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# Proposal for a Council regulation concerning arrangements applicable to rice and broken rice imported from the associated African States and Madagascar and from the overseas countries and territories

(Submitted by the Commission to the Council on 31 January 1964)

## Explanatory Memorandum

1. At a private sitting on 23 December 1963 the Council of the European Economic Community noted that the Commission had undertaken to submit proposals before 1 January 1964 concerning rice imports from the associated African States and Madagascar and from Surinam so that the arrangements applicable to such imports could take effect from the same date as the regulation concerning the gradual establishment of a common organization in the rice market.

By the Convention of Association between the European Economic Community and the associated African States and Madagascar signed in Yaoundé on 20 July 1963, the Community pledged itself to take into consideration, when determining common agricultural policy, the interests of the associated States as regards products similar to and competitive with European products. Furthermore, when the transitional provisions were adopted, the Member States and the associated States agreed that this undertaking should hold good from 1 January 1963 until the entry into force of the new Convention.

Moreover, the Council decision of 2 and 3 December 1963 lays down that the same principle shall be applied in respect of the overseas countries and territories associated with the Community.

2. The undertaking given by the Community may be satisfied as a general rule by granting a levy reduction on imports of rice and broken rice from the associated African States and Madagascar and from the overseas countries and territories, on condition that this does not endanger the objectives of the common agricultural policy.

The reduction can be made by a cut in the "standard amount", or a cut in the fixed component, depending on the stage of processing of the imported product. The arrangements allow imports of rice and broken rice from the associated States and the overseas countries and territories to enjoy the same preference as exists between the Member States.

Since, however, a possible acceleration in the alignment of prices during the transitional period might lead to the "standard amount" being abolished, the associated African States and Madagascar and the overseas countries and territories would then be denied any preference; it is therefore desirable that the Council should ensure that these States and countries enjoy the benefit of the preferential arrangements until the Convention of Association expires.

3. Madagascar exports rice and broken rice to France at French home prices up to a certain annual quota, which has varied during the last few years between 13 500 and 15 000 tons.

If the general system for rice imports from the African States and Madagascar and the overseas countries and territories is applied immediately upon the entry into force of the levy arrangements, rice exports from Madagascar to France will be adversely affected and consequently the possible outlets for this product will be reduced. Therefore, in order to prevent a sudden change in the present situation from hampering trade between Madagascar and the Community and in order to enable that country to adapt itself to the general system, it is advisable to provide for transitional arrangements of a graduated nature.

4. Finally, Article 10 (2), second sub-paragraph, of the Council regulation concerning the gradual establishment of a common organization in the rice market provides that the duration of the validity of import licences, which is three months, may in certain circumstances be extended to four months.

Having regard to the geographical position of the associated African States and Madagascar and the overseas countries and territories, and the special conditions which may affect the lading of ships in their ports, it would seem advisable to make this extension the general practice in their case.

## Proposal for a Council regulation concerning arrangements applicable to rice and broken rice imported from the associated African States and Madagascar and from the overseas countries and territories

*The Council of the European Economic Community,*

*Having regard to* the Treaty establishing the European Economic Community and particularly Article 43 thereof;

*Having regard to* the proposal of the Commission;

*Having regard to* the opinion of the European Parliament;

*Whereas* by the Convention of Association between the European Economic Community and the associated African States and Madagascar signed in Yaoundé on 20 July 1963, the Community has pledged itself to take into consideration, when determining common agricultural policy, the interests of the associated States as regards products similar to and competitive with European products;

*Whereas* at the time of adopting the transitional provisions, the Member States and associated States agreed that this undertaking should hold good from 1 January 1963 until the entry into force of the new Convention;

*Whereas* in accordance with the Council decision of 2 and 3 December 1963, concerning the association of the overseas countries and territories with the Community, the same principles must apply to them as to the associated African States and Madagascar;

*Whereas* consultations have been held with the associated States;

*Whereas* the arrangements to be applied must promote the growth of trade between the associated States and the Member States;

*Whereas* Council Regulation No. .../64/CEE of ... concerning the gradual establishment of a common organization in the rice market sets up a system of levies superseding any other measures of protection at the frontier;

*Whereas* the undertaking given by the Community may be satisfied by granting a levy reduction on imports of rice and broken rice from the associated African States and Madagascar and from the overseas countries and territories;

*Whereas,* however, the application of this system may not suffice to prevent unfavourable repercussions on traditional exports of rice from Madagascar to France; and whereas it is advisable, in order to allow of a gradual adjustment to the general system for rice imported from the associated African States and Madagascar and the overseas countries and territories, to provide immediately for transitional arrangements of a graduated nature,

*Has made the present Regulation:*

*Article 1*

Notwithstanding the provisions of Article 2 (1, 2, 3 and 4) of Council Regulation No. .../64/CEE of ... and without prejudice to Article 2 of the present regulation, there shall be imposed on imports of rice and broken rice from the associated African States and Madagascar and the overseas countries and territories:

i) For husked rice, paddy rice and broken rice, a levy equal to that applicable to imports from non-member countries less an amount equal to the standard amount established in accordance with Article 6 of Council Regulation No. .../64/CEE;

ii) For milled rice, a levy composed of a variable component, which shall be equal to that applicable to imports from non-member countries and a fixed component which shall be equal to that applicable to imports from Member States.

