of those measures designed to ensure that the Community funds intended for the implementation of the common agricultural policy (CAP) are not granted to persons or companies which do not offer all the guarantees of reliability as to the proper execution of the operations concerned;

Whereas Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(4)</sup>, lays down, in particular, that Member States are under an obligation to take all the measures necessary to ensure that transactions financed by the Fund are actually carried out and properly executed, and to prevent and follow up irregularities;

Whereas Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of

an information system in this field and repealing Regulation (EEC) No 283/72 <sup>(5)</sup>, provides, among other things, for the Member States regularly to inform the Commission of cases of irregularities and judicial or administrative procedures sanctioning persons who have committed irregularities, in order to acquire systematic knowledge of the nature of the fraudulent practices and to recover sums wrongly paid;

Whereas these provisions need to be supplemented by a Community system allowing all the national authorities to identify, in connection with tendering procedures, grant of export refunds or sales at reduced prices of intervention products, operators who have deliberately or as a result of serious negligence committed an irregularity prejudicial to Community funds or who are suspected on solid grounds of having done so; whereas, on that basis, there must be determined, in the light of the seriousness of the offence and depending on whether it has been established or suspected, a series of varied measures ranging from reinforced controls to the exclusion of the operators concerned from taking part in operations to be determined when their fraudulent actions are established;

Whereas, in order to provide operators with a maximum of guarantees, it would be advisable to adopt the essential features of the corresponding provisions of Regulation (EEC) No 595/91, in particular with regard to the observance of confidentiality and professional secrecy and the national rules relating to criminal proceedings; whereas, with regard to data protection, the relevant provisions laid down for that purpose in the rules on mutual assistance in customs and agricultural matters may be applied;

Whereas this system must be supplementary to the specific provisions already existing or to be adopted in the future under the CAP with a view to preventing irregularities, in particular those provisions relating to controls and sanctions established by the Commission by virtue of its powers confirmed by the Court of Justice;

<sup>(1)</sup> OJ No C 151, 2. 6. 1994, p. 13.<sup>(2)</sup> OJ No C 56, 6. 3. 1995, p. 175.<sup>(3)</sup> OJ No C 393, 31. 12. 1994, p. 81.<sup>(4)</sup> OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ No L 125, 8. 6. 1995, p. 1).<sup>(5)</sup> OJ No L 67, 14. 3. 1991, p. 11.

Whereas, furthermore, as part of an across-the-board campaign against fraud, on 7 July 1994 the Commission submitted a proposal for a Regulation (EC, Euratom) on protection of the Community's financial interests<sup>(1)</sup>, whereas, on the adoption of that Regulation by the Council, the common set of legal rules enacted by it for all areas of Community policy will apply to the measures introduced by this Regulation ; whereas, until that Regulation is adopted, provision should be made for the detailed rules for the application of this Regulation temporarily to include similar rules, in particular as regards the definition of the irregularities involved,

HAS ADOPTED THIS REGULATION :

#### *Article 1*

1. A Community system is hereby established for the purpose of identifying and making known as rapidly as possible to all the competent authorities of the Member States and the Commission operators presenting, on the grounds of experience acquired with them as regards the proper execution of their previous obligations, a risk of non-reliability in connection with tendering procedures, export refunds and sales at reduced prices or intervention products, financed by the Guarantee Section of the EAGGF.

2. For the purposes of this Regulation, 'operators presenting a risk of non-reliability' means operators, whether natural or legal persons, who :

- (a) according to a final decision of an administrative or judicial authority, have deliberately or through serious negligence committed an irregularity in respect of relevant Community provisions and have unjustly benefited from a financial advantage or attempted to benefit therefrom ;
- (b) have been the subject, in this respect, on the basis of established facts, of a preliminary administrative or judicial report by the competent authorities of the Member State.

3. Pending the entry into force of horizontal provisions defining irregularities, the conduct referred to in paragraph 2 (a) shall be defined in accordance with the procedure laid down in Article 5.

#### *Article 2*

1. The identification procedures and rules relating to notification shall be implemented on the initiative of the Member State in which the risk of the operator's non-reliability is identified.

2. Where a Member State fails to fulfil its obligation under paragraph 1 the Commission shall, within the framework of the existing legal provisions, ensure that the

identification and notification system is implemented by the Member State concerned.

#### *Article 3*

1. Member States shall take the following measures to deal with the operators referred to in Article 1 (2) (a) :

- (a) reinforced checking of all operations performed by the operator, and/or
- (b) suspension, going as far as an administrative determination of the existence of an irregularity or of the absence of an irregularity, of payment of amounts relating to current operations, to be determined, and, where appropriate, of release of the guarantee relating thereto, and/or
- (c) their exclusion for a period of time from operations to be determined.

The measures referred to under points (b) and (c) shall be determined by the competent authorities of the Member State in accordance with criteria laid down in accordance with the procedure provided for in Article 5, having due regard to the risk of further irregularities that may be committed by the operator. They shall be adopted after any formalities relating thereto laid down in the laws of the Member States have been completed.

2. As regards the operators referred to in Article 1 (2) (b), only the measures set out in paragraph 1 points (a) and (b) shall apply.

3. Where, under a tendering procedure, the Commission itself awards a contract, it shall, as appropriate, take or propose to the Member State, one or more of the measures set out in paragraph 1.

#### *Article 4*

1. The measures referred to in Article 3 shall comply with the following principles, in accordance with the national law of the Member State :

- (a) a prior hearing and right of appeal by the operator concerned in respect of the measures referred to in Article 3 (1) (c) and, where appropriate, (b) ;
- (b) proportionality between the irregularity committed or suspected and one or other of the measures referred to in Article 3 (1), subject to the provisions to be established in accordance with the procedure laid down in Article 5 ;
- (c) non-discrimination between operators.

2. Member States and the Commission shall take all necessary precautions to ensure that the information which they exchange pursuant to this Regulation remains confidential.

Such information may not, in particular, be sent to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it, unless the Member State supplying it has expressly so agreed.

<sup>(1)</sup> OJ No C 216, 6. 8. 1994, p. 11.

Information communicated or acquired in any form under this Regulation shall be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions.

In addition, that information may not be used for purposes other than those provided for in this Regulation unless the authorities providing it have expressly agreed and provided that the provisions in force in the Member State in which the authority that has received it is located do not prohibit such communication or use.

As regards data protection, the relevant provisions laid down in the rules on mutual assistance in customs and agricultural matters shall apply.

3. The provisions of this Regulation shall not affect the application in the Member States of rules governing criminal proceedings and mutual assistance in criminal matters between Member States. They shall not prevent the use, in the context of judicial proceedings or of proceedings brought subsequently for non-compliance with agricultural regulations, of information obtained pursuant to this Regulation ; in the latter case the competent authority of the Member State which provided such information shall be notified of such use.

However, Member States shall take the administrative measures necessary to ensure that the provisions of the first subparagraph are applied in such a way as not to hinder the effective application of this Regulation as regards the operators referred to in Article 1 (2) (b).

If national laws provide for the confidentiality of judicial investigations, communication of information as provided for in this Regulation shall be subject to authorization by

the competent judicial authority. The competent administrative authority shall secure such authorization at the earliest opportunity.

#### *Article 5*

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70. They shall concern, among other things :

- the notifications to be made by the Member States ;
- the nature of the links between different natural or legal persons which may result in their being regarded as operators within the meaning of this Regulation ;
- the conditions under which operators may avoid the suspension of payments as referred to in Article 3 (1) (b) by lodging a security.

#### *Article 6*

This Regulation shall be supplementary to the specific provisions under the CAP.

#### *Article 7*

The Commission shall present to the European Parliament and the Council by 6 July 1997 a report on the implementation of this Regulation and, in the light of experience gained, shall propose amendments that may be needed to the arrangements introduced by this Regulation.

#### *Article 8*

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

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

Done at Brussels, 22 June 1995.

*For the Council*

*The President*

Ph. VASSEUR

## I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 3508/92**

of 27 November 1992

**establishing an integrated administration and control system for certain  
Community aid schemes**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, pursuant to Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(4)</sup>, Member States must take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) are actually carried out and are executed correctly, and prevent and deal with irregularities; whereas Article 23 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments <sup>(5)</sup> provides for the same obligation with regard to the agricultural structures policy;

Whereas up to now the various aid schemes have been administered and controlled by the Member States under separate rules for each scheme, as a result of their heterogeneous structure; whereas, however, in realigning the existing market measures a part of the reform of the common agricultural policy, the Community is opting, to

a large extent, in both the crop and livestock sectors, for direct aid to producers;

Whereas, in order to adapt the administration and control mechanisms to the new situation and improve their effectiveness and usefulness, it is necessary to set up a new integrated administration and control system covering the aid schemes for arable crops, beef and veal, sheepmeat and goatmeat, as well as specific measures for farming in mountain, hill and certain less-favoured areas; whereas provision should be made for the possibility of including, at a later date, other aid schemes linked to the cultivated area;

Whereas, the various components of the integrated system will potentially result in more effective administration and control in the case of Community schemes not covered by this Regulation; whereas the Member States should therefore be authorized to avail themselves of the system on condition they do not in any way act in opposition to the provisions concerned;

Whereas, given the complexity of such a system and the large number of aid applications to be processed, it is essential to use the appropriate technical resources and administration and control methods; whereas as a result, the integrated system should comprise, in each Member State, a computerized data base, an alphanumeric identification system for agricultural parcels, aid applications from farmers, a harmonized control system and, in the livestock sector, a system for the identification and recording of animals;

Whereas the administration of the data collected and its use for the verification of aid applications make it necessary to set up high-performance computerized data bases allowing cross-checks in particular to be made;

Whereas the identification of agricultural parcels is a key element in the correct application of schemes linked to surface area; whereas experience has shown that the existing methods have certain deficiencies; whereas, therefore, provision should be made for an alphanumeric identification system set up initially, where necessary, with the aid of remote sensing;

<sup>(1)</sup> OJ No C 9, 15. 1. 1992, p. 4.

<sup>(2)</sup> Opinion delivered on 17 November 1992 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 98, 21. 4. 1992, p. 29.

<sup>(4)</sup> OJ No L 94, 28. 4. 1970, p. 13. (Last amended by Regulation (EEC) No 2048/88).

<sup>(5)</sup> OJ No L 374, 31. 12. 1988, p. 1.

Whereas in order to guarantee the possibility of effective control, 'area' aid applications must be submitted not later than during the first quarter of the year; whereas however the Member State may, in cases which it justifies, be authorized to apply a later date; whereas for 1993, having regard to the difficulties of implementing the integrated system, a later date is permitted;

Whereas, in the livestock sector, effective control requires that animals be identified and recorded; whereas, to this end, Council Directive 92/102/EEC of 27 November 1992, on the identification and registration of animals<sup>(1)</sup> lays down specific provisions in this respect; whereas recourse should therefore be had to that Directive;

Whereas the detailed rules governing aid applications continue to be subject to the provisions of each sector; whereas, however, for the sake of simplification, Member States should be authorized to make provision for the submission of one single application for several aid schemes;

Whereas one of the main advantages of the new system is the introduction of an integrated control system in each Member State avoiding any duplication of sectoral checks of the same type; whereas, as a result, the stepping up of checks made necessary by the reform of the common agricultural policy should be attainable without substantially increasing the number of checks; whereas aid applications submitted must be subjected to a thorough administrative check carried out with the aid of computerized data bases; whereas, up to now, administrative checks have been supplemented systematically by checks on the spot; whereas, to a large extent, on-the-spot checks on areas may be replaced by remote sensing;

Whereas the expenditure involved in introducing the integrated system may represent a high additional budgetary burden for Member States; whereas, consequently, provision should be made for part-financing for a certain period; whereas the diversity of existing production structures in the Member States must be taken into account; whereas, as a result, provision should be made for sharing out the financial contribution in a way which takes into account in particular the number of agricultural holdings, livestock numbers and the agricultural area in the Member States;

Whereas provision should be made for the gradual implementation of all the elements of the integrated system,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. Each Member State shall set up an integrated administration and control system, hereinafter referred to as the 'integrated system', applying:

<sup>(1)</sup> See page 32 of this Official Journal.

(a) in the crop sector:

- the support system for producers of certain arable crops established by Regulation (EEC) No 1765/92<sup>(2)</sup>;

(b) in the livestock sector:

- to the premium arrangements for beef and veal producers established by Articles 4 (a) to (h) of Regulation (EEC) No 805/68<sup>(3)</sup>,
- to the premium arrangements for sheepmeat producers introduced by Regulation (EEC) No 3013/89<sup>(4)</sup>,
- to the specific measures for farming in mountain, hill and certain less-favoured areas introduced by Regulation (EEC) No 2328/91<sup>(5)</sup> concerning compensatory allowances for cattle, sheep, goats and equidae,

hereinafter referred to as 'Community schemes'.

2. The Council may, acting by a qualified majority on a Commission proposal, extend the scope of the integrated system to other Community aid schemes.

3. For the purposes of applying Community aid schemes not covered by this Regulation and notwithstanding the specific provisions laid down under such schemes, in particular those concerning the terms under which aid may be granted, the Member States may incorporate in their administration and control mechanisms one or more of the administrative, technical or data-processing components of the integrated system.

Member States may extend this possibility to national schemes. They may use the information from the integrated system for statistical purposes.

Before availing themselves of these possibilities, Member States shall inform the Commission of their intentions in good time.

<sup>(2)</sup> OJ No L 181, 1. 7. 1992, p. 12. (Amended by Commission Regulation (EEC) No 2467/92 (OJ No L 246, 27. 8. 1992, p. 11)).

<sup>(3)</sup> OJ No L 148, 28. 6. 1968. (Last amended by Regulation (EEC) No 2066/92 (OJ No L 215, 30. 7. 1992, p. 49)).

<sup>(4)</sup> OJ No L 289, 7. 10. 1989, p. 1. (Last amended by Regulation (EEC) No 2069/92 (OJ No L 215, 30. 7. 1992, p. 59)).

<sup>(5)</sup> OJ No L 218, 6. 8. 1991, p. 1. (Last amended by Regulation (EEC) No 2080/92 (OJ No L 215, 30. 7. 1992, p. 96)).

The Commission shall ensure that recourse to this possibility does not prejudice compliance with the provisions of the sectoral Regulations or of this Regulation.

4. Without prejudice to specific provisions provided for under the arrangements referred to in paragraph 1, for the purposes of this Regulation :

- *farmer* shall mean an individual agricultural producer, whether a natural or legal person or a group of natural or legal persons, whatever legal status is granted the group and its members by national law, whose holding is within Community territory,
- *holding* shall mean all the production units managed by a farmer situated within the same Member State's territory,
- *agricultural parcel* shall mean a continuous area of land on which a single crop is raised by a single farmer. In accordance with the procedure laid down in Article 12 the Commission shall adopt implementing arrangements for specific uses of agricultural parcels, in particular those concerning mixed crops and jointly used areas.

#### Article 2

The integrated system shall comprise the following elements :

- (a) a computerized data base ;
- (b) an alphanumeric identification system for agricultural parcels ;
- (c) an alphanumeric system for the identification and registration of animals ;
- (d) aid applications ;
- (e) an integrated control system.

#### Article 3

1. The computerized data base shall record, for each agricultural holding, the data obtained from the aid applications. This data base shall in particular allow direct and immediate consultation, through the competent authority of the Member State, of the data relating at least to the previous three consecutive calendar and/or marketing years.

2. The Member States may set up decentralized data bases on condition that these, and the administrative procedures for recording and accessing data, are designed homogeneously throughout the territory of the Member State and are compatible with one another.

#### Article 4

The alphanumeric identification system for agricultural parcels shall be established on the basis of land registry maps and documents, other cartographic references or of

aerial photographs or satellite pictures or other equivalent supporting references or on the basis of more than one of these elements.

#### Article 5

The system for the identification and registration of animals to be taken into account for the granting of aid governed by this Regulation shall be set up in accordance with Articles 4, 5, 6 and 8 of Directive 92/102/EEC.

#### Article 6

1. In order to be eligible under one or more Community schemes governed by this Regulation, each farmer shall submit, for each year, an 'area' aid application indicating :

- agricultural parcels, including areas under forage crops, and agricultural parcels covered by a set-aside measure for arable land and those laid fallow,
- where applicable, any other necessary information provided for either by the Regulations relating to the Community schemes, or by the Member State concerned.

2. The area aid application must be submitted by a date to be fixed by the Member State which shall be during the first quarter of the year. However :

- in 1993, the Member State may fix a date not later than the dates referred to in Articles 10, 11 and 12 of Regulation (EEC) No 1765/92,
- in the following years, the Commission may, in accordance with the procedure laid down in Article 12, allow a Member State to fix a date between 1 April and the dates referred to in Articles 10, 11 and 12 of Regulation (EEC) No 1765/92, provided that the Member State can justify such a date, in particular by providing the Commission with a detailed working plan, which demonstrates that the requirements of the following subparagraph are fulfilled.

In all cases, the date shall be fixed bearing in mind, *inter alia*, the time required for all relevant data to be available for proper administrative and financial management of the aid and for the checks provided for in Article 8 to be carried out.

3. A Member State may decide that an 'area' aid application need contain only changes with respect to the 'area' aid application submitted for the previous year.

4. Certain amendments may be made to the 'area' aid application provided that they are received by the competent authorities, no later than the dates referred to in Articles 10, 11 and 12 of Regulation (EEC) No 1765/92.



5. The 'area' aid application, amended if necessary in accordance with paragraph 4, shall be deemed to be the aid application provided for in the scheme referred to in Article 1 (1) (a).

6. For each of the agricultural parcels declared, farmers shall indicate the area and its location which information must enable the parcel to be identified in the alphanumeric identification system for agricultural parcels.

7. Farmers applying only for aid under a scheme not directly linked to agricultural area may be exempted from the requirement to submit an 'area' aid application.

8. In order to be eligible for one of the Community schemes or arrangements referred to in Article 1 (1) (b), each farmer shall submit one or more 'animal' aid applications, at the latest by the dates set by the schemes concerned.

9. Where an aid application or amendments to it have to be accompanied by supplementary documentation, such documentation shall be considered part of the application.

10. While abiding by the dates or periods laid down for submitting applications under Community rules, the Member States may decide that a single application can cover:

- several 'animal' aid applications,
- an 'area' aid application and one or more 'animal' aid applications.

#### Article 7

The integrated control system shall cover all aid applications submitted, in particular as regards administrative checks, on-the-spot checks and, if appropriate, verification by aerial or satellite remote sensing.

#### Article 8

1. Member States shall carry out administrative checks on aid applications.

2. Administrative checks shall be supplemented by on-the-spot checks covering a sample of agricultural holdings. For all these checks, Member States shall draw up a sampling plan.

3. Each Member State shall designate an authority responsible for coordinating the checks provided for in this Regulation.

4. National authorities may, under conditions to be laid down, use remote sensing to determine the area of agricultural parcels, identify crops and verify their status.

5. Where the competent authorities of the Member State delegate some aspects of the work to be carried out pursuant to this Regulation to specialized agencies or firms, they must retain control over and responsibility for that work.

#### Article 9

The Member States shall take the measures necessary to ensure protection of the data collected.

#### Article 10

1. The Community shall contribute to the expenditure incurred by Member States pursuant to this Regulation for the introduction of the computerized and checking structures and for the acquisition of aerial photographs or satellite pictures and the analysis thereof.

Expenditure on the updating of land registry maps shall not be co-financed by the Community.

2. The Community's financial contribution shall be granted for a period of three years from 1992, within the limits of the appropriations allocated for this purpose.

The total amount shall be shared among the Member States as follows:

Belgium	2,3 %
Denmark	2,4 %
Germany	10,1 %
Greece	8,7 %
Spain	18,1 %
France	14,6 %
Ireland	4,5 %
Italy	20,1 %
Luxembourg	0,6 %
Netherlands	3,0 %
Portugal	5,7 %
United Kingdom	9,9 %

The Community's financial contribution may not be greater than 50 % of the payments made by the Member State concerned in respect of the budget year and relating to the eligible expenditure within the meaning of paragraph 1.

3. Amounts expressed in ecus and national currencies shall be converted at the rates of exchange obtaining on the first working day of the calendar year in question published in the 'C' series of the *Official Journal of the European Communities*.

#### Article 11

1. The Commission shall be informed at regular intervals of the progress of work on the implementation of the integrated system. It shall organize exchanges of views on this subject with the Member States.

2. After informing the competent authorities concerned in good time, Commission officials may carry out :

- any examination or control relating to the body of measures taken in order to establish the integrated system and to the eligibility of expenditure declared under the Community co-financing provided for in Article 10 ;
- checks at the specialized agencies and firms referred to in Article 8 (5).

Officials of the Member State concerned may take part in such checks.

The aforementioned powers to check shall not affect the application of national criminal law provisions which reserve certain acts for officials specifically designated by national law. Commission officials shall in particular not participate in home visits to or the formal interrogation of suspects under the criminal law of the Member State. They shall, however, have access to the information obtained thereby.

3. Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission may seek the assistance of specialized bodies or persons in order to facilitate the establishment, monitoring and utilization of the integrated system, in particular with a view to providing the competent authorities of the Member States with technical advice, should they request it.

#### Article 12

The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70. These detailed rules shall cover in particular :

- (a) the basic features of the alphanumeric identification system for agricultural parcels ;
- (b) any amendments which may be made to the 'area' aid applications and exemption from the requirement to submit an 'area' aid application ;

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

Done at Brussels, 27 November 1992.

- (c) the minimum amount of information to be included in the aid applications ;
- (d) the administrative and on-the-spot checks and the checks by remote sensing ;
- (e) the establishment of an advance payment scheme for Community financial participation ;
- (f) transitional provisions for the start-up period of the system ;
- (g) communications between the Member States and the Commission ;
- (h) the measures required to resolve specific practical problems. Such measures - if duly justified - may derogate from certain parts of this Regulation.

#### Article 13

1. The integrated system shall apply

- (a) from 1 February 1993 as regards aid applications, an alphanumeric system of identification and registration of bovine animals and the integrated control system referred to in Article 7 ;
- (b) from 1 January 1996 at the latest as regards the other elements referred to in Article 2.

2. With a view to implementation of the integrated system, the Member States shall :

- adopt the necessary laws, regulations and administrative provisions concerning paragraph 1 (a) before 1 February 1993, and those concerning paragraph 1 (b) before 1 June 1993 ;
- take the administrative, budgetary and technical measures necessary for the integrated system to be operational from the dates laid down in paragraph 1.

If, however, any parts of the integrated system are operational before the dates laid down in paragraph 1, the Member States shall use them for their management and checking activities.

#### Article 14

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

For the Council  
The President  
J. PATTEN

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 3911/92**

**of 9 December 1992**

**on the export of cultural goods**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, in view of the completion of the internal market, rules on trade with third countries are needed for the protection of cultural goods;

Whereas, in the light of the conclusions of the Council meeting on 19 November 1990, it seems necessary to take measures in particular to ensure that exports of cultural goods are subject to uniform controls at the Community's external borders;

Whereas such a system should require the presentation of a licence issued by the competent Member State prior to the export of cultural goods covered by this Regulation; whereas this necessitates a clear definition of the scope of such measures and the procedures for their implementation; whereas the implementation of the system should be as simple and efficient as possible; whereas a Committee should be set up to assist the Commission in carrying out the responsibilities conferred on it by this Regulation;

Whereas, in view of the considerable experience of the Member States' authorities in the application of Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities

of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters <sup>(4)</sup>, the said Regulation should be applied to this matter;

Whereas the Annex to this Regulation is aimed at making clear the categories of cultural goods which should be given particular protection in trade with third countries, but is not intended to prejudice the definition, by Member States, of national treasures within the meaning of Article 36 of the Treaty,

HAS ADOPTED THIS REGULATION:

*Article 1*

Without prejudice to Member States' powers under Article 36 of the Treaty, the term 'cultural goods' shall refer, for the purposes of this Regulation, to the items listed in the Annex.

TITLE I

Export licence

*Article 2*

1. The export of cultural goods outside the customs territory of the Community shall be subject to the presentation of an export licence.

2. The export licence shall be issued at the request of the person concerned:

— by a competent authority of the Member State in whose territory the cultural object in question was lawfully and definitively located on 1 January 1993.

<sup>(1)</sup> OJ No C 53, 28. 2. 1992, p. 8.

<sup>(2)</sup> OJ No C 176, 13. 7. 1992, p. 31.

<sup>(3)</sup> OJ No C 223, 31. 8. 1992, p. 10.

<sup>(4)</sup> OJ No L 144, 2. 6. 1981, p. 1. Regulation as amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).

— or, thereafter, by a competent authority of the Member State in whose territory it is located following either lawful and definitive dispatch from another Member State, or importation from a third country, or reimportation from a third country after lawful dispatch from a Member State to that country.

However, without prejudice to paragraph 4, the Member State which is competent in accordance with the two indents in the first subparagraph may not require export licences for the cultural goods specified in the first and second indents of category A1 of the Annex where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.

The export licence may be refused, for the purposes of this Regulation, where the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned.

Where necessary, the authority referred to in the second indent of the first subparagraph shall enter into contact with the competent authorities of the Member State from which the cultural object in question came, and in particular the competent authorities within the meaning of Council Directive 93/.../EEC of ... on the return of cultural objects unlawfully removed from the territory of a Member State <sup>(1)</sup>.

3. The export licence shall be valid throughout the Community.

4. Without prejudice to the provisions of this Article, direct export from the customs territory of the Community of national treasures having artistic, historic or archaeological value which are not cultural goods within the meaning of this Regulation is subject to the national law of the Member State of export.

#### Article 3

1. Member States shall furnish the Commission with a list of the authorities empowered to issue export licences for cultural goods.

2. The Commission shall publish a list of these authorities and any amendment to that list in the 'C' series of the *Official Journal of the European Communities*.

<sup>(1)</sup> Not yet adopted at the time of this publication; in accordance with Article 11 below, the present Regulation will enter into force on the third day following that of publication of the Directive in the *Official Journal of the European Communities*.

#### Article 4

The export licence shall be presented, in support of the export declaration, when the customs export formalities are carried out, at the customs office which is competent to accept that declaration.

#### Article 5

1. Member States may restrict the number of customs offices empowered to handle formalities for the export of cultural goods.

2. Member States availing themselves of the option afforded by paragraph 1 shall inform the Commission of the customs offices duly empowered.

The Commission shall publish this information in the 'C' series of the *Official Journal of the European Communities*.

### TITLE 2

#### Administrative cooperation

#### Article 6

For the purposes of implementing this Regulation, the provisions of Regulation (EEC) No 1468/81, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

In addition to the cooperation provided for under the first subparagraph, Member States shall take all necessary steps to establish, in the context of their mutual relations, cooperation between the customs authorities and the competent authorities referred to in Article 4 of Directive 93/.../EEC <sup>(2)</sup>.

### TITLE 3

#### General and final provisions

#### Article 7

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (for example, the model and technical properties) shall be adopted in accordance with the procedure laid down in Article 8 <sup>(2)</sup>.

#### Article 8

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

<sup>(2)</sup> See footnote to Article 2 <sup>(2)</sup>.

The committee shall examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

#### Article 9

Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

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

Done at Brussels, 9 December 1992.

#### Article 10

Each Member State shall inform the Commission of the measures taken pursuant to this Regulation.

The Commission shall pass on this information to the other Member States.

Every three years the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee on the implementation of this Regulation.

The Council shall review the effectiveness of the Regulation after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.

In any event, the Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex, on the basis of economic and monetary indicators in the Community.

#### Article 11

This Regulation shall enter into force on the third day following that of publication in the *Official Journal of the European Communities* of Directive 93/.../EEC<sup>(1)</sup>.

*For the Council*

*The President*

W. WALDEGRAVE

<sup>(1)</sup> The Directive on the return of cultural objects unlawfully removed from the territory of a Member State, already referred to in Articles 2 (2) and 6, has not yet been adopted at the time of this publication.

## ANNEX

## CATEGORIES OF CULTURAL OBJECTS COVERED BY ARTICLE 1

A. 1. Archaeological objects more than 100 years old which are the products of:	
-- excavations and finds on land or under water	9705 00 00
-- archaeological sites	9706 00 00
-- archaeological collections	
2 Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	9705 00 00 9706 00 00
3. Pictures and paintings executed entirely by hand, on any medium and in any material <sup>(1)</sup>	9701
4. Mosaics other than those in categories 1 or 2 and drawings executed entirely by hand, on any medium and in any material <sup>(1)</sup>	6914 9701
5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters <sup>(1)</sup>	Chapter 49 9702 00 00 8442 50 99
6. Original sculptures or statuary and copies produced by the same process as the original <sup>(1)</sup> , other than those in category 1	9703 00 00
7. Photographs, films and negatives thereof <sup>(1)</sup>	3704 3705 3706 4911 91 80
8. Incunabula and manuscripts, including maps and musical scores, singly or in collections <sup>(1)</sup>	9702 00 00 9706 00 00 4901 10 00 4901 99 00 4904 00 00 4905 91 00 4905 99 00 4906 00 00
9. Books more than 100 years old, singly or in collections	9705 00 00 9706 00 00
10. Printed maps more than 200 years old	9706 00 00
11. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	3704 3705 3706 4901 4906 9705 00 00 9706 00 00
12. (a) Collections <sup>(2)</sup> and specimens from zoological, botanical, mineralogical or anatomical collections;	9705 00 00
(b) Collections <sup>(2)</sup> of historical, palaeontological, ethnographic or numismatic interest	9705 00 00
13. Means of transport more than 75 years old	9705 00 00 Chapters 86—89

<sup>(1)</sup> Which are more than 50 years old and do not belong to their originators.

<sup>(2)</sup> As defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 97.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.'

## 14. Any other antique items not included in categories A.1 to A.13

## (a) between 50 and 100 years old:

— toys, games	Chapter 95
— glassware	7013
— articles of goldsmiths' or silversmiths' wares	7114
— furniture	Chapter 94
— optical, photographic or cinematographic apparatus	Chapter 90
— musical instruments	Chapter 92
— clocks and watches and parts thereof	Chapter 91
— articles of wood	Chapter 44
— pottery	Chapter 69
— tapestries	5805 00 00
— carpets	Chapter 57
— wallpaper	4814
— arms	Chapter 93

(b) more than 100 years old 9706 00 00

The cultural objects in categories A.1 to A.14 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

## B. Financial thresholds applicable to certain categories under A (in ecus)

*Value: 0 (Zero)*

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 8 (Incunabula and manuscripts)
- 11 (Archives)

*15 000*

- 4 (Mosaics and drawings)
- 5 (Engravings)
- 7 (Photographs)
- 10 (Printed maps)

*50 000*

- 6 (Statuary)
- 9 (Books)
- 12 (Collections)
- 13 (Means of transport)
- 14 (Any other object)

*150 000*

- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export licence is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2 (2) of the Regulation.

The date for the conversion of values expressed in ecus in the Annex into national currencies shall be 1 January 1993.

## I

*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 259/93****of 1 February 1993****on the supervision and control of shipments of waste within, into and out of the European Community**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the Community has signed the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

Whereas provisions concerning waste are contained in Article 39 of the ACP-EEC Convention of 15 December 1989;

Whereas the Community has approved the Decision of the OECD Council of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations;

Whereas, in the light of the foregoing, Directive 84/631/EEC <sup>(4)</sup>, which organizes the supervision and control of transfrontier shipments of hazardous waste, needs to be replaced by a Regulation;

Whereas the supervision and control of shipments of waste within a Member State is a national responsibility; whereas, however, national systems for the supervision and control of shipments of waste within a Member State

should comply with minimum criteria in order to ensure a high level of protection of the environment and human health;

Whereas it is important to organize the supervision and control of shipments of wastes in a way which takes account of the need to preserve, protect and improve the quality of the environment;

Whereas Council Directive 75/442/EEC of 15 July 1975 on waste <sup>(5)</sup> lays down in its Article 5 (1) that an integrated and adequate network of waste disposal installations, to be established by Member States through appropriate measures, where necessary or advisable in cooperation with other Member States, must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialized installations for certain types of waste; whereas Article 7 of the said Directive requests the drawing up of waste management plans, if appropriate in cooperation with the Member States concerned, which shall be notified to the Commission, and stipulates that Member States may take measures necessary to prevent movements of waste which are not in accordance with their waste management plans and that they shall inform the Commission and the other Member States of any such measures;

Whereas it is necessary to apply different procedures depending on the type of waste and its destination, including whether it is destined for disposal or recovery;

Whereas shipments of waste must be subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment;

<sup>(1)</sup> OJ No C 115, 6. 5. 1992, p. 4.

<sup>(2)</sup> OJ No C 94, 13. 4. 1992, p. 276 and opinion delivered on 20 January 1993 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 269, 14. 10. 1991, p. 10.

<sup>(4)</sup> OJ No L 326, 13. 12. 1984, p. 31. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

<sup>(5)</sup> OJ No L 194, 25. 7. 1975, p. 39. Directive as amended by Directive 91/156/EEC (OJ No L 78, 26. 3. 1991, p. 32).



Whereas Member States should be able to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels — in accordance with Directive 75/442/EEC — by taking measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste for disposal, except in the case of hazardous waste produced in the Member State of dispatch in such a small quantity that the provision of new specialized disposal installations within that State would be uneconomic; whereas the specific problem of disposal of such small quantities requires cooperation between the Member States concerned and possible recourse to a Community procedure;

Whereas exports of waste for disposal to third countries must be prohibited in order to protect the environment of those countries; whereas exceptions shall apply to exports to EFTA countries which are also Parties to the Basle Convention;

Whereas exports of waste for recovery to countries to which the OECD Decision does not apply must be subject to conditions providing for environmentally sound management of waste;

Whereas agreements or arrangements on exports of waste for recovery with countries to which the OECD Decision does not apply must be subject to periodic review by the Commission leading, if appropriate, to a proposal by the Commission to reconsider the conditions under which such exports take place, including the possibility of a ban;

Whereas shipments of waste for recovery listed on the green list of the OECD Decision shall be generally excluded from the control procedures of this Regulation since such waste should not normally present a risk to the environment if properly recovered in the country of #IO116,9# destination; whereas some exceptions to this exclusion are necessary in accordance with Community legislation and the OECD Decision; whereas some exceptions are also necessary in order to facilitate the tracking of such shipments within the Community and to take account of exceptional cases; whereas such waste shall be subject to Directive 75/442/EEC;

Whereas exports of waste for recovery listed on the OECD green list to countries to which the OECD Decision does not apply must be subject to consultation by the Commission with the country of destination; whereas

it may be appropriate in the light of such consultation that the Commission make proposals to the Council;

Whereas exports of waste for recovery to countries which are not parties to the Basle Convention must be subject to specific agreements between these countries and the Community; whereas Member States must, in exceptional cases, be able to conclude after the date of application of this Regulation bilateral agreements for the import of specific waste before the Community has concluded such agreements, in the case of waste for recovery in order to avoid any interruption of waste treatment and in the case of waste for disposal where the country of dispatch does not have or cannot reasonably acquire the technical capacity and necessary facilities to dispose of the waste in an environmentally sound manner;

Whereas provision must be made for the waste to be taken back or to be disposed of or recovered in an alternative and environmentally sound manner if the shipment cannot be completed in accordance with the terms of the consignment note or the contract;

Whereas, in the event of illegal traffic, the person whose action is the cause of such traffic must take back and/or dispose of or recover the waste in an alternative and environmentally sound manner; whereas, should he fail to do so, the competent authorities of dispatch or destination, as appropriate, must themselves intervene;

Whereas it is important for a system of financial guarantees or equivalent insurance to be established;

Whereas Member States must provide the Commission with information relevant to the implementation of this Regulation;

Whereas the documents provided for by this Regulation must be established and the Annexes adapted within a Community procedure,

HAS ADOPTED THIS REGULATION :

#### TITLE I

#### SCOPE AND DEFINITIONS

##### *Article 1*

1. This Regulation shall apply to shipments of waste within, into and out of the Community.

2. The following shall be excluded from the scope of this Regulation :

- (a) the offloading to shore of waste generated by the normal operation of ships and offshore platforms, including waste water and residues, provided that such waste is the subject of a specific binding international instrument ;
- (b) shipments of civil aviation waste ;
- (c) shipments of radioactive waste as defined in Article 2 of Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community <sup>(1)</sup> ;
- (d) shipments of waste mentioned in Article 2 (1) (b) of Directive 75/442/EEC, where they are already covered by other relevant legislation ;
- (e) shipments of waste into the Community in accordance with the requirements of the Protocol on Environmental Protection to the Antarctic Treaty.

3. (a) Shipments of waste destined for recovery only and listed in Annex II shall also be excluded from the provisions of this Regulation except as provided for in subparagraphs (b), (c), (d) and (e), in Article 11 and in Article 17 (1), (2) and (3).

(b) Such waste shall be subject to all provisions of Directive 75/442/EEC. It shall in particular be :

- destined for duly authorized facilities only, authorized according to Article 10 and 11 of Directive 75/442/EEC,
- subject to all provisions of Articles 8, 12, 13 and 14 of Directive 75/442/EEC.

(c) However, certain wastes listed in Annex II may be controlled, if, among other reasons, they exhibit any of the hazardous characteristics listed in Annex III of Council Directive 91/689/EEC <sup>(2)</sup>, as if they had been listed in Annex III or IV.

These wastes and the decision about which of the two procedures should be followed shall be determined in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC. Such wastes shall be listed in Annex II (a).

(d) In exceptional cases, shipments of wastes listed in Annex II may, for environmental or public health reasons, be controlled by Member States as if they had been listed in Annex III or IV.

Member States which make use of this possibility shall immediately notify the Commission of such cases and inform other Member States, as appropriate, and give reasons for their decision. The Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, may confirm such action including, where appropriate, by adding such wastes to Annex IIA.

(e) Where waste listed in Annex II is shipped in contravention of this Regulation or of Directive 75/442/EEC, Member States may apply appropriate provisions of Articles 25 and 26 of this Regulation.

