

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 10 final.

Brussels, 2 June 1977.

PROPOSAL FOR A COUNCIL DIRECTIVE  
RELATING TO COMMON PRINCIPLES TO BE ADOPTED  
IN EXPORT CREDIT INSURANCE SYSTEMS FOR MEDIUM  
AND LONG TERM TRANSACTIONS WITH PUBLIC AND  
PRIVATE BUYERS

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(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

1. In April 1974, the Commission submitted to the Council a working paper relating to the adoption of common principles in export credit insurance policies<sup>1</sup>.

- The object of the paper was to seek to harmonize credit insurance and export credit guarantee systems by the application of uniform principles, as provided
- for in Article 113 of the Treaty establishing the European Economic Community.

The previous search for a harmonization of general conditions by the formulation of identical policy texts had encountered certain obstacles arising from the different administrative or banking practices of Member States.

2. The working paper of April 1974 has formed a basis for thorough discussions with experts from Member States and with UNICE (Union of Industries of the European Community) and ORGALDE (Liaison Group for the European Engineering Industries).

Further, the Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits has discussed the paper several times.

Finally, in June and September 1976, the Commission called in experts in order to define common principles to be incorporated in a formal proposal for a Directive.

3. All that preparatory work having been accomplished, the Commission is now able to present a formal proposal relating to common principles to be adopted in export credit insurance systems for medium and long-term transactions with public and private buyers, leaving it to the insurers and guarantors to draw up their own texts based on the common rules and in conformity with the legal requirements of their individual countries.

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<sup>1</sup>Doc. COM(74)393/6 of 3 April 1974.

In order to ensure that the common principles are brought into force and that they are in conformity with those laid down in this proposal, the texts to be adopted in each Member State are to be communicated previously to the other organizations providing insurance or guarantees and to the Commission.

4. As for premia, in order to up-date the information on national systems and to clarify how their operation affects the uniform principles, the Directive provides that the rules, scales and rates of premium which are applied in the export credit insurance and guarantees covered by the uniform principles set out in this Directive are to be communicated to the organisations providing insurance or guarantees, as well as to the Commission, within 2 months following the entry into force of the uniform principles.

The Commission intends to continue its efforts to arrive at a harmonised system of export credit insurance premia, under a regime where, through time, premium income is sufficient to cover losses.

5. This proposal for a directive is based on Article 113 of the Treaty, which provides that "..... the common commercial policy shall be based on uniform principles, particularly in regard to ..... export policy .....".

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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 the common commercial policy should be based on uniform principles,  
in particular as far as export policy is concerned;

Whereas export credit is of primary importance in international trade  
and is an important instrument of commercial policy, and it is therefore  
necessary to define the common principles of commercial policy in this  
field;

Whereas in this respect the differences between export credit insurance  
systems in force in Member States may give rise to distortion in competition  
between Community undertakings in markets in third countries;

Whereas harmonisation of these various export credit insurance systems  
could facilitate co-operation between undertakings in the various Member  
States;

Whereas harmonisation can be achieved either by common policies, or by  
common principles relating to the elements considered essential to the  
operation of export credit insurance systems;

Whereas moreover medium and long term guaranteed transactions relate to public and private buyers equally;

Whereas it is important for the Commission to obtain the opinions of the Representatives of the Member States on any problem relating to the uniform application of this Directive;

HAS ADOPTED THIS DIRECTIVE

#### Article 1

1. Member States shall adopt such measures by law, regulation or administrative action as may be necessary to put into force as from 1.3.1978 the common principles set out in the Annexes to this Directive and, in order to ensure these common principles are respected, the measures necessary for all credit insurance organisations, guaranteeing for the account of or with the support of the State, or any institutions deriving through public support, whatever its form, a mandate to give a guarantee or a credit whether tied to an export insurance policy or not, to deposit at the latest on the 30.9.1977 with all the above mentioned other credit insurance organisations, institutions and the Commission copies of all the documents to be used in application of this Directive.

2. Any amendment envisaged to the text of these documents should equally be communicated to the above mentioned organisations and institutions as well as the Commission at least 3 months before the date at which its application is envisaged.