*Article 2*

1. Until 31 August 1969, there shall be imposed on rice imported into the French Republic from the Malagasy Republic, up to a total quantity for each marketing year equal to the average annual imports from the latter country during the years 1961, 1962 and 1963:

i) For the period from 1 July 1964 to 31 August 1965, a zero levy, the quantity referred to above being increased by two twelfths;

ii) For the marketing year beginning 1 September 1965, a levy equal to one fifth of the levy calculated in accordance with Article 1.

iii) For each of the three following marketing years, a levy equal respectively to two, three and four fifths of the levy calculated in accordance with Article 1.

2. The Government of the French Republic shall inform the Commission before 15 July

1964 of the quantities of rice imported from the Malagasy Republic during the years 1961, 1962 and 1963 and the average referred to in paragraph 1. It shall also inform the Commission each year of the quantities imported in accordance with the present article.

*Article 3*

Import licences for imports from the associated African States and Madagascar and from the overseas countries and territories shall be valid from the date of issue until the end of the fourth month following that in which they were issued.

*Article 4*

The associated African States and Madagascar shall be notified of any decision concerning them taken by the Commission in accordance with Article 16 of Regulation No. .../64/CEE

*Article 5*

Should the single rice market be established in advance of the time-table laid down by the Treaty, the Council will decide, on a proposal of the Commission, on measures to maintain the benefits of the levy reduction provided for by this regulation.

*Article 6*

This regulation shall take effect from 1 July 1964.

It shall be applicable until the expiry of the Convention of Association between the European Economic Community and the associated African States and Madagascar.

This regulation shall be binding in every respect and directly applicable in each Member State.

## Proposal for a Council regulation amending Council Regulations Nos. 19, 20, 21, 22 and 23 by adding a reference to the objectives to be attained

(Submitted by the Commission to the Council on 31 January 1964)

**Amendments for insertion in the regulations establishing a common organization of the markets in beef and veal, rice and dairy produce**

Insert:

*a)* In Regulation No. ... establishing a common organization of the markets in beef and veal, an Article 20*a*;

*b)* In Regulation No. ... establishing a common organization of the markets in rice, an Article 26*a*;

*c)* In Regulation No. ... establishing a common organization of the markets in milk and milk products, an Article 28*b*;

The text of the above articles shall be as follows:

"This regulation must be applied in such a way as to take account simultaneously and in an appropriate manner of the objectives set out in Articles 39 and 110 of the Treaty."

## Proposal for a Council regulation amending Regulations Nos. 19, 20, 21, 22 and 23 of the Council by adding a reference to the objectives to be attained

(Submitted by the Commission to the Council)

*The Council of the European Economic Community,*

*Having regard to* the Treaty setting up the European Economic Community and in particular Article 43 thereof;

*Having regard to* the proposal of the Commission;

*Having regard to* the opinion of the European Parliament;

*Whereas* the common organization of the agricultural markets is established with a view to achieving the objectives set out in Article 39 of the Treaty;

*Whereas* by virtue of Article 110 of the Treaty, the Member States, in establishing a customs union between themselves, intend to contribute in conformity with the common interest to the harmonious development of world trade, the progressive abolition of restrictions on international exchanges and the lowering of customs barriers;

*Whereas* account should be taken simultaneously and in an appropriate manner of the objectives laid down in Articles 39 and 110 of the Treaty when applying Council Regulations No. 19 to No. 23 on the progressive establishment of a common organization of the markets in the cereals, pigmeat, eggs, poultry meat and fruit and vegetables sectors,

*Has made the present Regulation:*

In Regulation No. 19 on the gradual establishment of a common organization of the markets in cereals an Article 28*a* shall be inserted worded as follows:

"This regulation must be applied in such a way as to take account simultaneously and in an appropriate manner of the objectives set out in Articles 39 and 110 of the Treaty."

An identical provision shall be introduced:

*a)* As Article 22*a* in Regulation No. 20 on the progressive establishment of a common organization of the markets in pigmeat;

*b)* As Article 19*a* in Regulation No. 21 on the progressive establishment of a common organization of the markets in eggs;

*c)* As Article 19*a* in Regulation No. 22 on the progressive establishment of a common organization of the markets in poultry meat:

*d)* As Article 16*a* in Regulation No. 23 on the progressive establishment of a common organization of the markets in fruit and vegetables;

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

## Proposed second directive concerning cinematography

### (Submitted by the Commission to the Council on 7 February 1964)

*The Council of the European Economic Community,*

*Having regard to* the Treaty establishing the European Economic Community and in particular Article 54 paragraphs 2 and 3 h and Article 63 paragraph 2 thereof;

*Having regard to* the General Programme for the lifting of restrictions on freedom of establishment and in particular Title IV-A thereof (1);