## Article 2

For the purposes of this Regulation :

(a) *waste* is as defined in Article 1 (a) of Directive 75/442/EEC ;

(b) *competent authorities* means the competent authorities designated by either the Member States in accordance with Article 36 or non-Member States ;

(c) *competent authority of dispatch* means the competent authority, designated by the Member States in accordance with Article 36, for the area from which the shipment is dispatched or designated by non-Member States ;

(d) *competent authority of destination* means the competent authority, designated by the Member States in accordance with Article 36, for the area in which the shipment is received, or in which waste is loaded on board before disposal at sea without prejudice to existing conventions on disposal at sea or designated by non-Member States ;

(e) *competent authority of transit* means the single authority designated by Member States in accordance with Article 36 for the State through which the shipment is in transit ;

(f) *correspondent* means the central body designated by each Member State and the Commission, in accordance with Article 37 ;

(g) *notifier* means any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped :

(i) the person whose activities produced the waste (original producer); or

(ii) where this is not possible, a collector licensed to this effect by a Member State or a registered or licensed dealer or broker who arranges for the disposal or the recovery of waste ; or

<sup>(1)</sup> OJ No L 35, 12. 2. 1992, p. 24.

<sup>(2)</sup> OJ No L 377, 31. 12. 1991, p. 20.

(iii) where these persons are unknown or are not licensed, the person having possession or legal control of the waste (holder); or

(iv) in the case of import into or transit through the Community of waste, the person designated by the laws of the State of dispatch or, when this designation has not taken place, the person having possession or legal control of the waste (holder);

(h) *consignee* means the person or undertaking to whom or to which the waste is shipped for recovery or disposal;

(i) *disposal* is as defined in Article 1 (e) of Directive 75/442/EEC;

(j) *authorized centre* means any establishment or undertaking authorized or licensed pursuant to Article 6 of Directive 75/439/EEC<sup>(1)</sup>, Articles 9, 10 and 11 of Directive 75/442/EEC and Article 6 of Directive 76/403/EEC<sup>(2)</sup>;

(k) *recovery* is as defined in Article 1 (f) of Directive 75/442/EEC;

(l) *State of dispatch* means any State from which a shipment of waste is planned or made;

(m) *State of destination* means any State to which a shipment of waste is planned or made for disposal or recovery, or for loading on board before disposal at sea without prejudice to existing conventions on disposal at sea;

(n) *State of transit* means any State, other than the State of dispatch or destination, through which a shipment of waste is planned or made;

(o) *consignment note* means the standard consignment note to be drawn up in accordance with Article 42;

(p) *the Basle Convention* means the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

(q) *the fourth Lomé Convention* means the Lomé Convention of 15 December 1989;

(r) *the OECD Decision* means the decision of the OECD Council of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations.

<sup>(1)</sup> OJ No L 194, 25. 7. 1975, p. 23. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

<sup>(2)</sup> OJ No L 108, 26. 4. 1976, p. 41.

## TITLE II

### SHIPMENTS OF WASTE BETWEEN MEMBER STATES

#### Chapter A

#### Waste for disposal

##### Article 3

1. Where the notifier intends to ship waste for disposal from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25 (2) and 26 (2), he shall notify the competent authority of destination and send a copy of the notification to the competent authorities of dispatch and of transit and to the consignee.

2. Notification shall mandatorily cover any intermediate stage of the shipment from the place of dispatch to its final destination.

3. Notification shall be effected by means of the consignment note which shall be issued by the competent authority of dispatch.

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to:

— the source, composition and quantity of the waste for disposal including, in the case of Article 2 (g) (ii), the producer's identity and, in the case of waste from various sources a detailed inventory of the waste and, if known, the identity of the original producers,

— the arrangements for routing and for insurance against damage to third parties,

— the measures to be taken to ensure safe transport and, in particular, compliance by the carrier with the conditions laid down for transport by the Member States concerned,

— the identity of the consignee of the waste, the location of the disposal centre and the type and duration of the authorization under which the centre operates. The centre must have adequate technical capacity for the disposal of the waste in question under conditions presenting no danger to human health or to the environment,

— the operations involving disposal as referred to in Annex IIA to Directive 75/442/EEC.

6. The notifier must make a contract with the consignee for the disposal of the waste.

The contract may include some or all of the information referred to in paragraph 5.

The contract must include the obligation :

- of the notifier, in accordance with Articles 25 and 26 (2), to take the waste back if the shipment has not been completed as planned or if it has been effected in violation of this Regulation,
- of the consignee, to provide as soon as possible and no later than 180 days following the receipt of the waste a certificate to the notifier that the waste has been disposed of in an environmentally sound manner.

A copy of this contract must be supplied to the competent authority on request.

Should the waste be shipped between two establishments under the control of the same legal entity, this contract may be replaced by a declaration by the entity in question undertaking to dispose of the waste.

7. The information given in accordance with paragraphs 4 to 6 shall be treated confidentially in accordance with existing national regulations.

8. A competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

The competent authority of dispatch may decide not to proceed with notification if it has itself immediate objections to raise against the shipment in accordance with Article 4 (3). It shall immediately inform the notifier of these objections.

#### Article 4

1. On receipt of the notification, the competent authority of destination shall, within three working days, send an acknowledgement to the notifier and copies thereof to the other competent authorities concerned and to the consignee.

2. (a) The competent authority of destination shall have 30 days following dispatch of the acknowledgement to take its decision authorizing the shipment, with or without conditions, or refusing it. It may also request additional information.

It shall give its authorization only in the absence of objections on its part or on the part of the other competent authorities. The authorization shall be subject to any transport conditions referred to in (d).

The competent authority of destination shall take its decision not earlier than 21 days following the

dispatch of the acknowledgement. It may, however, take its decision earlier if it has the written consent of the other competent authorities concerned.

The competent authority of destination shall send its decision to the notifier in writing, with copies to the other competent authorities concerned.

- (b) The competent authorities of dispatch and transit may raise objections within 20 days following the dispatch of the acknowledgement. They may also request additional information. These objections shall be conveyed in writing to the notifier, with copies to the other competent authorities concerned.
- (c) The objections and conditions referred to in (a) and (b) shall be based on paragraph 3.
- (d) The competent authorities of dispatch and transit may, within 20 days following the dispatch of the acknowledgement, lay down conditions in respect of the transport of waste within their jurisdiction.

These conditions must be notified to the notifier in writing, with copies to the competent authorities concerned, and entered in the consignment note. They may not be more stringent than those laid down in respect of similar shipments occurring wholly within their jurisdiction and shall take due account of existing agreements, in particular relevant international conventions.

- 3. (a) (i) In order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste. Such measures shall immediately be notified to the Commission, which will inform the other Member States.
- (ii) In the case of hazardous waste (as defined in Article 1 (4) of Directive 91/689/EEC) produced in a Member State of dispatch in such a small quantity overall per year that the provision of new specialized disposal installations within that State would be uneconomic, (i) shall not apply.
- (iii) The Member State of destination shall cooperate with the Member State of dispatch which considers that (ii) applies, with a view to resolving the issue bilaterally. If there is no satisfactory solution, either Member State may refer the matter to the Commission, which will determine the issue in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

(b) The competent authorities of dispatch and destination, while taking into account geographical circumstances or the need for specialized installations for certain types of waste, may raise reasoned objections to planned shipments if they are not in accordance with Directive 75/442/EEC, especially Articles 5 and 7 :

- (i) in order to implement the principle of self-sufficiency at Community and national levels ;
- (ii) in cases where the installation has to dispose of waste from a nearer source and the competent authority has given priority to this waste ;
- (iii) in order to ensure that shipments are in accordance with waste management plans.

(c) Furthermore, the competent authorities of dispatch, destination and transit may raise reasoned objections to the planned shipment if :

- it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection,
- the notifier or the consignee was previously guilty of illegal trafficking.

In this case, the competent authority of dispatch may refuse all shipments involving the person in question in accordance with national legislation, or

- the shipment conflicts with obligations resulting from international conventions concluded by the Member State or Member States concerned.

4. If, within the time limits laid down in paragraph 2, the competent authorities are satisfied that the problems giving rise to their objections have been solved and that the conditions in respect of the transport will be met, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

If there is subsequently any essential change in the conditions of the shipment, a new notification must be made.

5. The competent authority of destination shall signify its authorization by appropriately stamping the consignment note.

#### Article 5

1. The shipment may be effected only after the notifier has received authorization from the competent authority of destination.

2. Once the notifier has received authorization, he shall insert the date of shipment and otherwise complete the consignment note and send copies to the competent authorities concerned three working days before the shipment is made.

3. A copy or, if requested by the competent authorities, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

4. All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

5. Within three working days following receipt of the waste for disposal, the consignee shall send copies of the completed consignment note, except for the certificate referred to in paragraph 6, to the notifier and the competent authorities concerned.

6. As soon as possible and not later than 180 days following the receipt of the waste, the consignee shall, under his responsibility, send a certificate of disposal to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.

## Chapter B

### Waste for recovery

#### Article 6

1. Where the notifier intends to ship waste for recovery listed in Annex III from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25 (2) and 26 (2), he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

2. Notification shall mandatorily cover any intermediary stage of the shipment from the place of dispatch to its final destination.

3. Notification shall be effected by means of the consignment note which shall be issued by the competent authority of dispatch.

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to :

- the source, composition and quantity of the waste for recovery, including the producer's identity and, in the case of waste from various sources, a detailed inventory of the waste and, if known, the identity of the original producer,
- the arrangements for routing and for insurance against damage to third parties,
- the measures to be taken to ensure safe transport and, in particular, compliance by the carrier with the conditions laid down for transport by the Member States concerned,
- the identity of the consignee of the waste, the location of the recovery centre and the type and duration of the authorization under which the centre operates. The centre must have adequate technical capacity for the recovery of the waste in question under conditions presenting no danger to human health or to the environment,
- the operations involving recovery as contained in Annex II.B to Directive 75/442/EEC,
- the planned method of disposal for the residual waste after recycling has taken place,
- the amount of the recycled material in relation to the residual waste,
- the estimated value of the recycled material.

6. The notifier must conclude a contract with the consignee for the recovery of the waste.

The contract may include some or all of the information referred to in paragraph 5.

The contract must include the obligation :

- of the notifier, in accordance with Articles 25 and 26 (2), to take the waste back if the shipment has not been completed as planned or if it has been effected in violation of this Regulation,
- of the consignee to provide, in the case of retransfer of the waste for recovery to another Member State or to a third country, the notification of the initial country of dispatch,
- of the consignee to provide, as soon as possible and not later than 180 days following the receipt of the waste, a certificate to the notifier that the waste has been recovered in an environmentally sound manner.

A copy of this contract must be supplied to the competent authority on request.

Should the waste be shipped between two establishments under the control of the same legal entity, this contract may be replaced by a declaration by the entity in question undertaking to recover the waste.

7. The information given in accordance with paragraphs 4 to 6 shall be treated confidentially in accordance with existing national regulations.

8. A competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

#### Article 7

1. On receipt of the notification the competent authority of destination shall send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

2. The competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment. Such objection shall be based on paragraph 4. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

The competent authorities concerned may decide to provide written consent in a period less than the 30 days.

Written consent or objection may be provided by post, or by telefax followed by post. Such consent shall expire within one year unless otherwise specified.

3. The competent authorities of dispatch, destination and transit shall have 20 days following the dispatch of the acknowledgement in which to lay down conditions in respect of the transport of waste within their jurisdiction.

These conditions must be notified to the notifier in writing, with copies to the competent authorities concerned, and entered in the consignment note. They may not be more stringent than those laid down in respect of similar shipments occurring wholly within their jurisdiction and shall take due account of existing agreements, in particular relevant international conventions.

4. (a) The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment :

- in accordance with Directive 75/442/EEC, in particular Article 7 thereof, or

- if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection, or
  - if the notifier or the consignee has previously been guilty of illegal trafficking. In this case, the competent authority of dispatch may refuse all shipments involving the person in question in accordance with national legislation, or
  - if the shipment conflicts with obligations resulting from international conventions concluded by the Member State or Member States concerned, or
  - if the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non recoverable fraction do not justify the recovery under economic and environmental considerations.
- (b) The competent authorities of transit may raise reasoned objections to the planned shipment based on the second, third and fourth indents of (a).

5. If within the time limit laid down in paragraph 2 the competent authorities are satisfied that the problems giving rise to their objections have been solved and that the conditions in respect of the transport will be met, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

If there is subsequently any essential change in the conditions of the shipment, a new notification must be made.

6. In case of prior written consent, the competent authority shall signify its authorization by appropriately stamping the consignment note.

#### Article 8

1. The shipment may be effected after the 30-day period has passed if no objection has been lodged. Tacit consent, however, expires within one year from that date.

Where the competent authorities decide to provide written consent, the shipment may be effected immediately after all necessary consents have been received.

2. The notifier shall insert the date of shipment and otherwise complete the consignment note and send copies to the competent authorities concerned three working days before the shipment is made.

3. A copy or, if requested by the competent authorities, a specimen of the consignment note shall accompany each shipment.

4. All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

5. Within three working days following receipt of the waste for recovery, the consignee shall send copies of the completed consignment note, except for the certificate referred to in paragraph 6, to the notifier and to the competent authorities concerned.

6. As soon as possible and not later than 180 days following receipt of the waste the consignee, under his responsibility, shall send a certificate of recovery of the waste to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.

#### Article 9

1. The competent authorities having jurisdiction over specific recovery facilities may decide, notwithstanding Article 7, that they will not raise objections concerning shipments of certain types of waste to a specific recovery facility. Such decisions may be limited to a specific period of time; however, they may be revoked at any time.

2. Competent authorities which select this option shall inform the Commission of the recovery facility name, address, technologies employed, waste types to which the decision applies and the period covered. Any revocations must also be notified to the Commission.

The Commission shall send this information without delay to the other competent authorities concerned in the Community and to the OECD Secretariat.

3. All intended shipments to such facilities shall require notification to the competent authorities concerned, in accordance with Article 6. Such notification shall arrive prior to the time the shipment is dispatched.

The competent authorities of the Member States of dispatch and transit may raise objections to any such shipment, based on Article 7 (4), or impose conditions in respect of the transport.

4. In instances where competent authorities acting under terms of their domestic laws are required to review the contract referred to in Article 6 (6), these authorities shall so inform the Commission. In such cases, the notification plus the contracts or portions thereof to be reviewed must arrive seven days prior to the time the shipment is dispatched in order that such review may be appropriately performed.

5. For the actual shipment, Article 8 (2) to (6) shall apply.

#### *Article 10*

Shipments of waste for recovery listed in Annex IV and of waste for recovery which has not yet been assigned to Annex II, Annex III or Annex IV shall be subject to the same procedures as referred to in Articles 6 to 8 except that the consent of the competent authorities concerned must be provided in writing prior to commencement of shipment.

#### *Article 11*

1. In order to assist the tracking of shipments of waste for recovery listed in Annex II, they shall be accompanied by the following information, signed by the holder :

- (a) the name and address of the holder ;
- (b) the usual commercial description of the waste ;
- (c) the quantity of the waste ;
- (d) the name and address of the consignee ;
- (e) the operations involving recovery, as listed in Annex II.B to Directive 75/442/EEC ;
- (f) the anticipated date of shipment.

2. The information specified in paragraph 1 shall be treated confidentially in accordance with existing national regulations.

### Chapter C

#### Shipment of waste for disposal and recovery between Member States with transit via third States

#### *Article 12*

Without prejudice to Articles 3 to 10, where a shipment of waste takes place between Member States with transit via one or more third States,

(a) the notifier shall send a copy of the notification to the competent authority(ies) of the third State(s) ;

(b) the competent authority of destination shall ask the competent authority in the third State(s) whether it wishes to send its written consent to the planned shipment :

- in the case of parties to the Basle Convention, within 60 days, unless it has waived this right in accordance with the terms of that Convention, or
- in the case of countries not parties to the Basle Convention, within a period agreed between the competent authorities.

In both cases the competent authority of destination shall, where appropriate, wait for consent before giving its authorization.

### TITLE III

#### SHIPMENTS OF WASTE WITHIN MEMBER STATES

#### *Article 13*

1. Titles II, VII and VIII shall not apply to shipments within a Member State.

2. Member States shall, however, establish an appropriate system for the supervision and control of shipments of waste within their jurisdiction. This system should take account of the need for coherence with the Community system established by this Regulation.

3. Member States shall inform the Commission of their system for the supervision and control of shipments of waste. The Commission shall inform the other Member States thereof.

4. Member States may apply the system provided for in Titles II, VII and VIII within their jurisdiction.

### TITLE IV

#### EXPORTS OF WASTE

#### Chapter A

#### Waste for disposal

#### *Article 14*

1. All exports of waste for disposal shall be prohibited, except those to EFTA countries which are also parties to the Basle Convention.



2. However, without prejudice to Articles 25 (2), and 26 (2), exports of waste for disposal to an EFTA country shall also be banned:

- (a) where the EFTA country of destination prohibits imports of such wastes or where it has not given its written consent to the specific import of this waste;
- (b) if the competent authority of dispatch in the Community has reason to believe that the waste will not be managed in accordance with environmentally sound methods in the EFTA country of destination concerned.

3. The competent authority of dispatch shall require that any waste for disposal authorized for export to EFTA countries be managed in an environmentally sound manner throughout the period of shipment and in the State of destination.

#### Article 15

1. The notifier shall send the notification to the competent authority of dispatch by means of the consignment note in accordance with Article 3 (5), with copies to the other competent authorities concerned and to the consignee. The consignment note shall be issued by the competent authority of dispatch.

On receipt of the notification, the competent authority of dispatch shall within three working days send the notifier a written acknowledgement of the notification, with copies to the other competent authorities concerned.

2. The competent authority of dispatch shall have 70 days following dispatch of the acknowledgement to take its decision authorizing the shipment, with or without conditions, or refusing it. It may also request additional information.

It shall give its authorization only in the absence of objections on its part or on the part of the other competent authorities and if it has received from the notifier the copies referred to in paragraph 4. The authorization shall, where applicable, be subject to any transport conditions referred to in paragraph 5.

The competent authority of dispatch shall take its decision no earlier than 61 days following the dispatch of the acknowledgement.

It may, however, take its decision earlier if it has the written consent of the other competent authorities.

It shall send a certified copy of the decision to the other competent authorities concerned, to the customs office of departure from the Community and to the consignee.

3. The competent authorities of dispatch and transit in the Community may, within 60 days following the

dispatch of the acknowledgement, raise objections based on Article 4 (3). They may also request additional information. Any objection must be provided in writing to the notifier, with copies to the other competent authorities concerned.

4. The notifier shall provide to the competent authority of dispatch a copy of:

- (a) the written consent of the EFTA country of destination to the planned shipment;
- (b) the confirmation from the EFTA country of destination of the existence of a contract between the notifier and the consignee specifying environmentally sound management of the waste in question; a copy of the contract must be supplied, if requested.

The contract shall also specify that the consignee be required to provide:

- within three working days following the receipt of the waste for disposal, copies of the fully completed consignment note, except for the certification referred to in the second indent, to the notifier and to the competent authority concerned,
- as soon as possible and not later than 180 days following the receipt of the waste, a certificate of disposal under his responsibility to the notifier and to the competent authority concerned. The form of this certificate shall be part of the consignment note which accompanies the shipment.

The contract shall, in addition, stipulate that if a consignee issues an incorrect certificate with the consequence that the financial guarantee is released he shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and its disposal in an alternative and environmentally sound manner;

- (c) written consent to the planned shipment from the other State(s) of transit, unless this (these) State(s) is (are) a Party (Parties) to the Basle Convention and has (have) waived this in accordance with the terms of that Convention.

5. The competent authorities of transit in the Community shall have 60 days following the dispatch of the acknowledgement in which to lay down conditions in respect of the shipments of waste in their area of jurisdiction.

These conditions, which shall be forwarded to the notifier, with copies to the other competent authorities concerned, may not be more stringent than those laid down in respect of similar shipments effected wholly within the area of jurisdiction of the competent authority in question.

6. The competent authority of dispatch shall signify its authorization by appropriately stamping the consignment note.

7. The shipment may be effected only after the notifier has received authorization from the competent authority of dispatch.

8. Once the notifier has received authorization, he shall insert the date of shipment and otherwise complete the consignment note and send copies to the competent authorities concerned three working days before the shipment is made. A copy or, if requested by the competent authorities, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

A specimen of the consignment note shall be delivered by the carrier to the last customs office of departure when the waste leaves the Community.

9. As soon as the waste has left the Community, the customs office of departure shall send a copy of the consignment note to the competent authority which issued the authorization.

10. If, 42 days after the waste has left the Community, the competent authority which gave the authorization has received no information from the consignee about his receipt of the waste, it shall inform without delay the competent authority of destination.

It shall take action in a similar way if, 180 days after the waste has left the Community, the competent authority which gave the authorization has not received from the consignee the certificate of disposal referred to in paragraph 4.

11. A competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier, with copies to the consignee and the competent authority of transit.

The competent authority of dispatch may decide to proceed with any notification if it has itself immediate objections to raise against the shipment in accordance with Article 4 (3). It shall immediately inform the notifier of these objections.

12. The information given in paragraphs 1 to 4 shall be treated confidentially in accordance with existing national regulations.

## Chapter B

### Waste for recovery

#### Article 16

1. All exports of waste for recovery shall be prohibited except those to :

- (a) countries to which the OECD decision applies ;
- (b) other countries :

- which are Parties to the Basle Convention and/or with which the Community, or the Community and its Member States, have concluded bilateral or multilateral or regional agreements or arrangements in accordance with Article 11 of the Basle Convention and paragraph 2, or

- with which individual Member States have concluded bilateral agreements and arrangements prior to the date of application of this Regulation, in so far as these are compatible with Community legislation and in accordance with Article 11 of the Basle Convention and paragraph 2. These agreements and arrangements shall be notified to the Commission within three months of the date of application of this Regulation or of their date of application, whichever is the earlier, and shall expire when agreements or arrangements are concluded in accordance with the first indent.

2. The agreements and arrangements referred to in paragraph 1 (b) shall guarantee an environmentally sound management of the waste in accordance with Article 11 of the Basle Convention and shall, in particular :

- (a) guarantee that the recovery operation is carried out in an authorized centre which complies with the requirements for environmentally sound management ;
- (b) fix the conditions for the treatment of the non-recoverable components of the waste and, if appropriate, oblige the notifier to take them back ;
- (c) enable, if appropriate, the examination of the compliance of the agreements on the spot in agreement with the countries concerned ;
- (d) be subject to periodic review by the Commission and for the first time not later than 31 December 1996, taking into account the experience gained and the ability of the countries concerned to carry out recovery activities in a manner which provides full guarantees of environmentally sound management. The Commission shall inform the European Parliament and the Council about the results of this review. If such a review leads to the conclusion that environmental guarantees are insufficient, the continuation of waste exports under such terms shall, on a proposal from the Commission, be reconsidered, including the possibility of a ban.

3. However, without prejudice to Article 25 (2) and 26 (2), exports of waste for recovery to the countries referred to in paragraph 1 shall be prohibited :

- (a) where such a country prohibits all imports of such wastes or where it has not given its consent to their specific import ;
- (b) if the competent authority of dispatch has reason to believe that the waste will not be managed in accordance with environmentally sound methods in such a country.

4. The competent authority of dispatch shall require that any waste for recovery authorized for export be managed in an environmentally sound manner throughout the period of shipment and in the State of destination.

#### Article 17

1. In respect of waste listed in Annex II, the Commission shall notify prior to the date of application of this Regulation to every country to which the OECD Decision does not apply the list of waste included in that Annex and request written confirmation that such waste is not subject to control in the country of destination and that the latter will accept categories of such waste to be shipped without recourse to the control procedures which apply to Annex III or IV or that it indicate where such waste should be subject to either those procedures or the procedure laid down in Article 15.

If such confirmation is not received six months before the date of application of this Regulation, the Commission shall make appropriate proposals to the Council.

2. Where waste listed in Annex II is exported, it shall be destined for recovery operations within a facility which under applicable domestic law is operating or is authorized to operate in the importing country. Furthermore, a surveillance system based on prior automatic export licensing shall be established in cases to be determined in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

Such a system shall in each case provide that a copy of the export licence be forwarded without delay to the authorities of the country in question.

3. Where such waste is subject to control in the country of destination or upon request of such a country in accordance with paragraph 1 or where a country of destination has notified under Article 3 of the Basle Convention that it regards certain kinds of waste listed in Annex II as hazardous, exports of such waste to that

country shall be subjected to control. The Member State of export or the Commission shall notify all such cases to the committee established pursuant to Article 18 of Directive 75/442/EEC ; the Commission shall determine in consultation with the country of destination which of the control procedures shall apply, that is those applicable to Annex III or IV or the procedure laid down in Article 15.

4. Where waste listed in Annex III is exported from the Community for recovery to countries and through countries to which the OECD Decision applies, Articles 6, 7, 8 and 9 (1), (3), (4) and (5) shall apply, the provisions concerning the competent authorities of dispatch and transit applying only to the competent authorities in the Community.

5. In addition, the competent authorities of the exporting and Community-transit countries shall be informed of the decision referred to in Article 9.

6. Where the waste for recovery listed in Annex IV and waste for recovery which has not yet been assigned to Annex II, III or IV is exported for recovery to countries and through countries to which the OECD Decision applies, Article 10 shall apply by analogy.

7. In addition, where waste is exported in accordance with paragraphs 4 to 6 :

- a specimen of the consignment note shall be delivered by the carrier to the last customs office of departure when the waste leaves the Community,
- as soon as the waste has left the Community, the customs office of departure shall send a copy of the consignment note to the competent authority of export,
- if, 42 days after the waste has left the Community, the competent authority of export has received no information from the consignee about this receipt of the waste, it shall inform without delay the competent authority of destination,
- the contract shall stipulate that, if a consignee issues an incorrect certificate with the consequence that the financial guarantee is released, he shall bear the costs arising from the duty to return the waste to the area of jurisdiction of the competent authority of dispatch and its disposal or recovery in an alternative and environmentally sound manner.

8. Where waste for recovery listed in Annex III and IV and waste for recovery which has not yet been assigned to Annex II, III or IV is exported to and through countries to which the O D Decision does not apply :

- Article 15, except for paragraph 3, shall apply by analogy,
- reasoned objections may be raised in accordance with Article 7 (4) only,

save as otherwise provided for in bilateral or multilateral agreements entered into in accordance with Article 16 (1) (b) and on the basis of the control procedure of either paragraph 4 or 6 of this Article or Article 15.

## Chapter C

### Export of waste to ACP States

#### Article 18

1. All exports of waste to ACP States shall be prohibited.
2. This prohibition does not prevent a Member State to which an ACP State has chosen to export waste for processing from returning the processed waste to the ACP State of origin.
3. In case of re-export to ACP States, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

## TITLE V

### IMPORTS OF WASTE INTO THE COMMUNITY

#### Chapter A

#### Imports of waste for disposal

##### Article 19

1. All imports into the Community of waste for disposal shall be prohibited except those from :
  - (a) EFTA countries which are Parties to the Basle Convention ;
  - (b) other countries :
    - which are Parties to the Basle Convention, or
    - with which the Community, or the Community and its Member States, have concluded bilateral or multilateral agreements or arrangements compatible with Community legislation and in accordance with Article 11 of the Basle Convention guaranteeing that the disposal operations carried out in an authorized centre and complies with the requirements for environmentally sound management, or

- with which individual Member States have concluded bilateral agreements or arrangements prior to the date of application of this Regulation, compatible with Community legislation and in accordance with Article 11 of the Basle Convention, containing the same guarantees as referred to above and guaranteeing that the waste originated in the country of dispatch and that disposal will be carried out exclusively in the Member State which has concluded the agreement or arrangement. These agreements or arrangements shall be notified to the Commission with in three months of the date of application of the Regulation or of their date of application, whichever is the earlier, and shall expire when agreements or arrangements are concluded in accordance with the second indent, or
- with which individual Member States conclude bilateral agreements or arrangements after the date of application of this Regulation in the circumstances of paragraph 2.

2. The Council hereby authorizes individual Member States to conclude bilateral agreements and arrangements after the date of application of this Regulation in exceptional cases for the disposal of specific waste, where such waste will not be managed in an environmentally sound manner in the country of dispatch. These agreements and arrangements shall comply with the conditions set out in paragraph 1 (b), third indent and shall be notified to the Commission prior to their conclusion.

3. The countries referred to in paragraph 1 (b) shall be required to present a duly motivated request beforehand to the competent authority of the Member State of destination on the basis that they do not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner.

4. The competent authority of destination shall prohibit the bringing of waste into its area of jurisdiction if it has reason to believe that the waste will not be managed in an environmentally sound manner in its area.

##### Article 20

1. Notification shall be made to the competent authority of destinations by means of the consignment note in accordance with Article 3 (5) with copies to the consignee of the waste and to the competent authorities of transit. The consignment note shall be issued by the competent authority of destination.

On receipt of the notification, the competent authority of destination shall, within three working days, send a written acknowledgement of the notifier, with copies to the competent authorities of transit in the Community.

2. The competent authority of destination shall authorize the shipment only in the absence of objections on its part or from the other competent authorities concerned. The authorization shall be subject to any transport conditions referred to in paragraph 5.

3. The competent authorities of destination and transit in the Community may, within 60 days of dispatch of the copy of the acknowledgement, raise objections based on Article 4 (3).

They may also request additional information. These objections shall be conveyed in writing to the notifier, with copies to the other competent authorities concerned in the Community;

4. The competent authority of destination shall have 70 days following dispatch of the acknowledgement to take its decision authorizing the shipment, with or without conditions, or refusing it. It may also request additional information.

It shall send certified copies of the decision to the competent authorities of transit in the Community, the consignee and the customs office of entry into the Community.

The competent authority of destination shall take its decision no earlier than 61 days following the dispatch of the acknowledgement. It may, however, take its decision earlier if it has the written consent of the other competent authorities.

The competent authority of destination shall signify its authorization by appropriately stamping the consignment note.

5. The competent authority of destination and transit in the Community shall have 60 days following dispatch of the acknowledgement to lay down conditions in respect of the shipment of the waste. These conditions, which must be conveyed to the notifier, with copies to the competent authorities concerned, may not be more stringent than those laid down in respect of similar shipments occurring wholly within the jurisdiction of the competent authority in question.

6. The shipment may be effected only after the notifier has received authorization from the competent authority of destination.

7. Once the notifier has received authorization, he shall insert the date of the shipment and otherwise complete the consignment note and send copies to the competent authorities concerned three working days before the shipment is made. A specimen of the consignment note shall be delivered by the carrier to the customs office of entry into the Community.

A copy or, if requested by the competent authorities, a specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy.

8. Within three working days following receipt of the waste for disposal, the consignee shall send copies of the completed consignment note, except for the certificate referred to in paragraph 9, to the notifier and the competent authorities concerned;

9. As soon as possible and not later than 180 days following the receipt of the waste, the consignee shall, under his responsibility, send a certificate of disposal to the notifier and the other competent authorities concerned. This certificate shall be part of or attached to the consignment note which accompanies the shipment.

## Chapter B

### Imports of waste for recovery

#### Article 21

1. All imports of waste for recovery into the Community shall be prohibited, except those from:

(a) countries to which the OECD decision applies;

(b) other countries:

— which are Parties to the Basle Convention and/or with which the Community, or the Community and its Member States, have concluded bilateral or multilateral or regional agreements or arrangements compatible with Community legislation and in accordance with Article 11 of the Basle Convention, guaranteeing that the recovery operation is carried out in an authorized centre and complies with the requirements for environmentally sound management, or

— with which individual Member States have concluded bilateral agreements or arrangements prior to the date of application of this Regulation, where these are compatible with Community legislation and in accordance with Article 11 of the Basle Convention, containing the same guarantees as referred to above. These agreements or arrangements shall be notified to the Commission within three months of the date of application of this Regulation or of their date of application, whichever is the earlier, and shall expire when agreements or arrangements are concluded in accordance with the first indent, or

— with which individual Member States conclude bilateral agreements or arrangements after the date of application of this Regulation in the circumstances of paragraph 2.

2. The Council hereby authorizes individual Member States to conclude after the date of applications of this Regulation bilateral agreements and arrangements in exceptional cases for the recovery of specific waste, where a Member State deems such agreements or arrangements necessary to avoid any interruption of waste treatment before the Community has concluded those agreements and arrangements. Such agreements and arrangements shall also be compatible with Community legislation and in accordance with Article 11 of the Basle Convention; they shall be notified to the Commission prior to their conclusion and shall expire when agreements or arrangements are concluded in accordance with paragraph 1 (b), first indent.

#### Article 22

1. Where waste is imported for recovery from countries and through countries to which the OECD Decision applies, the following control procedures shall apply by analogy:

- (a) for waste listed in Annex III: Articles 6, 7, 8, 9 (1), (3), (4) and (5), and 17 (5);
- (b) for waste listed in Annex IV and waste which has not yet been assigned to Annex II, III or IV: Article 10.

2. Where waste for recovery listed in Annexes III and IV and waste which has not yet been assigned to Annex II, III or IV is imported from and through countries to the OECD Decision does not apply:

- Article 20 shall apply by analogy,
- reasoned objections may be raised in accordance with Article 7 (4) only,

save as otherwise provided for the bilateral or multilateral agreements entered into in accordance with Article 21 (1) (b) and on the basis of the control procedures of either paragraph 1 of this Article or Article 20.

#### TITLE VI

### TRANSIT OF WASTE FROM OUTSIDE AND THROUGH THE COMMUNITY FOR DISPOSAL OR RECOVERY OUTSIDE THE COMMUNITY

#### Chapter A

**Waste for disposal and recovery (except transit covered by Article 24)**

#### Article 23

1. Where waste for disposal and, except in cases covered by Article 24, recovery is shipped through (a) Member State(s), notification shall be effected by means of the consignment note to the last competent authority of transit within the Community, with copies to the consignee, the other competent authorities concerned and the customs offices of entry into and departure from the Community.

2. The last competent authority of transit within the Community shall promptly inform the notifier of receipt of the notification. The other competent authorities in the Community shall, on the basis of paragraph 5, convey their reactions to the last competent authority of transit in the Community, which shall then respond in writing to the notifier within 60 days, consenting to the shipment with or without reservations; or imposing, if appropriate, conditions laid down by the other competent authorities of transit, or withholding information. Any refusal or reservations must be justified. The competent authority shall send a certified copy of the decision to both the other competent authorities concerned and the customs offices of entry into and departure from the Community.

3. Without prejudice to Articles 25 (2) and 26 (2), the shipment shall be admitted into the Community only if the notifier has received the written consent of the last competent authority of transit. This authority shall signify its consent by appropriately stamping the consignment note.

4. The competent authorities of transit within the Community shall have 20 days following notification to lay down, if appropriate, any conditions attached to the transport of the waste.

These conditions, which must be conveyed to the notifier, with copies to the competent authorities concerned, may not be more stringent than those laid down in respect of similar shipments occurring wholly within the jurisdiction of the competent authority in question.

5. The consignment note shall be issued by the last competent authority of transit within the Community.

6. Once the notifier has received authorization, he shall complete the consignment note and send copies to the competent authorities concerned three working days before the shipment is made.

A specimen of the consignment note, together with the stamp of authorization, shall accompany each shipment.

A specimen of the consignment note shall be supplied by the carrier to the customs office of departure when the waste leaves the Community.

All undertakings involved in the operation shall complete the consignment note at the points indicated, sign it and retain a copy thereof.

7. As soon as the waste has left the Community, the customs office of departure shall send a copy of the consignment note to the last competent authority of transit within the Community.

Furthermore, at the latest 42 days after the waste has left the Community, the notifier shall declare or certify to that competent authority, with copies to the other competent authorities of transit, that it has arrived at its intended destination.

## Chapter B

### Transit of waste for recovery from and to a country to which the OECD Decision applies

#### Article 24

1. Transit of waste for recovery listed in Annexes III and IV from a country and transferred for recovery to a country to which the OECD Decision applies through (a) Member State(s) requires notification to all competent authorities of transit of the Member State(s) concerned.

2. Notification shall be effected by means of the consignment note.

3. On receipt of the notification the competent authority(ies) of transit shall send an acknowledgement to the notifier and to the consignee within three working days.

4. This competent authority(ies) of transit may raise reasoned objections to the planned shipment based on Article 7 (4). Any objection must be provided in writing to the notifier and to the competent authorities of transit of the other Member States concerned within 30 days of dispatch of the acknowledgement.

5. The competent authority of transit may decide to provide written consent in less than 30 days.

In the case of transit of waste listed in Annex IV and waste which has not yet been assigned to Annex II, III or IV, consent must be given in writing prior to commencement of the shipment.

6. The shipment may be effected only in the absence of any objection.

## TITLE VII

### COMMON PROVISIONS

#### Article 25

1. Where a shipment of waste to which the competent authorities concerned have consented cannot be completed in accordance with the terms of the consignment note or the contract referred to in Articles 3 and 6, the competent authority of dispatch shall, within 90 days after it has been informed thereof, ensure that the notifier returns the waste to its area of jurisdiction or elsewhere within the State of dispatch unless it is satisfied that the waste can be disposed of or recovered in an alternative and environmentally sound manner.

2. In cases referred to in paragraph 1, a further notification shall be made. No Member State of dispatch or Member State of transit shall oppose the return of this waste at the duly motivated request of the competent authority of destination and with an explanation of the reason.

3. The obligation of the notifier and the subsidiary obligation of the State of dispatch to take the waste back shall end when the consignee has issued the certificate referred to in Articles 5 and 8.

#### Article 26

1. Any shipment of waste effected :

- (a) without notification to all competent authorities concerned pursuant to the provisions of this Regulation ; or
- (b) without the consent of the competent authorities concerned pursuant to the provisions of this Regulation ; or
- (c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud ; or
- (d) which is not specified in a material way in the consignment note ; or
- (e) which results in disposal or recovery in contravention of Community or international rules ; or
- (f) contrary to Articles 14, 16, 19 and 21

shall be deemed to be illegal traffic.

2. If such illegal traffic is the responsibility of the notifier of the waste, the competent authority of dispatch shall ensure that the waste in question is :

- (a) taken back by the notifier or, if necessary, by the competent authority itself, into the State of dispatch, or if impracticable ;
- (b) otherwise disposed of or recovered in an environmentally sound manner,

within 30 days from the time when the competent authority was informed of the illegal traffic or within such other period of time as may be agreed by the competent authorities concerned.

In this case a further notification shall be made. No Member State of dispatch or Member State of transit shall oppose the return of this waste at the duly motivated request of the competent authority of destination and with an explanation of the reason.

3. If such illegal traffic is the responsibility of the consignee, the competent authority of destination shall ensure that the waste in question is disposed of in an environmentally sound manner by the consignee or, if impracticable, by the competent authority itself within 30 days from the time it was informed of the illegal traffic or within any such other period of time as may be agreed by the competent authorities concerned. To this end, they shall cooperate, as necessary, in the disposal or recovery of the waste in an environmentally sound manner.