3. Furthermore, within 2 months following the entry into force of the uniform principles in accordance with the provisions of paragraph 1 of this Article, the rules, scales and rates of premium which are applied in the export credit insurance and guarantees covered by the uniform principles shall be communicated to the other organisations and institutions mentioned above, as well as to the Commission. Subsequent modifications to these rules, scales or tariffs for premium shall be subject to notification prior their introduction.

4. The Annexes refer respectively:

Annex I

To transactions guaranteed by specific or comprehensive or selected transaction policies, effected on the basis of a supplier credit.

Annex II

To Performance Bonds.

Annex III

To guarantees granted to banks relating to the same transactions as those mentioned in Annex I.

Annex IV

To guarantees granted to banks in respect of financial credits.

Annex V

Definitions.

Article 2

Each Member State shall see that the credit insurance organisations, guaranteeing for the account of or with the support of the State and the institutions receiving through public support, whatever its form, a mandate to give a guarantee or credits whether or not related to an export insurance policy, insure transactions or grant guarantees which fall within the field of application of the common principles, in conformity with the particular conditions and rules adopted by the Council.

Article 3

There shall be appointed to the Commission an Advisory Committee for Export Credit Insurance, hereinafter called 'the Committee', which shall consist of Representatives of the Member States with a representative of the Commission as Chairman.

The Committee shall establish its own rules of procedures.

Article 4

The Committee shall meet when convened by its Chairman, either on the initiative of the latter or at the request of the Representative of a Member State.

Article 5

The Committee may be consulted by the Commission on any problem relating to the uniform application of this Directive.

Article 6

The Commission shall, within three years of the entry into force of the common principles and after consultation with the Committee referred to in Article 3, present a report on experience acquired during the application of the said principles. It may, in due course, make proposals for amendments to these principles with a view to adapting them to the specific needs which the application of these principles has not been able to meet.

That report may, however, be presented at any time if a Member State so requests and shall be submitted as a matter of urgency to the Council.

Article 7

The Council Directive No 70/509/CEE of 27 October 1970 and the Council Directive No 70/510/CEE of 27 October 1970 are hereby abrogated.

Article 8

This Directive is addressed to the Member States.

Done at \_\_\_\_\_, on \_\_\_\_\_

For the Council  
The President



I COMMON PRINCIPLES TO BE APPLIED TO THE INSURANCE OF SUPPLIER CREDIT

1. The field of application of common principles shall cover export transactions to third countries (sale of goods or provision of services), effected on the basis of a supplier credit, to a public or private buyer, guaranteed by specific, comprehensive or selected transaction policies and entailing either a credit risk of a period equal to or greater than 24 months, or a manufacturing risk of a period equal to or greater than 12 months, or both these risks whose periods when added together are equal to or greater than 24 months.

II. SCOPE OF THE GUARANTEE

1. Manufacturing Risk

The manufacturing risk covers loss arising from the suspension of the manufacture of the goods ordered or performance of the conditions of the contract for a minimum period of 6 months directly caused by an event listed in III below or in accordance with a decision of the Insurer at his absolute discretion because of the threat of such an event.

It also covers loss arising from the final suspension of the manufacture or performance of the conditions of the contract at least 6 months after it has been continued with the Insurer's agreement following such an event or decision.

2. Credit Risk

The credit risk covers loss arising from the Insured's failure to receive within the period fixed in § III the sums due in accordance with the terms and conditions of the contract, provided always that the loss is directly caused by an event listed in III below.

III. EVENTS CONSTITUTING A CAUSE OF LOSS AND QUALIFYING PERIOD FOR CLAIMS

The following causes of loss may be covered, and must be stated in all Guarantees in the appropriate terminology for the legal system governing a particular contract of insurance:

