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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 20 July 1976

amending for the fourth time Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption

(76/628/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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas Article 6 (2) of Council Directive 73/241/EEC of 24 July 1973 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption ⁽³⁾, as last amended by Directive 75/155/EEC ⁽⁴⁾, provides that the individual weights for marketing cocoa powder products shall be fixed at a later date;

Whereas a scale of weights should be fixed to ensure the transparency of the market and as far as possible reduce the risk that consumers may be misled by weights which are too close to one another,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 6 (2) of Directive 73/241/EEC shall be replaced by the following:

'2. The cocoa powder products referred to in Annex I, headings 1.8 to 1.13, when packaged in units having an individual net weight equal to or more than 50 g and not exceeding 1 kg, shall be marketed in the following individual net weights only: 50 g, 75 g, 125 g, 250 g, 500 g, 750 g and 1 kg'.

Article 2

Within one year from the date of notification of this Directive, Member States shall, if necessary, amend

⁽¹⁾ OJ No C 280, 8. 12. 1975, p. 69.

⁽²⁾ OJ No C 15, 22. 1. 1976, p. 7.

⁽³⁾ OJ No L 228, 16. 8. 1973, p. 23.

⁽⁴⁾ OJ No L 64, 11. 3. 1975, p. 21.

their laws in accordance with this Directive and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

The laws thus amended shall be applied so as to:

- permit the marketing of products conforming to this Directive within two years from the date of notification,
- ban the marketing of products not conforming to this Directive not later than seven years from the date of notification.

Done at Brussels, 20 July 1976.

For the Council

The President

A.P.L.M.M. van der STEE

COUNCIL DIRECTIVE

of 20 July 1976

amending for the twelfth time Directive 64/54/EEC on the approximation of the laws of the Member States concerning the preservatives authorized for use in foodstuffs intended for human consumption

(76/629/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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas Council Directive 64/54/EEC of 5 November 1963 on the approximation of the laws of the Member States concerning the preservatives authorized for use in foodstuffs intended for human consumption ⁽³⁾, as last amended by Directive 76/462/EEC ⁽⁴⁾, provides for the temporary use of thiabendazole at a maximum level of 6 mg/kg in the case of citrus fruit and 3 mg/kg in the case of bananas;

Whereas on a toxicological basis, the use of thiabendazole on the surface of citrus fruit in quantities leading to residues of 6 mg/kg in the whole fruit is temporarily acceptable, but all uses of thiabendazole leading to its presence in foodstuffs should be taken into consideration before taking a final decision;

Whereas experience in the use of thiabendazole has shown that the maintenance of these levels is technologically justified because of its fungicidal properties;

Whereas the transitional period provided for by Directive 74/394/EEC ⁽⁵⁾ should therefore be extended to allow time for an overall examination of the sources and of the presence of thiabendazole in foodstuffs, without prejudice to the possible inclusion of thiabendazole in a subsequent Community system on the treatment of fruits and vegetables,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In No E 233 subparagraph (c) of Section I of the Annex to Directive 64/54/EEC '1 July 1976' shall be replaced by '1 January 1979'.

Article 2

Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive with effect from 1 July 1976 and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1976.

*For the Council**The President*

A.P.L.M.M. van der STEE

⁽¹⁾ OJ No C 159, 12. 7. 1976, p. 42.

⁽²⁾ Opinion delivered 1 July 1976 and not yet published in the Official Journal.

⁽³⁾ OJ No 12, 27. 1. 1964, p. 161/64.

⁽⁴⁾ OJ No L 126, 14. 5. 1976, p. 31.

⁽⁵⁾ OJ No L 208, 30. 7. 1974, p. 25.

COUNCIL DIRECTIVE
of 20 July 1976
concerning surveys of pig production to be made by Member States
(76/630/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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas, in order to carry out the tasks imposed on it by the Treaty and by Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat ⁽²⁾, as amended by Regulation (EEC) No 367/76 ⁽³⁾, the Commission needs to be precisely informed as to trends in pig population and in pigmeat production in the Member States, and to have at its disposal short-term forecasts of market supplies of pigmeat;

Whereas surveys of the pig population should therefore be undertaken in all Member States at comparable points in time, covering the same categories and conducted with comparable accuracy; whereas monthly statistics for slaughterings should be supplemented and forecasts of pigmeat production should be made regularly and in respect of identical periods;

Whereas these surveys should in principle be restricted to holdings which normally engage in the breeding or fattening of pigs; whereas it is necessary, however, in order that a complete picture may be obtained, that a special study be made to cover pigs not coming within the field of survey;