4. Where responsibility for the illegal traffic cannot be imputed to either the notifier or the consignee, the competent authorities shall cooperate to ensure that the waste in question is disposed of or recovered in an environmentally sound manner. Guidelines for this cooperation shall be established in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

5. Member States shall take appropriate legal action to prohibit and punish illegal traffic.

#### Article 27

1. All shipments of waste covered within the scope of this Regulation shall be subject to the provision of a financial guarantee or equivalent insurance covering costs for shipment, including cases referred to in Articles 25 and 26, and for disposal or recovery.

2. Such guarantees shall be returned when proof has been furnished, by means of:

- the certificate of disposal or recovery, that the waste has reached its destination and has been disposed of or recovered in an environmentally sound manner,
- Control copy T 5 drawn up pursuant to Commission Regulation (EEC) No 2823/87<sup>(1)</sup> that, in the case of transit through the Community, the waste has left the Community.

<sup>(1)</sup> OJ No L 270, 23. 9. 1987, p. 1.

3. Each Member State shall inform the Commission of the provision which it makes in national law pursuant to this Article. The Commission shall forward this information to all Member States.

#### Article 28

1. While respecting the obligations imposed on him by the applicable Articles 3, 6, 9, 15, 17, 20, 22, 23 and 24, the notifier may use a general notification procedure where waste for disposal or recovery having the same physical and chemical characteristics is shipped periodically to the same consignee following the same route. If, in the case of unforeseen circumstances, this route cannot be followed, the notifier shall inform the competent authorities concerned as soon as possible or before the shipment starts if the need for route modification is already known at this time.

Where the route modification is known before the shipment starts and this involves other competent authorities than those concerned in the general notification, this procedure shall not be used.

2. Under a general notification procedure, a single notification may cover several shipments of waste over a maximum period of one year. The indicated period may be shortened by agreement between the competent authorities concerned.

3. The competent authorities concerned shall make their agreement to the use of this general notification procedure subject to the subsequent supply of additional information. If the composition of the waste is not as notified or if the conditions imposed on its shipment are not respected, the competent authorities concerned shall withdraw their consent to this procedure by means of official notice to the notifier. Copies of this notice shall be sent to the other competent authorities concerned.

4. General notification shall be made by means of the consignment note.

#### Article 29

Wastes which are the subject of different notifications shall not be mixed during shipment.

#### Article 30

1. Member States shall take the measures needed to ensure that waste is shipped in accordance with the provisions of this Regulation. Such measures may include inspections of establishments and undertakings, in accordance with Article 13 of Directive 75/442/EEC, and spot checks of shipments.



2. Checks may take place in particular:
- at the point of origin, carried out with the producer, holder or notifier,
  - at the destination, carried out with the final consignee,
  - at the external frontiers of the Community,
  - during the shipment within the Community.
3. Checks may include the inspection of documents, the confirmation of identity and, if appropriate, the physical control of the waste.

#### Article 31

1. The consignment note shall be printed and completed and any further documentation and information referred to in Article 4 and 6 shall be supplied in a language which is acceptable to the competent authority of:

- dispatch, as referred to in Articles 3, 7, 15 and 17, in the case of both a shipment of waste within the Community and the export of waste,
- destination, as referred to in Articles 20 and 22, in the case of the import of waste,
- transit, as referred to in Articles 23 and 24.

A translation shall be supplied by the notifier at the request of the other competent authorities concerned in a language acceptable to them.

2. Further details may be determined in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.

### TITLE VIII

#### OTHER PROVISIONS

##### Article 32

The provisions of the international transport conventions listed in Annex I to which the Member States are parties shall be complied with in so far as they cover the waste to which this Regulation refers.

##### Article 33

1. Appropriate administrative costs of implementing the notification and supervision procedure and usual costs of appropriate analyses and inspections may be charged to the notifier.
2. Costs arising from the return of waste, including shipment, disposal or recovery of the waste in an alternative and environmentally sound manner pursuant to Articles 25 (1) and 26 (2), shall be charged to the notifier or, if impracticable, to the Member States concerned.
3. Costs arising from disposal or recovery in an alternative and environmentally sound manner pursuant to Article 26 (3) shall be charged to the consignee.

4. Costs arising from disposal or recovery, including possible shipment pursuant to Article 26 (4), shall be charged to the notifier and/or the consignee depending upon the decision by the competent authorities involved.

##### Article 34

1. Without prejudice to the provisions of Article 26 and to Community and national provisions concerning civil liability and irrespective of the point of disposal or recovery of the waste, the producer of that waste shall take all the necessary steps to dispose of or recover or to arrange for disposal or recovery of the waste so as to protect the quality of the environment in accordance with Directives 75/442/EEC and 91/689/EEC.

2. Member States shall take all necessary steps to ensure that the obligations laid down in paragraph 1 are carried out.

##### Article 35

All documents sent to or by the competent authorities shall be kept in the Community for at least three years by the competent authorities, the notifier and the consignee.

##### Article 36

Member States shall designate the competent authority or authorities for the implementation of this Regulation. A single competent authority of transit shall be designated by each Member State.

##### Article 37

1. Member States and the Commission shall each designate at least one correspondent responsible for informing or advising persons or undertakings who or which make enquiries. The Commission correspondent shall forward to the correspondents of the Member States any questions put to him which concern the latter, and *vice versa*.

2. The Commission shall, if requested by Member States or if otherwise appropriate, periodically hold a meeting of the correspondents to examine with them the questions raised by the implementation of this Regulation.

##### Article 38

1. Member States shall notify the Commission not later than three months before the date of application of this Regulation of the name(s), address(es) and telephone and telex/telefax number(s) of the competent authorities and of the correspondents, together with the stamp of the competent authorities.

Member States shall notify the Commission annually of any changes in this information.

2. The Commission shall send the information without delay to the other Member States and to the Secretariat of the Basle Convention.

The Commission shall furthermore send to Member States the waste management plans referred to in Article 7 of Directive 75/442/EEC.

#### Article 39

1. Member States may designate customs offices of entry into and departure from the Community for shipments of waste entering and leaving the Community and inform the Commission thereof.

The Commission shall publish the list of these offices in the *Official Journal of the European Communities* and, if appropriate, update this list.

2. If Member States decide to designate the custom offices referred to in paragraph 1, no shipment of waste shall be allowed to use any other frontier crossing points within a Member State for entering or leaving the Community.

#### Article 40

Member States, as appropriate and necessary in liaison with the Commission, shall cooperate with other parties to the Basle Convention and inter-State organizations directly or through the Secretariat of the Basle Convention, *inter alia*, via the exchange of information, the promotion of environmentally sound technologies and the development of appropriate codes of good practice.

#### Article 41

1. Before the end of each calendar year, Member States shall draw up a report in accordance with Article 13 (3) of the Basle Convention and send it to the Secretariat of the Basle Convention and a copy thereof to the Commission.

2. The Commission shall, based on these reports, establish every three years report on the implementation of this Regulation by the Community and its Member States. It may request to this end additional information in accordance with Article 6 of Directive 91/692/EEC<sup>(1)</sup>.

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

Done at Brussels, 1 February 1993.

For the Council

The President

N. HELVEG PETERSEN

#### Article 42

1. The Commission shall draw up not later than three months before the date of application of this Regulation and adapt if appropriate afterwards, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, the standard consignment note, including the form of the certificate of disposal and recovery (either integral to the consignment note or, meanwhile, attached to the existing consignment note under Directive 84/631/EEC) taking account in particular of:

- the relevant Articles of this Regulation,
- the relevant international Conventions and agreements.

2. The existing form of the consignment note shall apply by analogy until the new consignment note has been drawn up. The form of the certificate of disposal and recovery to be attached to the existing consignment note shall be drawn up as soon as possible.

3. Without prejudice to the procedure laid down in Article 1 (3) (c) and (d) regarding Annex II.A, Annexes II, III and IV shall be adapted by the Commission in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC only to reflect changes already agreed under the review mechanism of the OECD.

4. The procedure referred to in paragraph 1 shall apply also to define environmentally sound management, taking into account the relevant international conventions and agreements.

#### Article 43

Directive 84/631/EEC is hereby repealed with effect from the date of application of this Regulation. Any shipment pursuant to Articles 4 and 5 of that Directive shall be completed not later than six months from the date of application of this Regulation.

#### Article 44

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

It shall apply 15 months after publication.

<sup>(1)</sup> OJ No L 377, 31. 12. 1991, p. 48.

*ANNEX I***LIST OF INTERNATIONAL TRANSPORT CONVENTIONS REFERRED TO IN ARTICLE 32 (1)****1. ADR :**

European Agreement concerning the international carriage of dangerous goods by road (1957).

**2. Cotif :**

Convention concerning the international carriage of dangerous goods by rail (1985).

**RID :**

Regulation on the international carriage by rail of dangerous goods (1985).

**3. Solas Convention :**

International Convention for the safety of life at sea (1974).

**4. IMDG Code (2) :**

International maritime dangerous goods code.

**5. Chicago Convention :**

Convention on international civil aviation (1944), Annex 18 to which deals with the carriage of dangerous goods by air (TI: Technical instructions for the safe transport of dangerous goods by air).

**6. Marpol Convention :**

International Convention for the prevention of pollution from ships (1973 to 1978).

**7. ADNR :**

Regulations of the carriage of dangerous substances on the Rhine (1970).

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(1) This list contains those Conventions in force at the time of adoption of this Regulation.

(2) Since 1 January 1985, the IMDG code has been incorporated in the Solas Convention.

## ANNEX II

## GREEN LIST OF WASTES (\*)

## A. METAL AND METAL-ALLOY WASTES IN METALLIC, NON DISPERSIBLE FORM (\*\*)

The following waste and scrap of precious metals and their alloys :

- 7112 10 — Of gold
- 7112 20 — Of platinum (the expression 'platinum' includes platinum, iridium, osmium, palladium, rhodium and ruthenium)
- 7112 90 — Of other precious metal, e.g., silver

NB: 1. Mercury is specifically excluded as a component of these metals.

2. Electrical assemblies wastes and electronic scrap shall consist only of metals or alloys

3. Electrical scrap (meeting specifications laid down by the Review Mechanism).

The following ferrous waste and scrap; remelting scrap ingots of iron or steel :

- 7204 10 — Waste and scrap of cast iron
- 7204 21 — Waste and scrap of stainless steel
- 7204 29 — Waste and scrap of other alloy steels
- 7204 30 — Waste and scrap of tinned iron or steel
- 7204 41 — Turnings, shavings, chips, milling waste, filings, trimmings and stampings, whether or not in bundles
- 7204 49 — Other ferrous waste and scrap
- 7204 50 — Remelting scrap ingots
- ex 7302 10 — Used iron and steel rails

The following waste and scrap of non-ferrous metals and their alloys :

- 7404 00 — Copper waste and scrap
- 7503 00 — Nickel waste and scrap
- 7602 00 — Aluminium waste and scrap
- ex 7802 00 — Lead waste and scrap
- 7902 00 — Zinc waste and scrap
- 8002 00 — Tin waste and scrap
- ex 8101 91 — Tungsten waste and scrap
- ex 8102 91 — Molybdenum waste and scrap
- ex 8103 10 — Tantalum waste and scrap
- 8104 20 — Magnesium waste and scrap
- ex 8105 10 — Cobalt waste and scrap
- ex 8106 00 — Bismuth waste and scrap
- ex 8107 10 — Cadmium waste and scrap
- ex 8108 10 — Titanium waste and scrap
- ex 8109 10 — Zirconium waste and scrap
- ex 8110 00 — Antimony waste and scrap
- ex 8111 00 — Manganese waste and scrap
- ex 8112 11 — Beryllium waste and scrap
- ex 8112 20 — Chromium waste and scrap
- ex 8112 30 — Germanium waste and scrap
- ex 8112 40 — Vanadium waste and scrap

(\*) The indicative 'ex' identifies a specific item contained within the harmonized customs code heading.

(\*\*) 'Non-dispersible' does not include any wastes in the form of powder, sludge, dust or solid items containing encased hazardous waste liquids.

- ex 8112 91 Wastes and scrap of :
  - Hafnium
  - Indium
  - Niobium
  - Phenium
  - Gallium
  - Thallium
- ex 2805 30 Thorium and rare earths waste and scrap
- ex 2804 90 Selenium waste and scrap
- ex 2804 50 Tellurium waste and scrap

#### B. OTHER METAL BEARING WASTES ARISING FROM MELTING, SMELTING AND REFINING OF METALS

- 2620 11 Hard zinc spelter
  - Zinc containing drosses :
    - Galvanizing slab zinc top dross (> 90 % Zn)
    - Galvanizing slab zinc bottom dross (> 92 % Zn)
    - Zinc die cast dross (> 85 % Zn)
    - Hot dip galvanizers slab zinc dross (batch) (> 92 % Zn)
    - Zinc skimmings
  - Aluminium skimmings
- ex 2620 90 Slags from precious metals and copper processing for further refining

#### C. WASTES FROM MINING OPERATIONS : THESE WASTES TO BE IN NON-DISPERSIBLE FORM

- ex 2504 90 Natural graphite waste
- ex 2514 00 Slate waste, whether or not roughly trimmed or merely cut, by sawing or otherwise
- 2525 30 Mica waste
- ex 2529 21 Feldspar ; leucite ; nepheline and nepheline syenite ; fluorspar — containing by weight 97 % or less of calcium fluoride
- ex 2804 61 Silica wastes in solid form excluding those used in foundry operations
- ex 2804 69

#### D. SOLID PLASTIC WASTES

Including, but not limited to :

- 3915 Waste, parings and scrap of plastics :
  - 3915 10 — Of polymers of ethylene
  - 3915 20 — Of polymers of styrene
  - 3915 30 — Of polymers of vinyl chloride
  - 3915 90 Polymerized or co-polymerized :
    - Polypropylene
    - Polyethylene terephthalate
    - Acrylonitrile copolymer
    - Butadiene copolymer
    - Styrene copolymer
    - Polyamides
    - Polybutylene terephthalates
    - Polycarbonates
    - Polyphenylene sulphides
    - Acrylic polymers
    - Paraffins (C10-C13)
    - Polyurethane (not containing chlorofluorocarbons)

- Polysilozalanes (silicones)
  - Polymethyl methacrylate
  - Polyvinyl alcohol
  - Polyvinyl butyral
  - Polyvinyl acetate
  - Fluorinated polytetrafluoroethylene (Teflon, PTFE)
- 3915 90 Resins or condensation products of :
- Urea formaldehyde resins
  - Phenol formaldehyde resins
  - Melamine formaldehyde resins
  - Epoxy resins
  - Alkyd resins
  - Polyamides

#### E. PAPER, PAPERBOARD AND PAPER PRODUCT WASTES

- 4707 00 Waste and scrap of paper or paperboard :
- 4707 10 — Of unbleached kraft paper or paperboard or of corrugated paper or paperboard
- 4707 20 — Of other paper or paperboard, made mainly of bleached chemical pulp, not colored in the mass
- 4707 30 — Of paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)
- 4707 90 — Other, including but not limited to :
1. Laminated paperboard
  2. Unsorted waste and scrap

#### F. GLASS WASTE IN NON-DISPERSIBLE FORM

- ex 7001 00 Cullet and other waste and scrap of glass except for glass from cathode-ray tubes and other activated glasses
- Fibre glass wastes

#### G. CERAMIC WASTES IN NON-DISPERSIBLE FORM

- ex 6900 00 Wastes of ceramic which have been fired after shaping, including ceramic vessels
- ex 8113 00 Cermets waste and scrap
- Ceramic based fibres not otherwise listed

#### H. TEXTILE WASTES

- 5003 Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock) :
- 5003 10 — Not carded or combed
- 5003 90 — Other
- 5103 Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock :
- 5103 10 — Noils of wool or of fine animal hair
- 5103 20 — Other waste of wool or of fine animal hair
- 5103 30 — Waste of coarse animal hair
- 5202 Cotton waste (including yarn waste and garnetted stock) :
- 5202 10 — Yarn waste (including thread waste)
- 5202 91 — Garnetted stock
- 5202 99 — Other
- 5301 30 Flax tow and waste
- ex 5302 90 Tow and waste (including yarn waste and garnetted stock) of true hemp (*Cannabis sativa* L)
- ex 5303 90 Tow and waste (including yarn waste and garnetted stock) of jute and other textile bast fibres (excluding flax, true hemp and ramie)
- ex 5304 90 Tow and waste (including yarn waste and garnetted stock) of sisal and other textile fibres of the genus *Agave*
- ex 5305 19 Tow, noils and waste (including yarn waste and garnetted stock) of coconut
- ex 5305 29 Tow, noils and waste (including yarn waste and garnetted stock) of abaca (*Musa textilis* Nees)

- ex 5305 99 Tow, noils and waste (including yarn waste and garnetted stock) of ramie and other vegetable textile fibres, not elsewhere specified or included
- 5505 Waste (including noils, yarn waste and garnetted stock) of man-made fibres :
- 5505 10 — Of synthetic fibres
- 5505 20 — Of artificial fibres
- 6309 00 Worn clothing and other worn textile articles
- 6310 Used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile materials :
- 6310 10 — Sorted
- 6310 90 — Other

#### I. RUBBER WASTES

- 4004 00 Waste, parings and scrap of rubber (other than hard rubber) and granules obtained therefrom
- 4012 20 Used pneumatic tyres
- ex 4017 00 Waste and scrap of hard rubber (for example, ebonite)

#### J. UNTREATED CORK AND WOOD WASTES

- 4401 30 Wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- 4501 90 Cork waste ; crushed, granulated or ground cork

#### K. WASTES ARISING FROM AGRO-FOOD INDUSTRIES

- 2301 00 Dried, sterilized and stabilized flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption but fit for animal feed or other purposes ; greaves
- 2302 00 Bran, sharps and other residues, whether or not in the form of pellets derived from the shifting, milling or other working of cereals or of leguminous plants
- 2303 00 Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets
- 2304 00 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil, used for animal feed
- 2305 00 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of ground-nut (peanut) oil, used for animal feed
- 2306 00 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable oil, used for animal feed
- ex 2307 00 Wine lees
- ex 2308 00 Dried and sterilized vegetable waste, residues and byproducts, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included
- 1522 00 Degras ; residues resulting from the treatment of fatty substances or animal or vegetable waxes
- 1807 00 Cocoa shells, husks, skins and other cocoa waste

#### L. WASTES ARISING FROM TANNING AND FELLMONGERY OPERATIONS AND LEATHER USE

- 0502 00 Waste of pigs', hogs' or boars' bristles and hair or of badger hair and other brush-making hair
- 0503 00 Horsehair waste, whether or not put up as a layer with or without supporting material
- 0505 90 Waste of skins and other parts of birds, with their feathers or down, of feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation
- 0506 90 Waste of bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinized
- 4110 00 Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles, excluding leather sludges

**M. OTHER WASTES**

- 8908 00 Vessels and other floating structures for breaking up, properly emptied of any cargo which may have been classified as a dangerous substance or waste  
Motor vehicle wrecks, drained of liquids
- 0501 00 Waste of human hair
- ex 0511 91 Fish waste  
Anode butts of petroleum coke and/or bitumen  
Flue gas desulphurisation (FGD) gypsum  
Waste gypsum wallboard or plasterboard arising from the demolition of buildings
- ex 2621 Coal fired power station fly ash, bottom ash and slag tap (\*)  
Waste straw  
Broken concrete  
Spent catalysts:  
— Fluid catalytic cracking (FCC) catalysts  
— Precious metal bearing catalysts  
— Transition metal catalysts  
Deactivated fungus mycelium from penicillin production to be used as animal feed
- 2618 00 Granulated slag arising from the manufacture of iron and steel
- ex 2619 00 Slag arising from the manufacture of iron or steel (\*\*)
- 3103 20 Basic slag arising from the manufacture of iron or steel for phosphate fertilizer and other use
- ex 2621 00 Slag from copper production, chemically stabilized, having a high iron content (above 20 %) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications
- ex 2621 00 Neutralized red mud from alumina production
- ex 2621 00 Spent activated carbon  
Sulphur in solid form
- ex 2836 50 Limestone from the production of calcium cyanamide (having a pH less than 9)  
Sodium, calcium potassium chlorides  
Waste photographic film base and waste photographic film not containing silver  
Single use cameras without batteries
- ex 2818 10 Carborundum

(\*) Must be subject to certain specifications, these to be reviewed by the Review Mechanism.  
(\*\*) This entry covers the use of such slags as a source of titanium dioxide and vanadium.



## ANNEX III

## AMBER LIST OF WASTES (\*)

- ex 2619 00 Dross, scalings and other wastes from the manufacture of iron and steel (\*\*)
- 2620 19 Zinc ash and residues
- 2620 20 Lead ash and residues
- 2620 30 Copper ash and residues
- 2620 40 Aluminium ash and residues
- 2620 50 Vanadium ash and residues
- 2620 90 Ash and residue containing metals or metal compounds not specified elsewhere  
Residues from alumina production not specified elsewhere
- 2621 00 Other ash and residues, not specified elsewhere  
Residues arising from the combustion of municipal wastes
- 2713 90 Waste from the production/processing of petroleum coke and bitumen, excluding anode butts  
Lead-acid batteries, whole or crushed  
Waste oils unfit for their originally intended use  
Waste oils/water, hydrocarbons/water mixtures, emulsions  
Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish  
Wastes from production, formulation and use of resins, latex, plasticizers, glues and adhesives  
Wastes from production, formulation and use of reprographic and photographic chemicals and processing materials not otherwise listed  
Single use cameras with batteries  
Wastes from non-cyanide-based systems which arise from surface treatment of metals and plastics  
Asphalt cement wastes  
Phenols, phenol compounds including chlorophenol in the form of liquids or sludges  
Treated cork and wood wastes  
Used batteries or accumulators, whole or crushed, other than lead-acid batteries, and waste and scrap arising from the production of batteries and accumulators, not otherwise listed
- ex 3915 90 Nitrocellulose
- ex 7001 00 Glass from cathode-ray tubes and other activated glasses
- ex 4110 00 Leather dust, ash, sludges and flours
- ex 2529 21 Calcium fluoride sludge  
Other inorganic fluorine compounds in the form of liquids or sludges  
Zinc slags containing up to 18 weight percent zinc  
Galvanic sludges  
Liquors from the pickling of metals  
Sands used in foundry operations  
Thallium compounds  
Polychlorinated naphthalenes  
Ethers  
Precious metal bearing residues in solid form which contain traces of inorganic cyanides  
Hydrogen peroxide solutions  
Triethylamine catalyst for setting foundry sands

(\*) The indicative 'ex' identifies a specific item contained within the harmonized customs code heading.

(\*\*) This listing includes ash, residue, slag, dross, skimming, scaling, dust, sludge and cake, unless a material is expressly listed elsewhere.

- ex 2804 80 Arsenic waste and residue
- ex 2805 40 Mercury waste and residue
- Precious metal ash, sludge, dust and other residues such as :
- Ash from incineration of printed circuit boards
  - Film ash
- Waste catalysts not on the green list
- Leaching residues from zinc processing, dusts and sludges such as jarosite, hematite, goethite, etc.
- Waste hydrates of aluminium
- Waste alumina
- Wastes that contain, consist of or are contaminated with any of the following :
- Inorganic cyanides, excepting precious metal-bearing residues in solid form containing traces or inorganic cyanides
  - Organic cyanides
- Wastes of an explosible nature, when not subject to specific other legislation
- Wastes from the manufacture, formulation and use of wood preserving chemicals
- Leaded petrol (gasoline) sludges
- Used blasting grit
- Chlorofluorocarbons
- Halons
- Fluff — light fraction from metal shredding
- Thermal (heat transfer) fluids
- Hydraulic fluids
- Brake fluids
- Antifreeze fluids
- Ion exchange resins

**Wastes on the amber list which will be re-examined as a priority matter by the Review Mechanism of the OECD**

- Organic phosphorous compounds
- Non-halogenated solvents
- Halogenated solvents
- Halogenated or unhalogenated non-aqueous distillation residues arising from organic solvent recovery operations
- Liquid pig manure ; feces
- Sewage sludge
- Household wastes
- Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Wastes from the production and preparation of pharmaceutical products
- Acidic solutions
- Basic solutions
- Surface active agents (surfactants)
- Inorganic halide compounds, not specified elsewhere
- Wastes from industrial pollution control devices for cleaning of industrial off-gases, not specified elsewhere
- Gypsum arising from chemical industry processes

*ANNEX IV***RED LIST OF WASTES**

**Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB) and/or polychlorinated terphenyl (PCT) and/or polybrominated biphenyl (PBB), including any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more**

**Wastes that contain, consist of or are contaminated with any of the following :**

- Any congener of polychlorinated dibenzo-furan
- Any congener of polychlorinated dibenzo-dioxin

**Asbestos (dusts and fibres)**

**Ceramic based fibres similar to those of asbestos**

**Leaded anti-knock compound sludges**

**Wastes on the red list which will be re-examined as a priority matter by the Review Mechanism of the OECD**

**Waste tarry residues (excluding asphalt cements) arising from refining, distillation and any pyrolytic treatment**

**Peroxides other than hydrogen peroxide**

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## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE 93/36/EEC

of 14 June 1993

coordinating procedures for the award of public supply contracts

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard of the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts <sup>(4)</sup> has been amended on a number of occasions; whereas, on the occasion of further amendments, the said Directive should, for reasons of clarity be recast;

~~Whereas it seems important in particular to align the~~  
~~text of this Directive with the text of Council~~  
~~Directive 93/37/EEC concerning the coordination of~~

procedures for the award of public works contracts <sup>(5)</sup> and Council Directive 92/50/EEC of 18 June 1992, relating to the coordination of procedures on the award of public service contracts <sup>(6)</sup>;

Whereas the alignments to be introduced relate, in particular, to the introduction of the functional definition of contracting authorities, the option of recourse to the open or restricted procedure, the requirement to justify the refusal of candidates or tenderers, the rules for drawing up reports on the execution of the different award procedures, the conditions for referring to the common rules in the technical field, publication and participation, clarifications concerning award criteria and the introduction of the Advisory Committee procedure;

Whereas it is also necessary to introduce some drafting changes aimed at improving the clarity of existing provisions;

Whereas the attainment of freedom of movement of goods in respect of public supply contracts awarded in Member States on behalf of the State, or regional or local authorities or other bodies governed by public law entails not only the abolition of restrictions but also the harmonisation of national procedures for the award of public supply contracts;

Whereas such coordination should take into account as far as possible the procedures and administrative practices in force in each Member State;

<sup>(1)</sup> OJ No C 277, 26. 10. 1992, p. 1.

<sup>(2)</sup> OJ No C 72, 15. 3. 1993, p. 73 and Decision of 26. 5. 1993 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 332, 16. 12. 1992, p. 72.

<sup>(4)</sup> OJ No L 13, 15. 1. 1977, p. 1. Directive as last amended by Directive 92/50/EEC (OJ No L 209, 24. 7. 1992, p. 1).

<sup>(5)</sup> See p. 54 of this Official Journal.

<sup>(6)</sup> OJ No L 209, 24. 7. 1992, p. 1.

Whereas the Community is a Party to the Agreement on government procurement <sup>(1)</sup>, hereinafter referred to as 'the GATT Agreement';

Whereas Annex I to this Directive sets out the lists of contracting authorities subject to the GATT Agreement; whereas it is necessary to update this Annex in accordance with amendments submitted by the Member States;

Whereas this Directive does not apply to certain supply contracts which are awarded in the water, energy, transport and telecommunication sectors covered by Directive 90/531/EEC <sup>(2)</sup>;

Whereas, without prejudice to the application of the threshold set out for supply contracts subject to the GATT Agreement, supply contracts of less than ECU 200 000 may be exempted from competition as provided under this Directive and it is appropriate to provide for their exemption from coordination measures;

Whereas provision must be made for exceptional cases where measures concerning the coordination of procedures may not necessarily be applied, but whereas such cases must be expressly limited;

Whereas the negotiated procedure should be considered to be exceptional and therefore applicable only in limited cases;

Whereas it is necessary to provide common rules in the technical field which take account of the Community policy on standards and specifications;

Whereas, to ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community; whereas the information contained in these notices must enable suppliers established in the Community to determine whether the proposed contracts are of interest to them; whereas, for this purpose, it is appropriate to give them adequate information about the goods to be supplied and the conditions attached to their supply; whereas, more particularly, in restricted procedures advertisement is intended to enable suppliers of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions;

Whereas additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document;

Whereas it is necessary to provide common rules for participation in public supply contracts, including both qualitative selection criteria and criteria for the award of the contracts;

Whereas it would be appropriate to enable certain technical conditions concerning notices and statistical reports required by this Directive to be adapted in the light of changing technical requirements; whereas Annex II to this Directive refers to a nomenclature, whereas the Community may, as required, revise or replace its common nomenclature and whereas it is necessary to make provision for the possibility of adapting the reference made to the nomenclature accordingly;

Whereas this Directive should not affect the obligations of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex V,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### GENERAL PROVISIONS

#### Article 1

For the purpose of this Directive:

- (a) '*public supply contracts*' are contracts for pecuniary interest concluded in writing involving the purchase, lease rental or hire purchase, with or without option to buy, of products between a supplier (a natural or legal person) and one of the contracting authorities defined in (b) below. The delivery of such products may in addition include siting and installation operations;
- (b) '*contracting authorities*' shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law;

'*a body governed by public law*' means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having legal personality, and

<sup>(1)</sup> OJ No L 71, 17. 3. 1980, p. 44 and OJ No L 345, 9. 12. 1987, p. 24.

<sup>(2)</sup> OJ No L 297, 29. 10. 1990, p. 1.

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

the lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph are set out in Annex I to Directive 93/37/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 35 of Directive 93/37/EEC;

- (c) a supplier who submits a tender shall be designated by the term 'tenderer', and one who has sought an invitation to take part in a restricted procedure by the term 'candidate';
- (d) 'open procedures' are those national procedures whereby all interested suppliers may submit tenders;
- (e) 'restricted procedures' are those national procedures whereby only those suppliers invited by the contracting authorities may submit tenders;
- (e) 'negotiated procedures' are those national procedures whereby contracting authorities consult suppliers of their choice and negotiate the terms of the contract with one or more of them.

#### Article 2

1. This Directive shall not apply to:

- (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6 (2) of that Directive;
- (b) supply contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the Member State's security so requires.

2. When a contracting authority within the meaning of Article 1 (b) grants to a body other than a contracting authority — regardless of its legal status — special or exclusive rights to engage in a public service activity, the instrument granting this right shall stipulate that the body in question must observe the principle of non-discrimination by nationality when awarding public supply contracts to third parties.

#### Article 3

Without prejudice to Articles 2, 4 and 5 (1), this Directive shall apply to all products to which Article 1 (a) relates, including those covered by contracts awarded by contracting authorities in the field of defence, except for the products to which Article 223 (1) (b) of the EEC Treaty applies.

#### Article 4

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

- (a) in pursuance of an international agreement concluded in conformity with the Treaty, between a Member State and one or more non-member countries and covering supplies intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Decision 71/306/EEC <sup>(1)</sup>;
- (b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

#### Article 5

1. (a) Titles II, III and IV and Articles 6 and 7 shall apply to public supply contracts:

- awarded by the contracting authorities referred to in Article 1 (b), including contracts awarded by the contracting authorities listed in Annex I in the field of defence in so far as the products not covered by Annex II are concerned, provided that the estimated value net of VAT is not less than ECU 200 000,
- awarded by the contracting authorities listed in Annex I and whose estimated value net of VAT is not less than the threshold fixed pursuant to the GATT Agreement; in the case of contracting authorities in the field of defence, this shall apply only to contracts involving products covered by Annex II;

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15. Decision amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15. 272

(b) this Directive shall apply to public supply contracts for which the estimated value equals or exceeds the threshold concerned at the time of publication of the notice in accordance with Article 9 (2);

(c) the value of the thresholds in national currencies and the threshold of the GATT Agreement expressed in ecus shall in principle be revised every two years with effect from 1 January 1988. The calculation of these values shall be based on the average daily values of these currencies expressed in ecus and of the ecu expressed in SDRs over the 24 months terminating on the last day of August immediately preceding the 1 January revision;

the method of calculation laid down in the present subparagraph shall be reviewed, on the Commission's initiative, by the Advisory Committee for Public Contracts, in principle two years after its initial application;

(d) the threshold laid down in subparagraph (c) and the value of the thresholds in national currencies and, as regards the threshold fixed by the GATT Agreement, its threshold expressed in ecus shall be published in the *Official Journal of the European Communities* at the beginning of the month of November which follows the revision laid down in the first part of subparagraph (c).

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

- in the case of fixed-term contracts, where their term is 12 months or less the total contract value for its duration, or, where their term exceeds 12 months, its total value including the estimated residual value;
- in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts the monthly value multiplied by 48.

3. In the case of regular contracts or of contracts which are to be renewed within a given time, the estimated contract value shall be established on the basis of:

- either the actual aggregate value of similar contracts concluded over the previous fiscal year or 12 months, adjusted where possible, for anticipated changes in quantity or value over the 12 months following the initial contract;
- or the estimated aggregate value during the 12 months following the first delivery or during the term of the contract, where this is greater than 12 months.

The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive.

4. If a proposed procurement of supplies of the same type may lead to contracts being awarded at the same time in separate parts, the estimated value of the total sum of these parts must be taken as the basis for the application of paragraphs 1 and 2.

5. In the case where a proposed procurement specifies option clauses, the basis for calculating the estimated contract value shall be the highest possible total of the purchase, lease, rental, or hire-purchase permissible, inclusive of the option clauses.

6. No procurement requirement for a given quantity of supplies may be split up with the intention of avoiding the application of this Directive.

#### Article 6

1. In awarding public supply contracts the contracting authorities shall apply the procedures defined in Article 1 (d), (e) and (f), in the cases set out below.

2. The contracting authorities may award their supply contracts by negotiated procedure in the case of irregular tenders in response to an open or restricted procedure or in the case of tenders which are unacceptable under national provisions that are in accordance with provisions of Title IV, in so far as the original terms for the contract are not substantially altered. The contracting authorities shall in these cases publish a tender notice unless they include in such negotiated procedures all the enterprises satisfying the criteria of Articles 20 to 24 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.

3. The contracting authorities may award their supply contracts by negotiated procedure without prior publication of a tender notice, in the following cases:

- (a) in the absence of tenders or appropriate tenders in response to an open or restricted procedure insofar as the original terms of the contract are not substantially altered and provided that a report is communicated to the Commission;
- (b) when the products involved are manufactured purely for the purpose of research, experiment, study or development, this provision does not extend to quantity

production to establish commercial viability or to recover research and development costs;

(c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the products supplied may be manufactured or delivered only by a particular supplier;

(d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit laid down for the open, restricted or negotiated procedures referred to in paragraph 2 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;

(e) for additional deliverers by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of such contracts as well as that of recurrent contracts may, as a general rule, not exceed three years.

4. In all other cases, the contracting authorities shall award their supply contracts by the open procedure or by the restricted procedure.

#### Article 7

1. The contracting authority shall, within 15 days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests of the reasons of rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. For each contract awarded the contracting authorities shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract.
- the names of the candidates or tenderers admitted and the reasons for their selection,

- the names of the candidates or tenderers rejected and the reasons for their rejection,
- the name of the successful tenderer and the reasons for his tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to a third party,
- for negotiated procedures, the circumstances referred to in Article 6 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

## TITLE II

### COMMON RULES IN THE TECHNICAL FIELD

#### Article 8

1. The technical specifications defined in Annex III shall be given in the general or contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules, in so far as these are compatible with Community law, the technical specifications mentioned in paragraph 1 shall be defined by the contracting authorities by reference to national standards implementing European standards, or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

- (a) the standards, European technical approvals or common technical specifications do not include any provision for establishing conformity or technical means do not exist for establishing satisfactorily the conformity of a product to these standards, European technical approvals or common technical specifications;
- (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>(1)</sup> or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>(2)</sup> or other Community instruments in specific service or product areas;

<sup>(1)</sup> OJ No L 217, 5. 8. 1986, p. 21. Directive as amended by Directive 91/263/EEC (OJ No L 128, 23. 5. 1991, p. 1).

<sup>(2)</sup> OJ No L 36, 7. 2. 1987, p. 31.



- (c) use of these standards, European technical approvals or common technical specifications would oblige the contracting authority to acquire supplies incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to change-over, within a given period, to European standards, European technical approvals or common technical specifications;
- (d) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the tender notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards, European technical approvals or common technical specifications, the technical specifications:

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Directive 89/106/EEC <sup>(1)</sup>;
- (b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents. In this case, it is appropriate to make reference in order of preference to:
- (i) national standards implementing international standards accepted by the country of the contracting authority;
  - (ii) other national standards and national technical approvals of the country of the contracting authority;
  - (iii) any other standard.

6. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of

technical specifications which mention goods of specific make or source or of a particular process and which therefore favour or eliminate certain suppliers or products. In particular, the indication of trade marks, patents, types or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent' it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and fully intelligible to all parties concerned.

### TITLE III

#### COMMON ADVERTISING RULES

##### Article 9

1. The contracting authorities shall make known, as soon as possible after the beginning of their budgetary year, by means of an indicative notice, the total procurement by product area which they envisage awarding during the subsequent 12 months where the total estimated value, taking into account the provisions of Article 5, is equal to or greater than ECU 750 000.

The product area shall be established by the contracting authorities by means of reference to the nomenclature 'Classification of Products According to Activities (CPA)'. The Commission shall determine the conditions of reference in the notice to particular positions of the nomenclature in accordance with the procedure laid down in Article 32 (2).

2. Contracting authorities who wish to award a public supply contract by open, restricted or negotiated procedure in the cases referred to in Article 6 (2), shall make known their intention by means of a notice.

3. Contracting authorities who have awarded a contract shall make known the result by means of a notice. However, certain information on the contract award may, in certain cases, not be published where release of such information would impede law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between suppliers.

4. The notices shall be drawn up in accordance with the models given in Annex IV and shall specify the information requested in those models. The contracting authorities may not require any conditions other than those specified in

<sup>(1)</sup> OJ No L 40, 11. 2. 1989; p. 12.

Article 22 and 23 when requesting information concerning the economic and technical standards which they require of suppliers for their selection (Section 11 of Annex IV B, Section 9 of Annex IV C and Section 8 of Annex IV D).