*Having regard to* the General Programme for the lifting of restrictions on freedom to supply service and in particular Title V-C-c thereof (2);

*Having regard to* the first directive concerning cinematography, adopted by the Council on 15 October 1963 (3);

*Having regard to* the proposal of the Commission;

*Having regard to* the opinion of the European Parliament;

*Having regard to* the opinion of the Economic and Social Committee;

*Whereas,* in accordance with Title IV-A of the General Programme for the lifting of restrictions on freedom of establishment, the restrictions on the opening of cinemas specializing in the exclusive exhibition of foreign films in the language of the country of origin must be lifted by the end of the second year of the second stage of the transitional period;

*Whereas,* in accordance with Title V-C-c paragraph 2 of the General Programme for the lifting of restrictions on freedom to supply services, the problems arising from the realization of a common film market must be gradually solved by the end of the transitional period; whereas in order to achieve this it is necessary, now that part of the transitional period has already elapsed, to lift certain restrictions that still remain after the adoption of the Council directive of 15 October 1963;

(1) Official gazette of the European Communities, No. 2, 15 January 1962, p. 36/62.
(2) *Ibid.*, No. 2, 15 January 1962, p. 32/62.
(3) *Ibid.*, No. 159, 2 November 1963, p. 2661/63.

and whereas those among these restrictions which concern the import and the programming of films considerably restrict exchanges within the Community and must, in view of the similarity of their effect on the exchange of films, be lifted simultaneously;

*Whereas* the dubbing of films can be effected satisfactorily in the exporting country and the provision that films having the nationality of a Member State must be dubbed in the country of exhibition is therefore no longer justified;

*Whereas* the conditions of establishment must not be distorted as the result of aid given by the Member State of which a person benefiting under this directive is a national,

*Has made the present directive:*

*Article 1*

In accordance with the following provisions Member States shall abolish, for the benefit of the natural or legal persons listed in Title I of the General Programmes for the lifting of restrictions on freedom of establishment and on freedom to supply services such restrictions or discriminations in the field of cinematography as concern:

*a)* The opening of cinemas which specialize in the exclusive exhibition of foreign films in the language of the country of origin;

*b)* Import quotas and screen quotas;

*c)* The dubbing of films.

The restrictions to be lifted are those referred to under Title III of the General Programmes.

*Article 2*

For the application of this directive any film shall be recognized as having the nationality of one or more Member States if it has been produced according to the provisions of Articles 3 and 4 of the first directive concerning cinematography passed by the Council on 15 October 1963.

*Article 3*

Specialized cinemas are those which exclusively exhibit foreign films in the language of the country of origin, except when the majority of cinemas of the state concerned exhibit foreign films in the language of the country of origin.

On a proposal of the Commission and on application from the Member State concerned, the Council may by qualified majority authorize that state to place limits on the exhibition of foreign films in the language of the country of origin if this language is also the language of the district in which the specialized cinema is located. The Council shall take a decision within three months of the filing of the application.

*Article 4*

The opening of a specialized cinema must not lead to the granting by another Member State of direct or indirect aid, whether financial or other, which would distort the conditions of establishment.

In particular no such aid will be granted for:

i) the construction, reconstructing or modernization of cinemas;

ii) the execution of work related to health, safety, or technical improvements;

iii) the purchase of equipment;

iv) the booking of feature-length films;

v) covering risks or operational losses.

Any form of aid available in the Member State concerned for the opening of a specialized cinema must be granted, without discrimination, to owners who are nationals of other Member States of the Community.

The treatment accorded to nationals of Member States who are covered by this directive shall in no case be less favourable than that to which the nationals and enterprises of third countries are entitled.

*Article 5*

Member States which, on the day of publication of this directive, impose on cinemas a minimum number of screening days for native films per calendar year shall, not later than 31 December 1966, accept as part of this quota films of the nationality of one or more Member States under the same conditions as those applied to native films or most favoured films.

Member States which, on the day of publication of this directive, do not impose any screen quotas may introduce such quotas provided that they also apply to films having the nationality of other Member States.

*Article 6*

Quotas for the import of films having the nationality of one or more Member States shall be abolished not later than 31 December 1966.

The Federal Republic of Germany, however, shall retain the right during the transitional period to restrict the import of those films

having the nationality of one or more Member States for which its national censorship authority granted the release certificate more than three years before application for import was made to the competent authorities.

The abolition of quotas carries with it the right to unlimited import of positive prints, dupes and publicity material.

*Article 7*

Regulations requiring that films must be dubbed in the importing country shall be cancelled not later than 31 December 1966 for films having the nationality of one or more Member States.

*Article 8*

The Member States shall put into effect, within six months of the publication of this directive, any measures needed to comply with its provisions and shall inform the Commission forthwith of the action taken.

*Article 9*

The present directive is addressed to all Member States.

*N.B.:* In accordance with Article 191 of the Treaty, directives take effect upon notification to their addressees.