- A. The default of the buyer or his failure or refusal to fulfil any of the terms of the contract; the losses established 6 months after the due date of a sum remaining unpaid.
- B. Insolvency of the debtor, the loss is immediately established.
- C. A general moratorium decreed by the Government of the buyer's country or by that of a third country through which payment must be effected; the loss is established 4 months after the due date of a sum remaining unpaid.
- D. Any other measure or decision of the Government of a foreign country which prevents performance of the contract; the loss is established 4 months after the due date of a sum remaining unpaid.
- E. Political events, economic difficulties arising outside ....<sup>1</sup> or legislative or administrative measures taken outside .....<sup>1</sup> which prevent or delay the transfer of funds paid over in respect of the contract; the loss is established 4 months after the due date of a sum remaining unpaid, or 4 months after the payment of funds of the debtor is private.
- F. Legal provisions adopted in the country of the buyer declaring payments made by the buyer to be valid discharge of the debt, notwithstanding that as a result of fluctuations in exchange rates such payments, when converted into the currency of the contract, no longer cover the amount of the debt at the date of transfer; the loss is established as soon as it is confirmed.

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<sup>1</sup>The country of the Insurer

- G. The occurrence outside .....<sup>1</sup> of one of the following events :  
war (including civil war, hostilities, rebellion and insurrection),  
revolution or riot, cyclone, flood, earthquake, volcanic eruption  
or tidal wave; the loss is established 4 months after the due date  
of a sum remaining unpaid.
- H. A measure of decision of the Government of .....<sup>1</sup> which  
prohibits or restricts the export of the goods, insomuch as  
this measure or decision falls within the context of international  
affairs; the loss is established 4 months after the due date of  
a sum remaining unpaid.

IV. EFFECTIVE DATE AND EXTENT OF THE GUARANTEE

1. Effective date

The manufacturing risk shall become effective at the  
later of the following dates:

- (i) the date of entry into effect of the contract
- (ii) the date when all conditions precedent to liability  
stipulated by the Insurer have been fulfilled.

When (ii) applies the guarantee can be applied retrospectively  
to any costs incurred by the Insured between (i) and (ii).

The credit risk shall become effective when the Insured has  
fulfilled all his contractual obligations; however when, under  
the terms of the contract, the Insured has an entitlement to  
payment at a specified due date in respect of partial deliveries  
or the rendering of part of the services, the credit risk may  
become effective at the date of such entitlement.

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<sup>1</sup> The country of the Insurer

2. Extent of the guarantee

Cover for the manufacturing and credit risks as set out in this statement of common principles must not be given for losses arising:

- (i) as a consequence of the calling of a performance bond;
- (ii) from the inability of the Insured to recover equipment owned by him and not forming part of the contract but used in the buyer's country for the execution of the contract;
- (iii) from exchange losses consequent upon a fall in the exchange rate of the currency in which the contract is denominated between the effective date of the guarantee and the date on which the exporter is paid by the buyer or is paid a claim by the Insurer.

It will not be a breach of (i), (ii) and (iii) above if the loss is covered by a special facility and subject to payment of a supplementary premium.

(a) Manufacturing Risk

Liability in respect of the Manufacturing Risk must, within the limit of the total contract amount, be restricted to costs incurred by the Insured in manufacturing the goods or performing his contractual obligations.

It ceases in relation to any goods or services which become eligible for credit risk cover once they become so eligible.

(b) Credit Risk

Liability in respect of the Credit Risk must be limited to the principal sums and interest accruing up to the due date of payment owed to the Insured under the contract.

(c) Additional Costs

Liability may be extended to additional costs incurred by the Insured with approval of the Insurer following a loss or threat of loss to minimise that loss.

In particular when manufacture of the goods or performance of the conditions of the contract has been continued in accordance with a decision of the Insurer in the circumstances described in III and one of the causes of loss as defined in III does not ultimately arise, liability may be extended to the additional costs incurred as a consequence of the decision of the Insurer that manufacture or performance shall continue.

Additional costs incurred as a consequence to the provisional provisional interruption of the execution of the business may be covered, no matter the length of interruption.

3. Percentage guaranteed

The guaranteed percentage must not exceed 95%.

V. INDEMNITIES

General Principles

The following general principles of cover must be observed:

- (a) The Insured must act at all times with due diligence as regards the conclusion and performance of the guaranteed contract.