5. The contracting authorities shall send the notices as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 12, the notice shall be sent by telex, telegram or telefax.

The notice referred to in paragraph 1 shall be sent as soon as possible after the beginning of each budgetary year.

The notice referred to in paragraph 3 shall be sent at the latest 48 days after the award of the contract in question.

6. The notices referred to in paragraphs 1 and 3 shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the text in the original language alone being authentic.

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

8. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 12, this period shall be reduced to five days.

9. The notices shall not be published in the Official Journals or in the press of the country of the contracting authority before the date of dispatch to the Office for Official Publications of the European Communities; they shall mention that date. They shall not contain information other than that published in the *Official Journal of the European Communities*.

10. The contracting authorities must be able to supply proof of the date of dispatch.

11. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Journal, or approximately 650 words. Each edition of the Journal containing one or more notices

shall reproduce the model notice or notices on which the published notice or notices are based.

#### Article 10

1. In open procedures the time limit for the receipt of tenders, fixed by the contracting authorities, shall not be less than 52 days from the date of dispatch of the notice.

2. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers by the contracting authorities or competent departments within six days of receiving their application.

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

4. Where the contract documents, supporting documents or additional information are too bulky to be supplied within the time limits laid down in paragraph 2 or 3 or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 1 shall be extended accordingly.

#### Article 11

1. In restricted procedures and negotiated procedures as described in Article 6 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall not be less than 37 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the

candidate in accordance with Article 9 (4), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 22 and 23;

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

3. In restricted procedures, the time limit receipt of tenders fixed by the contracting authorities may not be less than 40 days from the date of dispatch of the written invitation.

4. Requests to participate in procedures for the award of contracts may be made by letter, by telegram, telex, telefax or by telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in paragraph 1.

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

6. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraph 3 shall be extended accordingly.

#### Article 12

1. In cases where urgency renders impracticable the time limits laid down in Article 11, the contracting authorities may fix the following time limits:

(a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date of dispatch of the notice;

(b) a time limit for the receipt of tenders which shall not be less than 10 days from the date of the invitation to tender.

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

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are

made by telegram, telex, telefax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

#### Article 13

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public supply contracts which are not subject to the publication requirement laid down in this Directive.

#### Article 14

The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Article 9 and of the statistical reports provided for in Article 31 as well as the nomenclature provided for in Article 9 and in Annexes II and IV may be modified in accordance with the procedure laid down in Article 32 (2). The conditions for referring in the notices to particular positions in the nomenclature may be determined pursuant to the same procedure.

### TITLE IV

#### Chapter 4 -

#### Common rules on participation

#### Article 15

1. Contracts shall be awarded on the basis for the criteria laid down in Chapter 3 of this Title, taking into account Article 16, after the suitability of the suppliers not excluded under Article 20 has been checked by the contracting authorities in accordance with the criteria of economic and financial standing and of technical capacity referred to in Articles 22, 23 and 24.

2. The contracting authorities shall respect fully the confidential nature of any information furnished by the suppliers.

#### Article 16

1. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting authorities.

The contracting authorities shall state in the contract documents the minimum specifications to be respected by

the variants and any specific requirements for their presentation. They shall indicate in the tender notice if variants are not permitted.

Contracting authorities may not reject the submission of a variant of the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 8 (2), or again by reference to national technical specifications to in Article 8 (5) (a) and (b).

2. Contracting authorities which have admitted variants pursuant to paragraph 1 may not reject a variant on the sole grounds that it would lead, if successful, to a service contract rather than a public supply contract within the meaning of this Directive.

#### Article 17

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

This indication shall be without prejudice to the question of the principal supplier's liability.

#### Article 18

Tenders may be submitted by groups of suppliers. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

#### Article 19

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the supplier's personal position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 20 to 24 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of suppliers which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light

of the nature of the goods to be supplied. The range must number at least five suppliers and may be up to 20.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 6 (2), the number of candidates admitted to negotiate may not be less than three provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discrimination to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

### Chapter 2

#### Criteria for qualitative selection

#### Article 20

1. Any supplier may be excluded from participation in the contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Chapter.

2. Where the contracting authority requires to the supplier proof that none of the cases quoted in (a), (b), (c), (e) or (f) of paragraph 1 applies to him, it shall accept as sufficient evidence:

- for points (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin in the country whence that person comes showing that these requirements have been met,
- for points (e) or (f), a certificate issued by the competent authority in the Member State concerned.

3. Where the country in question does not issue the documents or certificates referred to in paragraph 2 or where these do not cover all the cases quoted in (a), (b) or (c) of paragraph 1, they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraphs 2 and 3 and shall forthwith inform the other Member States and the Commission thereof.

#### Article 21

1. Any supplier wishing to take part in a public supply contract may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration on oath or certificate as described in paragraph 2 below.

2. The relevant professional and trade registers or declarations or certificates are:

- in Belgium: 'Registre du commerce/Handelsregister',
- in Denmark: 'Aktieselskabsregistret', 'Foreningsregistret' and 'Handelsregistret',
- in Germany: 'Handelsregister' and 'Handwerksrolle',
- in Greece: 'Βιοτεχνικό ή Βιομηχανικό ή Εμπορικό Επιμελητήριο',
- in Spain: 'Registro Mercantil' or, in the case of non-registered individuals, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question,

- in France: 'Registre du commerce' and 'répertoire des métiers',
- in Italy: 'Registro della Camera di commercio, industria, agricoltura e artigianato', and 'Registro delle Commissioni provinciali per l'artigianato',
- in Luxembourg: 'Registre aux firmes' and 'Rôle de la chambre des métiers',
- in the Netherlands: 'Handelsregister',
- in Portugal: 'Registo Nacional das Pessoas Colectivas',
- in the United Kingdom and Ireland, the supplier may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies, that he is certified as incorporated or registered or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name and under a specific trading name.

#### Article 22

1. Evidence of the supplier's financial and economic standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from bankers;
- (b) the presentation of the supplier's balance-sheets or extracts from the balance-sheets, where publication of the balance-sheet is required under the law of the country in which the supplier is established;
- (c) a statement of the supplier's overall turnover and its turnover in respect of the products to which the contract relates for the three previous financial years.

2. The contracting authorities shall specify in the notice or in the invitation to tender which reference or references mentioned in paragraph 1 they have chosen and which references other than those mentioned under paragraph 1 are to be produced.

3. If, for any valid reason, the supplier is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

#### Article 23

1. Evidence of the supplier's technical capacity may be furnished by one or more of the following means according to the nature, quantity and purpose of the products to be supplied:

- (a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved:

- where effected to public authorities, evidence to be in the form of certificates issued or countersigned by the competent authority;
  - where effected to private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the supplier to have been effected;
- (b) a description of the supplier's technical facilities, its measures for ensuring quality and its study and research facilities;
- (c) indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier, especially those responsible for quality control;
- d) samples, description and/or photographs of the products to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (e) certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to certain specifications or standards of products clearly identified by references to specifications or standards;
- (f) where the products to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement, on the production capacities of the supplier and if necessary on his study and research facilities and quality control measures.

2. The contracting authority shall specify, in the notice or in the invitation to tender, which references it wishes to receive.

3. The extent of the information referred to in Article 22 and in paragraph 1 and 2 of this Article must be confined to the subject of the contract; the contracting authority shall take into consideration the legitimate interests of the suppliers as regards the protection of their technical or trade secrets.

#### Article 24

Within the limits of Articles 20 to 23 the contracting authority may invite the suppliers to supplement the certificates and documents submitted or to clarify them.

#### Article 25

1. Member States who have official lists of recognized suppliers must adapt them to the provisions of points (a) to (d) and (g) of Article 20 (1) and of Articles 21, 22 and 23.

2. Suppliers registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in that list.

3. Certified registration in official lists of suppliers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability corresponding to the suppliers classification only as regards Article 20 (1) (a) to (d) and (g), Article 21, Article 22 (1) (b) (e) Article 23 (1) (a).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered suppliers whenever a contract is offered.

The contracting authorities of other Member States shall apply the first and second subparagraph only in favour of suppliers established in the Member States holding the official list.

4. For the registration of suppliers of other Member States in an official list, no further proof or statements can be required other than those requested of national suppliers and, in any event, only those provided for under Articles 20 to 23.

5. Member States holding an official list shall communicate the address of the body to which requests for registration may be made to other Member States and to the Commission which shall ensure distribution.

### Chapter 3

#### Criteria for the award of contracts

#### Article 26

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

(a) either the lowest price only;

(b) or, when award is made to the most economically advantageous tender, various criteria according to the contract in question: e. g. price, delivery date, running

costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance.

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

#### Article 27

If, for a given contract, tenders appear to be abnormally low in relation to the goods to be supplied, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

The contracting authority may take into consideration explanations relating to the economics of the manufacturing process, or to the technical solutions chosen, or to the exceptionally favourable conditions available to the tenderer for the supply of the goods, or to the originality of the suppliers proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it considers to be too low.

### TITLE V

#### FINAL PROVISIONS

##### Article 28

For the purposes of the award of public contracts by the contracting authorities referred to in Annex I, and, to the extent that rectifications, modifications or amendments have been made thereto, by their successor authorities, Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the GATT Agreement, in particular those in Articles V and VI of that Agreement, on the restricted procedure, information and review. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.

##### Article 29

1. The Commission shall examine the application of this Directive in consultation with the Advisory Committee for Public Contracts and where appropriate shall submit new

proposals to the Council with the aim in particular of harmonizing the measures taken by the Member States for the implementation of this Directive.

2. The Commission shall review this Directive and any new measures which may be adopted by virtue of paragraph 1, having regard to the results of the further negotiations provided for in Article IX (6) of the GATT Agreement and shall, if necessary, submit appropriate proposals to the Council.

3. The Commission shall update Annex I on the basis of any rectifications, modifications or amendments referred to in Article 28 and shall have the updated version published in the *Official Journal of the European Communities*.

#### Article 30

The calculation of time limits shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(1)</sup>.

#### Article 31

1. In order to permit assessment of the results of applying this Directive, Member States shall forward to the Commission a statistical report relative to supply contract awards:

- (a) not later than 31 October of each year for the preceding year in respect of the contracting authorities listed in Annex I;
- (b) not later than 31 October 1991 and for the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic 31 October 1995 and thereafter 31 October of each second year for the preceding year in respect of the other contracting authorities within the meaning of Article 1.

2. The statistical report shall detail at least:

- (a) the number and value of contracts awarded by each contracting authority above the threshold and, in the case of contracting authorities mentioned in Annex I, the value below the threshold;
- (b) the number and value of contracts awarded by each contracting authority above the threshold, subdivided by procedure, product and the nationality of the supplier to whom the contract has been awarded, and in the case of negotiated procedures, subdivided in accordance with Article 6, listing the number and value

<sup>(1)</sup> OJ No L 124, 8. 6. 1971, p. 1.

of the contracts awarded to each Member State and to third countries, and in the case of contracting authorities referred to in Annex I, the number and value of the contracts awarded to each signatory to the GATT Agreement.

3. The Commission shall determine in accordance with the procedure laid down in Article 32 (2) the nature of any additional statistical information, which is required in accordance with this Directive.

#### Article 32

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Decision 71/306/EEC.

2. Where reference is made to the procedure laid down in this paragraph, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

3. The Committee mentioned in paragraph 1 shall examine, on the initiative of the Commission or at the request of a Member State, any question relating to the application of this Directive.

#### Article 33

Directive 77/62/EEC<sup>(1)</sup> is hereby repealed, without prejudice to the obligation of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex V.

References to the repealed Directives shall be construed as reference to this Directive and should be read in accordance with the correlation table set out in Annex VI.

#### Article 34

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 14 June 1994. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods for making such a reference shall be laid down by the Member States.

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

#### Article 35

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1993.

For the Council  
The President  
J. TRØJBORG

<sup>(1)</sup> Including the provisions which amended this Directive, namely:

- Directive 80/767/EEC (OJ No L 215, 18. 8. 1980, p. 1),
- Directive 88/295/EEC (OJ No L 127, 20. 5. 1988, p. 1),
- Article 35 (1) of Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1),
- Article 42 (1) of Directive 92/50/EEC (OJ No L 209, 24. 7. 1992, p. 1).



## ANNEX I

LIST OF CONTRACTING AUTHORITIES SUBJECT TO THE GATT AGREEMENT  
ON GOVERNMENT PROCUREMENT

## BELGIUM

A. L'État, exception faite pour les marchés passés dans le cadre de coopération au développement qui, en vertu d'accords internationaux conclus avec des pays tiers et se rapportant à la passation de marchés, sont soumis à d'autres dispositions, incompatibles avec les dispositions du présent arrêté <sup>(1)</sup>:

- la Régie des postes <sup>(2)</sup>,
- la Régie des bâtiments;
- le Fonds des routes.

B. Le Fonds général des bâtiments scolaires de l'État

Le Fonds de construction d'institutions hospitalières et médico-sociales

La Société nationale terrienne

L'Office national de sécurité sociale

L'Institut national d'assurances sociales pour travailleurs indépendants

L'Institut national d'assurance maladie-invalidité

L'Institut national de crédit agricole

L'Office national des pensions

L'Office central de crédit hypothécaire

L'Office national du ducroire

La Caisse auxiliaire d'assurance maladie-invalidité

Le Fonds des maladies professionnelles

La Caisse nationale de crédit professionnel

L'Office national des débouchés agricoles et horticoles

L'Office national du lait et de ses dérivés

L'Office national de l'emploi

Régie des voies aériennes

De Staat, met uitzondering van de opdrachten inzake ontwikkelingssamenwerking die, krachtens internationale overeenkomsten met derde landen inzake het plaatsen van opdrachten, andere bepalingen behelzen die niet verenigbaar zijn met de bepalingen van dit besluit <sup>(1)</sup>:

- de Regie der Posterijen <sup>(2)</sup>;
- de Regie der Gebouwen;
- het Wegenfonds

Het Algemeen Gebouwenfonds voor de rijksscholen

Het Fonds voor de bouw van ziekenhuizen en medisch-sociale inrichtingen

De Nationale Landmaatschappij

De Rijksdienst voor sociale zekerheid

Het Rijksinstituut voor de sociale verzekeringen der zelfstandigen

Het Rijksinstituut voor ziekte- en invaliditeitsverzekering

Het Nationaal Instituut voor landbouwkrediet

De Rijksdienst voor pensioenen

Het Centraal Bureau voor hypothecair krediet

De Nationale Delcrederedienst

De Hulpkas voor ziekte- en invaliditeitsverzekering

Het Fonds voor de beroepsziekten

De Nationale Kas voor beroepskrediet

De Nationale Dienst voor afzet van land- en tuinbouwprodukten

De Nationale Zuiveldienst

De Rijksdienst voor arbeidsvoorziening

De Regie der Luchtwegen

<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

## DENMARK

- |  |  |
|--|--|
| 1. Statsministeriet  | — to departementer   |
| 2. Arbejdsministeriet  | — fem direktorater og institutioner  |
| 3. Udenrigsministeriet<br>(tre departementer)  |  |
| 4. Boligministeriet  | — fem direktorater og institutioner  |
| 5. Energiministeriet   | — ét direktorat og Forsøgsanlæg Risø   |
| 6. Finansministeriet<br>(to departementer)   | — fire direktorater og institutioner inklusive<br>Direktoratet for Statens Indkøb        |
|  | — fem andre institutioner  |
| 7. Ministeriet for Skatter og Afgifter<br>(to departementer)                                       | — fem direktorater og institutioner  |
| 8. Fiskeriministeriet  | — fire institutioner   |
| 9. Industriministeriet<br>(Fulde navn: Ministeriet for Industri, Handel,<br>Håndværk og Skibsfart) | — ni direktorater og institutioner   |
| 10. Indenrigsministeriet   | — Civilforsvarsstyrelsen   |
|  | — ét direktorat  |
| 11. Justitsministeriet   | — Rigspolitechefen   |
|  | — fem andre direktorater og institutioner  |
| 12. Kirkeministeriet   |  |
| 13. Landbrugsministeriet   | — 19 direktorater og institutioner   |
| 14. Miljøministeriet   | — fem direktorater   |
| 15. Kultur- og Kommunikationsministeriet <sup>(1)</sup>  | — tre direktorater og adskillige statsejede museer og<br>højere uddannelsesinstitutioner |
| 16. Socialministeriet  | — fire direktorater  |
| 17. Undervisningsministeriet   | — seks direktorater  |
|  | — 12 universiteter og andre højere læreanstalter   |
| 18. Økonomiministeriet<br>(tre departementer)  |  |
| 19. Ministeriet for Offentlige Arbejder <sup>(2)</sup>   | — statshavne og statslufthavne   |
|  | — fire direktorater og adskillige institutioner  |
| 20. Forsvarsministeriet <sup>(3)</sup>   |  |
| 21. Sundhedsministeriet  | — adskillige institutioner inklusive<br>Statens Seruminstitut og Rigshospitalet          |

<sup>(1)</sup> With the exception of telecommunications services of the 'Post- og Telegrafvæsenet'.

<sup>(2)</sup> With the exception of the 'Danske Statsbaner'.

<sup>(3)</sup> Non-warlike materials contained in Annex II.

## FEDERAL REPUBLIC OF GERMANY

1. Auswärtiges Amt
2. Bundesministerium für Arbeit und Sozialordnung
3. Bundesministerium für Bildung und Wissenschaft
4. Bundesministerium für Ernährung, Landwirtschaft und Forsten
5. Bundesministerium der Finanzen
6. Bundesministerium für Forschung und Technologie
7. Bundesministerium des Inneren (nur ziviles Material)
8. Bundesministerium für Gesundheit
9. Bundesministerium für Frauen und Jugend
10. Bundesministerium für Familie und Senioren
11. Bundesministerium der Justiz
12. Bundesministerium für Raumordnung, Bauwesen und Städtebau
13. Bundesministerium für Post- und Telekommunikation <sup>(1)</sup>
14. Bundesministerium für Wirtschaft
15. Bundesministerium für wirtschaftliche Zusammenarbeit
16. Bundesministerium der Verteidigung <sup>(2)</sup>
17. Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit

**NB:** According to existing national obligations, the entities contained in this list must, in conformity with special procedures, award contracts to certain groups in order to remove difficulties caused by the last war.

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<sup>(1)</sup> With the exception of telecommunications equipment.

<sup>(2)</sup> Non-warlike materials contained in Annex II.

## FRANCE

## 1. Main purchasing entities

## A. General budget

- Premier ministre
- Ministère d'État, ministère de l'éducation nationale de la jeunesse et des sports
- Ministère d'État, ministère de l'économie, des finances et du budget
- Ministère d'État, ministère de l'équipement, du logement, des transports et de la mer
- Ministère d'État, ministère des affaires étrangères
- Ministère de la justice
- Ministère de la défense <sup>(1)</sup>
- Ministère de l'intérieur et de la centralisation
- Ministère de l'industrie et de l'aménagement du territoire
- Ministère des affaires européennes
- Ministère d'État, ministère de la fonction publique et des réformes administratives
- Ministère du travail, de l'emploi et de la formation professionnelle
- Ministère de la coopération et du développement
- Ministère de la culture, de la communication, des grands travaux et du bicentenaire
- Ministère des départements et territoires d'outre-mer
- Ministère de l'agriculture et de la forêt
- Ministère des postes, des télécommunications et de l'espace <sup>(2)</sup>
- Ministère chargé des relations avec le Parlement
- Ministère de la solidarité, de la santé et de la protection sociale
- Ministère de la recherche et de la technologie
- Ministère du commerce extérieur
- Ministère délégué auprès du ministère d'État, ministère de l'économie, des finances et du budget, chargé du budget
- Ministère délégué auprès du ministère d'État, ministère des affaires étrangères, chargé de la francophonie
- Ministère délégué auprès du ministère d'État, ministère des affaires étrangères
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé de l'aménagement du territoire et des reconversions
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé du commerce et de l'artisanat
- Ministère délégué auprès du ministère de l'industrie et de l'aménagement du territoire, chargé du tourisme
- Ministère délégué auprès du ministère de l'équipement, du logement, des transports et de la mer, chargé de la mer
- Ministère délégué auprès du ministère de la culture, de la communication, des grands travaux et du Bicentenaire, chargé de la communication
- Ministère délégué auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé des personnes âgées

<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

- Secrétariat d'État chargé des droits des femmes
- Secrétariat d'État chargé des anciens combattants et des victimes de guerre
- Secrétariat d'État chargé de la prévention des risques technologiques et naturels majeurs,
- Secrétariat d'État auprès du premier ministre, chargé du plan
- Secrétariat d'État auprès du premier ministre, chargé de l'environnement
- Secrétariat d'État auprès du premier ministre
- Secrétariat d'État auprès du premier ministre, chargé de l'action humanitaire
- Secrétariat d'État auprès du ministère d'État, ministère de l'éducation nationale de la jeunesse et des sports, chargé de l'enseignement technique
- Secrétariat d'État auprès du ministère d'État, ministère de l'éducation nationale de la jeunesse et des sports, chargé de la jeunesse et des sports
- Secrétariat d'État auprès du ministère d'État, ministère de l'économie, des finances et du budget, chargé de la consommation
- Secrétariat d'État auprès du ministère des affaires étrangères, chargé des relations culturelles internationales
- Secrétariat d'État auprès du ministère de l'intérieur, chargé des collectivités territoriales
- Secrétariat d'État auprès du ministère de l'équipement, du logement, des transports et de la mer, chargé des transports routiers et fluviaux
- Secrétariat d'État auprès du ministère du travail, de l'emploi et de la formation professionnelle, chargé de la formation professionnelle
- Secrétariat d'État auprès du ministère de la culture, de la communication, des grands travaux et du bicentenaire, chargé des grands travaux
- Secrétariat d'État auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé de la famille
- Secrétariat d'État auprès du ministère de la solidarité, de la santé et de la protection sociale, chargé des handicapés et des accidentés de la vie

#### B. *Budget Annex*

In particular:

- Imprimerie nationale

#### C. *Special Treasury accounts*

In particular:

- Fonds forestier national
- Soutien financier de l'industrie cinématographique et de l'industrie des programmes audiovisuels
- Fonds national d'aménagement foncier et d'urbanisme
- Caisse autonome de la reconstruction

#### 2. *National administrative public bodies*

- Académie de France à Rome
- Académie de marine
- Académie des sciences d'outre-mer
- Agence centrale des organismes de sécurité sociale (ACOSS)
- Agences financières de bassins
- Agence nationale pour l'amélioration des conditions de travail (ANACT)
- Agence nationale pour l'amélioration de l'habitat (ANAH)
- Agence nationale pour l'emploi (ANPE)

- Agence nationale pour l'indemnisation des français d'outre-mer (ANIFOM)
- Assemblée permanente des chambres d'agriculture (APCA)
- Bibliothèque nationale
- Bibliothèque nationale et universitaire de Strasbourg
- Bureau d'études des postes et télécommunications d'outre-mer (BEPTOM)
- Caisse d'aide à l'équipement des collectivités locales (CAECL)
- Caisse des dépôts et consignations
- Caisse nationale des allocations familiales (CNAF)
- Caisse nationale d'assurance maladie des travailleurs salariés (CNAM)
- Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS)
- Caisse nationale des autoroutes (CNA)
- Caisse nationale militaire de sécurité sociale (CNMSS)
- Caisse nationale des monuments historiques et des sites
- Caisse nationale des télécommunications <sup>(1)</sup>
- Caisse de garantie du logement social
- Casa de Velasquez
- Centre d'enseignement zootechnique de Rambouillet
- Centre d'études du milieu et de pédagogie appliquée du ministère de l'agriculture
- Centre d'études supérieures de sécurité sociale
- Centres de formation professionnelle agricole
- Centre national d'art et de culture Georges Pompidou
- Centre national de la cinématographie française
- Centre national d'études et de formation pour l'enfance inadaptée
- Centre national d'études et d'expérimentation du machinisme agricole, du génie rural, des eaux et des forêts
- Centre national et de formation pour l'adaptation scolaire et l'éducation spécialisée (CNEFASES)
- Centre national de formation et de perfectionnement des professeurs d'enseignement ménager agricole
- Centre national des lettres
- Centre national de documentation pédagogique
- Centre national des œuvres universitaires et scolaires (CNOUS)
- Centre national d'ophtalmologie des quinze-vingts
- Centre national de préparation au professorat de travaux manuels éducatifs et d'enseignement ménager
- Centre national de promotion rurale de Marmilhat
- Centre national de la recherche scientifique (CNRS)
- Centre régional d'éducation populaire d'Ile-de-France
- Centres d'éducation populaire et de sport (CREPS)
- Centres régionaux des œuvres universitaires (CROUS)
- Centres régionaux de la propriété forestière
- Centre de sécurité sociale des travailleurs migrants
- Chancelleries des universités
- Collèges d'État

<sup>(1)</sup> Postal business only.

- Commission des opérations de bourse
- Conseil supérieur de la pêche
- Conservatoire de l'espace littoral et des rivages lacustres
- Conservatoire national des arts et métiers
- Conservatoire national supérieur de musique
- Conservatoire national supérieur d'art dramatique
- Domaine de Pompadour
- École centrale — Lyon
- École centrale des arts et manufactures
- École française d'archéologie d'Athènes
- École française d'Extrême-Orient
- École française de Rome
- École des hautes études en sciences sociales
- École nationale d'administration
- École nationale de l'aviation civile (ENAC)
- École nationale des Chartes
- École nationale d'équitation
- École nationale du génie rural des eaux et des forêts (ENGREF)
- Écoles nationales d'ingénieurs
- École nationale d'ingénieurs des industries des techniques agricoles et alimentaires
- Écoles nationales d'ingénieurs des travaux agricoles
- École nationale des ingénieurs des travaux ruraux et des techniques sanitaires
- École nationale des ingénieurs des travaux des eaux et forêts (ENITEF)
- École nationale de la magistrature
- Écoles nationales de la marine marchande
- École nationale de la santé publique (ENSP)
- École nationale de ski et d'alpinisme
- École nationale supérieure agronomique — Montpellier
- École nationale supérieure agronomique — Rennes
- École nationale supérieure des arts décoratifs
- École nationale supérieure des arts et industries — Strasbourg
- École nationale supérieure des arts et industries textiles — Roubaix
- Écoles nationales supérieures d'arts et métiers
- École nationale supérieure des beaux-arts
- École nationale supérieure des bibliothécaires
- École nationale supérieure de céramique industrielle
- École nationale supérieure de l'électronique et de ses applications (ENSEA)
- École nationale supérieure d'horticulture
- École nationale supérieure des industries agricoles alimentaires
- École nationale supérieure du paysage (rattachée à l'école nationale supérieure d'horticulture)
- École nationale supérieure des sciences agronomiques appliquées (ENSSA)
- Écoles nationales vétérinaires

- École nationale de voile
- Écoles normales d'instituteurs et d'institutrices
- Écoles normales nationales d'apprentissage
- Écoles normales supérieures
- École polytechnique
- École technique professionnelle agricole et forestière de Meymac (Corrèze)
- École de sylviculture — Crogny (Aube)
- École de viticulture et d'œnologie de la Tour Blanche (Gironde)
- École de viticulture — Avize (Marne)
- Établissement national de convalescents de Saint-Maurice
- Établissement national des invalides de la marine (ENIM)
- Établissement national de bienfaisance Koenigs-Wazter
- Fondation Carnegie
- Fondations Singer-Polignac
- Fonds d'action sociale pour les travailleurs immigrés et leurs familles
- Hôpital-hospice national Dufresne-Sommeiller
- Institut de l'élevage et de médecine vétérinaire des pays tropicaux (IEMVPT)
- Institut français d'archéologie orientale du Caire
- Institut géographique national
- Institut industriel du Nord
- Institut international d'administration publique (IIAP)
- Institut national agronomique de Paris-Grignon
- Institut national des appellations d'origine des vins et eaux-de-vie (INAOVEV)
- Institut national d'astronomie et de géophysique (INAG)
- Institut national de la consommation (INC)
- Institut national d'éducation populaire (INEP)
- Institut national d'études démographiques (INED)
- Institut national des jeunes aveugles — Paris
- Institut national des jeunes sourds — Bordeaux
- Institut national des jeunes sourds — Chambéry
- Institut national des jeunes sourds — Metz
- Institut national des jeunes sourds — Paris
- Institut national de physique nucléaire et de physique des particules (I.N2.P3)
- Institut national de promotion supérieure agricole
- Institut national de la propriété industrielle
- Institut national de la recherche agronomique (INRA)
- Institut national de recherche pédagogique (INRP)
- Institut national de la santé et de la recherche médicale (INSERM)
- Institut national des sports
- Instituts nationaux polytechniques
- Instituts nationaux des sciences appliquées
- Institut national supérieur de chimie industrielle de Rouen



- Institut national de recherche en informatique et en automatique (INRIA)
- Institut national de recherche sur les transports et leur sécurité (INRETS)
- Instituts régionaux d'administration
- Institut supérieur des matériaux et de la construction mécanique de Saint-Ouen
- Lycées d'État
- Musée de l'armée
- Musée Gustave Moreau
- Musée de la marine
- Musée national J.J. Henner
- Musée national de la Légion d'honneur
- Musée de la poste
- Muséum national d'histoire naturelle
- Musée Auguste Rodin
- Observatoire de Paris
- Office de coopération et d'accueil universitaire
- Office français de protection des réfugiés et apatrides
- Office national des anciens combattants
- Office national de la chasse
- Office national d'information sur les enseignements et les professions (ONISEP)
- Office national d'immigration (ONI)
- ORSTOM — Institut français de recherche scientifique pour le développement en coopération
- Office universitaire et culturel français pour l'Algérie
- Palais de la découverte
- Parcs nationaux
- Réunion des musées nationaux
- Syndicat des transports parisiens
- Thermes nationaux — Aix-les-Bains
- Universités

### 3. Other national public bodies

- Union des groupements d'achats publics (UGAP)

## IRELAND

**1. Main purchasing entities**

- Office of Public Works

**2. Other departments**

- President's Establishment
- Houses of the Oireachtas (Parliament)
- Department of the Taoiseach (Prime Minister)
- Central Statistics Office
- Department of the Gaeltacht (Irish-speaking areas)
- National Gallery of Ireland
- Department of Finance
- State Laboratory
- Office of the Comptroller and Auditor General
- Office of the Attorney general
- Office of the Director of Public Prosecutions
- Valuation Office
- Civil Service Commission
- Office of the Ombudsman
- Office of the Revenue Commissioners
- Department of Justice
- Commissioners of Charitable Donations and Bequests for Ireland
- Department of the Environment
- Department of Education
- Department of the Marine
- Department of Agriculture and Food
- Department of Labour
- Department of Industry and Commerce
- Department of Tourism and Transport
- Department of Communications
- Department of Defence <sup>(1)</sup>
- Department of Foreign Affairs
- Department of Social Welfare
- Department of Health
- Department of Energy

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<sup>(1)</sup> Non-warlike materials contained in Annex II.

## ITALY

1. Ministero del tesoro <sup>(1)</sup>
2. Ministero delle finanze <sup>(2)</sup>
3. Ministero di grazia e giustizia
4. Ministero degli affari esteri
5. Ministero della pubblica istruzione
6. Ministero dell'interno
7. Ministero dei lavori pubblici
8. Ministero dell'agricoltura e delle foreste
9. Ministero dell'industria, del commercio e dell'artigianato
10. Ministero del lavoro e della previdenza sociale
11. Ministero della sanità
12. Ministero per i beni culturali e ambientali
13. Ministero della difesa <sup>(3)</sup>
14. Ministero del bilancio e della programmazione economica
15. Ministero delle partecipazioni statali
16. Ministero del turismo e dello spettacolo
17. Ministero del commercio con l'estero
18. Ministero delle poste e delle telecomunicazioni <sup>(4)</sup>
19. Ministero dell'ambiente
20. Ministero dell'università e della ricerca scientifica e tecnologica

**NB:** This Agreement shall not prevent the implementation of provisions contained in Italian Law No 835 of 6 October 1950 (Official Gazette N° 245 of 24 October 1950 of the Italian Republic) and in modifications thereto in force on the date on which this Agreement is adopted.

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<sup>(1)</sup> Acting as the central purchasing entity for most of the other Ministries or entities.

<sup>(2)</sup> Not including purchases made by the tobacco and salt monopolies.

<sup>(3)</sup> Non-warlike materials contained in Annex II.

<sup>(4)</sup> Postal business only.

## LUXEMBOURG

1. Ministère d'État: service central des imprimés et des fournitures de l'État
2. Ministère de l'agriculture: administration des services techniques de l'agriculture
3. Ministère de l'éducation nationale: lycées d'enseignement secondaire et d'enseignement secondaire technique
4. Ministère de la famille et de la solidarité sociale: maisons de retraite
5. Ministère de la force publique: armée <sup>(1)</sup> — gendarmerie — police
6. Ministère de la justice: établissements pénitentiaires
7. Ministère de la santé publique: hôpital neuropsychiatrique
8. Ministère des travaux publics: bâtiments publics — ponts et chaussées
9. Ministère des communications: postes et télécommunications <sup>(2)</sup>
10. Ministère de l'énergie: centrales électriques de la Haute et Basse Sûre
11. Ministère de l'environnement: commissariat général à la protection des eaux

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<sup>(1)</sup> Non-warlike materials contained in Annex II.

<sup>(2)</sup> Postal business only.

## THE NETHERLANDS

**A. Ministries and central government bodies**

1. Ministerie van Algemene Zaken
2. Ministerie van Buitenlandse Zaken
3. Ministerie van Justitie
4. Ministerie van Binnenlandse Zaken
5. Ministerie van Financiën
6. Ministerie van Economische Zaken
7. Ministerie van Onderwijs en Wetenschappen
8. Ministerie van volkshuisvesting, Ruimtelijke Ordening en Milieubeheer
9. Ministerie van Verkeer en Waterstaat
10. Ministerie van Landbouw, Natuurbeheer en Visserij
11. Ministerie van Sociale Zaken en Werkgelegenheid
12. Ministerie van Welzijn, Volksgezondheid en Cultuur
13. Kabinet voor Nederlands Antilliaanse en Arubaanse Zaken
14. Hogere Colleges van Staat

**B. Central procurement offices**

Entities listed above under A generally make their own specific purchases; other general purchases are effected through the entities listed below:

1. Directoraat-generaal Rijkswaterstaat
2. Directoraat-generaal voor de Koninklijke Landmacht <sup>(1)</sup>
3. Directoraat-generaal voor de Koninklijke Luchtmacht <sup>(1)</sup>
4. Directoraat-generaal voor de Koninklijke Marine <sup>(1)</sup>

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<sup>(1)</sup> Non-warlike materials contained in Annex II.

## UNITED KINGDOM

**Cabinet Office**

- Civil Service College
- Civil Service Commission
- Civil Service Occupational Health Service
- Office of the Minister for the Civil Service
- Parliamentary Counsel Office

**Central Office of Information****Charity Commission****Crown Prosecution Service****Crown Estate Commissioners****Customs and Excise Department****Department for National Savings****Department of Education and Science**

- University Grants Committee

**Department of Employment**

- Employment Appeals Tribunal
- Industrial Tribunals
- Office of Manpower Economics

**Department of Energy****Department of Health**

- Central Council for Education and Training in Social Work
- Dental Estimates Board
- English National Board for Nursing, Midwifery and Health Visitors
- Medical Boards and Examining Medical Officers (War Pensions)
- National Health Service Authorities
- Prescriptions Pricing Authority
- Public Health Laboratory Service Board
- Regional Medical Service
- United Kingdom Central Council for Nursing, Midwifery and Health Visiting

**Department of Social Security**

- Attendance Allowance Board
- Occupational Pensions Board
- Social Security Advisory Committee
- Supplementary Benefits Appeal Tribunals

**Department of the Environment**

- Building Research Establishment
- Commons Commissioners
- Countryside Commission
- Fire Research Station (Boreham Wood)
- Historic Buildings and Monuments Commission
- Local Valuation Panels
- Property Services Agency
- Rent Assessment Panels
- Royal Commission on Environmental Pollution
- Royal Commission on Historical Monuments of England
- Royal Fine Art Commission (England)

**Department of the Procurator General and Treasury Solicitor**  
**Legal Secretariat to the Law Officers**

**Department of Trade and Industry**

Laboratory of the Government Chemist  
National Engineering Laboratory  
National Physical Laboratory  
Warren Spring Laboratory  
National Weights and Measures Laboratory  
Domestic Coal Consumers' Council  
Electricity Consultative Councils for England and Wales  
Gas Consumers' Council  
Transport Users Consultative Committee  
Monopolies and Mergers Commission  
Patent Office

**Department of Transport**

Coastguard Services  
Transport and Road Research Laboratory  
Transport Tribunal

**Export Credits Guarantee Department****Foreign and Commonwealth Office**

Government Communications Headquarters  
Wilton Park Conference Centre

**Government Actuary's Department****Home Office**

Boundary Commission for England  
Gaming Board for Great Britain  
Inspectors of Constabulary  
Parole Board and Local Review Committees

**House of Commons****House of Lords****Inland Revenue, Board of****Intervention Board for Agricultural Produce****Lord Chancellor's Department**

Council on Tribunals  
County Courts (England and Wales)  
Immigration Appellate Authorities  
Immigration Adjudicators  
Immigration Appeals Tribunal  
Judge Advocate-General and Judge Advocate of the Fleet  
Lands Tribunal  
Law Commission  
Legal Aid Fund (England and Wales)  
Pensions Appeals Tribunals  
Public Trustee Office  
Office of the Social Security Commissioners  
Special Commissioners for Income Tax (England and Wales)  
Supreme Court (England and Wales)  
Court of Appeal: Civil and Criminal Divisions  
Courts Martial Appeal Court  
Crown Court  
High Court  
Value Added Tax Tribunals

**Ministry of Agriculture, Fisheries and Food**

Advisory Services  
Agricultural Development and Advisory Service

Agricultural Dwelling House Advisory Committees  
Agricultural Land Tribunals  
Agricultural Science Laboratories  
Agricultural Wages Board and Committees  
Cattle Breeding Centre  
Plant Variety Rights Office  
Royal Botanic Gardens, Kew

Ministry of Defence <sup>(1)</sup>  
Meteorological Office  
Procurement Executive

National Audit Office

National Investment Loans Office

Northern Ireland Court Service  
Coroners Courts  
County Courts  
Crown Courts  
Enforcement of Judgements Office  
Legal Aid Fund  
Magistrates Court  
Pensions Appeals Tribunals  
Supreme Court of Judicature and Courts of Criminal Appeal

Northern Ireland, Department of Agriculture

Northern Ireland, Department for Economic Development

Northern Ireland, Department of Education

Northern Ireland, Department of the Environment

Northern Ireland, Department of Finance and Personnel

Northern Ireland, Department of Health and Social Services

Northern Ireland Office  
Crown Solicitor's Office  
Department of the Director of Public Prosecutions for Northern Ireland  
Northern Ireland Forensic Science Laboratory  
Office of Chief Electoral Officer for Northern Ireland  
Police Authority for Northern Ireland  
Probation Board for Northern Ireland  
State Pathologist Service

Office of Arts and Libraries  
British Library  
British Museum  
British Museum (Natural History)  
Imperial War Museum  
Museums and Galleries Commission  
National Gallery  
National Maritime Museum  
National Portrait Gallery  
Science Museum  
Tate Gallery  
Victoria and Albert Museum  
Wallace Collection

Office of Fair Trading

Office of Population Censuses and Surveys  
National Health Service Central Register

(1) Non-warlike materials contained in Annex II.