## Explanatory Memorandum

1. *Basis of the proposal*

The General Programme for the removal of restrictions on freedom of establishment, adopted by the Council of Ministers on 18 December 1961, (1) provides that before the end of the second year of the second stage restrictions shall be lifted on the opening of cinemas which exclusively exhibit foreign films in the language of the country of origin (see Schedule 1 of the General Programmes for the removal of restrictions on freedom of establishment, under ex 841).

The staff of the Commission have long been at work on the draft of a directive for the application of these provisions in the General Programme. At the same time however, steps were being taken in the European Parliament, in the Economic and Social Committee and within the Council in connection with the adoption of the first directive concerning cinematography; this was finally passed by the Council at its meeting on 15 October 1963. (2) From the discussions in these bodies the Commission gained valuable hints on the lines to be followed in its endeavour to set up a common film market, and these led it to re-examine and extend the contents of the original draft.

At the time of the adoption of the General Programmes the Council had recommended that the lifting of the restrictions on freedom of establishment and on freedom to supply services should if possible be simultaneous, in order to avoid the problems that would arise if there were an area of uncertainty between the right of establishment and the supply of services.

The Council had also recognized the complexity of the problems of the film trade arising from differences in market regulations, from state intervention in production, from politico-cultural influences on the cinema and from the requirements of public policy. All these problems were made more acute by the economic situation of the film today, a situation due mainly to the competition of television.

Taking into account the complexity of the problem, the General Programme for the removal of restrictions on freedom to supply services has, in the sphere of cinematography, specified only one date by which all restrictions on freedom to supply services must have been lifted: "before the end of the transitional period".

At its plenary meeting of 8 February 1963, the European Parliament recommended that the entire film problem be solved during the course of the transitional period, and the Economic and Social Committee recommended, at its plenary meetings of 30 and 31 January in Paris and 27, 28 and 29 March 1963 in Brussels, that all questions relating to the creation of the common film market be solved during the transitional period and with the least possible delay.

All this means, on the strictly legal plane because of the provisions in the General Programmes, as well as on the political plane as a result of the recommendations made by the two highest advisory bodies of the Community, that the Commission is free to decide the sequence and the stages in which the film problem is to be solved, but that, no matter what the order of priority, the common film market must be realized as quickly as possible and at latest by the end of the transitional period.

Furthermore, at the session of the Permanent Representatives on 17 December 1963, the representative of the Commission, for the purpose of removing the last obstacles to the adoption of the first directive, gave an assurance that the Commission's staff would

(1) Official gazette of the European Communities, No. 2, 15 January 1962, p. 36/62.
(2) *Ibid.*, No. 159, 2 November 1963, p. 2661/63.

prepare as quickly as possible the draft of a directive on the complete elimination of screen quotas and import quotas.

The Commission's staff has accordingly re-examined the draft in order to include provisions concerning the further measures of liberalization.

The revised draft removes not only the restrictions on freedom of establishment for the opening of cinemas which exclusively exhibit foreign films in the language of the country of origin, but also the restrictions on the import, exhibition and dubbing of films.

The lifting of all these restrictions makes it possible to correct the effects of certain provisions at present applied in the Member States which in effect treat films from third countries more favourably than films from other Member States.

2. *Analysis of the proposed directive*

The regulatory character of the second directive concerning cinematography is of considerable importance and, as already mentioned, constitutes a decisive step towards the creation of a common film market:

*Article 1*

Article 1 defines the natural and legal persons to whom the directive applies. In accordance with the practice that has been established for quite some time, the persons to benefit under the provisions of the directive are defined by reference to the provisions of Title I of the General Programmes.

These are not only the natural persons who have the nationality of one of the Member States, but also any company which has been set up in conformity with the legislation of a Member State and which has its registered office, its central administration or its head office within the Community.

Article 1 at once goes on to name the purpose of the directive, namely:

*a)* Lifting of restrictions on the opening of cinemas which specialize in the exclusive exhibition of foreign films in the language of the country of origin;

*b)* Lifting of the import quotas and the screen quotas;

*c)* Lifting of the restrictions on the dubbing of films.

To determine the restrictions to be lifted, Article 1 refers to the provisions of Title III of the General Programmes: this method of referring to Title III of the General Programmes has meanwhile also become an established practice.

Title III of the General Programmes includes, without prejudice to the exceptions and special provisions laid down in the Treaty, a very long but not exhaustive enumeration of existing restrictions.

Article 1 refers to this enumeration, requiring the restrictions therein to be lifted wherever this is necessary for admission to the activities concerned and to the pursuit thereof.

*Article 2*

The directive contains frequent reference to films which have the nationality of one or more Member States. To avoid a repetition of the definition of nationality whenever reference is made to it, Article 2 defines once and for all what is to be understood by films which have the nationality of one or more Member States by referring to Articles 3 and 4 of the first directive concerning cinematography passed by the Council at its meeting on 15 October 1963 (1).

*Article 3*

Article 3 specifies what is to be understood by cinemas which specialize in the exclusive exhibition of films in the language of the country of origin and contains an escape clause on the basis of which the Member States can file an application with the Council of Ministers for an authorization to restrict the exhibition of foreign films in the original language when this language is identical with the language of the territory in which the specialized cinema is situated; the Council must reach a decision within three months of the date of application.