(b) Cover must not be given for losses arising

- where there is a dispute over the performance of the contract until that dispute has been resolved to the satisfaction of the Insurer;
- by reason of the failure of the Insured or by any person acting on his behalf or by a co-contractor or sub-contractor to fulfil any of the terms and conditions of the contract or to comply with any laws or regulations that may apply in either the country of the Insured or of the buyer.
- by reason of the failure to obtain any necessary authorities for the import of the goods or performance of the conditions of the contract in force at the date when the Insurer's liability commences.

(c) Similarly cover must not be given for losses arising from errors by the Insured in the development, design or performance of the contract and which would have arisen irrespective of whether or not an event constituting a cause of loss had occurred.

1 Calculation of loss for manufacturing risk

Guaranteed loss must not exceed the difference between:

- (i) total allowable costs and expenses as defined in IV2a and 2c;
- (ii) the total of the payments received by and amounts credited to the Insured - with the exception of those relating to goods and services for which the guarantee of the credit risk has already taken effect - (for example, sums received by the Insured, the proceeds from the resale or alternative use of goods not delivered, the proceeds of the realisation of securities, amounts which the Insured has received or is entitled to receive by way of set-off, indemnity payments of any kind) and generally any financial advantage that has accrued to the Insured as a result of the occurrence of the loss.

the costs, payments and amounts credited as described in 1(i) and (ii) above which are effected in foreign currencies shall be converted into the national currency at the rate ruling on the date when the costs are incurred or the payments and amounts received.

2. Calculation of loss for credit risk

Guaranteed loss must not exceed the difference between:-

- (a) total sums due as defined in IV 2b but not received by the Insured;
  - (b) - the total of the payments received by and amounts credited to the Insured - with the exception of those relating to goods and services to which the guarantee of the manufacturing risk still applies - (for example, sums received by the Insured as payments on account, the proceeds of the realisation of securities, amounts which the Insured has received or is entitled to receive by way of compensation, indemnity payments of any kind);
- any expenses saved by the Insured or any financial advantage that has accrued to the Insured as a result of the occurrence of the loss.

When the contract provides for payment in a foreign currency, the amounts referred to in (a) and (b) above which are denominated in such a currency shall be converted into the currency of the country of the Insured at the rate ruling on the date of expiry of the qualifying period for the claim.

The conversion rate used must not, however, exceed the rate ruling on the date when the contract was signed or was concluded.

3. Calculation of loss for additional costs

Additional costs as defined in IV (2c) may be indemnified on presentation of evidence of those costs.

If such costs are incurred in a foreign currency they shall be converted into the currency of the country of the Insured at the rate ruling on the date they were incurred.

4. Allocation of payments and the proceeds of the realisation of securities

The general principle for the allocation of payments and the proceeds of the realisation of securities insofar as it affects calculation of the guaranteed portion of the loss and the allocation of recoveries between the Insurer and the Insured shall be that such payments and proceeds shall not be allocated to unguaranteed losses in preference to guaranteed losses.

5. Recoveries

Recoveries shall be understood to comprise all sums recovered by the Insured or anyone acting on his behalf from the buyer or any other source subsequent to the payment of a claim and attributed to the related guaranteed contract.

They shall be shared between the Insured and the Insurer, after conversion if necessary into the currency of the country of the Insurer at the exchange rate ruling on the date when they are received by the Insured in the same proportion as loss has been borne.

VI. PREMIUM

1. The conclusion of the insurance contract shall render the Insured liable to a premium.
2. All premia paid shall be non-returnable. However, if the Insured is able to prove that the guarantee of the risk covered has not become effective in the sense of § IV, the credit insurer may repay part of the premium.



COMMON PRINCIPLES TO BE APPLIED TO THE ENDORSEMENT OF THE GUARANTEE

(calling of a bond guaranteeing the execution of the insured contract)

The common principles of this Annex shall apply when the guarantee, to which the common principles set out in Annex 1 apply, covers the calling of bonds required by the terms of the contract.

I. SUBJECT OF THE GUARANTEE.

The guarantee shall be extended to cover losses due to the calling of the bond:

- (a) in the event of the termination or the interruption of the contract before the completion of the contractual obligations of the Insured, due to one of the events covered in the insurance policy,
- (b) in the event of the unfair calling of the bond.