Office of the Parliamentary Commissioner for Administration and Health  
Service Commissioners

Overseas Development Administration  
Overseas Development and National Research Institute

Paymaster General's Office

Postal Business of the Post Office

Privy Council Office

Public Record Office

Registry of Friendly Societies

Royal Commission on Historical Manuscripts

Royal Hospital, Chelsea

Royal Mint

Scotland, Crown Office and Procurator  
Fiscal Service

Scotland, Department of the Registers of Scotland

Scotland, General Register Office  
National Health Service Central Register

Scotland, Lord Advocate's Department

Scotland, Queen's and Lord Treasurer's Remembrancer

Scottish Courts Administration  
Accountant of Court's Office  
Court of Justiciary  
Court of Session  
Lands Tribunal for Scotland  
Pensions Appeal Tribunals  
Scottish Land Court  
Scottish Law Commission  
Sheriff Courts  
Social Security Commissioners' Office

Scottish Office  
Central Services  
Department of Agriculture and Fisheries for Scotland  
Artificial Insemination Service  
Crofters Commission  
Red Deer Commission  
Royal Botanic Garden, Edinburgh

Industry Department for Scotland  
Scottish Electricity Consultative Councils

Scottish Development Department  
Rent Assessment Panel and Committees  
Royal Commission on the Ancient and Historical Monuments of Scotland  
Royal Fine Art Commission for Scotland

Scottish Education Department  
National Galleries of Scotland  
National Library of Scotland  
National Museums of Scotland

Scottish and Health Departments  
HM Inspectorate of Constabulary  
Local Health Councils  
Mental Welfare Commission for Scotland  
National Board for Nursing, Midwifery and Health Visiting for Scotland

Parole Board for Scotland and Local Review Committees  
Scottish Antibody Production Unit  
Scottish Council for Postgraduate Medical Education  
Scottish Crime Squad  
Scottish Criminal Record Office  
Scottish Fire Service Training School  
Scottish Health Boards  
Scottish Health Service — Common Services Agency  
Scottish Health Service Planning Council  
Scottish Police College

Scottish Record Office

HM Stationery Office

HM Treasury

Central Computer and Telecommunications Agency  
Chessington Computer Centre  
Civil Service Catering Organization  
National Economic Development Council  
Rating of Government Property Department

Welsh Office

Ancient Monuments (Wales) Commission  
Council for the Education and Training of Health Visitors  
Local Government Boundary Commission for Wales  
Local Valuation Panels and Courts  
National Health Service Authorities  
Rent Control Tribunals and Rent Assessment Panels and Committees

## GREECE

1. Υπουργείο Εθνικής Οικονομίας
2. Υπουργείο Παιδείας & Θρησκευμάτων
3. Υπουργείο Εμπορίου
4. Υπουργείο Βιομηχανίας-Ενέργειας-Τεχνολογίας
5. Υπουργείο Εμπορικής Ναυτιλίας
6. Υπουργείο Προεδρίας της Κυβέρνησης
7. Υπουργείο Αιγαίου
8. Υπουργείο Εξωτερικών
9. Υπουργείο Δικαιοσύνης
10. Υπουργείο Εξωτερικών
11. Υπουργείο Εργασίας
12. Υπουργείο Πολιτισμού και Επιστημών
13. Υπουργείο Περιβάλλοντος Χωροταξίας & Δημοσίων Έργων
14. Υπουργείο Οικονομικών
15. Υπουργείο Μεταφορών και Επικοινωνιών
16. Υπουργείο Υγείας, Πρόνοιας & Κοινωνικών Ασφαλίσεων
17. Υπουργείο Μακεδονίας-Θράκης
18. Γενικό Επιτελείο Στρατού (1)
19. Γενικό Επιτελείο Ναυτικού (1)
20. Γενικό Επιτελείο Αεροπορίας (1)
21. Υπουργείο Γεωργίας
22. Γενική Γραμματεία Τύπου και Πληροφοριών
23. Γενική Γραμματεία Νέας Γενιάς
24. Γενικό Χημείο του Κράτους
25. Γενική Γραμματεία Λαϊκής Επιμόρφωσης
26. Γενική Γραμματεία Ισότητας των Δύο Φύλων
27. Γενική Γραμματεία Κοινωνικών Ασφαλίσεων
28. Γενική Γραμματεία Απόδημου Ελληνισμού
29. Γενική Γραμματεία Βιομηχανίας
30. Γενική Γραμματεία Έρευνας και Τεχνολογίας
31. Γενική Γραμματεία Αθλητισμού
32. Γενική Γραμματεία Δημοσίων Έργων
33. Εθνική Στατιστική Υπηρεσία
34. Εθνικός Οργανισμός Πρόνοιας
35. Οργανισμός Εργατικής Εστίας
36. Εθνικό Τυπογραφείο
37. Ελληνική Επιτροπή Ατομικής Ενέργειας

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(1) Non-warlike materials contained in Annex II.

38. Ταμείο Εθνικής Οδοποιίας
39. Εθνικό Καποδιστριακό Πανεπιστήμιο Αθηνών
40. Πανεπιστήμιο Αιγαίου
41. Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης
42. Δημοκρίτειο Πανεπιστήμιο Θράκης
43. Πανεπιστήμιο Ιωαννίνων
44. Πανεπιστήμιο Πατρών
45. Πολυτεχνείο Κρήτης
46. Σιβιτανίδειος Σχολή
47. Πανεπιστήμιο Μακεδονίας (Οικονομικές & Κοιν/κες Επιστημές)
48. Αιγινήτειο Νοσοκομείο
49. Αρεταίειο Νοσοκομείο
50. Εθνικό Κέντρο Δημόσιας Διοίκησης
51. Ελληνικά Ταχυδρομεία
52. Οργανισμός Διαχείρισης Δημόσιου Υλικού
53. Οργανισμός Γεωργικών Ασφαλίσεων
54. Οργανισμός Σχολικών Κτιρίων

## SPAIN

1. Ministerio de Asuntos Exteriores
2. Ministerio de Justicia
3. Ministerio de Defensa <sup>(1)</sup>
4. Ministerio de Economía y Hacienda
5. Ministerio del Interior
6. Ministerio de Obras Públicas y Transportes
7. Ministerio de Educación y Ciencia
8. Ministerio de Trabajo y Seguridad Social
9. Ministerio de Industria, Comercio y Turismo
10. Ministerio de Agricultura, Pesca y Alimentación
11. Ministerio para las Administraciones Públicas
12. Ministerio de Cultura
13. Ministerio de Relaciones con las Cortes y de la Secretaría del Gobierno
14. Ministerio de Sanidad y Consumo
15. Ministerio de Asuntos Sociales
16. Ministerio del Portavoz del Gobierno

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<sup>(1)</sup> Non-warlike materials contained in Annex II.

## PORTUGAL

**Presidência do Conselho de Ministros**

1. Auditoria Jurídica da Presidência do Conselho de Ministros
2. Centro de Estudos e Formação Autárquica
3. Centro de Estudos Técnicos e Apoio Legislativo
4. Centro de Gestão da Rede Informática do Governo
5. Conselho Nacional de Planeamento Civil de Emergência
6. Conselho Permanente de Concertação Social
7. Departamento de Formação e Aperfeiçoamento Profissional
8. Gabinete de Macau
9. Gabinete do Serviço Cívico dos Objectores de Consciência
10. Instituto da Juventude
11. Instituto Nacional de Administração
12. Secretaria-Geral da Presidência do Conselho de Ministros
13. Secretariado para a Modernização Administrativa
14. Serviço Nacional de Protecção Civil
15. Serviços Sociais da Presidência do Conselho de Ministros

**Ministério da Administração Interna**

1. Direcção-Geral de Viação
2. Gabinete de Estudos e Planeamento de Instalações
3. Governos Cívicos
4. Guarda Fiscal
5. Guarda Nacional Republicana
6. Polícia de Segurança Pública
7. Secretaria-Geral
8. Secretariado Técnico dos Assuntos para o Processo Eleitoral
9. Serviço de Estrangeiros e Fronteiras
10. Serviço de Informação e Segurança
11. Serviço Nacional de Bombeiros

**Ministério da Agricultura**

1. Agência do Controlo das Ajudas Comunitárias ao Sector do Azeite
2. Direcção-Geral da Hidráulica e Engenharia Agrícola
3. Direcção-Geral da Pecuária
4. Direcção-Geral das Florestas
5. Direcção-Geral de Planeamento e Agricultura
6. Direcção-Geral dos Mercados Agrícolas e da Indústria Agro-alimentar
7. Direcção Regional de Agricultura da Beira Interior
8. Direcção Regional de Agricultura da Beira Litoral
9. Direcção Regional de Agricultura de Entre Douro e Minho

10. Direcção Regional de Agricultura de Trás-os-Montes
11. Direcção Regional de Agricultura do Alentejo
12. Direcção Regional de Agricultura do Algarve
13. Direcção Regional de Agricultura do Ribatejo e Oeste
14. Gabinete para os Assuntos Agrícolas Comunitários
15. Inspeção Geral e Auditoria de Gestão
16. Instituto da Vinha e do Vinho
17. Instituto de Qualidade Alimentar
18. Instituto Nacional de Investigação Agrária
19. Instituto Regulador Orientador dos Mercados Agrícolas
20. Obra Social — Secretaria Geral
21. Rede de Informação de Contabilidades Agrícolas
22. Secretaria Geral
23. IFADAP — Instituto Financeiro de Apoio ao Desenvolvimento da Agricultura e Pescas
24. INGA — Instituto Nacional de Intervenção e Garantia Agrícola

#### Ministério do Ambiente e Recursos Naturais

1. Direcção-Geral da Qualidade do Ambiente
2. Direcção-Geral dos Recursos Naturais
3. Gabinete dos Assuntos Europeus
4. Gabinete de Estudos e Planeamento
5. Gabinete de Protecção e Segurança Nuclear
6. Instituto Nacional do Ambiente
7. Instituto Nacional de Defesa do Consumidor
8. Instituto Nacional de Meteorologia e Geofísica
9. Secretaria-Geral
10. Serviço Nacional de Parques, Reservas e Conservação da Natureza
11. Gabinete do Saneamento Básico da Costa do Estoril
12. Delegações Regionais
13. Instituto Nacional da Água

#### Ministério do Comércio e Turismo

1. Comissão de Aplicação de Coimas em Matéria Económica
2. Direcção-Geral de Concorrência e Preços
3. Direcção-Geral de Inspeção Económica
4. Direcção-Geral do Comércio Externo
5. Direcção-Geral do Comércio Interno
6. Direcção-Geral do Turismo
7. Fundo de Turismo
8. Gabinete para os Assuntos Comunitários
9. ICEP — Instituto do Comércio Externo de Portugal
10. Inspeção Geral de Jogos
11. Instituto de Promoção Turística

12. Instituto Nacional de Formação Turística
13. Regiões de turismo
14. Secretaria-Geral
15. ENATUR — Empresa Nacional de Turismo, EP
16. AGA — Administração-Geral do Açúcar e do Alcool, EP

Ministério da Defesa Nacional <sup>(1)</sup>

1. Estado-Maior General das Forças Armadas
2. Estado-Maior da Força Aérea
3. Comando Logístico-Administrativo da Força Aérea
4. Estado-Maior do Exército
5. Estado-Maior da Armada
6. Direcção-Geral do Material Naval
7. Direcção das Infra-Estruturas Navais
8. Direcção de Abastecimento
9. Fábrica Nacional de Cordoaria
10. Hospital da Marinha
11. Arsenal do Alfeite
12. Instituto Hidrográfico
13. Direcção-Geral de Armamento
14. Direcção-Geral de Pessoal e Infra-estruturas
15. Direcção-Geral de Política de Defesa Nacional
16. Instituto de Defesa Nacional
17. Secretaria-Geral

Ministério da Educação

1. Auditoria Jurídica
2. Direcção-Geral da Administração Escolar
3. Direcção-Geral da Extensão Educativa
4. Direcção-Geral do Ensino Superior
5. Direcção-Geral dos Desportos
6. Direcção-Geral dos Ensinos Básico e Secundário
7. Direcção Regional de Educação de Lisboa
8. Direcção Regional de Educação do Algarve
9. Direcção Regional de Educação do Centro
10. Direcção Regional de Educação do Norte
11. Direcção Regional de Educação do Sul
12. Editorial do Ministério da Educação
13. Gabinete Coordenador do Ingresso no Ensino Superior
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestão Financeira
16. Gabinete do Ensino Tecnológico, Artístico e Profissional

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(1) Non-warlike materials contained in Annex II.



17. Inspeção Geral de Educação
18. Instituto de Cultura da Língua Portuguesa
19. Instituto de Inovação Educacional
20. Instituto dos Assuntos Sociais da Educação
21. Secretaria-Geral

#### Ministério do Emprego e Segurança Social

1. Auditoria Jurídica
2. Caixa Nacional de Seguros e Doenças Profissionais
3. Caixas de Previdência Social
4. Casa Pia de Lisboa
5. Centro Nacional de Pensões
6. Centros Regionais de Segurança Social
7. Comissão para a Igualdade e Direitos das Mulheres
8. Departamento de Estatística
9. Departamento de Estudos e Planeamento
10. Departamento de Relações Internacionais e Convenções da Segurança Social
11. Departamento para Assuntos do Fundo Social Europeu
12. Departamento para os Assuntos Europeus e Relações Externas
13. Direcção-Geral da Acção Social
14. Direcção-Geral da Família
15. Direcção-Geral das Relações de Trabalho
16. Direcção-Geral de Apoio Técnico à Gestão
17. Direcção-Geral de Higiene e Segurança no Trabalho
18. Direcção-Geral do Emprego e Formação Profissional
19. Direcção-Geral dos Regimes de Segurança Social
20. Fundo de Estabilização Financeira da Segurança Social
21. Inspeção Geral da Segurança Social
22. Inspeção Geral do Trabalho
23. Instituto de Gestão Financeira da Segurança Social
24. Instituto do Emprego e Formação Profissional
25. Instituto Nacional para o Aproveitamento dos Tempos Livres dos Trabalhadores
26. Secretaria-Geral
27. Secretariado Nacional de Reabilitação
28. Serviços Sociais do MESS
29. Santa Casa da Misericórdia de Lisboa

#### Ministério das Finanças

1. ADSE — Direcção-Geral de Protecção aos Funcionários e Agentes da Administração Pública
2. Auditoria Jurídica
3. Direcção-Geral da Administração Pública
4. Direcção-Geral da Contabilidade Pública e Intendência Geral do Orçamento
5. Direcção-Geral da Junta de Crédito Público

6. Direcção-Geral das Alfândegas
7. Direcção-Geral das Contribuições e Impostos
8. Direcção-Geral do Património do Estado
9. Direcção-Geral do Tesouro
10. Gabinete de Estudos Económicos
11. Gabinete dos Assuntos Europeus
12. GAFEEP — Gabinete para a análise do Financiamento do Estado e das Empresas Públicas
13. Inspeção Geral de Finanças
14. Instituto de Informática
15. Junta de Crédito Público
16. Secretaria-Geral
17. SOFE — Serviços Sociais do Ministério das Finanças

#### Ministério da Indústria e Energia

1. Delegação Regional da Indústria e Energia de Lisboa e Vale do Tejo
2. Delegação Regional da Indústria e Energia do Alentejo
3. Delegação Regional da Indústria e Energia do Algarve
4. Delegação Regional da Indústria e Energia do Centro
5. Delegação Regional da Indústria e Energia do Norte
6. Direcção-Geral da Indústria
7. Direcção-Geral da Energia
8. Direcção-Geral de Geologia e Minas
9. Gabinete de Estudos e Planeamento
10. Gabinete para a Pesquisa e Exploração do Petróleo
11. Gabinete para os Assuntos Comunitários
12. Instituto Nacional da Propriedade Industrial
13. Instituto Português da Qualidade
14. LNETI — Laboratório Nacional de Engenharia e Tecnologia Industrial
15. Secretaria-Geral

#### Ministério da Justiça

1. Centro de Estudos Judiciários
2. Centro de Identificação Civil e Criminal
3. Centros de Observação e Acção Social
4. Conselho Superior de Magistratura
5. Conservatória dos Registos Centrais
6. Direcção-Geral dos Registos e Notariado
7. Direcção-Geral dos Serviços de Informática
8. Direcção-Geral dos Serviços Judiciários
9. Direcção-Geral dos Serviços Prisionais
10. Direcção-Geral dos Serviços Tutelares de Menores
11. Estabelecimentos Prisionais
12. Gabinete de Direito Europeu

13. Gabinete de Documentação e Direito Comparado
14. Gabinete de Estudos e Planeamento
15. Gabinete de Gestão Financeira
16. Gabinete de Planeamento e Coordenação do Combate à Droga
17. Hospital-prisão de S. João de Deus
18. Instituto Corpus Christi
19. Instituto da Guarda
20. Instituto de Reinserção Social
21. Instituto de S. Domingos de Benfica
22. Instituto Nacional da Política e Ciências Criminais
23. Instituto Navarro Paiva
24. Instituto Padre António Oliveira
25. Instituto S. Fiel
26. Instituto S. José
27. Instituto Vila Fernando
28. Instituto de Criminologia
29. Instituto de Medicina Legal
30. Polícia Judiciária
31. Secretaria-Geral
32. Serviços Sociais

#### Ministério das Obras Públicas, Transportes e Comunicações

1. Conselho de Mercados de Obras Públicas e Particulares
2. Direcção-Geral de Aviação Civil
3. Direcção-Geral dos Edifícios e Monumentos Nacionais
4. Direcção-Geral dos Transportes Terrestres
5. Gabinete da Travessia do Tejo
6. Gabinete de Estudos e Planeamento
7. Gabinete do Nó Ferroviário de Lisboa
8. Gabinete do Nó Ferroviário do Porto
9. Gabinete para a Navegabilidade do Douro
10. Gabinete para as Comunidades Europeias
11. Inspeção Geral de Obras Públicas, Transportes e Comunicações
12. Junta Autónoma das Estradas
13. Laboratório Nacional de Engenharia Civil
14. Obra Social do Ministério das Obras Públicas, Transportes e Comunicações
15. Secretaria-Geral

#### Ministério dos Negócios Estrangeiros

1. Direcção-Geral dos Assuntos Consulares e Administração Financeira
2. Direcção-Geral das Comunidades Europeias
3. Direcção-Geral da Cooperação
4. Instituto de Apoio à Emigração e às Comunidades Portuguesas

5. Instituto de Cooperação Económica
6. Secretaria-Geral

**Ministério do Planeamento e Administração do Território**

1. Academia das Ciências
  2. Auditoria Jurídica
  3. Centro Nacional de Informação Geográfica
  4. Comissão Coordenadora da Região Centro
  5. Comissão Coordenadora da Região de Lisboa e Vale do Tejo
  6. Comissão Coordenadora da Região do Alentejo
  7. Comissão Coordenadora da Região do Algarve
  8. Comissão Coordenadora da Região Norte
  9. Departamento Central de Planeamento
  10. Direcção-Geral da Administração Autárquica
  11. Direcção-Geral do Desenvolvimento Regional
  12. Direcção-Geral do Ordenamento do Território
  13. Gabinete Coordenador do projecto do Alqueva
  14. Gabinete de Estudos e Planeamento da Administração do Território
  15. Gabinete para os Aeroportos da Região Autónoma da Madeira
  16. Inspeção Geral de Administração do Território
  17. Instituto Nacional de Estatísticas
  18. Instituto António Sérgio de Sector Cooperativo
  19. Instituto de Investigação Científica e Tropical
  20. Instituto Geográfico e Cadastral
  21. Junta Nacional de Investigação Científica e Tecnológica
  22. Secretaria-Geral
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## ANNEX II

LIST OF PRODUCTS REFERRED TO IN ARTICLE 5 CONCERNING THE AWARD OF CONTRACTS  
BY CONTRACTING AUTHORITIES IN THE FIELD OF DEFENCE

- Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement
- Chapter 26: Metallic ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
- except:*
- ex 2710: special engine fuels
- Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes
- except:*
- ex 2809: explosives  
ex 2813: explosives  
ex 2814: tear gas  
ex 2828: explosives  
ex 2832: explosives  
ex 2839: explosives  
ex 2850: toxic products  
ex 2851: toxic products  
ex 2854: explosives
- Chapter 29: Organic chemicals
- except:*
- ex 2903: explosives  
ex 2904: explosives  
ex 2907: explosives  
ex 2908: explosives  
ex 2911: explosives  
ex 2912: explosives  
ex 2913: toxic products  
ex 2914: toxic products  
ex 2915: toxic products  
ex 2921: toxic products  
ex 2922: toxic products  
ex 2923: toxic products  
ex 2926: explosives  
ex 2927: toxic products  
ex 2929: explosives
- Chapter 30: Pharmaceutical products
- Chapter 31: Fertilizers
- Chapter 32: Tanning and dyeing extracts; tannings and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks
- Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations
- Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'

- Chapter 35: Albuminoidal substances; glues; enzymes
- Chapter 37: Photographic and cinematographic goods
- Chapter 38: Miscellaneous chemical products  
*except:*  
ex 3819: toxic products
- Chapter 39: Artificial resins and plastic materials, celluloses esters and ethers; articles thereof  
*except:*  
ex 3903 explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof  
*except:*  
ex 4011: bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur; manufactures thereof
- Chapter 44: Wood and articles of wood; wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof

- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof  
*except:*  
ex 8205: tools  
ex 8207: tools, parts
- Chapter 83: Miscellaneous articles of base metal
- Chapter 84: Boilers, machinery and mechanical appliances; parts thereof  
*except:*  
ex 8406: engines  
ex 8408: other engines  
ex 8445: machinery  
ex 8453: automatic data-processing machines  
ex 8455: parts of machines under heading No 84.53  
ex 8459: nuclear reactors
- Chapter 85: Electrical machinery and equipment; parts thereof  
*except:*  
ex 8513: telecommunication equipment  
ex 8515: transmission apparatus
- Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)  
*except:*  
ex 8602: armoured locomotives, electric  
ex 8603: other armoured locomotives  
ex 8605: armoured wagons  
ex 8606: repair wagons  
ex 8607: wagons
- Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof  
*except:*  
8708: tanks and other armoured vehicles  
ex 8701: tractors  
ex 8702: military vehicles  
ex 8703: breakdown lorries  
ex 8709: motorcycles  
ex 8714: trailers
- Chapter 89: Ships, boats and floating structures  
*except:*  
ex 8901 A: warships

- Chapter 90:** Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
- except:*
- ex 9005: binoculars
  - ex 9013: miscellaneous instruments, lasers
  - ex 9014: telemeters
  - ex 9028: electrical and electronic measuring instruments
  - ex 9011: microscopes
  - ex 9017: medical instruments
  - ex 9018: mechano-therapy appliances
  - ex 9019: orthopaedic appliances
  - ex 9020: X-ray apparatus
- Chapter 91:** Clocks and watches and parts thereof
- Chapter 92:** Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles
- Chapter 94:** Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings
- except:*
- ex 9401 A: aircraft seats
- Chapter 95:** Articles and manufactures of carving or moulding material
- Chapter 96:** Brooms, brushes, powder-puffs and sieves
- Chapter 98:** Miscellaneous manufactured articles
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## ANNEX III

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive the following terms shall be defined as follows:

1. **Technical specifications:** the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling.
  2. **Standard:** a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.
  3. **European standard:** a standard approved by the European Committee for standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European standard (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations.
  4. **European technical approval:** a favorable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. The European agreement shall be issued by an approval body designated for this purpose by the Member State.
  5. **Common technical specification:** a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
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## ANNEX IV

## MODEL NOTICES OF SUPPLY CONTRACTS

## A. Prior information

1. The name, address, telegraphic address, telephone, telex and telefax numbers of the contracting authority, and if different, of the service from which additional information may be obtained:
2. The nature and quantity or value of the products to be supplied: CPA reference number:
3. Estimated date for initiating the award procedures in respect of the contract or contracts (if known):
4. Other information:
5. Date of dispatch of the notice:
6. Date of receipt of the notice by the Office for Official Publications of the European Communities:

## B. Open procedures

1. The name, address, telegraphic address, telephone, telex and telefax numbers of the contracting authority:
2. (a) The award procedure chosen:  
(b) Form of the contract for which tenders are being requested:
3. (a) Place of delivery:  
(b) The nature and quantity of the goods to be supplied: CPA reference number:  
(c) Indication of whether the supplier can tender for a part of the goods required:
4. Time limit for delivery, if any:
5. (a) Name and address of the service from which the contract documents and additional documents may be requested:  
(b) The final date for making such requests:  
(c) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents:
6. (a) The final date for receipt of tenders:  
(b) The address to which they must be sent:  
(c) The language or languages in which they must be drawn up:
7. (a) The persons authorized to be present at the opening of tenders:  
(b) The date, hour and place of such opening:
8. Where applicable, any deposits and guarantees required:
9. The main terms concerning financing and payment and/or references to the provisions in which these are contained:
10. Where applicable, the legal form to be taken by the grouping of suppliers to whom the contract is awarded:
11. Information concerning the supplier's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of the supplier:
12. Period during which the tenderer is bound to keep open his tender:
13. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents:
14. Where applicable, prohibition on variants:
15. Other information:
16. Date of publication of the prior information notice in the *Official Journal of the European Communities* or references to its non-publication:

17. Date of dispatch of the notice:
18. Date of receipt of the notice by the Office for Official Publications of the European Communities:

#### C. Restricted procedures

1. The name, address, telegraphic address, telephone, telex and telefax numbers of the contracting authority:
2. (a) The award procedure chosen:
  - (b) Where applicable, justification for use of the accelerated procedure:
  - (c) Form of the contract for which tenders are being requested:
3. (a) Place of delivery:
  - (b) The nature and quantity of the goods to be supplied: CPA reference number:
  - (c) Indication of whether the supplier can tender for a part of the goods required:
4. Time limit for delivery, if any:
5. Where applicable, the legal form to be assumed by the grouping of suppliers to whom the contract is awarded:
6. (a) The final date for the receipt of requests to participate:
  - (b) The address to which they must be sent:
  - (c) The language or languages in which they must be drawn up:
7. The final date for the dispatch of invitations to tender:
8. Where applicable, any deposits and guarantees required:
9. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him:
10. The criteria for the award of the contract where they are mentioned in the invitation to tender:
11. Envisaged number or range of suppliers which will be invited to tender:
12. Where applicable, prohibition on variants:
13. Other information:
14. Date of publication of the prior information notice in the *Official Journal of the European Communities* or references to its non-publication:
15. Date of dispatch of the notice:
16. Date of receipt of the notice by the Office for Official Publications of the European Communities:

#### D. Negotiated procedures

1. The name, address, telegraphic address, telephone, telex and telefax numbers of the contracting authority:
2. (a) The award procedure chosen:
  - (b) Where applicable, justification for use of the accelerated procedure:
  - (c) Where applicable, form of contract for which tenders are invited:
3. (a) Place of delivery:
  - (b) The nature and quantity of the goods to be supplied: CPA reference number:
  - (c) Indication of whether the suppliers can tender for a part of the goods required:
4. Time limit for delivery, if any:
5. Where applicable, the legal form to be assumed by a grouping of suppliers to whom the contract is awarded:

6. (a) The final date for the receipt of requests to participate:  
(b) The address to which they must be sent:  
(c) The language or languages in which they must be drawn up:
7. Where applicable, any deposits and guarantees required:
8. Information concerning the supplier's personal position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him:
9. Envisaged number or range of suppliers which will be invited to tender:
10. Where applicable, prohibition on variants:
11. Where applicable, the names and addresses of suppliers already selected by the awarding authority:
12. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*:
13. Other information:
14. Date of dispatch of the notice:
16. Date of receipt of the notice by the Office for Official Publications of the European Communities:

#### E. Contracts awards

1. Name and address of awarding authority:
  2. Award procedure chosen. In the case of the negotiated procedure, without publication of a tender notice, justification (Article 6 (3)):
  3. Date of award of contract:
  4. Criteria for award of contract:
  5. Number of tenders received:
  6. Name(s) and address(es) of supplier(s):
  7. The nature and quantity of goods supplied, where applicable, by supplier: CPA reference number:
  8. Price or range of prices (minimum/maximum) paid:
  9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties:
  10. Other information:
  11. Date of publication of the tender notice in the *Official Journal of the European Communities*:
  12. Date of dispatch of the notice:
  13. Date of receipt of the notice by the Office for Official Publications of the European Communities:
-

## ANNEX V

## DEADLINES FOR APPLICATION OF TRANSPOSITION MEASURES

Directive 77/62/EEC (1)	amended by Directives				amended by Acts of Accession	
	80/767/EEC (2)	88/295/EEC (3)	90/531/EEC (4)	92/50/EEC (5)	GR (6)	ES/PO (7)
Article 1 (a)		amended				
Article 1 (b) and (c)						
Article 1 (d) to (f)		amended				
Article 2 (1)		deleted				
Article 2 (2)		amended	amended			
Article 2 (3)						
Article 2a		inserted				
Article 3						
Article 4		deleted				
Article 5		amended				
Article 5 (1) (c)				amended		
Article 6		amended				
Article 7		amended				
Article 8						
Article 9		amended				
Article 10 (1)		amended				
Article 10 (2) to (4)						
Article 11 (1) to (3)		amended				
Article 11 (4) to (6)						
Article 12 (1)		amended				
Article 12 (2) to (3)						
Article 13		deleted				
Article 14		deleted				
Article 15		deleted				
Article 16						
Article 17						
Article 18						
Article 19 (1)		amended				
Article 19 (2)						
Article 20						
Article 21 (1)						
Article 21 (2)		amended				
Article 22						
Article 23						
Article 24						
Article 25						
Article 26		amended				
Article 27						
Article 28						
Article 29		amended				
Article 30						
Article 31						
Article 32						
Annex I		amended			amended	amended
Annex II		amended				

Directive 77/62/EEC <sup>(1)</sup>	amended by Directives				amended by Acts of Accession	
	80/767/EEC <sup>(2)</sup>	88/295/EEC <sup>(3)</sup>	90/531/EEC <sup>(4)</sup>	92/50/EEC <sup>(5)</sup>	GR <sup>(6)</sup>	ES/PO <sup>(7)</sup>
Annex III	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 7 Article 8 Article 9 Article 10 Article 11 Annex I Annex II	amended  deleted deleted deleted deleted deleted				
<sup>(1)</sup> EC-9: 24. 6. 1978 GR: 1. 1. 1983 ES, PO: 1. 1. 1986	<sup>(2)</sup> EC-9: 1. 1. 1981 GR: 1. 1. 1983 ES, PO: 1. 1. 1986	<sup>(3)</sup> EC-9: 1. 1. 1989 GR, ES, PO: 1. 3. 1992	<sup>(4)</sup> EC-9: 1. 1. 1983 ES: 1. 1. 1996 GR, PO: 1. 1. 1998	<sup>(5)</sup> EC-12: 1. 7. 1993	<sup>(6)</sup> EC-10: 1. 1. 1983	<sup>(7)</sup> EC-12: 1. 1. 1986

## ANNEX VI

## CORRELATION TABLE

This directive	77/62/EEC	80/767/EEC	88/295/EEC	90/531/EEC	92/50/EEC
Article 1	Article 1				
Article 2 (1)	Article 2 (2)			Article 35 (1)	
Article 2 (2)	Article 2 (3)				
Article 3	Article 2a				
Article 4	Article 3				
Article 5 (1) (a) and (b)	Article 5 (1) (a) and (b)				
Article 5 (1) (c) first sub-paragraph	Article 5 (1) (c)				Article 42 (1)
Article 5 (1) (c) second sub-paragraph	Article 5 (1) (d)				
Article 5 (1) (d)	—				
Article 5 (2—6)	Article 5 (2—6)				
Article 6 (1)	Article 6 (1)				
—	Article 6 (2)				
Article 6 (2)	Article 6 (3)				
Article 6 (3) (a) — (e)	Article 6 (4) (a) — (e)				
Article 6 (4)	Article 6 (5)				
Article 7 (1—2)	(—)				
Article 7 (3)	Article 6 (6)				
Article 8 (1—4)	Article 7 (1—4)				
Article 8 (5) (a) and (b)	(—)				
Article 8 (5) (c)	Article 7 (5) (a) — (c)				
Article 8 (6)	Article 7 (6)				
Article 9 (1) first sub-paragraph	Article 9 (1) first sub-paragraph				
(—)	Article 9 (1) second sub-paragraph				
Article 9 (1) second sub-paragraph	—				
Article 9 (2) and (3)	Article 9 (2) and (3)				
Article 9 (4)	Article 9 (5)				
Article 9 (5)	Article 9 (4)				
Article 9 (6) and (7)	Article 9 (6) first sub-paragraph				
Article 9 (8)	Article 9 (6) second sub-paragraph				
Article 9 (9)	Article 9 (7)				
Article 9 (10)	Article 9 (8)				
Article 9 (11)	Article 9 (9)				
Article 10	Article 10				
Article 11 (1)	Article 11 (1)				
Article 11 (2)	Article 11 (2)				
Article 11 (2) (a) — (e)	(—)				
Article 11 (3)	Article 11 (3)				
Article 11 (4)	Article 11 (5)				

This directive	77/62/EEC	80/767/EEC	88/295/EEC	90/531/EEC	92/50/EEC
Article 11 (5)	Article 11 (4)				
Article 11 (6)	Article 11 (6)				
Article 12	Article 12				
Article 13	Article 16				
Article 14	(—)				
Article 15	Article 17				
Article 16 (1)	Article 8				
Article 16 (2)	(—)				
Article 17	(—)				
Article 18	Article 18				
Article 19 (1)	Article 19 (1)				
Article 19 (2) and (3)	(—)				
Article 19 (4)	Article 19 (2)				
Article 20	Article 20				
Article 21 (1) and (2)	Article 21				
Article 22	Article 22				
Article 23	Article 23				
Article 24	Article 24				
Article 25	(—)				
Article 26 (1) and (2)	Article 25 (1) and (2)				
(—)	Article 25 (3) and (4)				
Article 27	Article 25 (5) to (7)				
—	Article 26				
—	Article 27				
Article 28		Article 1 (1) and 7			
Article 29 (1) and (2)		Article 8 (1) and (2)			
Article 29 (3)		Article 1 (2)			
Article 30	Article 28				
Article 31	Article 29				
Article 32	(—)				
Article 33	Article 30 and 31	Article 9 and 10	Article 20 and 21		
Article 34	(—)				
Article 35	(—)				
(—)	Annex I				
Annex I		Annex I			
Annex II		Annex II			
Annex III	Annex II				
point 1	point 1				
point 2	point 2				
point 3	point 3				
point 4	—				
point 5	point 4				
Annex IV	Annex III				
point A	point D				
point B	point A				
point C	point B				
point D	point C				
point E	point E				
Annex V	(—)				
Annex VI	(—)				



## COUNCIL DIRECTIVE 93/37/EEC

of 14 June 1993

concerning the coordination of procedures for the award of public works contracts

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

specific nature, rules concerning advertising should be included in this Directive;

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Whereas works contracts of less than ECU 5 000 000 may be exempted from competition as provided for under this Directive and it is appropriate to provide for their exemption from coordination measures;

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Whereas provision must be made for exceptional cases where measures concerning the coordination of procedures need not be applied, but such cases must be expressly limited;

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts <sup>(4)</sup> has been amended substantially and on a number of occasions; whereas, for reasons of clarity and better understanding, the said Directive should be consolidated;

Whereas the negotiated procedure should be considered to be exceptional and therefore only applicable in certain limited cases;

Whereas the simultaneous attainment of freedom of establishment and freedom to provide services in respect of public works contracts awarded in Member States on behalf of the State, or regional or local authorities or other bodies governed by public law entails not only the abolition of restrictions but also the coordination of national procedures for the award of public works contracts;

Whereas it is necessary to provide common rules in the technical field which take account of the Community policy on standards and specifications;

Whereas such coordination should take into account as far as possible the procedures and administrative practices in force in each Member State;

Whereas, to ensure development of effective competition in the field of public contracts, it is necessary that contract notices drawn up by the contracting authorities of Member States be advertised throughout the Community; whereas the information contained in these notices must enable contractors established in the Community to determine whether the proposed contracts are of interest to them; whereas, for this purpose, it is appropriate to give them adequate information on the works undertaken and the conditions attached thereto; whereas, more particularly, in restricted procedures advertisement is intended to enable contractors of Member States to express their interest in contracts by seeking from the contracting authorities invitations to tender under the required conditions;

Whereas this Directive does not apply to certain works contracts which are awarded in the water, energy, transport and telecommunication sectors covered by Directive 90/531/EEC;

Whereas, in view of the increasing importance of concession contracts in the public works area and of their

Whereas additional information concerning contracts must, as is customary in Member States, be given in the contract documents for each contract or else in an equivalent document;

<sup>(1)</sup> OJ No C 46, 20. 2. 1992, p. 79.

<sup>(2)</sup> OJ No C 125, 18. 5. 1992, p. 171 and OJ No C 305, 23. 11. 1992, p. 73.