The justification for such a clause is self-evident: when the language of the country of origin of the film is the same as that of the territory in which the cinema is situated, there is no longer a difference between specialized cinemas and normal cinemas, for it is precisely the difference in language which distinguishes the one from the other.

This clause was introduced mainly to avoid the risk of an imbalance in the bookings of existing cinemas, above all in Belgium and in some frontier districts.

The lifting of restrictions on freedom of establishment for specialized cinemas is not a problem of particular importance, from the economic point of view, for the specialized cinemas constitute only a very small percentage of the cinemas in EEC countries.

It must however be emphasized that the problem is important culturally, because, it is

(1) Official gazette of the European Communities, No. 159, 2 November 1963, p. 2661/63.

precisely the films of greatest artistic merit that the more educated classes generally prefer to see in their original version.

The lifting of the restrictions on the opening of specialized cinemas applies to any cinemas which may be opened in a Member State by nationals of the other States; it is therefore intended to apply both in respect of cinemas which exhibit films having the nationality of another Member State and in respect of cinemas which exhibit films having the nationaly of a non-member country.

*Article 4*

Article 4 puts into effect the provisions of Article 54, paragraph 3 h, of the Treaty; these have been retained in Title VII of the General Programme for the lifting of restrictions on freedom of establishment:

"Any aid granted by Member States which could distort the conditions governing establishment shall be abolished not later than at the time of lifting the restrictions on freedom of establishment".

To facilitate the application of this directive, Article 4 contains an enumeration, which is not exhaustive, of the most frequent forms of aid. But obviously there is no limit to the number of forms in which aid could be given.

*Article 5*

Article 5 solves the delicate problem of screen quotas by admitting under these quotas, subject to the same conditions as national or most favoured films, any films which, according to Article 3 of the first directive, have the nationality of one or more Member States.

Screen quotas are also termed screening time quotas, but the Commission's staff has decided to retain the terminology of Article 4 of the General Agreement on Tariffs and Trade in order to encourage the use of a terminology common to all international organizations.

*Article 6*

Article 6 solves a further problem which had already given rise to considerable differences of opinion during the discussion of the first directive, both in the Economic and Social Committee and in the European Parliament.

It lifts import quotas (such quotas exist at present between Germany and France and between Germany and Italy) and contains certain guarantees for the German market which take into account the special situation in which the film industry of that country at present finds itself.

The safeguard clause which brings these guarantees into play allows the Federal Republic of Germany, during the transitional period, to restrict the import of films having the nationality of one or more Member States, where these films were granted a release certificate prior to a certain date; this is intended to protect the market against a possible inundation with old films which, having redeemed their costs in other markets, could be distributed at very low rates and thus upset the already precarious balance of the German market.

In accordance with what was agreed upon the Council's Working Party on economic questions during the discussion of the first directive (see Council paper No. 1083/63 (C.E. 40) of 24 July 1963), the term "dupes" in the last paragraph of the Article is to be taken to mean all the material necessary for the commercial exploitation of a film.

*Article 7*

Article 7 lifts the restrictions which require the dubbing of films in the importing country.

The obligation to dub films in their national territory had been imposed by certain countries for cultural reasons, so as to protect the purity of the language and the national modes of expression in general. This however was also of considerable benefit to the local technical industries, as it gave them the exclusive right to dub all films exhibited within the national territory. The cultural requirements can easily be fulfilled once there is freedom of movement of employees and self-employed persons, as the exporting countries can in fact have their films dubbed by specialists from the importing countries and thus ensure a perfect dubbing, both from the linguistic and cultural point of view.

The economic considerations referred to above could no longer be accepted as valid, since they run counter to the basic principles of the Treaty relating to freedom of movement of persons, services and capital.

*Articles 8 and 9*

These are the usual articles appearing in all directives; they concern the time allowed for putting the directive into effect and the ruling about notification.

# Proposal for a Council directive to co-ordinate and render equivalent the guarantees required in the Member States of companies as defined in Article 58, second paragraph, of the Treaty, to protect the interests of the members of such companies and of third parties

(Submitted by the Commission to the Council on 21 February 1964)

*The Council of the European Economic Community,*

*Having regard to* the Treaty establishing the European Economic Community, and in particular Article 53 (3 g) thereof;

*Having regard to* the General Programme for the removal of restrictions on freedom of establishment, and in particular Title VI thereof;

*Having regard to* the proposal of the Commission;

*Having regard to* the opinion of the European Parliament;

*Having regard to* the opinion of the Economic and Social Committee;

*Whereas* the co-ordination stipulated in Article 54 (3 g) and referred to in the General Programme for the removal of restrictions on freedom of establishment is urgently required, particularly as regards joint stock companies and limited partnerships, since such undertakings often carry on business outside the national frontiers;

*Whereas* the co-ordination of national laws on publication of information, the validity of commitments and the nullity of association of such companies or partnerships is of particular importance, especially as regards the protection of the interests of third parties;