II. INDEMNITIES - GENERAL PRINCIPLES

1. The maximum amount payable by the credit insurer in respect of the calling of a bond may not exceed 95% of the amount guaranteed.
2. The loss shall be paid under the endorsement to the guarantee:
  - in the case of para (a) of Article I of this Annex, at the same date as the date of payment of the loss under the guarantee.
  - in the case of para (b) of Article 1 of this Annex, at the minimum 4 months after the date of the calling of the bond.

III. GENERAL CONDITIONS

1. The endorsement to the guarantee shall render the Insured liable to a premium.
2. The provisions of Annex I not set out in this Annex II shall apply equally to the endorsement.

## ANNEX III

### I. COMMON PRINCIPLES TO BE APPLIED TO THE DIRECT GUARANTEE TO BANKS

The field of application of the common principles shall cover the direct guarantee to banks relating to export transactions to third countries (sale of goods or provisions of services) effected on the basis of a supplier credit, inasmuch as

- these transactions are insured by a credit insurance policy covering both political and commercial risks;
- these transactions have a minimum credit period of 2 years;
- the sum due to the exporter is evidenced by bills or notes issued or accepted by the buyer.

### II. GENERAL PRINCIPLES

The bank financing an export transaction insured either by a specific, a comprehensive or a selected transaction policy, may obtain a direct guarantee in respect of the sums due from the foreign buyer or, within the limit of the amount of the said sums due, the sums due from the exporter as a result of the financing which has been extended to him for that transaction.

The direct guarantee to the bank may be granted by a credit insurance organisation, acting for the account or with the support of the State, or by an institution deriving through public support, whatever its form, a mandate to give a guarantee or credit whether or not related to an export insurance policy.

III. EXTENT OF THE GUARANTEE

1. The direct guarantee to a bank shall cover the risk of non-payment by the foreign debtor, within the limit of the amount of the credit (principal and interest) extended by the bank to the exporter.
2. The guarantee may be unconditional except where the loss is due to the fault or negligence of the bank, the credit insurer or the institution which has given the guarantee to the bank shall undertake not to apply to the bank the exceptions which would have been applied to the exporter.
3. The guarantee may cover 100% of the value of principal and interest.
4. The qualifying period for claims shall be a minimum of 3 months.

IV. EFFECTIVE DATE OF THE GUARANTEE

The direct guarantee may become effective:

- as soon as the goods have been despatched; or
- as soon as the goods have been despatched and the exporter has received in exchange of documents, the accepted bills related to the said goods; or
- when the export contract stipulates that the buyer has the right to refuse the delivered goods, as soon as the goods have been formally accepted by the buyer and, without prejudice to any guarantee contained in the contract, have been accepted as being in accordance with the specifications of the contract.

V. PRINCIPLES OF INDEMNIFICATION

If the loss is due to the fault or the negligence of the bank no indemnity shall be paid to the bank.

When the contract provides for payment in a foreign currency, the loss shall be calculated on the basis of the lower of the following two conversion rates:

- rate ruling at the end of the qualifying period of the claim,
- rate ruling at the date of contract.

Payment of a claim to the bank shall not prejudice the right of the credit insurer or the institution which has granted the said guarantee to request the exporter to exercise on its behalf the rights and guarantees which it holds against the buyer.

VI RECOURSE

The giving of a direct guarantee to a bank shall not affect the terms of guarantee issued to the exporter.

The insurer shall have recourse to the exporter, to the full extent to which the insurer is not liable under the terms of the guarantee issued to the exporter.

When only political risks are covered, the credit insurer or the institution which has given the guarantee to the bank may delay taking recourse up to the date appearing in the exporter's policy at which the qualifying period for claims ends.

In the event of the right of recourse being exercised the exporter shall repay the amounts demanded of him plus interest calculated from the date of payment of claim to the bank.

VII. PREMIUM

The giving of a direct guarantee to the bank shall render the exporter liable to a premium to the credit insurer or to the institution which has given the guarantee.