<sup>(3)</sup> OJ No C 106, 27. 4. 1992, p. 11.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 15; Directive as last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

Whereas it is necessary to provide common rules for participation in public works contracts, including both

qualitative selection criteria and criteria for the award of the contract;

Whereas it would be appropriate to enable certain technical conditions concerning notices and statistical reports required by this Directive to be adapted in the light of changing technical requirements; whereas Annex II to this Directive refers to the General Industrial Classification of Economic Activities within the European Communities (NACE); whereas the Community may, as required, revise or replace its common nomenclature and whereas it is necessary to make provision for the possibility of adapting the reference made to the NACE nomenclature in the said Annex II accordingly;

Whereas this Directive should not affect the obligations of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex VII,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### GENERAL PROVISIONS

#### Article 1

For the purpose of this Directive:

(a) 'public works contracts' are contracts for pecuniary interest concluded in writing between a contractor and a contracting authority as defined in (b), which have as their object either the execution, or both the execution and design, of works related to one of the activities referred to in Annex II or a work defined in (c) below, or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority;

(b) 'contracting authorities' shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law;

A 'body governed by public law' means any body:

— established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and

— having legal personality, and

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

The lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in the second subparagraph are set out in Annex I. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 35. To this end, Member States shall periodically notify the Commission of any changes of their lists of bodies and categories of bodies;

(c) a 'work' means the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function;

(d) 'public works concession' is a contract of the same type as that indicated in (a) except for the fact that the consideration for the works to be carried out consists either solely in the right to exploit the construction or in this right together with payment;

(e) 'open procedures' are those national procedures whereby all interested contractors may submit tenders;

(f) 'restricted procedures' are those national procedures whereby only those contractors invited by the contracting authority may submit tenders;

(g) 'negotiated procedures' are those national procedures whereby contracting authorities consult contractors of their choice and negotiate the terms of the contract with one or more of them;

(h) a contractor who submits a tender shall be designated by the term 'tenderer' and one who has sought an invitation to take part in a restricted or negotiated procedure by the term 'candidate'.

#### Article 2

1. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50 % a works contract awarded by an entity other than themselves.

2. Paragraph 1 shall concern only contracts covered by Class 50, Group 502, of the general industrial classification

of economic activities within the European Communities (NACE) nomenclature and contracts relating to building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.

### Article 3

1. Should contracting authorities conclude a public works concession contract, the advertising rules as described in Article 11 (3), (6), (7) and (9) to (13), and in Article 15, shall apply to that contract when its value is not less than ECU 5 000 000.

2. The contracting authority may:

- either require the concessionaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to third parties, at the same time providing the option for candidates to increase this percentage. This minimum percentage shall be specified in the concession contract,
- or request the candidates for concession contracts to specify in their tenders the percentage, if any, of the total value of the work for which the concession contract is to be awarded which they intend to assign to third parties.

3. When the concessionaire is himself a contracting authority, as referred to in Article 1 (b), he shall comply with the provisions of this Directive in the case of works to be carried out by third parties.

4. Member States shall take the necessary steps to ensure that a concessionaire other than a contracting authority shall apply the advertising rules listed in Article 11 (4), (6), (7), and (9) to (13), and in Article 16, in respect of the contracts which it awards to third parties when the value of the contracts is not less than ECU 5 000 000. An advertisement is not, however, required where works contracts meet the conditions laid down in Article 7 (3).

Undertakings which have formed a group in order to obtain the concession contract, or undertakings affiliated to them, shall not be regarded as third parties.

An 'affiliated undertaking' means any undertaking over which the concessionaire may exercise, directly or indirectly, a dominant influence or which may exercise a dominant influence over the concessionaire or which, in common with the concessionaire, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which

govern it. A dominant influence on the part of an undertaking shall be presumed when, directly or indirectly in relation to another undertaking, it:

- holds the major part of the undertaking's subscribed capital, or
- controls the majority of the votes attaching to shares issued by the undertakings, or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

A comprehensive list of these undertakings shall be enclosed with the candidature for the concession. This list shall be brought up to date following any subsequent changes in the relationship between the undertakings.

### Article 4

This Directive shall not apply to:

- (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6 (2) of that Directive;
- (b) works contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of the Member State's security so requires.

### Article 5

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

- (a) in pursuance of an international agreement, concluded in conformity with the Treaty, between a Member State and one or more non-member countries and covering works intended for the joint implementation or exploitation of a project by the signatory States; all agreements shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Decision 71/306/EEC<sup>(1)</sup>;
- (b) to undertakings in a Member State or a non-member country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

<sup>(1)</sup> OJ No L 185, 16. 8. 1971, p. 15; Decision as amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

## Article 6

1. The provisions of this Directive shall apply to public works contracts whose estimated value net of VAT is not less than ECU 5 000 000.

2. (a) The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1992. The calculation of this value shall be based on the average daily values of these currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. The exchange values shall be published in the *Official Journal of the European Communities* at the beginning of November.

(b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts in principle two years after its initial application.

3. Where a work is subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amounts referred to in paragraph 1. Where the aggregate value of the lots is not less than the amount referred to in paragraph 1, the provisions of that paragraph shall apply to all lots. Contracting authorities shall be permitted to depart from this provision for lots whose estimated value net of VAT is less than ECU 1 000 000, provided that the total estimated value of all the lots exempted does not, in consequence, exceed 20 % of the total estimated value of all lots.

4. No work or contract may be split up with the intention of avoiding the application of this Directive.

5. When calculating the amounts referred to in paragraph 1 and in Article 7, account shall be taken not only of the amount of the public works contracts but also of the estimated value of the supplies needed to carry out the works are made available to the contractor by the contracting authorities.

## Article 7

1. In awarding public works contracts the contracting authorities shall apply the procedures defined in Article 1 (e), (f) and (g), adapted to this Directive.

2. The contracting authorities may award their public works contracts by negotiated procedure, with prior publication of a contract notice and after having selected

the candidates according to publicly known qualitative criteria, in the following cases:

(a) in the event of irregular tenders in response to an open or restricted procedure or in the case of tenders which are unacceptable under national provisions that are in accordance with the provisions of Title IV, insofar as the original terms of the contract are not substantially altered. The contracting authorities shall not, in these cases, publish a contract notice where they include in such negotiated procedure all the enterprises satisfying the criteria of Articles 24 to 29 which, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) when the works involved are carried out purely for the purpose of research, experiment or development, and not to establish commercial viability or to recover research and development costs;

(c) in exceptional cases, when the nature of the works or the risks attaching thereto do not permit prior overall pricing.

3. The contracting authorities may award their public works contracts by negotiated procedure without prior publication of a contract notice, in the following cases:

(a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure insofar as the original terms of the contract are not substantially altered and provided that a report is communicated to the Commission at its request;

(b) when, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the works may only be carried out by a particular contractor;

(c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseen by the contracting authorities in question, the time limit laid down for the open, restricted or negotiated procedures referred to in paragraph 2 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;

(d) for additional works not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the carrying out of the work described therein, on condition that the award is made to the contractor carrying out such work:

- when such works cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities, or
- when such works, although separable from the execution of the original contract, are strictly necessary to its later stages,

However, the aggregate amount of contracts awarded for additional works may not exceed 50 % of the amount of the main contract;

- (e) for new works consisting of the repetition of similar works entrusted to the undertaking to which the same contracting authorities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4.

As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting authorities when they apply the provisions of Article 6. This procedure may only be adopted during the three years following the conclusion of the original contract.

4. In all other cases, the contracting authorities shall award their public works contracts by the open procedure or by the restricted procedure.

#### Article 8

1. The contracting authority shall, within 15 days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests of the reasons for rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. For each contract awarded, the contracting authorities shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract,
- the names of the candidates or tenderers admitted and the reasons for their selection,

- the names of the candidates or tenderers rejected and the reasons for their rejection,
- the name of the successful tenderer and the reasons for his tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to a third party,
- for negotiated procedures, the circumstances referred to in Article 7 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

#### Article 9

In the case of contracts relating to the design and construction of a public housing scheme whose size and complexity, and the estimated duration of the work involved, require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

In particular, contracting authorities shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested contractors to form a valid idea of the project. Furthermore, contracting authorities shall, in accordance with Articles 24 to 29, set out in such a contract notice the personal, technical and financial conditions to be fulfilled by candidates.

Where such procedure is adopted, contracting authorities shall apply the common advertising rules relating restricted procedure and to the criteria for qualitative selection.

#### TITLE II

#### COMMON RULES IN THE TECHNICAL FIELD

#### Article 10

1. The technical specifications defined in Annex III shall be given in the general or contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules and insofar as these are compatible with Community law, the technical specifications shall be defined by the contracting authorities by reference to

national standards implementing European standards, or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

- (a) the standards, European technical approvals or common technical specifications do not include any provision for establishing conformity, or, if technical means do not exist for establishing satisfactorily the conformity of a product to these standards, European technical approvals or common technical specifications;
- (b) use of these standards, European technical approvals or common technical specifications would oblige the contracting authority to acquire products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to change-over, within a given period, to European standards, European technical approvals or common technical specifications;
- (c) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the tender notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards or European technical approvals or common technical specifications, the technical specifications:

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products <sup>(1)</sup>;

(b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;

(c) may be defined by reference to other documents.

In this case, it is appropriate to make reference in order of preference to:

- (i) national standards implementing international standards accepted by the country of the contracting authority;
- (ii) other national standards and national technical approvals of the country of the contracting authority;
- (iii) any other standard.

6. Unless such specifications are justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain undertakings. In particular, the indication of trade marks, patents, types, or of a specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent', it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

### TITLE III

#### COMMON ADVERTISING RULES

##### Article 11

1. Contracting authorities shall make known, by means of an indicative notice, the essential characteristics of the works contracts which they intend to award and the estimated value of which is not less than the threshold laid down in Article 6 (1).

2. Contracting authorities who wish to award a public works contract by open, restricted or negotiated procedure referred to in Article 7 (2), shall make known their intention by means of a notice.

3. Contracting authorities who wish to award a works concession contract shall make known their intention by means of a notice.

<sup>(1)</sup> OJ No L 40, 11. 2. 1989, p. 12.

4. Works concessionnaires, other than a contracting authority, who wish to award works contracts to a third party within the meaning of Article 3 (4), shall make known their intention by means of a notice.

5. Contracting authorities who have awarded a contract shall make known the result by means of a notice. However, certain information on the contract award may, in certain cases, not be published where release of such information would impede law enforcement or otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of particular enterprises, public or private, or might prejudice fair competition between contractors.

6. The notices referred to in paragraphs 1 to 5 shall be drawn up in accordance with the models given in Annexes IV, V and VI, and shall specify the information requested in those Annexes.

The contracting authorities may not require any conditions but those specified in Articles 26 and 27 when requesting information concerning the economic and technical standards which they require of contracts for their selection (point 11 of Annex IV B, point 10 of Annex IV C and point 9 of Annex IV D).

7. The contracting authorities shall send the notices referred to in paragraphs 1 to 5 as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 14, the notice shall be sent by telex, telegram or telefax.

The notice referred to in paragraph 1 shall be sent as soon as possible after the decision approving the planning of the works contracts that the contracting authorities intend to award.

The notice referred to in paragraph 5 shall be sent at the latest 48 days after the award of the contract in question.

8. The notices referred to in paragraphs 1 and 5 shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the original text alone being authentic.

9. The notices referred to in paragraphs 2, 3 and 4 shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the original languages. A summary of the important elements of each

notice shall be published in the other official languages of the Community, the original text alone being authentic.

10. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 14, this period shall be reduced to five days.

11. The notice shall not be published in the official journals or in the press of the country of the contracting authority before the date of dispatch to the *Official Journal of the European Communities* and it shall mention this date. It shall not contain information other than that published in the *Official Journal of the European Communities*.

12. The contracting authorities must be able to supply evidence of the date of dispatch.

13. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Journal, or approximately 650 words. Each edition of the Journal containing one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

#### Article 12

1. In open procedures the time limit for the receipt of tenders, fixed by the contracting authorities shall be not less than 52 days from the date of dispatch of the notice.

2. The time limit for the receipt of tenders laid down in paragraph 1 may be reduced to 36 days where the contracting authorities have published the notice for in Article 11 (1), drafted in accordance with the specimen in Annex IV A, in the *Official Journal of the European Communities*.

3. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the contractors by the contracting authorities or competent departments within six days of receiving their application.

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

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied

within the time limits laid down in paragraph 3 or 4 or where tenders can only be made after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limits laid down in paragraphs 1 and 2 shall be extended accordingly.

#### Article 13

1. In restricted procedures and negotiated procedures as described in Article 7 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 11 (7), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 26 and 27;
- (e) the criteria for the award of the contract if these are not given in the notice.

3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than 40 days from the date of dispatch of the written invitation.

4. The time limit for the receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the notice provided for in Article 11 (1), drafted in accordance with the model in Annex IV A, in the *Official Journal of the European Communities*.

5. Requests to participate in procedures for the award of contracts may be made by letter, by telegram, telex, telefax or by telephone. If by one of the last four, they must be

confirmed by letter dispatched before the end of the period laid down in paragraph 1.

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

7. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraphs 3 and 4 shall be extended accordingly.

#### Article 14

1. In cases where urgency renders impracticable the time limits laid down in Article 13, the contracting authorities may fix the following time limits:

- (a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice;
- (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

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

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telefax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

#### Article 15

Contracting authorities who wish to award a works concession contract shall fix a time limit for receipt of candidatures for the concession, which shall not be less than 52 days from the date of dispatch of the notice.

#### Article 16

In works contracts awarded by a works concessionaire other than a contracting authority, the time limit for the receipt of requests to participate, fixed by the concessionaire, shall be not less than 37 days from the



date of dispatch of the notice, and the time limit for the receipt of tenders not less than 40 days from the date of dispatch of the notice or the invitation to tender.

#### Article 17

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public works contracts which are not subject to the publication requirement laid down in this Directive.

### TITLE IV

## COMMON RULES ON PARTICIPATION

### Chapter 1

#### General provisions

#### Article 18

Contracts shall be awarded on the basis of the criteria laid down in Chapter 3 of this Title, taking into account Article 19, after the suitability of the contractors not excluded under Article 24 has been checked by contracting authorities in accordance with the criteria of economic and financial standing and of technical knowledge or ability referred to in Articles 26 to 29.

#### Article 19

Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting authorities.

The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the tender notice if variants are not permitted.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications

referred to in Article 10 (2) or again by reference to national technical specifications referred to in Article 10 (5) (a) and (b).

#### Article 20

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

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

#### Article 21

Tenders may be submitted by groups of contractors. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.

#### Article 22

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the contractor's personal position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 24 to 29 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of undertakings which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light of the nature of the work to be carried out. The range must number at least 5 undertakings and may be up to 20.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 7 (2), the number of candidates admitted to negotiate may not be less than three provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discriminations to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

*Article 23*

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

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 30 (4) concerning the examination of abnormally low tenders.

## Chapter 2

## Criteria for qualitative selection

*Article 24*

Any contractor may be excluded from participation in the contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proved by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the

country in which he is established or those of the country of the contracting authority;

(g) is guilty of serious misrepresentation in supplying the information required under this Chapter.

Where the contracting authority requires of the contractor proof that none of the cases quoted in (a), (b), (c), (e) or (f) applies to him, it shall accept as sufficient evidence:

- for points (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin in the country whence that person comes showing that these requirements have been met;
- for points (e) or (f), a certificate issued by the competent authority in the Member State concerned.

Where the country concerned does not issue such documents or certificates, they may be replaced a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

Member States shall designate the authorities and bodies competent to issue these documents and shall forthwith inform the other Member States and the Commission thereof.

*Article 25*

Any contractor wishing to take part in a public works contract may be requested to prove his enrolment in the professional or trade register under the conditions laid down by the laws of the Member State in which he is established:

- in Belgium the 'Registre du Commerce - Handelsregister',
- in Denmark, the 'Handelsregistret, Aktieselskabsregistret' and the 'Erhvervsregistret',
- in Germany, the 'Handelsregister' and the 'Handwerksrolle',
- in Greece, the registrar of contractors' enterprises ('Μητρώο Εργοληπτικών Επιχειρήσεων') of the Ministry for Environment, Town and Country Planning and Public Works,
- in Spain, the 'Registro Oficial de Contratistas del Ministerio de Industria, Comercio y Turismo',
- in France, the 'Registre du Commerce and the Répertoire des métiers',

- in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato',
- in Luxembourg, the 'Registre aux firmes and the Rôle de la Chambre des métiers',
- in the Netherlands, the 'Handelsregister',
- in Portugal, the 'Comissão de Alvarás de Empresas de Obras Públicas e Particulares (CAEOPP)',
- in the United Kingdom and Ireland, the contractor may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

#### Article 26

1. Evidence of the contractor's financial and economic standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from bankers;
- (b) the presentation of the firm's balance sheets or extracts from the balance sheets, where publication of the balance sheet is required under the law of the country in which the contractor is established;
- (c) a statement of the firm's overall turnover and the turnover on construction works for the three previous financial years.

2. The contracting authorities shall specify in the notice or in the invitation to tender which reference or references they have chosen and what references other than those mentioned under paragraph 1 (a), (b) or (c) are to be produced.

3. If, for any valid reason, the contractor is unable to supply the references requested by the contracting authorities, he may prove his economic and financial standing by any other document which the contracting authorities consider appropriate.

#### Article 27

1. Evidence of the contractor's technical capability may be furnished by:

- (a) the contractor's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for carrying out the works;
- (b) a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the

rules of the trade and properly completed. Where necessary, the competent authority shall submit these certificates to the contracting authority direct;

- (c) a statement of the tools, plant and technical equipment available to the contractor for carrying out the work;
- (d) a statement of the firm's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the technicians or technical bodies which the contractor can call upon for carrying out the work, whether or not they belong to the firm.

2. The contracting authorities shall specify in the invitation to tender which of these references are to be produced.

#### Article 28

Within the limits of Articles 24 to 27, the contracting authority may invite the contractor to supplement the certificates and documents submitted or to clarify them.

#### Article 29

1. Member States who have official lists of recognized contractors must adapt them to the provisions of Article 24 (a) to (d) and (g) and of Articles 25, 26 and 27.

2. Contractors registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

3. Certified registration in the official lists by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability for works corresponding to the contractor's classification only as regards Articles 24 (a) to (d) and (g), 25, 26 (b) and (c) and 27 (b) and (d).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered contractor whenever a contract is offered.

The contracting authorities of other Member States shall apply the above provisions only in favour of contractors who are established in the country holding the official list.

4. For the registration of contractors of other Member States in an official list, no further proofs and statements may be required other than those requested of nationals and, in any event, only those provided for under Articles 24 to 27.

5. Member States holding an official list shall communicate to other Member States the address of the body to which requests for registration may be made.

### Chapter 3

#### Criteria for the award of contracts

##### Article 30

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

- (a) either the lowest price only;
- (b) or, when the award is made to the most economically advantageous tender, various criteria according to the contract: e. g. price, period for completion, running costs, profitability, technical merit.

2. In the case referred to in paragraph 1 (b), the contracting authority shall state in the contract documents or in the contract notice all the criteria it intends to apply to the award, where possible in descending order of importance.

3. Paragraph 1 shall not apply when a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of the adoption of this Directive whose aim is to give preference to certain tenderers, on condition that the rules invoked are compatible with the EEC Treaty.

4. If, for a given contract, tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

The contracting authority may take into consideration explanations which are justified on objective grounds including the economy of the construction method, or the technical solution chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the work, or the originality of the work proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it considers to be too low.

However, until the end of 1992, if current national law so permits, the contracting authority may exceptionally, without any discrimination on grounds of nationality, reject tenders which are abnormally low in relation to the works, without being obliged to comply with the procedure provided for in the first subparagraph if the number of such tenders for a particular contract is so high that implementation of this procedure would lead to a considerable delay and jeopardize the public attaching to the execution of the contract in question. Recourse to this exceptional procedure shall be mentioned in the notice referred to in Article 11 (5).

##### Article 31

1. Until 31 December 1992, this Directive shall not prevent the application of existing national provisions on the award of public works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in regions whose development is lagging behind and in declining industrial regions, on condition that the provisions concerned are compatible with the Treaty, in particular with the principles of non-discrimination on grounds of nationality, freedom of establishment and freedom to provide services, and with the Community's international obligations.

2. Paragraph 1 shall be without prejudice to Article 30 (3).

##### Article 32

1. Member States shall inform the Commission of national covered by Article 30 (3) and Article 31 and of the rules for applying them.

2. Member States concerned shall forward to the Commission, every year, a report describing the practical application of the measures referred to in paragraph 1. The reports shall be submitted to the Advisory Committee for Public Contracts.

#### TITLE V

#### FINAL PROVISIONS

##### Article 33

The calculation of the time limit for receipt of tenders or requests to participate shall be made in accordance with

Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>(1)</sup>.

#### Article 34

1. In order to permit assessment of the results of applying the Directive, Member States shall forward to the Commission a statistical report on the contracts award by contracting authorities by 31 October 1993 at the latest for the preceding year and thereafter by 31 October of every second year.

Nevertheless, for Greece, Spain and Portugal, the date of 31 October 1993 shall be replaced by 31 October 1995.

2. The statistical reports shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the threshold, subdivided as far as possible by procedure, category of work and the nationality of the contractor to whom the contract has been awarded, and in the case of negotiated procedures, subdivided in accordance with Article 7, listing the number and value of the contracts awarded to each Member State and to third countries.

3. The Commission shall determine in accordance with the procedure laid down in Article 35 (3) the nature of any additional statistical information, which is requested under the Directive.

#### Article 35

1. Annex I shall be amended by the Commission, in accordance with the procedure laid down in paragraph 3, when, in particular on the basis of the notifications from the Member States, it appears necessary:

(a) to remove from the said Annex bodies governed by public law which no longer fulfil the criteria laid down in Article 1 (b);

(b) to include in that Annex bodies governed by public law which meet those criteria.

2. The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Article 11 and of the statistical reports

provided for in Article 34, the nomenclature provided for in Annex II, as well as the reference in the notices to particular positions of the nomenclature, may be modified in accordance with the procedure laid down in paragraph 3.

3. The chairman of the Advisory Committee for Public Contracts shall submit to the committee a draft of any measures to be taken. The committee shall deliver its opinion on the draft, if necessary by taking a vote, within a time limit to be fixed by the chairman in light of the urgency of the matter.

The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to request that its position be recorded in the minutes.

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

4. Amended versions of Annexes I and II and of the conditions set out in paragraph 2 shall be published in the *Official Journal of the European Communities*.

#### Article 36

1. Directive 71/305/EEC<sup>(2)</sup> is hereby repealed, without prejudice to the obligations of the Member States concerning the deadlines for transposition into national law and for application indicated in Annex VII.

2. References to the repealed Directive shall be construed as references to this Directive and should be read in accordance with the correlation table given in Annex VIII.

#### Article 37

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1993.

For the Council

The President

J. TRØJBORG

<sup>(1)</sup> OJ No L 124, 8. 6. 1971, p. 1.

<sup>(2)</sup> including the provisions which amended this Directive, namely:

- Directive 78/669/EEC (OJ No L 225, 16. 8. 1978, p. 41),
- Directive 89/440/EEC (OJ No L 210, 21. 7. 1989, p. 1),
- Commission Decision 90/380/EEC (OJ No L 187, 19. 7. 1990, p. 55),
- Article 35 (2) of Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1), and
- Directive 93/4/EEC (OJ No L 38, 16. 2. 1993, p. 31).

## ANNEX I

## LISTS OF BODIES AND CATEGORIES OF BODIES GOVERNED BY PUBLIC LAW REFERRED TO IN ARTICLE 1 (b)

## I. BELGIUM

## Bodies

- Archives générales du Royaume et Archives de l'État dans les Provinces — Algemeen Rijksarchief en Rijksarchief in de Provinciën,
- Conseil autonome de l'enseignement communautaire — Autonome Raad van het Gemeenschapsonderwijs,
- Radio et télévision belges, émissions néerlandaises — Belgische Radio en Televisie, Nederlandse uitzendingen,
- Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft (Centre de radio et télévision belge de la Communauté de langue allemande — Centrum voor Belgische Radio en Televisie voor de Duitstalige Gemeenschap),
- Bibliothèque royale Albert I<sup>er</sup> — Koninklijke Bibliotheek Albert I,
- Caisse auxiliaire de paiement des allocations de chômage — Hulpkas voor Werkloosheidsuitkeringen,
- Caisse auxiliaire d'assurance maladie-invalidité — Hulpkas voor Ziekte- en Invaliditeitsverzekeringen,
- Caisse nationale des pensions de retraite et de survie — Rijkskas voor Rust- en Overlevingspensioenen,
- Caisse de secours et de prévoyance en faveur des marins naviguant sous pavillon belge — Hulp- en Voorzorgskas voor Zeevarenden onder Belgische Vlag,
- Caisse nationale des calamités — Nationale Kas voor de Rampenschade,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie diamantaire — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders der Diamantnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs de l'industrie du bois — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders in de Houtnijverheid,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de batellerie — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van Arbeiders der Ondernemingen voor Binnenscheepvaart,
- Caisse spéciale de compensation pour allocations familiales en faveur des travailleurs occupés dans les entreprises de chargement, déchargement et manutention de marchandises dans les ports débarcadères, entrepôts et stations (appelée habituellement «Caisse spéciale de compensation pour allocations familiales des régions maritimes») — Bijzondere Verrekenkas voor Gezinsvergoedingen ten bate van de Arbeiders gebezigd door Ladings- en Lossingsondernemingen en door de Stuwadoors in de Havens, Losplaatsen, Stapelplaatsen en Stations (gewoonlijk genoemd: „Bijzondere Compensatiekas voor kindertoeslagen van de zeevaartgewesten”),
- Centre informatique pour la Région bruxelloise — Centrum voor Informatica voor het Brussels Gewest,
- Commissariat général de la Communauté flamande pour la coopération internationale — Commissariaat-generaal voor Internationale Samenwerking van de Vlaamse Gemeenschap,
- Commissariat général pour les relations internationales de la Communauté française de Belgique — Commissariaat-generaal bij de Internationale Betrekkingen van de Franse Gemeenschap van België,
- Conseil central de l'économie — Centrale Raad voor het Bedrijfsleven,
- Conseil économique et social de la Région wallonne — Sociaal-economische Raad van het Waals Gewest,
- Conseil national du travail — Nationale Arbeidsraad,
- Conseil supérieur des classes moyennes — Hoge Raad voor de Middenstand,
- Office pour les travaux d'infrastructure de l'enseignement subsidie — Dienst voor Infrastructuurwerken van het Gesubsidieerd Onderwijs,
- Fondation royale — Koninklijke Schenking,

- Fonds communautaire de garantie des bâtiments scolaires — Gemeenschappelijk Waarborgfonds voor Schoolgebouwen.
- Fonds d'aide médicale urgente — Fonds voor Dringende Geneeskundige Hulp.
- Fonds des accidents du travail — Fonds voor Arbeidsongevallen.
- Fonds des maladies professionnelles — Fonds voor Beroepsziekten.
- Fonds des routes — Wegenfonds.
- Fonds d'indemnisation des travailleurs licenciés en cas de fermeture d'entreprises — Fonds tot Vergoeding van de in geval van Sluiting van Ondernemingen Ontslagen Werknemers.
- Fonds national de garantie pour la réparation des dégâts houillers — Nationaal Waarborgfonds inzake Kolenmijn schade.
- Fonds national de retraite des ouvriers mineurs — Nationaal Pensioenfonds voor Mijnwerkers.
- Fonds pour le financement des prêts à des États étrangers — Fonds voor Financiering van de Leningen aan Vreemde Staten.
- Fonds pour la rémunération des mousses enrôlés à bord des bâtiments de pêche — Fonds voor Scheepsjongens aan Boord van Visservaartuigen.
- Fonds wallon d'avances pour la réparation des dommages provoqués par des pompages et des prises d'eau souterraine — Waals Fonds van Voorschotten voor het Herstel van de Schade veroorzaakt door Grondwaterzuiveringen en Afpompingen.
- Institut d'aéronomie spatiale — Instituut voor Ruimte-aeronomie.
- Institut belge de normalisation — Belgisch Instituut voor Normalisatie.
- Institut bruxellois de l'environnement — Brussels Instituut voor Milieubeheer.
- Institut d'expertise vétérinaire — Instituut voor Veterinaire Keuring.
- Institut économique et social des classes moyennes — Economisch en Sociaal Instituut voor de Middenstand.
- Institut d'hygiène et d'épidémiologie — Instituut voor Hygiëne en Epidemiologie.
- Institut francophone pour la formation permanente des classes moyennes — Franstalig Instituut voor Permanente Vorming voor de Middenstand.
- Institut géographique national — Nationaal Geografisch Instituut.
- Institut géotechnique de l'État — Rijksinstituut voor Grondmechanica.
- Institut national d'assurance maladie-invalidité — Rijksinstituut voor Ziekte- en Invaliditeitsverzekering.
- Institut national d'assurances sociales pour travailleurs indépendants — Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen.
- Institut national des industries extractives — Nationaal Instituut voor de Extractiebedrijven.
- Institut national des invalides de guerre, anciens combattants et victimes de guerre — Nationaal Instituut voor Oorlogsinvaliden, Oudstrijders en Oorlogsslachtoffers.
- Institut pour l'amélioration des conditions de travail — Instituut voor Verbetering van de Arbeidsvoorwaarden.
- Institut pour l'encouragement de la recherche scientifique dans l'industrie et l'agriculture — Instituut tot Aanmoediging van het Wetenschappelijk Onderzoek in Nijverheid en Landbouw.
- Institut royal belge des sciences naturelles — Koninklijk Belgisch Instituut voor Natuurwetenschappen.
- Institut royal belge du patrimoine artistique — Koninklijk Belgisch Instituut voor het Kunstpatrimonium.
- Institut royal de météorologie — Koninklijk Meteorologisch Instituut.
- Enfance et famille — Kind en Gezin.
- Compagnie des installations maritimes de Bruges — Maatschappij der Brugse Zeevaartinrichtingen.
- Mémorial national du fort de Breendonck — Nationaal Gedenkteken van het Fort van Breendonck.
- Musée royal de l'Afrique centrale — Koninklijk Museum voor Midden-Afrika.
- Musées royaux d'art et d'histoire — Koninklijke Musea voor Kunst en Geschiedenis.
- Musées royaux des beaux-arts de Belgique — Koninklijke Musea voor Schone Kunsten van België.
- Observatoire royal de Belgique — Koninklijke Sterrenwacht van België.
- Office belge de l'économie et de l'agriculture — Belgische Dienst voor Bedrijfsleven en Landbouw.
- Office belge du commerce extérieur — Belgische Dienst voor Buitenlandse Handel.

- Office central d'action sociale et culturelle au profit des membres de la communauté militaire — Centrale Dienst voor Sociale en Culturele Actie ten behoeve van de Leden van de Militaire Gemeenschap.
- Office de la naissance et de l'enfance — Dienst voor Burelingen en Kinderen.
- Office de la navigation — Dienst voor de Scheepvaart.
- Office de promotion du tourisme de la Communauté française — Dienst voor de Promotie van het Toerisme van de Franse Gemeenschap.
- Office de renseignements et d'aide aux familles des militaires — Hulp- en Informatiebureau voor Gezinnen van Militairen.
- Office de sécurité sociale d'outre-mer — Dienst voor Overzeese Sociale Zekerheid.
- Office national d'allocations familiales pour travailleurs salariés — Rijksdienst voor Kinderbijslag voor Werknemers.
- Office national de l'emploi — Rijksdienst voor de Arbeidsvoorziening.
- Office national des débouchés agricoles et horticoles — Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten.
- Office national de sécurité sociale — Rijksdienst voor Sociale Zekerheid.
- Office national de sécurité sociale des administrations provinciales et locales — Rijksdienst voor Sociale Zekerheid van de Provinciale en Plaatselijke Overheidsdiensten.
- Office national des pensions — Rijksdienst voor Pensioenen.
- Office national des vacances annuelles — Rijksdienst voor de Jaarlijkse Vakantie.
- Office national du lait — Nationale Zuiveldienst.
- Office régional bruxellois de l'emploi — Brusselse Gewestelijke Dienst voor Arbeidsbemiddeling.
- Office régional et communautaire de l'emploi et de la formation — Gewestelijke en Gemeenschappelijke Dienst voor Arbeidsvoorziening en Vorming.
- Office régulateur de la navigation intérieure — Dienst voor Regeling der Binnenvaart.
- Société publique des déchets pour la Région flamande — Openbare Afvalstoffenmaatschappij voor het Vlaams Gewest.
- Orchestre national de Belgique — Nationaal Orkest van België.
- Organisme national des déchets radioactifs et des matières fissiles — Nationale Instelling voor Radioactief Afval en Slijtstoffen.
- Palais des beaux-arts — Paleis voor Schone Kunsten.
- Pool des marins de la marine marchande — Pool van de Zeelieden ter Koopvaardij.
- Port autonome de Charleroi — Autonome Haven van Charleroi.
- Port autonome de Liège — Autonome Haven van Luik.
- Port autonome de Namur — Autonome Haven van Namen.
- Radio et télévision belges de la Communauté française — Belgische Radio en Televisie van de Franse Gemeenschap.
- Régie des bâtiments — Regie der Gebouwen.
- Régie des voies aériennes — Regie der Luchtwegen.
- Régie des postes — Regie der Posterijen.
- Régie des télégraphes et des téléphones — Regie van Telegraaf en Telefoon.
- Conseil économique et social pour la Flandre — Sociaal-economische Raad voor Vlaanderen.
- Société anonyme du canal et des installations maritimes de Bruxelles — Naamloze Vennootschap „Zeekanaal en Haveninrichtingen van Brussel”.
- Société du logement de la Région bruxelloise et sociétés agréées — Brusselse Gewestelijke Huisvestingsmaatschappij en erkende maatschappijen.
- Société nationale terrienne — Nationale Landmaatschappij.
- Théâtre royal de la Monnaie — De Koninklijke Muntchouwburg.
- Universités relevant de la Communauté flamande — Universiteiten ahangende van de Vlaamse Gemeenschap.
- universités relevant de la Communauté française — Universiteiten ahangende van de Franse Gemeenschap.
- Office flamand de l'emploi et de la formation professionnelle — Vlaamse Dienst voor Arbeidsvoorziening en Beroepsopleiding.
- Fonds flamand de construction d'institutions hospitalières et médico-sociales — Vlaams Fonds voor de Bouw van Ziekenhuizen en Medisch-Sociale Instellingen.
- Société flamande du logement et sociétés agréées — Vlaamse Huisvestingsmaatschappij en erkende maatschappijen.
- Société régionale wallonne du logement et sociétés agréées — Waalse Gewestelijke Maatschappij voor de Huisvesting en erkende maatschappijen.
- Société flamande d'épuration des eaux — Vlaamse Maatschappij voor Waterzuivering.
- Fonds flamand du logement des familles nombreuses — Vlaams Woningfonds van de Grote Gezinnen.



**Categories**

- les centres publics d'aide sociale,
- les fabriques d'église (church councils).

**II. DENMARK****Bodies****Københavns Havn,**

- Danmarks Radio,
- TV 2/Danmark,
- TV2 Reklame A/S,
- Danmarks Nationalbank,
- A/S Storebæltsforbindelsen,
- A/S Øresundsforbindelsen (alene tilslutningsanlæg i Danmark),
- Københavns Lufthavn A/S,
- Byfornylsesselskabet København,
- Tele Danmark A/S with subsidiaries:
- Fyns Telefon A/S,
- Jydsk Telefon Aktieselskab A/S,
- Kjøbenhavns Telefon Aktieselskab,
- Tele Sønderjylland A/S,
- Telecom A/S,
- Tele Danmark Mobil A/S.

**Categories**

- De kommunale havne (municipal ports),
- Andre Forvaltningssubjekter (other public administrative bodies).

**III. GERMANY****1. Legal persons governed by public law**

Authorities, establishments and foundations governed by public law and created by federal, State or local authorities in particular in the following sectors:

**1.1. Authorities**

- Wissenschaftliche Hochschulen und verfaßte Studentenschaften (universities and established student bodies),
- berufsständige Vereinigungen (Rechtsanwalts-, Notar-, Steuerberater-, Wirtschaftsprüfer-, Architekten-, Ärzte- und Apothekerkammern) (professional associations representing lawyers, notaries, tax consultants, accountants, architects, medical practitioners and pharmacists),
- Wirtschaftsvereinigungen (Landwirtschafts-, Handwerks-, Industrie- und Handelskammern, Handwerksinnungen, Handwerkerschaften) (business and trade associations: agricultural and craft associations, chambers of industry and commerce, craftsmen's guilds, tradesmen's associations),
- Sozialversicherungen (Krankenkassen, Unfall- und Rentenversicherungsträger) (social security institutions: health, accident and pension insurance funds),
- kassenärztliche Vereinigungen (associations of panel doctors),
- Genossenschaften und Verbände (cooperatives and other associations).

**1.2. Establishments and foundations**

Non-industrial and non-commercial establishments subject to state control and operating in the general interest, particularly in the following fields:

- Rechtsfähige Bundesanstalten (federal institutions having legal capacity),
- Versorgungsanstalten und Studentenwerke (pension organizations and students' unions),
- Kultur-, Wohlfahrts- und Hilfsstiftungen (cultural, welfare and relief foundations).

## 2. Legal persons governed by private law

Non-industrial and non-commercial establishments subject to State control and operating in the general interest (including 'kommunale Versorgungsunternehmen' — municipal utilities), particularly in the following fields:

- Gesundheitswesen (Krankenhäuser, Kurmittelbetriebe, medizinische Forschungseinrichtungen, Untersuchungs- und Tierkörperbeseitigungsanstalten) (health: hospitals, health resort establishments, medical research institutes, testing and carcase-disposal establishments),
- Kultur (öffentliche Bühnen, Orchester, Museen, Bibliotheken, Archive, zoologische und botanische Gärten) (culture: public theatres, orchestras, museums, libraries, archives, zoological and botanical gardens),
- Soziales (Kindergärten, Kindertagesheime, Erholungseinrichtungen, Kinder- und Jugendheime, Freizeiteinrichtungen, Gemeinschafts- und Bürgerhäuser, Frauenhäuser, Altersheime, Obdachlosenunterkünfte) (social welfare: nursery schools, children's playschools, rest-homes, children's homes, hostels for young people, leisure centres, community and civic centres, homes for battered wives, old people's homes, accommodation for the homeless),
- Sport (Schwimmbäder, Sportanlagen und -einrichtungen) (sport: swimming baths, sports facilities),
- Sicherheit (Feuerwehren, Rettungsdienste) (safety: fire brigades, other emergency services),
- Bildung (Umschulungs-, Aus-, Fort- und Weiterbildungseinrichtungen, Volkshochschulen) (education: training, further training and retraining establishments, adult evening classes),
- Wissenschaft, Forschung und Entwicklung (Großforschungseinrichtungen, wissenschaftliche Gesellschaften und Vereine, Wissenschaftsförderung) (science, research and development: large-scale research institutes, scientific societies and associations, bodies promoting science),
- Entsorgung (Straßenreinigung, Abfall- und Abwasserbeseitigung) (refuse and garbage disposal services: street cleaning, waste and sewage disposal),
- Bauwesen und Wohnungswirtschaft (Stadtplanung, Stadtentwicklung, Wohnungsunternehmen, Wohnraumvermittlung) (building, civil engineering and housing: town planning, urban development, housing enterprises, housing agency services),
- Wirtschaft (Wirtschaftsförderungsgesellschaften) (economy: organizations promoting economic development),
- Friedhofs- und Bestattungswesen (cemeteries and burial services),
- Zusammenarbeit mit den Entwicklungsländern (Finanzierung, technische Zusammenarbeit, Entwicklungshilfe, Ausbildung) (cooperation with developing countries: financing, technical cooperation, development aid, training).