*Whereas* identical Community provisions must be adopted in these fields for joint stock companies and limited partnerships, since such companies and partnerships often fulfil the same purpose and since they are liable towards third parties only to the extent of their corporate assets;

*Whereas* publication must enable third parties to inspect the memorandum and articles of association (or other deeds of association or partnership) of the company or partnership and to ascertain the identity of persons having authority to bind the company of partnership; (1)

*Whereas* the publication of information must also serve to determine the validity of commitments entered into on behalf of the company, and whereas third parties acting in good faith must be protected by provisions limiting as far as possible any grounds on which such commitments may be declared invalid;

*Whereas,* in order to provide legal security in relations between the company and third parties and in relations between the members of the company, the grounds for a declaration of nullity must be circumscribed, it must not be retrospective as regards third parties, and the time-limit for third parties to lodge objections must be short;

*Whereas,* in order to consolidate what has already been achieved in the field of co-ordination and to enable the Community institutions to continue this work, it is essential that the Commission be consulted before any amendment is made to company law in a Member State.

*Has made the present directive:*

*Article 1*

The measures of co-ordination laid down in the present directive shall apply to laws and regulations in the Member States relating to the following types of company:

*a)* in the Federal Republic of Germany:

Aktiengesellschaften, Kommanditgesellschaften auf Aktien, Gesellschaften mit beschränkter Haftung;

(1) The French word "société" means either a company or a partnership. In this directive, according to context, the term clearly has reference to a partnership with limited liability, which has certain attributes of a body corporate and to all intents and purposes fulfils the same functions as an English private company. For the sake of simplicity in drafting, the word "company" or "firm" has henceforward been used to denote both kinds of body. Furthermore, inasmuch as a "société par actions" is a creation of French law and a limited company is a creation of English law, many of the terms used are only equivalent in a general way. (Translator's note).

*b)* in the Kingdom of Belgium:

sociétés anonymes, sociétés en commandite par actions, sociétés de personnes à responsabilité limitée;

*c)* in the French Republic:

sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée;

*d)* in the Italian Republic:

società per azioni, società in accomandita per azioni, società a responsabilità limitata;

*e)* in the Grand Duchy of Luxembourg:

sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée;

*f)* in the Kingdom of the Netherlands:

de Naamloze Vennootschap, de commanditaire Vennootschap op aandelen.

## Chapter I : Publication of information

### *Article 2*

The Member States shall require companies to make public:

1. The memorandum of association or other deed of association or partnership *(acte constitutif)* and, where they are a separate document, the articles of association *(statuts);*

2. Any amendments to the document or documents referred to under (1), including those to continue the association in being beyond, or to dissolve it before, the specified term, whether such amendments, are made by decision of the authorized officers of the company or in consequence of a court order;

3. The full, up-to-date text of the articles or, if these contain only rules governing the operation of the company, the full, up-to-date text of the deed of association or partnership *(acte constitutif);*

4. The identity of persons who, by law or under the articles of association, in their capacity as officers of the company:

*a)* Have authority to bind the company in dealings with third parties and to represent it in court;

*b)* Are engaged in the management or supervision of the company or partnership;

The official capacity of such persons must be indicated;

5. The identity of the auditors, where there is a legal requirement to have the accounts examined annually;

6. The balance sheet and profit and loss account for each financial year, but, in the case of limited partnerships (private companies), only where the balance sheet total exceeds one million units of account;

7. Any change in the registered office;

8. Any court order winding up the company;

9. The appointment of liquidators and their powers;

10. The conclusion of liquidation, and the striking of the company off the register in Member States in which this has legal consequences.

### *Article 3*

1. The Member States may stipulate that publication as required under Article 2 be effected in any of the following forms: publication in the press, lodging with a clerk of the court or other official body, registration.

2. Where publication is in the press, all notices in each Member State shall be published in a single official gazette.

The Member States may also require publication in other journals, including the local press.

3. The form of publication may vary with the information to be given and with the form of the company. Provided that the same form of publication must be employed in the case of the same form of company for information that may be cited against third parties other than the information referred to in Article 2 (3).

4. More than one form of publication may be employed for one and the same announcement. In such a case:

*a)* Care must be taken to ensure that there is no divergence between the particulars published in different forms;

*b)* The Member State concerned must specify which form of publication is authoritative as regards the constitution of the company in dealings with third parties, or as regards facts that may be cited against them.

*Article 4*

1. In each Member State a file shall be opened either at a central register office or at the office of each trade registrar or registrar of companies for each of the companies in the register.

2. The file of each company shall contain all the particulars, kept up-to-date, of its constitution and business required to be published under the terms of Article 2.

3. Each Member State shall remain free to decide that entry in the file shall be equivalent to lodging or registration within the meaning of Article 3 (1).

4. Where entry in the file is not deemed to be a form of publication and there is some divergence between duly published particulars and those contained in the file, it shall not be permissible to invoke the latter.

5. The registrar or the official in charge of the file shall supply, on written application, copies or extracts of the particulars referred to in Article 2, and the fee charged may not exceed the administrative costs involved.