I. COMMON PRINCIPLES TO BE APPLIED TO THE FINANCIAL GUARANTEE

1. The field of application of common principles shall cover the guarantee or credits defined in para 2 below extended to the buyer or the borrower by a bank established in the country of the credit insurer or of the institution which has given the guarantee.
2. The loan agreement shall provide exclusively for the direct payment by the bank to the exporter of sums due in respect of the export contract to which the latter is party.

II. EXTENT OF THE GUARANTEE

1. The financial guarantee shall relate to the indemnification of the bank to a maximum of 100% of the losses it might encounter under the loan agreement in the event of the occurrence of the risk covered.
2. The risk covered shall consist of the non-recovery by the bank of all or part of the sums due to it within 3 months of their due date.
3. The guarantee may be unconditional except where the loss is due to the fault or negligence of the bank.

### III. EFFECTIVE DATE AND EXTENT OF THE GUARANTEE

#### (1) Effective date

The guarantee shall become effective as and when the conditions precedent set out in the loan agreement have been fulfilled.

#### (2) Extent of the guarantee

The guarantee shall relate exclusively to the amount of the sums due to the bank (principal and interest) which the buyer or borrower is committed to repay to the bank by virtue of the loan agreement.

### IV. PRINCIPLES OF INDEMNIFICATION

If the loss is due to the fault or the negligence of the bank no indemnity shall be paid to the bank.

When the contract provides for payment in a foreign currency, the loss shall be calculated on the basis of the lower of the following two conversion rates:

- rate ruling at the end of the qualifying period of the claim,
- rate ruling at the date of contract.

### V. RECOURSE

The giving of a financial guarantee shall not affect the terms of the exporter's own insurance.

The credit insurer has a right to exercise recourse to the exporter in the event of non-recovery by the bank if all or part of its debt is due to a failure by the exporter in the execution of the contract.

### VI. PREMIUM

The giving of a financial guarantee shall render the exporter liable to a premium to the credit insurer or to the institution which has given the guarantee.



DEFINITIONS

A. The term "Public buyer" shall be defined as follows

(a) a buyer who, in one form or another, represents the public power itself, (States, regional or local authorities having a subordinate status such as provinces or local government units; public undertakings) and who cannot, either judically or administratively, be made insolvent.

(b) The following shall be considered as public buyers;

- State trading corporations

- public corporations

- and organisations in the public sector financed in whole by or fully accountable to any of (a) above.

B. "Insolvency" shall be deemed to occur when -

1. The buyer is declared bankrupt; or

2. If the buyer is a company, an order for winding-up has been made on the grounds that the company is insolvent; or

3. An order for administration of the buyer's affairs has been made by a court for the benefit of his creditors; or

4. In the course of execution of a judgement, the levy of execution has not satisfied the debt either in full or in part; or

5. The buyer has made a valid assignment, composition or other arrangement for the benefit of his creditors generally; or

6. The Insured shows, to the satisfaction of the Insurer, that the financial state of the buyer is such that even partial payment is unlikely and that to enforce judgment or to request that the buyer be declared bankrupt or wound up would have no other foreseeable result than one out of proportion to the costs of the proceedings; or

7. Such conditions exist as are by any other system of law substantially equivalent in effect to any of the foregoing conditions.

PROPOSAL FOR A COUNCIL DIRECTIVE

repealing the Council Directives of 27 October 1970  
authorizing derogations from the provisions of the  
common credit insurance policies for medium-and  
long-term transactions with public and private buyers

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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 the repeal of the Council Directives of 27 October 1970 on the adoption of common credit insurance policies for medium-and long-term transactions with public and private buyers<sup>1</sup> renders inoperative the unpublished Council Directives of the same date authorizing derogations from the provisions of the said common policies;

Whereas the unpublished Directives in question should therefore be abrogated,

HAS ADOPTED THIS DIRECTIVE:

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<sup>1</sup> Directives 70/509/EEC and 70/510/EEC, OJ No L 254, 23.11.1970.

Article 1

The Council Directives of 27 October 1970 authorizing derogations from the provisions of the Council Directives of 27 October 1970 (70/509/EEC and 70/510/EEC) are hereby abrogated.

Article 2

This Directive is addressed to the Member States.

Done at Brussels,

For the Council  
The President