## IV. GREECE

## Categories

Other legal persons governed by public law whose public works contracts are subject to State control.

## V. SPAIN

## Categories

- Entidades Gestoras y Servicios Comunes de la Seguridad Social (administrative entities and common services of the health and social services)
- Organismos Autónomos de la Administración del Estado (independent bodies of the national administration)
- Organismos Autónomos de las Comunidades Autónomas (independent bodies of the autonomous communities)
- Organismos Autónomos de las Entidades Locales (independent bodies of local authorities)
- Otras entidades sometidas a la legislación de contratos del Estado español (other entities subject to Spanish State legislation on procurement).

## VI. FRANCE

## Bodies

## 1. National public bodies:

## 1.1. with scientific, cultural and professional character:

- Collège de France,
- Conservatoire national des arts et métiers,
- Observatoire de Paris.

## 1.2. Scientific and technological:

- Centre national de la recherche scientifique (CNRS),
- Institut national de la recherche agronomique,
- Institut national de la santé et de la recherche médicale,
- Institut français de recherche scientifique pour le développement en coopération (ORSTOM).

## 1.3. with administrative character:

- Agence nationale pour l'emploi,
- Caisse nationale des allocations familiales,
- Caisse nationale d'assurance maladie des travailleurs salariés,
- Caisse nationale d'assurance vieillesse des travailleurs salariés,
- Office national des anciens combattants et victimes de la guerre,
- Agences financières de bassins.

## Categories

## 1. National public bodies:

- universités (universities),
- écoles normales d'instituteurs (teacher training colleges).

## 2. Administrative public bodies at regional, departmental and local level:

- collèges (secondary schools),
- lycées (secondary schools),
- établissements publics hospitaliers (public hospitals),
- offices publics d'habitations à loyer modéré (OPH.M) (public offices for low-cost housing).

## 3. Groupings of territorial authorities:

- syndicats de communes (associations of local authorities),
- districts (districts),
- communautés urbaines (municipalities),
- institutions interdépartementales et interrégionales (institutions common to more than one Département and interregional institutions).

## VII. IRELAND

## Bodies

- Shannon Free Airport Development Company Ltd,
- Local Government Computer Services Board,
- Local Government Staff Negotiations Board,
- Córas Tráchtála (Irish Export Board),
- Industrial Development Authority,
- Irish Goods Council (Promotion of Irish Goods),
- Córas Beostoic agus Feola (CBF) (Irish Meat Board),
- Bord Fáilte Éireann (Irish Tourism Board),
- Údarás na Gaeltachta (Development Authority for Gaeltacht Regions),
- An Bord Pleanála (Irish Planning Board).

## Categories

- Third level Educational Bodies of a Public Character,
- National Training, Cultural or Research Agencies,
- Hospital Boards of a Public Character,
- National Health & Social Agencies of a Public Character,
- Central & Regional Fishery Boards.

## VIII. ITALY

## Bodies

- Agenzia per la promozione dello sviluppo nel Mezzogiorno.

**Categories**

- Enti portuali e aeroportuali (port and airport authorities),
- Consorzi per le opere idrauliche (consortia for water engineering works),
- Le università statali, gli istituti universitari statali, i consorzi per i lavori interessanti le università (State universities, State university institutes, consortia for university development work),
- Gli istituti superiori scientifici e culturali, gli osservatori astronomici, astrofisici, geofisici o vulcanologici (higher scientific and cultural institutes, astronomical, astrophysical, geophysical or vulcanological observatories),
- Enti di ricerca e sperimentazione (organizations conducting research and experimental work),
- Le istituzioni pubbliche di assistenza e di beneficenza (public welfare and benevolent institutions),
- Enti che gestiscono forme obbligatorie di previdenza e di assistenza (agencies administering compulsory social security and welfare schemes),
- Consorzi di bonifica (land reclamation consortia),
- Enti di sviluppo o di irrigazione (development or irrigation agencies),
- Consorzi per le aree industriali (associations for industrial areas),
- Comunità montane (groupings of municipalities in mountain areas),
- Enti preposti a servizi di pubblico interesse (organizations providing services in the public interest),
- Enti pubblici preposti ad attività di spettacolo, sportive, turistiche e del tempo libero (public bodies engaged in entertainment, sport, tourism and leisure activities),
- Enti culturali e di promozione artistica (organizations promoting culture and artistic activities)

**IX. LUXEMBOURG****Categories**

- Les établissements publics de l'État placés sous la surveillance d'un membre du gouvernement (public establishments of the state placed under the supervision of a member of the Government),
- Les établissements publics placés sous la surveillance des communes (public establishments placed under the supervision of the communes),
- Les syndicats de communes créés en vertu de la loi du 14 février 1900 telle qu'elle a été modifiée par la suite (associations of communes created under the law of 14 February 1900 as subsequently modified).

**X. THE NETHERLANDS****Bodies**

- De Nederlandse Centrale Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (TNO) en de daaronder ressorterende organisaties.

**Categories**

- De waterschappen (administration of water engineering works),
- De instellingen van wetenschappelijk onderwijs vermeld in artikel 8 van de Wet op het Wetenschappelijk Onderwijs (1985), de academische ziekenhuizen (Institutions for scientific education, as listed in Article 8 of the Scientific Education Act (1985)) wet op het Wetenschappelijk Onderwijs (1985) (teaching hospitals).

**XI. PORTUGAL****Categories**

- Estabelecimentos públicos de ensino investigação científica e saúde (public establishments for education, scientific research and health),
- Institutos públicos sem carácter comercial ou industrial (public institutions without commercial or industrial character),
- Fundações públicas (public foundations),
- Administrações gerais e juntas autónomas (general administration bodies and independent councils).

**XII. THE UNITED KINGDOM****Bodies**

- Central Blood Laboratories Authority,
- Design Council,
- Health and Safety Executive,
- National Research Development Corporation,
- Public Health Laboratory Services Board,
- Advisory, Conciliation and Arbitration Service,
- Commission for the New Towns,
- Development Board For Rural Wales,
- English Industrial Estates Corporation,
- National Rivers Authority,
- Northern Ireland Housing Executive,
- Scottish Enterprise,
- Scottish Homes,
- Welsh Development Agency.

**Categories**

- Universities and polytechnics, maintained schools and colleges,
- National Museums and Galleries,
- Research Councils,
- Fire Authorities,
- National Health Service Authorities,
- Police Authorities,
- New Town Development Corporations,
- Urban Development Corporations.

## ANNEX II

## LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES (NACE)

Classes	Groups	Subgroups and items	Description
50			<b>BUILDING AND CIVIL ENGINEERING</b>
	500		<b>General building and civil engineering work (without any particular specification) and demolition work</b>
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		<b>Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential</b>
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repointing, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		<b>Civil engineering: construction of roads, bridges, railways, etc.</b>
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, locks and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		<b>Installation (fittings and fixtures)</b>
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aeriels, lightning conductors, telephones, etc.
	504		<b>Building completion work</b>
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

## ANNEX III

## DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

For the purposes of this Directive the following terms shall be defined as follows:

1. 'Technical specifications': the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall also include rules relating to design and costing, the test, inspection and acceptances for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
2. 'Standard': a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;
3. 'European standard': a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations;
4. 'European technical approval': a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. The European agreement shall be issued by an approval body designated for this purpose by the Member State;
5. 'Common technical specification': a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
6. 'Essential requirements': requirements regarding safety, health and certain other aspects in the general interest, that the construction works must meet.

## ANNEX IV

## MODEL CONTRACT NOTICES

## A. Prior information

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Site.  
(b) Nature and extent of the services to be provided and, where relevant, main characteristics of any lots by reference to the work.  
(c) If available, an estimate of the cost range of the proposed services.
3. (a) Estimated date for initiating the award procedures in respect of the contract or contracts.  
(b) If known, estimated date for the start of the work.  
(c) If known, estimated timetable for completion of the work.
4. If known, terms of financing of the work and of price revision and/or references to the provisions in which these are contained.
5. Other information.
6. Date of dispatch of the notice.
7. Date of receipt of the notice by the Office for Official Publication of the European Communities.

## B. Open procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Award procedure chosen.  
(b) Nature of the contract for which tenders are being requested:
3. (a) Site.  
(b) Nature and extent of the services to be provided and general nature of the work.  
(c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit for completion.
5. (a) Name and address of the service from which the contract documents and additional documents may be requested.  
(b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.
6. (a) Final date for receipt of tenders.  
(b) Address to which tenders must be sent.  
(c) Language or languages in which tenders must be drawn up.
7. (a) Where applicable, the persons authorized to be present at the opening of tenders.  
(b) Date, hour and place of opening of tenders.
8. Any deposit and guarantees required.



9. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
10. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
11. Minimum economic and technical standards required of the contractor to whom the contract is awarded.
12. Period during which the tenderer is bound to keep open his tender.
13. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
14. Where applicable, prohibition on variants.
15. Other information.
16. Date of publication of the prior information notice in the *Official Journal of the European Communities* or references to its non-publication.
17. Date of dispatch of the notice.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities.

#### C. Restricted procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Award procedure chosen.  
(b) Where applicable, justification for the use of the accelerated procedure.  
(c) Nature of the contract which tenders are being requested.
3. (a) Site.  
(b) Nature and extent of the services to be provided and general nature of the work.  
(c) If the work of the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit for completion.
5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
6. (a) Final date for receipt of requests to participate.  
(b) Address to which requests must be sent.  
(c) Language or languages in which requests must be drawn up.
7. Final date for dispatch of invitations to tender.
8. Any deposit and guarantees required.
9. Main terms concerning financing and payment and/or the provisions in which these are contained.
10. Information concerning the contractor's personal position and minimum economic and technical standards required of the contractor to whom the contract is awarded.
11. Criteria for the award of the contract where they are not mentioned in the invitation to tender.

12. Where applicable, prohibition on variants.
13. Other information.
14. Date of publication of the prior information notice in the *Official Journal of the European Communities* or reference to its non-publication.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

#### D. Negotiated procedures

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Award procedure chosen.  
(b) Where applicable, justification for the use of the accelerated procedure.  
(c) Nature of the contract for which tenders are being requested.
3. (a) Site.  
(b) Nature and extent of the services to be provided and general nature of the work.  
(c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.  
(d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit.
5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
6. (a) Final date for receipt of tenders.  
(b) Address to which tenders must be sent.  
(c) Language or languages in which tenders must be drawn up.
7. Any deposit and guarantees required.
8. Main terms concerning financing and payment and/or the provisions in which these are contained.
9. Information concerning the contractor's personal position and information and formalities necessary in order to evaluate the minimum economic and technical standards required of the contractor to whom the contract is awarded.
10. Where applicable, prohibition on variants.
11. Where applicable, name and address of suppliers already selected by the awarding authority.
12. Date(s) of previous publications in the *Official Journal of the European Communities*.
13. Other information.
14. Date of publication of the prior information notice in the *Official Journal of the European Communities*.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.

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**E. Contract awards**

1. Name and address of awarding authority.
  2. Award procedure chosen.
  3. Date of award of contract.
  4. Criteria for award of contract.
  5. Number of offers received.
  6. Name and address of successful contractor(s).
  7. Nature and extent of the services provided, general characteristics of the finished structure.
  8. Price or range of prices (minimum/maximum) paid.
  9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
  10. Other information.
  11. Date of publication of the tender notice in the *Official Journal of the European Communities*.
  12. Date of dispatch of the notice.
  13. Date of receipt of the notice by the Office for Official Publications of the European Communities.
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## ANNEX V

## MODEL NOTICE OF PUBLIC WORKS CONCESSION

1. Name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2. (a) Site.  
(b) Subject of the concession, nature and extent of the services to be provided
3. (a) Final date for receipt of candidatures.  
(b) Address to which candidatures must be sent.  
(c) Language or languages in which candidatures must be drawn up.
4. Personal, technical and financial conditions to be fulfilled by the candidates.
5. Criteria for award of contract.
6. Where applicable, the minimum percentage of the works contracts awarded to third parties.
7. Other information.
8. Date of dispatch of the notice.
9. Date of receipt of the notice by the Office for Official Publications of the European Communities.

## ANNEX VI

## MODEL NOTICE OF WORKS CONTRACTS AWARDED BY THE CONCESSIONNAIRE

1. (a) Site.  
(b) Nature and extent of the services to be provided and the general nature of the work.
2. Any time limit for the completion of the works.
3. Name and address of the service from which the contract documents and additional documents may be requested.
4. (a) Final date for receipt of requests to participate and/or for receipt of tenders.  
(b) Address to which requests must be sent.  
(c) Language or languages in which requests must be drawn up.
5. Any deposit and guarantees required.
6. Economic and technical standards required of the contract.
7. Criteria for the award of the contract.
8. Other information.
9. Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.

## ANNEX VII

## DEADLINES FOR TRANSPOSITION AND FOR APPLICATION

Directive 71/305/EEC <sup>(1)</sup>	amended by Directives			amended by Act of Accession of		
	78/669/EEC <sup>(2)</sup>	89/440/EEC <sup>(3)</sup>	90/531/EEC <sup>(4)</sup>	DK, IRL, UK <sup>(5)</sup>	GR <sup>(6)</sup>	E, P <sup>(7)</sup>
Article 1		amended				
Article 1 a		amended				
Article 1 b		amended				
Article 2		amended				
Article 3 (1)		deleted				
Article 3 (2)		deleted				
Article 3 (3)		deleted				
Article 3 (4) and (5), subparagraphs (a) and (b)		deleted				
Article 3, (4) and (5) subparagraph (c)		amended				
Article 4		amended				
Article 4 a		amended				
Article 5		amended				
Article 5 a		amended				
Article 6		amended				
Article 7 (1)	amended	deleted				
Article 7 (2)		deleted				
Article 8		deleted				
Article 9		deleted				
Article 10		amended				
Article 11		deleted				
Article 12		amended				
Article 13		amended				
Article 14		amended				
Article 15		amended				
Article 15 a		amended				
Article 15 b		amended				
Article 16		deleted				
Article 17		deleted				
Article 18		deleted				
Article 19	amended	amended				
Article 20		amended				
Article 20 a		amended				
Article 20 b		amended				
Article 21						
Article 22		amended				
Article 22 a		amended				
Article 23						
Article 24		amended		amended	amended	amended
Article 25						
Article 26						
Article 27						
Article 28						
Article 29 (1)						
Article 29 (2)						
Article 29 (3)		deleted				
Article 29 (4)		amended				
Article 29 (5)		amended				
Article 29 a		amended				
Article 29 b		amended				
Article 30						
Article 30 a		amended				
Article 30 b		amended				
Article 31		deleted				
Article 32						
Article 33						
Article 34						
Annexes I to VI		I to VI		I	I	II

(<sup>1</sup>) EC-6: 30. 7. 1972. (<sup>2</sup>) EC-9: 16. 2. 1979. (<sup>3</sup>) EC-9: 19. 7. 1990. (<sup>4</sup>) EC-9: 1. 1. 1993. (<sup>5</sup>) EC-9: 1. 1. 1973.  
DK, IRL, UK: 1. 1. 1973. GR: 1. 1. 1981. GR, E, P: 1. 3. 1992. E: 1. 1. 1996. (<sup>6</sup>) EC-10: 1. 1. 1981.  
GR, P: 1. 1. 1998. (<sup>7</sup>) EC-12: 1. 1. 1986.  
E, P: 1. 1. 1986.

## ANNEX VIII

## CORRELATION TABLE

Directive 71/305/EEC	This Directive
Article 1	Article 1
Article 1 a	Article 2
Article 1 b	Article 3
Article 2	—
Article 3 (1)	—
Article 3 (2)	—
Article 3 (3)	—
Article 3 (4) and (5), subparagraphs (a) and (b)	Article 4, subparagraph (a)
Article 3 (4) and (5), subparagraph (c)	Article 4, subparagraph (b)
Article 4	Article 5
Article 4 a	Article 6
Article 5	Article 7
Article 5 a	Article 8
Article 6	Article 9
Article 7	—
Article 8	—
Article 9	—
Article 10	Article 10
Article 11	—
Article 12	Article 11
Article 13	Article 12
Article 14	Article 13
Article 15	Article 14
Article 15 a	Article 15
Article 15 b	Article 16
Article 16	—
Article 17	—
Article 18	—
Article 19	Article 17
Article 20	Article 18
Article 20 a	Article 19
Article 20 b	Article 20
Article 21	Article 21
Article 22	Article 22
Article 22 a	Article 23
Article 23	Article 24
Article 24	Article 25
Article 25	Article 26
Article 26	Article 27
Article 27	Article 28
Article 28	Article 29
Article 29 (1)	Article 30 (1)
Article 29 (2)	Article 30 (2)
Article 29 (3)	—
Article 29 (4)	Article 30 (3)
Article 29 (5)	Article 30 (4)
Article 29 a	Article 31
Article 29 b	Article 32
Article 30	Article 33
Article 30 a	Article 34
Article 30 b	Article 35
Article 31	—
—	Article 36
Article 32	—
Article 33	—
—	Article 37
Article 34	Article 38
Annexes I to VI	Annexes I to VI
—	Annexes VII and VIII

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DIRECTIVE 92/50/EEC

of 18 June 1992

relating to the coordination of procedures for the award of public service contracts

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the European Council has drawn conclusions on the need to complete the internal market;

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

Whereas these objectives require the coordination of the procurement procedures for the award of public service contracts;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement, including in the field of services insofar as this is not already covered by Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the

award of public works contracts <sup>(4)</sup> and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts <sup>(5)</sup>;

Whereas this Directive should be applied by all contracting authorities within the meaning of Directive 71/305/EEC;

Whereas obstacles to the free movement of services need to be avoided; whereas, therefore, service providers may be either natural or legal persons; whereas this Directive shall not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession provided that they are compatible with Community law;

Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing it into categories corresponding to particular positions of a common classification; whereas Annexes I A and I B of this Directive refer to the CPC nomenclature (common product classification) of the United Nations; whereas that nomenclature is likely to be replaced in the future by Community nomenclature; whereas provision should be made for adapting the CPC nomenclature in Annexes I A and B in consequence;

Whereas the provision of services is covered by this Directive only in so far as it is based on contracts; whereas the provision of services on other bases, such as law or regulations, or employment contracts, is not covered;

<sup>(1)</sup> OJ No C 23, 31. 1. 1991, p. 1, and OJ No C 250, 25. 9. 1991, p. 4.

<sup>(2)</sup> OJ No C 158, 17. 6. 1991, p. 90, and OJ No C 150, 15. 6. 1992.

<sup>(3)</sup> OJ No C 191, 22. 7. 1991, p. 41.

<sup>(4)</sup> OJ No L 185, 16. 8. 1971, p. 5. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

<sup>(5)</sup> OJ No L 13, 15. 1. 1977, p. 1. Directive last amended by Directive 90/531/EEC (OJ No L 297, 29. 10. 1990, p. 1).

Whereas, in accordance with Article 130f of the Treaty, the encouragement of research and development is a means to strengthen the scientific and technological basis of European industry and the opening up of public contracts will contribute to this end; whereas contributions to the financing of research programmes should not be subject to this Directive; whereas research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive;

Whereas contracts relating to the acquisition or rental of immovable property or to rights thereon have particular characteristics, which make the application of procurement rules inappropriate;

Whereas the award of contracts for certain audiovisual services in the broadcasting field is governed by considerations which make the application of procurement rules inappropriate;

Whereas arbitration and conciliation services are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules;

Whereas for the purposes of this Directive financial services do not include the instruments of monetary, exchange rate, public debt, reserve management, and other policies involving transactions in securities and other financial instruments; whereas, therefore, contracts in connection with the issue, sale, purchase or transfer of securities and other financial instruments are not covered by this Directive; whereas central bank services are also excluded;

Whereas, in the field of services, the same derogations as in Directives 71/305/EEC and 77/62/EEC should apply as regards State security or secrecy and the priority of other procurement rules such as those pursuant to international agreements, those concerning the stationing of troops, or the rules of international organizations;

Whereas this Directive does not prejudice the application of, in particular, Articles 55, 56 and 66 of the Treaty;

Whereas public service contracts, particularly in the field of property management, may from time to time include some works; whereas it results from Directive 71/305/EEC that, for a contract to be a public works contract, its object must be the achievement of a work;

whereas, in so far as these works are incidental rather than the object of the contract, they do not justify treating the contract as a public works contract;

Whereas the rules concerning service contracts as contained in Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors <sup>(1)</sup> should remain unaffected by this Directive;

Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;

Whereas this Directive should not apply to small contracts below a certain threshold in order to avoid unnecessary formalities; whereas this threshold may in principle be the same as that for public supply contracts; whereas the calculation of the contract value, the publication and the method of adaptation of the thresholds should be the same as in the other Community procurement directives;

Whereas, to eliminate practices that restrict competition in general and participation in contracts by other Member States' nationals in particular, it is necessary to improve the access of service providers to procedures for the award of contracts;

Whereas full application of this Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before a decision is taken on the full application of this Directive; whereas the mechanism for such monitoring needs to be defined; whereas this mechanism should at the same time enable those interested to share the relevant information;

Whereas the rules for the award of public service contracts should be as close as possible to those concerning public supply contracts and public works contracts;

Whereas the procurement rules contained in Directives 71/305/EEC and 77/62/EEC can be appropriate, with necessary adaptations so as to take into account special aspects of procurement of services such as the choice of the negotiated procedure, design contests, variants, the legal form under which the service providers operate, the reservation of certain activities to certain professions, registration and quality assurance;

(<sup>1</sup>) OJ No L 297, 29. 10. 1990, p. 1.



Whereas use may be made of the negotiated procedure with prior publication of a notice when the service to be provided cannot be specified with sufficient precision, particularly in the field of intellectual services, with the result that such a contract cannot be awarded by selection of the best tender in accordance with the rules governing the open and restricted procedures;

Whereas the relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in an award procedure or a design contest;

Whereas the objectives of this Directive do not require any changes in the current situation at national level as regards price competition between service providers of certain services;

Whereas the operation of this Directive should be reviewed at the latest three years after the date set for procurement rules to be transposed into national law; whereas the review should extend in particular to the possibility of making the Directive fully applicable to a wider range of service contracts,

HAS ADOPTED THIS DIRECTIVE:

## TITLE I

### General provisions

#### Article 1

For the purposes of this Directive:

(a) *public service contracts* shall mean contracts for pecuniary interest concluded in writing between a service provider and a contracting authority, to the exclusion of:

- (i) public supply contracts within the meaning of Article 1(a) of Directive 77/62/EEC or public works contracts within the meaning of Article 1(a) of Directive 71/305/EEC;
- (ii) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Directive 90/531/EEC or fulfilling the conditions in Article 6(2) of the same Directive;
- (iii) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

tion or rental, in whatever form, shall be subject to this Directive;

- (iv) contracts for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;
- (v) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
- (vi) contracts for arbitration and conciliation services;
- (vii) contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services;
- (viii) employment contracts;
- (ix) research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(b) *contracting authorities* shall mean the State, regional or local authorities, bodies governed by public law, associations formed by one or more of such authorities or bodies governed by public law.

*Body governed by public law* means any body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having legal personality and
- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The lists of bodies or of categories of such bodies governed by public law which fulfil the criteria referred to in the second subparagraph of this point are set out in Annex I to Directive 71/305/EEC. These lists shall be as exhaustive as possible and may be reviewed in accordance with the procedure laid down in Article 30b of that Directive;

(c) *service provider* shall mean any natural or legal person, including a public body, which offers services.

A service provider who submits a tender shall be designated by the term *tenderer* and one who has sought an invitation to take part in a restricted or negotiated procedure by the term *candidate*:

- (d) *open procedures* shall mean those national procedures whereby all interested service providers may submit a tender;
- (e) *restricted procedures* shall mean those national procedures whereby only those service providers invited by the authority may submit a tender;
- (f) *negotiated procedures* shall mean those national procedures whereby authorities consult service providers of their choice and negotiate the terms of the contract with one or more of them;
- (g) *design contests* shall mean those national procedures which enable the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and civil engineering, or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

#### Article 2

If a public contract is intended to cover both products within the meaning of Directive 77/62/EEC and services within the meaning of Annexes I A and I B to this Directive, it shall fall within the scope of this Directive if the value of the services in question exceeds that of the products covered by the contract.

#### Article 3

1. In awarding public service contracts or in organizing design contests, contracting authorities shall apply procedures adapted to the provisions of this Directive.
2. Contracting authorities shall ensure that there is no discrimination between different service providers.
3. Member States shall take the necessary measures to ensure that the contracting authorities comply or ensure compliance with this Directive where they subsidize directly by more than 50 % a service contract awarded by an entity other than themselves in connection with a works contract within the meaning of Article 1a (2) of Directive 71/305/EEC.

#### Article 4

1. This Directive shall apply to public service contracts awarded by contracting authorities in the field of

defence, except for contracts to which the provisions of Article 223 of the Treaty apply.

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

#### Article 5

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

- (a) in pursuance of an international agreement concluded between a Member State and one or more third countries and covering services intended for the joint implementation or exploitation of a project by the signatory States; any agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC (1);
- (b) to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
- (c) pursuant to the particular procedure of an international organization.

#### Article 6

This Directive shall not apply to public service contracts awarded to an entity which is itself a contracting authority within the meaning of Article 1 (b) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

#### Article 7

1. This Directive shall apply to public service contracts, the estimated value of which, net of VAT, is not less than ECU 200 000.
2. For the purposes of calculating the estimated value of the contract, the contracting authority shall include

(1) OJ No L 185, 16. 8. 1971, p. 15. Decision amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

the estimated total remuneration of the service provider, taking account of the provisions of paragraphs 3 to 8.

3. The selection of the valuation method shall not be used with the intention of avoiding the application of this Directive, nor shall any procurement requirement for a given amount of services be split up with the intention of avoiding the application of this Article.

4. For the purposes of calculating the estimated contract value for the following types of services, account shall be taken, where appropriate:

- as regards insurance services, of the premium payable,
- as regards banking and other financial services, of fees, commissions and interest as well as other types of remuneration,
- as regards contracts which involve design, of the fee or commission payable.

Where the services are subdivided into several lots, each one the subject of a contract, the value of each lot must be taken into account for the purpose of calculating the amount referred to above.

Where the value of the lots is not less than this amount, the provisions of this Directive shall apply to all lots. Contracting authorities may waive application of paragraph 1 for any lot which has an estimated value net of VAT of less than ECU 80 000, provided that the total value of such lots does not exceed 20 % of the total value of all the lots.

5. In the case of contracts which do not specify a total price, the basis for calculating the estimated contract value shall be:

- in the case of fixed-term contracts, where their term is 48 months or less, the total contract value for its duration;
- in the case of contracts of indefinite duration or with a term of more than 48 months, the monthly instalment multiplied by 48.

6. In the case of regular contracts or of contracts which are to be renewed within a given time, the contract value may be established on the basis of:

- either the actual aggregate cost of similar contracts for the same categories of services awarded over the previous fiscal year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract,

- or the estimated aggregate cost during the twelve months following the first service performed or during the term of the contract, where this is greater than 12 months.

7. Where a proposed contract provides for options, the basis for calculating the contract value shall be the maximum permitted total including use of the option clauses.

8. The value of the thresholds in national currencies shall be revised every two years with effect from 1 January 1994. The calculation of these values shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

The method of calculation referred to in the preceding subparagraph shall be examined, on the Commission's initiative, within the Advisory Committee for Public Contracts in principle two years after its initial application.

## TITLE II

### Two-tier application

#### Article 8

Contracts which have as their object services listed in Annex I A shall be awarded in accordance with the provisions of Titles III to VI.

#### Article 9

Contracts which have as their object services listed in Annex I B shall be awarded in accordance with Articles 14 and 16.

#### Article 10

Contracts which have as their object services listed in both Annexes I A and I B shall be awarded in accordance with the provisions of Titles III to VI where the value of the services listed in Annex I A is greater than the value of the services listed in Annex I B. Where this is not the case, they shall be awarded in accordance with Articles 14 and 16.

## TITLE III

### Choice of award procedures and rules governing design contests

#### Article 11

1. In awarding public service contracts, contracting authorities shall apply the procedures defined in Arti-

cle 1 (d), (e) and (f), adapted for the purposes of this Directive.

2. Contracting authorities may award their public service contracts by negotiated procedure, with prior publication of a contract notice in the following cases:

(a) in the event of irregular tenders in response to an open or restricted procedure or in the event of tenders which are unacceptable under national provisions that are in accordance with Articles 23 to 28, insofar as the original terms of the contract are not substantially altered. Contracting authorities may in such cases refrain from publishing a contract notice where they include in the negotiated procedure all the tenderers who satisfy the criteria of Articles 29 to 35 and who, during the prior open or restricted procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) in exceptional cases, when the nature of the services or the risks involved do not permit prior overall pricing;

(c) when the nature of the services to be procured, in particular in the case of intellectual services and services falling within category 6 of Annex I A, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

3. Contracting authorities may award public service contracts by negotiated procedure without prior publication of a contract notice in the following cases:

(a) in the absence of tenders or of appropriate tenders in response to an open or restricted procedure provided that the original terms of the contract are not substantially altered and that a report is communicated to the Commission at its request;

(b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services may be provided only by a particular service provider;

(c) where the contract concerned follows a design contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations;

(d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated

procedures referred to in Articles 17 to 20 cannot be kept. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authorities;

(e) for additional services not included in the project initially considered or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the performance of the service described therein, on condition that the award is made to the service provider carrying out such service:

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

— when such services, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate estimated value of contracts awarded for additional services may not exceed 50 % of the amount of the main contract;

(f) for new services consisting in the repetition of similar services entrusted to the service provider to which the same contracting authorities awarded an earlier contract, provided that such services conform to a basic project for which a first contract was awarded according to the procedures referred to in paragraph 4. As soon as the first project is put up for tender, notice must be given that the negotiated procedure might be adopted and the total estimated cost of subsequent services shall be taken into consideration by the contracting authorities when they apply the provisions of Article 7. This procedure may be applied solely during the three years following the conclusion of the original contract.

4. In all other cases, the contracting authorities shall award their public service contracts by the open procedure or by the restricted procedure.

#### Article 12

1. The contracting authority shall, within fifteen days of the date on which the request is received, inform any eliminated candidate or tenderer who so requests in writing of the reasons for rejection of his application or his tender, and, in the case of a tender, the name of the successful tenderer.

2. The contracting authority shall inform candidates or tenderers who so request in writing of the grounds on which it decided not to award a contract in respect of which a prior call for competition was made, or to

recommence the procedure. It shall also inform the Office for Official Publications of the European Communities of that decision.

3. For each contract awarded, the contracting authorities shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract,
- the names of the candidates or tenderers admitted and the reasons for their selection,
- the names of the candidates or tenderers rejected and the reasons for their rejection,
- the name of the successful tenderer and the reasons why his tender was selected and, if known, the part of the contract which the successful tenderer intends to subcontract to third parties,
- for negotiated procedures, the circumstances referred to in Article 11 which justify the use of these procedures.

This report, or the main features of it, shall be communicated to the Commission at its request.

#### *Article 13*

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract whose estimated value net of VAT is not less than the value referred to in Article 7 (1).

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than ECU 200 000.

3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.

4. The admission of participants to design contests shall not be limited:

- by reference to the territory or part of the territory of a Member State,
- on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.

5. Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to

participate shall be sufficient to ensure genuine competition.

6. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of its members must have the same qualification or its equivalent.

The jury shall be autonomous in its decisions or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice within the meaning of Article 15 (3).

#### TITLE IV

#### Common rules in the technical field

#### *Article 14*

1. The technical specifications defined in Annex II shall be given in the general documents or the contractual documents relating to each contract.

2. Without prejudice to the legally binding national technical rules and insofar as these are compatible with Community law, such technical specifications shall be defined by the contracting authorities by reference to national standards implementing European standards or by reference to European technical approvals or by reference to common technical specifications.

3. A contracting authority may depart from paragraph 2 if:

(a) the standards, European technical approvals or common technical specifications do not include any provisions for establishing conformity, or technical means do not exist for establishing satisfactorily the conformity of a product with these standards, European technical approvals or common technical specifications;

(b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment <sup>(1)</sup>, or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications <sup>(2)</sup> or other Community instruments in specific service or product areas;

(1) OJ No L 217, 5. 8. 1986, p. 21. Amended by Directive 91/263/EEC (OJ No L 128, 23. 5. 1991, p. 1).

(2) OJ No L 36, 7. 2. 1987, p. 31.

- (c) these standards, European technical approvals or common technical specifications would oblige the contracting authority to use products or materials incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties, but only as part of a clearly defined and recorded strategy with a view to the transition, with a given period, to European standards, European technical approvals or common technical specifications;
- (d) the project concerned is of a genuinely innovative nature for which use of existing European standards, European technical approvals or common technical specifications would not be appropriate.

4. Contracting authorities invoking paragraph 3 shall record, wherever possible, the reasons for doing so in the contract notice published in the *Official Journal of the European Communities* or in the contract documents and in all cases shall record these reasons in their internal documentation and shall supply such information on request to Member States and to the Commission.

5. In the absence of European standards or European technical approvals or common technical specifications, the technical specifications:

- (a) shall be defined by reference to the national technical specifications recognized as complying with the basic requirements listed in the Community directives on technical harmonization, in accordance with the procedures laid down in those directives, and in particular in accordance with the procedures laid down in Directive 89/106/EEC (1);
- (b) may be defined by reference to national technical specifications relating to design and method of calculation and execution of works and use of materials;
- (c) may be defined by reference to other documents.

In this case, it is appropriate to make reference in order of preference to:

- (i) national standards implementing international standards accepted by the country of the contracting authority;
- (ii) other national standards and national technical approvals of the country of the contracting authority;
- (iii) any other standard.

6. Unless it is justified by the subject of the contract, Member States shall prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain service providers. In particular, the indication of trade marks, patents, types, or of specific origin or production shall be prohibited. However, if such indication is accompanied by the words 'or equivalent', it shall be authorized in cases where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned.

## TITLE V

### Common advertising rules

#### Article 15

1. Contracting authorities shall make known, by means of an indicative notice to be published as soon as possible after the beginning of their budgetary year, the intended total procurement in each of the service categories listed in Annex I A which they envisage awarding during the subsequent 12 months where the total estimated value, taking account of the provisions of Article 7, is not less than ECU 750 000.

2. Contracting authorities who wish to award a public service contract by open, restricted or, under the conditions laid down in Article 11, negotiated procedure, shall make known their intention by means of a notice.

3. Contracting authorities who wish to carry out a design contest shall make known their intention by means of a notice.

#### Article 16

1. Contracting authorities who have awarded a public contract or have held a design contest shall send a notice of the results of the results of the award procedure to the Office for Official Publication of the European Communities.

2. The notices shall be published:

- in the case of public contracts for services listed in Annex I A, in accordance with Articles 17 to 20,
- in the case of design contests, in accordance with Article 17.

3. In the case of public contracts for services listed in Annex I B, the contracting authorities shall indicate in the notice whether they agree on its publication.

(1) OJ No L 40, 11. 2. 1989, p. 12.

4. The Commission shall draw up the rules for establishing regular reports on the basis of the notices referred to in paragraph 3, and for the publication of such reports in accordance with the procedure laid down in Article 40 (3).

5. Where the release of information on the contract award would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of a particular enterprise, public or private, or might prejudice fair competition between service providers, such information need not be published.

#### Article 17

1. The notices shall be drawn up in accordance with the models set out in Annexes III and IV and shall specify the information requested in those models. The contracting authorities may not require any conditions other than those specified in Articles 31 and 32 when requesting information concerning the economic and technical standards which they require of service providers for their selection (section 13 of Annex III B, section 13 of Annex III C, and section 12 of Annex III D).

2. The contracting authorities shall send the notices as rapidly as possible and by the most appropriate channels to the Office for Official Publications of the European Communities. In the case of the accelerated procedure referred to in Article 20, the notice shall be sent by telex, telegram or fax.

The notice referred to in Article 15 (1) shall be sent as soon as possible after the beginning of each budgetary year.

The notice referred to in Article 16 (1) shall be sent at the latest forty-eight days after the award of the contract in question or the closure of the design contest in question.

3. The notices referred to in Articles 15 (1) and 16 (1) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in the official languages of the Communities, the text in the original language alone being authentic.

4. The notices referred to in Article 15 (2) and (3) shall be published in full in the *Official Journal of the European Communities* and in the TED data bank in their original language. A summary of the important elements of each notice shall be published in the official languages of the Communities, the text in the original language alone being authentic.

5. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In the case of the accelerated procedure referred to in Article 20, this period shall be reduced to five days.

6. The notices shall not be published in the official journals or in the press of the country of the contracting authority before the date of dispatch to the Office for Official Publications of the European Communities; they shall mention that date. They shall not contain information other than that published in the *Official Journal of the European Communities*.

7. The contracting authorities must be able to supply proof of the date of dispatch.

8. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities. The length of the notice shall not be greater than one page of the Official Journal, or approximately 650 words. Each edition of the Official Journal containing one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

#### Article 18

1. In open procedures the time limit for the receipt of tenders shall be fixed by the contracting authorities at not less than 52 days from the date of dispatch of the notice.

2. The time limit for the receipt of tenders provided for in paragraph 1 may be reduced to 36 days where the contracting authorities have published the contract notice, drafted in accordance with the model in Annex III A provided for in Article 15 (1), in the *Official Journal of the European Communities*.