Should the Member States decide that further particulars must be included in the file and that all or certain interested parties must be notified thereof, such persons may obtain copies or extracts of such particulars in the manner specified in the foregoing paragraph.

The documents supplied shall be certified true copies.

Where there is any divergence between published particulars and those extracted from the file, it shall not be permissible to invoke the latter.

*Article 5*

The Member States shall lay down that letters, invoices, order forms and price lists must indicate the trade register or register of companies in which the company is entered and at the office of which the file is kept. The registration number or any other information that will enable the entry to be found shall also be indicated.

The documents referred to in the foregoing paragraph must indicate the legal form of the company, the situation of its registered office, its capital and, should the case arise, the fact that it is in liquidation.

*Article 6*

Each Member State shall specify which persons are required to comply with the publications formalities.

*Article 7*

The Member States shall impose penalities:

*a)* If the balance sheet and profit and loss account are not published;

*b)* In the case of failure to deposit for inclusion in the file the documents and declarations to be entered therein in pursuance of Article 4 (2) when entry in the file is not a valid form of publication within the meaning of Article 3;

*c)* If the requisite particulars are not given on the business correspondence specified in Article 5.

*Article 8*

Persons who have acted on behalf of a company in the course of formation before it has acquired legal personality shall jointly and indefinitely bear liability for such acts unless the company takes over such liabilities after being duly constituted.

*Article 9*

In Member States in which failure to publish amendments to the memorandum or articles of association does not render the same ineffective, such failure shall at least have the consequence that the amendments may not be cited against third parties acting in good faith. In the latter case the Member States shall remain free to authorize third parties to rely on such amendments.

## Chapter II : Validity of commitments

*Article 10*

Where the appointment, resignation or removal of officers empowered to bind the company has not been made public, such acts may not be cited against third parties acting in good faith; but third parties may rely on such acts.

If the names of such persons have been duly published, no defect in their appointment may be cited against third parties acting in good faith.

*Article 11*

1. The company shall be liable towards third parties for the acts of its officers, unless such acts are *ultra vires* or beyond the objects of the company.

Provided that the company shall be liable for acts not consonant with its objects where a third party had good reason to believe that a contract entered into with the company was consonant with its objects.

2. Statutory limits to the powers of officers may not be cited against third parties, even if they have been published. Such limits shall be effective only in the internal affairs of the company.

A company may, however, be authorized by municipal law to cite against third parties any provisions in its articles which confer full powers to represent the company on a number of persons acting jointly, unless the third party concerned had good reason to believe that such provisions were not applied.

## Chapter III : Nullity of association

*Article 12*

In all Member States in which the law does not provide for prior administrative or judicial inspection when a company is being formed, the memorandum of association and any alterations thereof must be authenticated instruments.

*Article 13*

Companies may be declared not to have existed in law *(inexistence)* or may be declared null *(nullité absolue, nullité relative* or *annulabilité)* on the following grounds only:

1) because no memorandum of association was drawn up or — depending on legal requirements in each Member State — because the formalities of prior inspection have not been complied with or the necessary instruments are bad for want of form;

2) because the purpose of the association is unlawful or contrary to *ordre public.*

However, in Member States where the formation of a company does not require the publication of its memorandum, failure to publish the memorandum shall not make the association null and void. Instruments that have not been published may not be cited against third parties acting in good faith, but the latter may if they wish rely on them.

*Article 14*

1. A declaration that the association is null and void shall not of itself affect the validity of liabilities to third parties assumed previously on behalf of the company.

2. A declaration that the association is null and void shall entail the liquidation of the company as in the case of a winding-up order.

3. However, the effects of such declaration among the members of the company or partners in the firm may be regulated according to the law in each Member State.

4. Partners or shareholders must pay up any subscribed but unpaid capital required in order to satisfy the company's creditors.

*Article 15*

A judicial finding that the association was null and void is effective with respect to all and sundry. It must be published as specified in Chapter I of the present directive.

Objections by third parties, where allowed under municipal law, must be filed within six months of such publication.

*Article 16*

The Member States shall make by 1 January 1965 any amendments to their laws and regulations needed to comply with the provisions of the present directive and shall notify the Commission thereof forthwith.

The Member States may provide that publication of the complete articles of association embodying all amendments made since the execution of the deed of association will not be required until the articles of association are next amended or, failing this, not later than 1 January 1967.

The Member States shall notify the Commission, in time for the Commission to present its comments, of any further laws or regulations they propose to introduce in the matters covered by this directive.

Article 17

This directive is addressed to all Member States.

## Explanatory Memorandum

I. By virtue of Article 58 of the Treaty, companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of the Treaty clauses on establishment, be placed on the same footing as individual nationals of the Member States. It follows that the establishment of agencies and branches in other EEC countries is subject only to the requirement that the company setting them up is lawfully constituted.

However, Article 54 (3 g), having regard to the sometimes considerable differences between the laws of the various Member States, stipulates that the guarantees required of companies as defined in Article 58 be co-ordinated and rendered equivalent so as to protect the interests of members and of third parties.