3. Provided that they have been requested in good time, the contract documents and supporting documents shall be sent to the service providers by the contracting authorities or competent departments within six days of receipt of their application.

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

5. Where the contract documents, supporting documents or additional information are too bulky to be supplied within the time limits laid down in paragraph 3 or 4 or where the tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the

time limits laid down in paragraph 1 and 2 shall be extended accordingly.

#### Article 19

1. In restricted procedures and negotiated procedures within the meaning of Article 11 (2), the time limit for receipt of requests to participate fixed by the contracting authorities shall be not less than 37 days from the date of dispatch of the notice.

2. The contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) where appropriate, the address of the service from which the contract documents and supporting documents can be requested and the final date for making such a request; also the amount and terms of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published;
- (d) an indication of any documents to be annexed, either to support the verifiable statements furnished by the candidate in accordance with Article 17 (1), or to supplement the information provided for in that Article under the same conditions as those laid down in Articles 31 and 32;
- (e) the criteria for the award of the contract if these are not given in the notice.

3. In restricted procedures, the time limit for receipt of tenders fixed by the contracting authorities may not be less than forty days from the date of dispatch of the written invitation.

4. The time limit for receipt of tenders laid down in paragraph 3 may be reduced to 26 days where the contracting authorities have published the contract notice, drafted according to the model in Annex III A provided for in Article 15 (1), in the *Official Journal of the European Communities*.

5. Requests to participate in procedures for the award of contracts may be made by letter, telegram, telex, fax or telephone. If by one of the last four, they must be confirmed by letter dispatched before the end of the period laid down in paragraph 1.

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

7. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract documents, the time limit laid down in paragraphs 3 and 4 shall be extended accordingly.

#### Article 20

1. In cases where urgency renders impracticable the time limits laid down in Article 19, the contracting authorities may fix the following time limits:

- (a) a time limit for receipt of requests to participate which shall be not less than 15 days from the date of dispatch of the notice;
- (b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

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

3. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, fax or telephone, they must be confirmed by letter dispatched before the expiry of the time limit referred to in paragraph 1.

#### Article 21

Contracting authorities may arrange for the publication in the *Official Journal of the European Communities* of notices announcing public service contracts which are not subject to the publication requirement laid down in this Directive.

#### Article 22

The conditions for the drawing up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 15, 16 and 17 and of the statistical reports provided for in Articles 16 (4) and 39 and the nomenclature provided for in Annexes I A and B together with the reference in the notices to particular positions of the nomenclature within the categories of services listed in those Annexes may be modified in



accordance with the procedure laid down in Article 40 (3).

## TITLE VI

### CHAPTER 1

#### Common rules on participation

##### Article 23

Contracts shall be awarded on the basis of the criteria laid down in Chapter 3, taking into account Article 24, after the suitability of the service providers not excluded under Article 29 has been checked by the contracting authorities in accordance with the criteria referred to in Articles 31 and 32.

##### Article 24

1. Where the criterion for the award of the contract is that of the economically most advantageous tender, contracting authorities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by such contracting authorities. The contracting authorities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. They shall indicate in the contract notice if variants are not authorized.

Contracting authorities may not reject the submission of a variant on the sole grounds that it has been drawn up with technical specifications defined by reference to national standards transposing European standards, to European technical approvals or to common technical specifications referred to in Article 14 (2) or even by reference to national technical specifications referred to in Article 14 (5) (a) and (b).

2. Contracting authorities which have admitted variants pursuant to paragraph 1 may not reject a variant on the sole grounds that it would lead, if successful, to a supply contract rather than a public service contract within the meaning of this Directive.

##### Article 25

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

This indication shall be without prejudice to the question of the principal service provider's liability.

##### Article 26

1. Tenders may be submitted by groups of service providers. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract.

2. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity, shall not be rejected solely on the grounds that, under the law of the Member State in which the contract is awarded, they would have been required to be either natural or legal persons.

3. Legal persons may be required to indicate in the tender or the request for participation the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

##### Article 27

1. In restricted and negotiated procedures the contracting authorities shall, on the basis of information given relating to the service provider's position as well as to the information and formalities necessary for the evaluation of the minimum conditions of an economic and technical nature to be fulfilled by him, select from among the candidates with the qualifications required by Articles 29 to 35 those whom they will invite to submit a tender or to negotiate.

2. Where the contracting authorities award a contract by restricted procedure, they may prescribe the range within which the number of service providers which they intend to invite will fall. In this case the range shall be indicated in the contract notice. The range shall be determined in the light of the nature of the service to be provided. The range must number at least five service providers and may be up to twenty.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.

3. Where the contracting authorities award a contract by negotiated procedure as referred to in Article 11 (2), the number of candidates admitted to negotiate may not be less than three, provided that there is a sufficient number of suitable candidates.

4. Each Member State shall ensure that contracting authorities issue invitations without discrimination to those nationals of other Member States who satisfy the necessary requirements and under the same conditions as to its own nationals.

*Article 28*

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

2. The contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the service is to be carried out. This shall be without prejudice to the application of the provisions of Article 37 concerning the examination of abnormally low tenders.

## CHAPTER 2

## Criteria for qualitative selection

*Article 29*

Any service provider may be excluded from participation in a contract who:

- (a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws or regulations;
- (c) has been convicted of an offence concerning his professional conduct by a judgement which has the force of *res judicata*;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying or failing to supply the information that may be required under this Chapter.

Where the contracting authority requires of the service provider proof that none of the cases quoted in (a), (b), (c), (e), or (f) applies to him, it shall accept as sufficient evidence:

- for (a), (b) or (c), the production of an extract from the 'judicial record' or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or in the country whence that person comes showing that these requirements have been met,
- for (e) or (f), a certificate issued by the competent authority in the Member State concerned.

Where the country concerned does not issue such documents or certificates, they may be replaced by a declaration on oath made by the person concerned before a judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

Member States shall, within the time limit referred to in Article 44, designate the authorities and bodies competent to issue such documents or certificates and shall forthwith inform the other Member States and the Commission thereof.

*Article 30*

1. In so far as candidates for a public contract or tenderers have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the service concerned, the contracting authority may require them to prove that they hold such authorization or membership.

2. Any candidate or tenderer may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a declaration or certificate as described in paragraph 3 below.

3. The relevant professional and trade registers or declarations or certificates are:

- in Belgium, the 'registre du commerce — Handelsregister' and the 'ordres professionnels — Beroepsorden',
- in Denmark, the 'Erhvervs- og Selskabstyrelsen',
- in Germany, the 'Handelsregister', the 'Handwerksrolle' and the 'Vereinsregister',

- in Greece, the service provider may be asked to provide a declaration on the exercise of the profession concerned made on oath before a notary; in the cases provided for by existing national legislation, for the provision of research services as mentioned in Annex I A, the professional register 'Μητρώο Μελετητών' ανδ 'Μητρώο Γραφείων Μελετών',
- in Spain, the 'Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda',
- in France, the 'registre du commerce' and the 'répertoire des métiers',
- in Italy, the 'Registro della Camera di commercio, industria, agricoltura e artigianato', the 'Registro delle commissioni provinciali per l'artigianato' or the 'Consiglio nazionale degli ordini professionali',
- in Luxembourg, the 'registre aux firmes' and the 'rôle de la Chambre des métiers',
- in the Netherlands, the 'Handelsregister',
- in Portugal, the 'Registro nacional das Pessoas Colectivas',
- in the United Kingdom and Ireland, the service provider may be requested to provide a certificate from the Registrar of Companies or the Registrar of Friendly Societies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established in a specific place under a given business name.

#### Article 31

1. Proof of the service provider's financial and economic standing may, as a general rule, be furnished by one or more of the following references:
  - (a) appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
  - (b) the presentation of the service provider's balance sheets or extracts therefrom, where publication of the balance sheets is required under company law in the country in which the service provider is established;
  - (c) a statement of the undertaking's overall turnover and its turnover in respect of the services to which the contract relates for the previous three financial years.
2. The contracting authorities shall specify in the contract notice or in the invitation to tender which refer-

ence or references mentioned in paragraph 1 they have chosen and which other references are to be produced.

3. If, for any valid reason, the service provider is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

#### Article 32

1. The ability of service providers to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability.

2. Evidence of the service provider's technical capability may be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be provided:

- (a) the service provider's educational and professional qualifications and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services;
- (b) a list of the principal services provided in the past three years, with the sums, dates and recipients, public or private, of the services provided:
  - where provided to contracting authorities, evidence to be in the form of certificates issued or countersigned by the competent authority,
  - where provided to private purchasers, delivery to be certified by the purchaser or, failing this, simply declared by the service provider to have been effected;
- (c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control;
- (d) a statement of the service provider's average annual manpower and the number of managerial staff for the last three years;
- (e) a statement of the tool, plant or technical equipment available to the service provider for carrying out the services;
- (f) a description of the service provider's measures for ensuring quality and his study and research facilities;
- (g) where the services to be provided are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider is established, sub-

ject to that body's agreement, on the technical capacities of the service provider and, if necessary, on his study and research facilities and quality control measures;

(h) an indication of the proportion of the contract which the service provider may intend to sub-contract.

3. The contracting authority shall specify, in the notice or in the invitation to tender, which references it wishes to receive.

4. The extent of the information referred to in Article 31 and in paragraphs 1, 2 and 3 of this Article must be confined to the subject of the contract; contracting authorities shall take into consideration the legitimate interests of the service providers as regards the protection of their technical or trade secrets.

#### *Article 33*

Where contracting authorities require the production of certificates drawn up by independent bodies for attesting conformity of the service with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45 000 European standards series. They shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

#### *Article 34*

Within the limits of Articles 29 to 32, contracting authorities may invite the service providers to supplement the certificates and documents submitted or to clarify them.

#### *Article 35*

1. Member States who have official lists of recognized service providers must adapt them to the provisions of Articles 29 (a) to (d) and (g) and of Articles 30, 31 and 32.

2. Service providers registered in the official lists may, for each contract, submit to the contracting authority a certificate of registration issued by the competent auth-

ority. This certificate shall state the reference which enabled them to be registered in the list and the classification given in this list.

3. Certified registration in official lists of service providers by the competent bodies shall, for the contracting authorities of other Member States, constitute a presumption of suitability corresponding to the service provider's classification only as regards Article 29 (a) to (d) and (g), Article 30, Article 31 (b) and (c) and Article 32 (a).

Information which can be deduced from registration in official lists may not be questioned. However, with regard to the payment of social security contributions, an additional certificate may be required of any registered service provider whenever a contract is offered.

The contracting authorities of other Member States shall apply the above provisions only in favour of service providers established in the Member State holding the official list.

4. When registering service providers from other Member States in an official list, no proof or statement can be required in addition to those required of national service providers and, in any case, none in addition to those required in Articles 29 to 33.

5. Member States which have official lists shall be obliged to inform the other Member States of the address of the body to which applications for registration should be sent.

### CHAPTER 3

#### Criteria for the award of contracts

#### *Article 36*

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting authority shall base the award of contracts may be:

(a) where the award is made to the economically most advantageous tender, various criteria relating to the contract: for example, quality, technical merit, aesthetic and functional characteristics, technical assistance and after-sales service, delivery date, delivery period or period of completion, price; or

(b) the lowest price only.

2. Where the contract is to be awarded to the economically most advantageous tender, the contracting auth-

ority shall state in the contract documents or in the tender notice the award criteria which it intends to apply, where possible in descending order of importance.

#### Article 37

If, for a given contract, tenders appear to be abnormally low in relation to the service to be provided, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

The contracting authority may take into consideration explanations which are justified on objective grounds including the economy of the method by which the service is provided, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the provision of the service, or the originality of the service proposed by the tenderer.

If the documents relating to the contract provide for its award at the lowest price tendered, the contracting authority must communicate to the Commission the rejection of tenders which it considers to be too low.

### TITLE VII

#### Final provisions

#### Article 38

The calculation of time limits shall be made in accordance with Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(1)</sup>

#### Article 39

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

2. This report shall detail at least the number and value of contracts awarded by each contracting authority or category of contracting authority above the threshold, subdivided as far as possible by procedure, category of service and the nationality of the service provider to whom the contract has been awarded and, in the case of negotiated procedures, subdivided in accordance with Article 11, listing the number and value of the contracts awarded to each Member State and to third countries.

(1) OJ No L 124, 8. 6. 1971, p. 1.

3. The Commission shall determine in accordance with the procedure laid down in Article 40(3) the nature of any statistical information which is required in accordance with this Directive.

#### Article 40

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Decision 71/306/EEC.

2. As regards telecommunications services falling within category 5 of Annex I A, the Commission shall also be assisted by the Advisory Committee on Telecommunications Procurement set up by Directive 90/531/EEC.

3. Where reference is made to the procedure laid down in this paragraph, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

4. The Committees mentioned in paragraphs 1 and 2 shall examine, on the initiative of the Commission or at the request of a Member State, any question relating to the application of the Directive.

#### Article 41

Article 1(1) of 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 <sup>(2)</sup> shall be replaced by the following:

'1. The Member States shall take the measures necessary to ensure that, as regards contract award procedures falling within the scope of Directives 71/305/EEC, 77/62/EE, and 92/50/EEC (+), decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular,

(2) OJ No L 395, 30. 12. 1989, p. 33.

Article 2 (7) on the grounds that such decisions have infringed Community law in the field of public procurement or nation rules implementing that law.

(\*) OJ No L 209, 24. 7. 1992, p. 1.

#### Article 42

1. Article 5 (1) (c) of Directive 77/62/EEC shall be replaced by the following:

'(c) the value of the thresholds in national currencies and the threshold of the GATT Agreement expressed in ecus shall in principle be revised every two years with effect from 1 January 1988. The calculation of these values shall be based on the average daily values of these currencies expressed in ecus and of the ecu expressed in SDRs over the 24 months terminating on the last day of August immediately preceding the 1 January revision. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.'

2. Article 4a (2) of Directive 71/305/EEC shall be replaced by the following:

'2. (a) The value of the threshold in national currencies shall normally be revised every two years with effect from 1 January 1992. The calculation of this value shall be based on the average daily values of these currencies expressed in ecus over the 24 months terminating on the last day of August immediately preceding the 1 January revision. These values shall be published in the *Official Journal of the European Communities* at the beginning of November.

(b) The method of calculation laid down in subparagraph (a) shall be reviewed, on a proposal from the Commission, by the Advisory Committee for Public Contracts

in principle two years after its initial application.'

#### Article 43

Not later than three years after the time limit for compliance with this Directive, the Commission, acting in close cooperation with the Committees referred to in Article 40 (1) and (2), shall review the manner in which this Directive has operated, including the effects of the application of the Directive to procurement of the services listed in Annex I A and the provisions concerning technical standards. It shall evaluate, in particular, the prospects for the full application of the Directive to procurement of the other services listed in Annex I B, and the effects of in-house performance of services on the effective opening-up of procurement in this area. It shall make the necessary proposals to adapt the Directive accordingly.

#### Article 44

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

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

#### Article 45

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 1992.

For the Council  
The President  
Vitor MARTINS

## ANNEX 1A

## Services within the meaning of Article 8

Category No	Subject	CPC Reference No
1.	Maintenance and repair services	6112, 6122, 633, 886
2.	Land transport services <sup>(1)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
3.	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4.	Transport of mail by land <sup>(1)</sup> and by air	71235, 7321
5.	Telecommunications services <sup>(2)</sup>	752
6.	Financial services (a) Insurance services (b) Banking and investment services <sup>(3)</sup>	ex 81 812, 814
7.	Computer and related services	84
8.	R&D services <sup>(4)</sup>	85
9.	Accounting, auditing and book-keeping services	862
10.	Market research and public opinion polling services	864
11.	Management consultant services <sup>(5)</sup> and related services	865, 866
12.	Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
13.	Advertising services	871
14.	Building-cleaning services and property management services	874 82201 to 82206
15.	Publishing and printing services on a fee or contract basis	88442
16.	Sewage and refuse disposal services; sanitation and similar services	94

<sup>(1)</sup> Except for rail transport services covered by Category 18.

<sup>(2)</sup> Except voice telephony, telex, radiotelephony, paging and satellite services.

<sup>(3)</sup> Except contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

<sup>(4)</sup> Except research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

<sup>(5)</sup> Except arbitration and conciliation services.

**ANNEX I B****Services within the meaning of Article 9**

<b>Category No</b>	<b>Subject</b>	<b>CPC Reference No</b>
17.	Hotel and restaurant services	64
18.	Rail transport services	711
19.	Water transport services	72
20.	Supporting and auxiliary transport services	74
21.	Legal services	861
22.	Personnel placement and supply services	872
23.	Investigation and security services, except armoured car services	873 (except 87304)
24.	Education and vocational education services	92
25.	Health and social services	93
26.	Recreational, cultural and sporting services	96
27.	Other services	



## ANNEX II

## Definition of certain technical specifications

For the purpose of this Directive the following terms shall be defined as follows:

1. **Technical specifications:** the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a work, material, product or supply, which permits a work, a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These technical prescriptions shall include levels of quality, performance, safety or dimensions, including the requirements applicable to the material, the product or to the supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.
2. **Standard:** a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory.
3. **European standard:** a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as 'European Standards (EN)' or 'Harmonization documents (HD)' according to the common rules of these organizations or by the European Telecommunications Standards Institute (ETSI) as a 'European Telecommunication Standard' (ETS).
4. **European technical approval:** a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of applications and use. European approval shall be issued by an approval body designated for this purpose by the Member State;
5. **Common technical specification:** a technical specification laid down in accordance with a procedure recognized by the Member States to ensure uniform application in all Member States which has been published in the *Official Journal of the European Communities*.
6. **Essential requirements:** requirements regarding safety, health and certain other aspects in the general interest, that the construction works can meet.

**ANNEX III****Model contract notices****A. Prior information**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority, and, if different, of the service from which additional information may be obtained.
2. Intended total procurement in each of the service categories listed in Annex I A.
3. Estimated date for initiating the award procedures, per category.
4. Other information.
5. Date of dispatch of the notice.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities.

**B. Open procedure**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether service providers can tender for a part of the services concerned.
6. Where applicable, non-acceptance of variants.
7. Duration of contract or time limit for completion of the service.
8. (a) Name and address of the service from which the necessary documents may be requested.  
(b) Final date for making such requests.  
(c) Where applicable, the amount and terms of payment of any sum payable for such documents.
9. (a) Persons authorized to be present at the opening of tenders.  
(b) Date, time and place of the opening.
10. Where applicable, any deposits and guarantees required.
11. Main terms concerning financing and payment and/or references to the relevant provisions.
12. Where applicable, the legal form to be taken by the grouping of service providers winning the contract.
13. Information concerning the service provider's own position, and information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.

14. Period during which the tenderer is bound to keep open his tender.
15. Criteria for the award of the contract and, if possible, their order of importance. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents.
16. Other information.
17. Date of dispatch of the notice.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*C. Restricted procedure*

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Duration of contract, or time limit for completion of the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Final date for the dispatch of invitations to tender.
12. Where applicable, any deposits and guarantees required.
13. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
14. Criteria for the award of the contract and, if possible, their order of importance if these are not stated in the invitation to tender.
15. Other information.
16. Date of dispatch of the notice.
17. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*D. Negotiated procedure*

1. Name, address, telegraphic address, telephone, telex and fax number of the contracting authority.
2. Category of service and description. CPC reference number.
3. Place of delivery.
4. (a) Indication of whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.  
(b) Reference of the law, regulation or administrative provision.  
(c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the service.
5. Indication of whether the service provider can tender for a part of the services concerned.
6. Envisaged number or range of service providers which will be invited to tender.
7. Where applicable, non-acceptance of variants.
8. Duration of contract, or time limit for completion of the service.
9. Where applicable, the legal form to be assumed by the grouping of service providers winning the contract.
10. (a) Where applicable, justification for the use of the accelerated procedure.  
(b) Final date for the receipt of requests to participate.  
(c) Address to which they must be sent.  
(d) Language(s) in which they must be drawn up.
11. Where applicable, any deposits and guarantees required.
12. Information concerning the service provider's own position, and the information and formalities necessary for an appraisal of the minimum economic and technical standards required of him.
13. Where applicable, the names and addresses of service providers already selected by the contracting authority.
14. Other information.
15. Date of dispatch of the notice.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities.
17. Previous date(s) of publication in the *Official Journal of the European Communities*.

*E. Contract award notice*

1. Name and address of the contracting authority.
2. Award procedure chosen. In the case of the negotiated procedure without prior publication of a tender notice, justification (Article 11 (3)).
3. Category of service and description. CPC reference number.
4. Date of award of the contract.

5. **Criteria for award of the contract.**
6. **Number of tenders received.**
7. **Name and address of service provider(s).**
8. **Price or range of prices (minimum/maximum) paid.**
9. **Where appropriate, value and proportion of the contract which may be subcontracted to third parties.**
10. **Other information.**
11. **Date of publication of the contract notice in the Official Journal of the European Communities.**
12. **Date of dispatch of the notice.**
13. **Date of receipt of the notice by the Office for Official Publications of the European Communities.**
14. **In the case of contracts for services listed in Annex I B, agreement by the contracting authority to publication of the notice (Article 16 (3)).**

**ANNEX IV****A. Design contest notice**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority and of the service from which additional documents may be obtained.
2. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
  - (a) the number of participants envisaged;
  - (b) where applicable, names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
6. Where applicable, indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the selected members of the jury.
9. Indication of whether the decision of the jury is binding on the contracting authority.
10. Where applicable, number and value of prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether the prize-winners are permitted any follow-up contracts.
13. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

**B. Results of design contest**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting authority.
2. Project description.
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Where applicable, the prize(s).
7. Other information.
8. Reference of the design contest notice.
9. Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DIRECTIVE

of 18 June 1991

on control of the acquisition and possession of weapons

(91/477/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Article 8a of the Treaty provides that the internal market must be established by not later than 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured, in accordance with the provisions of the Treaty;

Whereas, at its meeting in Fontainebleau on 25 and 26 June 1984, the European Council expressly set the objective of abolishing all police and customs formalities at intra-Community frontiers;

Whereas the total abolition of controls and formalities at intra-Community frontiers entails the fulfilment of certain fundamental conditions; whereas in its white paper 'Completing the internal market' the Commission stated that the abolition of controls on the safety of

objects transported and on persons entails, among other things, the approximation of weapons legislation;

Whereas abolition of controls on the possession of weapons at intra-Community frontiers necessitates the adoption of effective rules enabling controls to be carried out within Member States on the acquisition and possession of firearms and on their transfer to another Member State; whereas systematic controls must therefore be abolished at intra-Community frontiers;

Whereas the mutual confidence in the field of the protection of the safety of persons which these rules will generate between Member States will be the greater if they are underpinned by partially harmonized legislation; whereas it would therefore be useful to determine category of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorization, or subject to declaration;

Whereas passing from one Member State to another while in possession of a weapon should, in principle, be prohibited; whereas a derogation therefrom is acceptable only if a procedure is adopted that enables Member States to be notified that a firearm is to be brought into their territory;

Whereas, however, more flexible rules should be adopted in respect of hunting and target shooting in order to avoid impeding the free movement of persons more that is necessary;

Whereas the Directive does not affect the right of Member States to take measures to prevent illegal trade in weapons,

<sup>(1)</sup> OJ No C 235, 1. 9. 1987, p. 8 and

OJ No C 299, 28. 11. 1989, p. 6.

<sup>(2)</sup> OJ No C 231, 17. 9. 1990, p. 69 and

OJ No C 158, 17. 6. 1991, p. 89.

<sup>(3)</sup> OJ No C 35, 8. 2. 1988, p. 5.

HAS ADOPTED THIS DIRECTIVE :

Directive, subject to the rights conferred on residents of the Member States by Article 12 (2).

## CHAPTER 1

## CHAPTER 2

### Scope

### Harmonization of legislation concerning firearms

#### Article 1

#### Article 4

1. For the purposes of this Directive 'weapons' and 'firearms' shall have the meanings ascribed to them in Annex I. Firearms are classified and defined in section II of that Annex.

At least in respect of categories A and B, each Member State shall make the pursuit of the activity of dealer within its territory conditional upon authorization on the basis of at least a check on the private and professional integrity of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. In respect of categories C and D, each Member State which does not make the pursuit of the activity of dealer conditional upon authorization shall make such activity subject to a declaration.

2. For the purposes of this Directive 'dealer' shall mean any natural or legal person whose trade or business consists wholly or partly in the manufacture, trade, exchange, hiring out, repair or conversion of firearms.

Each dealer shall be required to keep a register in which information concerning all firearms classified in category A, B or C received or disposed of by him shall be recorded, including such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the supplier and the person acquiring the weapon. The Member States shall regularly check dealers' compliance with this obligation. The dealer shall conserve the register for a period of five years, even after he has ceased his activity.

3. For the purposes of this Directive, a person shall be deemed to be a resident of the country indicated by the address appearing on a document establishing his place of residence, such as a passport or an identity card, which, on a check on possession or on acquisition, is submitted to the authorities of a Member State or to a dealer.

4. The 'European firearms pass' is a document which is issued on request by the authorities of a Member State to a person lawfully entering into possession of and using a firearm. It shall be valid for a maximum period of five years. The period of validity may be extended. Where only firearms classified in category D appear on the pass, the maximum period of validity thereof shall be ten years. It shall contain the information set out in Annex II. The 'European firearms pass' is a non-transferable document, on which shall be entered the firearm or firearms possessed and used by the holder of the pass. The pass must always be in the possession of the person using the firearm. Changes in the possession or characteristics of the firearms shall be indicated on the pass, as well as the loss or theft of the firearm.

#### Article 5

Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms classified in category B only by persons who have good cause and who :

- (a) are 18 years old or more, except for hunting or target shooting ;
- (b) are not likely to be a danger to themselves, to public order or to public safety.

#### Article 2

Without prejudice to Article 3, Member States shall allow the possession of firearms classified in categories C and D only by persons satisfying the conditions in point (a) of the first paragraph.

1. This Directive is without prejudice to the application of national provisions concerning the carrying of weapons, hunting or target shooting.

Member States may withdraw authorization for possession of the firearm if any of the conditions in point (b) of the first paragraph is no longer satisfied.

2. This Directive shall not apply to the acquisition or possession of weapons and ammunition, in accordance with national law, by the armed forces, the police, the public authorities or by collectors and bodies concerned with the cultural and historical aspects of weapons and recognized as such by the Member State in whose territory they are established. Nor shall it apply to commercial transfers of weapons and ammunition of war.

Member States may not prohibit persons resident within their territories from possessing a weapon acquired in another Member State unless they prohibit the acquisition of the same weapon within their own territories.

#### Article 3

#### Article 6

Member States may adopt in their legislation provisions which are more stringent than those provided for in this

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A. In special cases, the competent authorities may grant authorizations for such



firearms and ammunition where this is not contrary to public security or public order.

#### Article 7

1. No one may acquire a firearm classified in category E within the territory of a Member State unless that Member State has so authorized him.

No such authorization may be given to a resident of another Member State without the latter's prior agreement.

2. No one may be in possession of a firearm classified in category B within the territory of a Member State unless that Member State has so authorized him. If he is a resident of another Member State, that other Member State shall be informed accordingly.

3. An authorization to acquire and an authorization to possess a firearm classified in category B may take the form of a single administrative decision.

#### Article 8

1. No one may be in possession of a firearm classified in category C unless he has declared it to the authorities of the Member State in which that firearm is held.

The Member States shall provide for the compulsory declaration of all firearms classified in category C at present held within their territories but not previously declared within one year of the entry into force of the national provisions transposing this Directive.

2. Every seller, dealer or private person shall inform the authorities of the Member State in which it takes place of every transfer or handing over of a firearm classified in category C, giving the particulars by which the firearm and the person acquiring it may be identified. If the person acquiring such a firearm is a resident of another Member State, that other Member State shall be informed of the acquisition by the Member State in which it took place and by the person acquiring the firearm.

3. If a Member State prohibits or makes subject to authorization the acquisition and possession within its territory of a firearm classified in category B, C or D, it shall so inform the other Member States, which shall expressly include a statement to that effect on any European firearms pass they issue for such a firearm, pursuant to Article 12 (2).

#### Article 9

1. The handing over of a firearm classified in category A, B or C to a person who is not resident in the Member State in question shall be permitted, subject to compliance with the obligations laid down in Articles 6, 7 and 8:

— where the person acquiring it has been authorized in accordance with Article 11 himself to effect a transfer to his country of residence,

— where the person acquiring it submits a written declaration testifying to and justifying his intention to be in possession of the firearm in the Member State of acquisition, provided that he fulfils the legal conditions for possession in that Member State.

2. Member States may authorize the temporary handing over of firearms in accordance with procedures which they shall lay down.

#### Article 10

The arrangements for the acquisition and possession of ammunition shall be the same as those for the possession of the firearms for which the ammunition is intended.

### CHAPTER 3

#### Formalities for the movement of weapons within the Community

#### Article 11

1. Firearms may, without prejudice to Article 12, be transferred from one Member State to another only in accordance with the procedure laid down in the following paragraphs. These provisions shall also apply to transfers of firearms following a mail order sale.

2. Where a firearm is to be transferred to another Member State, the person concerned shall, before it is taken there, supply the following particulars to the Member State in which such firearm is situated:

- the names and addresses of the person selling or disposing of the firearm and of the person purchasing or acquiring it or, where appropriate, of the owner,
- the address to which the firearm is to be consigned or transported,
- the number of firearms to be consigned or transported,
- the particulars enabling the firearm to be identified and also an indication that the firearm has undergone a check in accordance with the Convention of 1 July 1969 on the Reciprocal Recognition of Proofmarks on Small Arms,
- the means of transfer,
- the date of departure and the estimated date of arrival.

The information referred to in the last two indents need not be supplied where the transfer takes place between dealers.

The Member State shall examine the conditions under which the transfer is to be carried out, in particular with regard to security.

Where the Member State authorizes such transfer, it shall issue a licence incorporating all the particulars referred to in the first subparagraph. Such licence shall accompany the firearm until it reaches its destination; it shall be produced whenever so required by the authorities of the Member States.

3. In the case of transfer of the firearms, other than weapons of war, excluded from the scope of this Directive pursuant to Article 2 (2), each Member State may grant dealers the right to effect transfers of firearms from its territory to a dealer established in another Member State without the prior authorization referred to in paragraph 2. To that end it shall issue an authorization valid for no more than three years, which may at any time be suspended or cancelled by reasoned decision. A document referring to that authorization must accompany the firearm until it reaches its destination; it must be produced whenever so required by the authorities of the Member States.

Not later than the time of transfer, the dealer shall communicate to the authorities of the Member State from which the transfer is to be effected all the particulars listed in the first subparagraph of paragraph 2.

4. Each Member State shall supply the other Member States with a list of firearms the transfer of which to its territory may not be authorized without its prior consent.

Such lists of firearms shall be communicated to dealers who have obtained approval for transferring firearms without prior authorization under the procedure laid down in paragraph 3.

#### Article 12

1. If the procedure provided for in Article 11 is not employed, the possession of a firearm during a journey through two or more Member States shall not be permitted unless the person concerned has obtained the authorization of each of those Member States.

Member States may grant such authorization for one or more journeys for a maximum period of one year, subject to renewal. Such authorizations shall be entered on the European firearms pass, which the traveller must produce whenever so required by the authorities of the Member States.

2. Notwithstanding paragraph 1, hunters, in respect of categories C and D, and marksmen, in respect of category B, C and D, may without prior authorization be in possession of one or more firearms classified in these categories during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a European firearms pass listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey, in particular by producing an invitation.

However, this derogation shall not apply to journeys to a Member State which prohibits the acquisition and possession of the firearm in question or which, pursuant to Article 8 (3), makes it subject to authorization; in that case, an express statement to that effect shall be entered on the European firearms pass.

In the context of the report referred to in Article 17, the Commission in consultation with the Member States, will also consider the effects of applying the second subparagraph, particularly as regards its impact on public order and public security.

3. Under agreements for the mutual recognition of national documents, two or more Member States may provide for arrangements more flexible than those prescribed in this Article for movement with firearms within their territories.

#### Article 13

1. Each Member State shall communicate all useful information at its disposal concerning definitive transfers of firearms to the Member State to the territory of which such a transfer has been effected.

2. All information that Member States receive by way of the procedures laid down in Article 11 for transfers of firearms and in Article 7 (2) and Article 8 (2) for the acquisition and possession of firearms by non-residents shall be communicated, not later than the time of the relevant transfers, to the Member States of destination and, where appropriate, not later than the time of transfer to the Member States of transit.

3. Member States shall set up, by 1 January 1993 at the latest, networks for the exchange of information for the purposes of applying this Article. They shall inform the other Member States and the Commission of the national authorities responsible for transmitting and receiving information and for applying the formalities referred to in Article 11 (4).

#### Article 14

Member States shall adopt all relevant provisions prohibiting entry into their territory:

- of a firearm except in the cases defined in Articles 11 and 12 and provided the conditions laid down therein are met,
- of a weapon other than a firearm provided that the national provisions of the Member State in question so permit.

### CHAPTER 4

#### Final provisions

#### Article 15

1. Member States shall intensify controls on the possession of weapons at external Community frontiers. They shall in particular ensure that travellers from third countries who intend to proceed to another Member State comply with Article 12.

2. This Directive shall not preclude the carrying out of controls by Member States or by the carrier at the time of boarding of a means of transport.

3. Member States shall inform the Commission of the manner in which the controls referred to in paragraphs 1 and 2 are carried out. The Commission shall collate this information and make it available to all Member States.

4. Member States shall notify the Commission of their national provisions, including changes relating to the acquisition and possession of weapons, where the national law is more stringent than the minimum standard they are required to adopt. The Commission shall pass on such information to the other Member States.

*Article 16*

Member States shall introduce penalties for failure to comply with the provisions adopted pursuant to this Directive. Such penalties must be sufficient to promote compliance with such provisions.

*Article 17*

Within five years from the date of transposition of this Directive into national law, the Commission shall submit a report to the European Parliament and to the Council on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals.

*Article 18*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with

this Directive in good time so that the measures provided for by this Directive may be put into effect not later than 1 January 1993. They shall forthwith inform the Commission and the other Member States of the measures taken.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

*Article 19*

This Directive is addressed to the Member States.

Done at Luxembourg, 18 June 1991.

*For the Council*

*The President*

G. WOHLFART

## ANNEX I

## I. For the purposes of this Directive, 'weapon' means :

- any firearm as defined in section II of this Annex,
- weapons other than firearms as defined in national legislation.

## II. For the purposes of this Directive, 'firearm' means :

- A. Any object which falls into one of the following categories, unless it meets the definition but is excluded for one of the reasons listed in section III.

*Category A — Prohibited firearms*

1. Explosive military missiles and launchers.
2. Automatic firearms.
3. Firearms disguised as other objects.
4. Ammunition with penetrating, explosive or incendiary projectiles, and the projectiles for such ammunition.
5. Pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except in the case of weapons for hunting or for target shooting, for persons entitled to use them.

*Category B — Firearms subject to authorization*

1. Semi-automatic or repeating short firearms.
2. Single-shot short firearms with centre-fire percussion.
3. Single-shot short firearms with rimfire percussion whose overall length is less than 28 cm.
4. Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds.
5. Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.
6. Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length.
7. Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms.

*Category C — Firearms subject to declaration*

1. Repeating long firearms other than those listed in category B, point 6.
2. Long firearms with single-shot rifled barrels.
3. Semi-automatic long firearms other than those in category B, points 4 to 7.
4. Single-shot short firearms with rimfire percussion whose overall length is not less than 28 cm.

*Category D — Other firearms*

Single-shot long firearms with smooth-bore barrels.

## B. Any essential component of such firearms :

The breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

## III. For the purposes of this Annex objects which correspond to the definition of a 'firearm' shall not be included in that definition if they :

- (a) have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or recognized by such a body ;
- (b) are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only ;
- (c) are regarded as antique weapons or reproductions of such where these have not been included in the previous categories and are subject to national laws.

Pending coordination throughout the Community, Member States may apply their national laws to the firearms listed in this Section.

## IV. For the purposes of this Annex :

- (a) 'short firearm' means a firearm with a barrel not exceeding 30 centimetres or whose overall length does not exceed 60 centimetres ;
  - (b) 'long firearm' means any firearm other than a short firearm ;
  - (c) 'automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire more than one round with one pull on the trigger ;
  - (d) 'semi-automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire only one round with one pull on the trigger ;
  - (e) 'repeating firearm' means a firearm which after a round has been fired is designed to be reloaded from a magazine or cylinder by means of a manually-operated action ;
  - (f) 'single-shot firearm' means a firearm with no magazine which is loaded before each shot by the manual insertion of a round into the chamber or a loading recess at the breech of the barrel ;
  - (g) 'ammunition with penetrating projectiles' means ammunition for military use where the projectile is jacketed and has a penetrating hard core ;
  - (h) 'ammunition with explosive projectiles' means ammunition for military use where the projectile contains a charge which explodes on impact ;
  - (i) 'ammunition with incendiary projectiles' means ammunition for military use where the projectile contains a chemical mixture which bursts into flame on contact with the air or on impact.
-

*ANNEX II***EUROPEAN FIREARMS PASS**

The pass must include the following sections :

- (a) identity of the holder;
- (b) identification of the weapon or firearm, including a reference to the category within the meaning of the Directive;
- (c) period of validity of the pass;
- (d) section for use by the Member State issuing the pass (type and references of authorizations, etc.);
- (e) section for entries by other Member States (authorizations to enter their territory, etc.);
- (f) the statements :

'The right to travel to another Member State with one or more of the firearms in categories B, C or D mentioned in this pass shall be subject to one or more prior corresponding authorizations from the Member State visited. This or these authorizations may be recorded on the pass.

The prior authorization referred to above is not in principle necessary in order to travel with a firearm in categories C or D with a view to engaging in hunting or with a firearm in categories B, C or D for the purpose of taking part in target shooting, on condition that the traveller is in possession of the firearms pass and can establish the reason for the journey.'

Where a Member State has informed the other Member States, in accordance with Article 8 (3), that the possession of certain firearms in categories B, C or D is prohibited or subject to authorization, one of the following statements shall be added :

'A journey to ... (State(s) concerned) with the firearm ... (identification) shall be prohibited.'

'A journey to ... (State(s) concerned) with the firearm ... (identification) shall be subject to authorization.'