The need for co-ordination was stressed by the Council when the General Programme for the removal of restrictions on freedom of establishment was drawn up. The General Programme notes that it is intended to carry through the required co-ordination by the end of the second year of the second stage of the transition period.

The duty laid upon the Community institutions by Article 54 (3 g) is extremely important since most of the provisions of company law in the Member States are aimed at protecting third parties or members of the company, or both at the same time; as regards companies there can be no establishment or freedom to supply services unless legal security is fully ensured in respect of all types of company or partnership.

II. Faced with this immense task, which touches upon the whole field of company law, and wishing to co-ordinate more rapidly the guarantees required of companies which are the most prominent in the international sphere, the Commission decided that the scope of this first draft directive should be restricted to limited liability or joint stock companies *(sociétés anonymes)* and limited partnerships (private companies) with or without capital divided into shares *(sociétés en commandite par actions* or *sociétés à responsabilité limitée)*. (1) These types of firm were also chosen because their purposes are practically the same or because on certain points they are subject to identical or similar regulations. Further, it was thought advisable to prevent any "getting round the law" that might have resulted if a single form of company had been selected.

(1) The English and French terms are only equivalent in a general way : see footnote on p. 10.

Co-ordination, even if restricted to these types of company, should be applied for the time being to the points that are most important for the protection of third parties and members of the company. The central idea behind this draft is the need to ensure rapidity and legal security in international transactions. The interest of third parties in this question is self-evident. The company also has an interest since third parties will refuse to deal with it if its legal position is uncertain, its validity doubtful, its financial standing unknown or the powers of its representatives questionable.

The matters dealt with in the directive fall under three heads:

### A. Publication of information

Publication of information is one of the first guarantees required of companies towards third parties and between their members. Article 2 lists the documents and acts that must be made public, the most important being the balance sheet and profit and loss account.

Now that the relations of companies, many of which are not of international repute, may extend to six countries, it is even more necessary that persons concluding contracts with a company should know its financial position.

The text of the draft has been fully approved by the Commission except for one point: the publication of the balance sheets of private companies *(sociétés à responsabilité limitée)*, on which there were two conflicting views:

*a)* The first was opposed to the publication of balance sheets by private companies on the grounds that they do not normally call for public subscription, that they are often family businesses and that their operations are usually confined to their own country.

*b)* The other view was that the balance sheets of such companies should be published, since exemption would be a retrograde step on the part of countries where publication is prescribed by law. Moreover, where the legislation of a given Member State does not recognize private companies, small limited liability companies would be at a disadvantage if private companies were absolved from the obligation to publish balance sheets.

The wording of Article 2 (6) as proposed to the Commission represents a compromise: only private companies whose balance sheet exceeds one million units of account will be obliged to publish. A large number of these companies — particularly all those that do not normally carry on business outside their own country — will thus be exempt.

Article 3 gives Member States a choice between three methods of publication but requires them to centralize their systems and co-ordinate information published in the three forms. This co-ordination is supplemented by the opening of a file for each company, which can be consulted by third parties (Article 4).

Business communications must give certain particulars (Article 5); failure to supply these particulars will according to case be a punishable offence or open to redress at civil law (Articles 6 to 9).

## B. Validity of commitments

Anyone dealing with a foreign company must be able to ascertain quickly and easily whether the person purporting to act on behalf of that company is authorized to do so.

The provisions therefore make the publication of information decisive in determining the binding force of commitments undertaken on behalf of the company (Article 10) and restrict the extent to which limits on the powers of directors can be cited against third parties (Article 11 ).

According to one line of thought, more protection should be given to third parties by making the company liable for acts of its officers even beyond its objects.

Another view was that it should be permissible to cite against third parties any restrictions on the powers of a company representative which arise from the objects of the company. A compromise between these two views was finally reached, according to which the clause in the memorandum defining the objects of the company must do no more than describe the nature of the company's business.

Furthermore, statutory restrictions on the powers of officers will no longer be citable against third parties except for the stipulation that more than one signature is needed to bind the company.

## C. Nullity of association

With the same object of improving legal security in relations between members of the company and third parties and among the members themselves, the draft reduces to two the grounds for declaring a company non-existent (Article 13): where in the formation of a company prior administrative or judicial inspection is not required by municipal law, the memorandum of association must be an authenticated instrument (Article 12).

Similarly, a company's being found to have no legal existence will have no effect for third parties except as regards future transactions (Article 14, 1); Member States remain free to legislate as to the consequences for members of the company (Article 14, 3).

Article 15 represents a compromise between the view that a court decision declaring a company to have no legal existence should be valid in respect of all and sundry and the view that persons who are not parties to the judgment should be able to file objections to the court's decision within what is often a very long period (thirty years).

Lastly, the draft stipulates that any future legislation by the Member States on the matters to which it refers must also be co-ordinated; provision is made for the Commission to be consulted prior to any future amendment of municipal law in this field, so that what has already been achieved in co-ordination may be consolidated and the Community institutions may continue this work (Article 16).