Whereas experience gained in implementing Council Directive 68/161/EEC of 27 March 1968 concerning

surveys of pig production to be made by Member States ⁽⁴⁾, as last amended by Directive 73/359/EEC ⁽⁵⁾, has shown that it is easier to compare results if the return date for surveys of pig population is specified as precisely as possible;

Whereas, since there are to be no further complete joint censuses, appropriate measures must be taken to improve sampling criteria to avoid deterioration in the results of sample surveys;

Whereas, since the structure of the pig-farming industry changes very quickly, it is necessary that a breakdown of results of the surveys by categories of animal be made at least every two years;

Whereas, in order that it may be ascertained whether the survey methods used have been giving a clear picture of continuing developments in the pig-farming industry, a progress report should be submitted from time to time;

Whereas, in order to ensure that efforts are coordinated as efficiently as possible, all problems arising in connection with the implementation of this Directive, with the conduct and analysis of the surveys, must be the subject of consultation and permanent cooperation between the Commission and the Member States;

Whereas, in the light of experience gained in previous surveys of pig production, it is necessary to introduce some measure of flexibility into the statistical classification of the technical features to be surveyed;

Whereas, in order to facilitate the application of the proposed measures, provision should be made for

⁽¹⁾ OJ No C 159, 12. 7. 1976, p. 41.

⁽²⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽³⁾ OJ No L 45, 21. 2. 1976, p. 1.

⁽⁴⁾ OJ No L 76, 28. 3. 1968, p. 13.

⁽⁵⁾ OJ No L 326, 27. 11. 1973, p. 19.

a procedure establishing close cooperation between the Member States and the Commission within the Standing Committee for Agricultural Statistics, established by Decision 72/279/EEC ⁽¹⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall every four months carry out surveys, one of which shall be at the beginning of December, of pig population in their countries coming within the field of survey defined in Article 3 (1).

Article 2

For the purposes of this Directive 'pigs' means swine of domestic species falling within subheading 01.03 A of the Common Customs Tariff.

Article 3

1. The surveys provided for in Article 1 shall cover all pigs on holdings of an agricultural or 'industrial' type. For the purposes of this Directive, holdings of an agricultural or 'industrial' type are the following:

- holdings with a utilized agricultural area of not less than one hectare,
- holdings with not less than one breeding pig,
- holdings with not less than three pigs other than breeding pigs.

2. However, such surveys may also cover pigs outside the field of survey defined in paragraph 1.

Article 4

1. The purpose of the surveys provided for in Article 1 shall be to ascertain the pig population, broken down by category to be defined in accordance with the procedure provided for in Article 11.

2. For December, April and August, surveys as provided for in Article 1 shall relate to the number of pigs present on one of the first three days of the month in question.

However, in the case of the April and August surveys, the return date may be that on which the survey is carried out, provided that the surveys are carried out within the first six days of these months.

3. Member States shall communicate the results of these surveys to the Commission not later than 10 weeks from the return date.

After two years this time limit may be reduced in accordance with the procedure provided for in Article 11.

4. Member States which, in pursuance of Article 3 (2) do not restrict their surveys to holdings of an agricultural or 'industrial' type as defined in Article 3 (1), shall supply data relating to such holdings in the form of an estimate.

5. The results of the December survey shall be supplied in respect of each division to be defined in accordance with the procedure provided for in Article 11.

Article 5

1. Where there is no provision under national law for a complete census, surveys shall be carried out by random sampling.

2. Sampling errors in the results of the surveys of pig population shall in no Member State exceed 3%.

3. Member States shall, if necessary, take appropriate measures to estimate errors of observation.

4. In order to improve sampling criteria, Member States shall, as far as possible, take such measures as they consider appropriate to maintain the quality of the results of surveys.

Article 6

1. Member States shall at least every two years, starting in 1977, make a breakdown of the results of their December surveys by weight categories to be defined in accordance with the procedure provided for in Article 11.

2. However, a Member State which obtains results broken down by weight category from some other national survey carried out during the year of return may use such results.

Article 7

1. Member States shall compile monthly statistics for pig slaughterings.

Where necessary they shall supply additional data, broken down by month, relating in particular to any slaughterings not covered by the monthly

⁽¹⁾ OJ No L 179, 7. 8. 1972, p. 1.

statistics referred to in the previous subparagraph, thereby making it possible to compare such statistics and to supplement them in such a way as to cover all slaughterings.

2. The statistics referred to in paragraph 1 shall cover the number of slaughterings and the average weight of the pigs slaughtered.

Member States shall indicate in which cuts pigs were weighed.

3. Member States shall forward to the Commission the results of the statistics referred to in this Article within the time limits to be laid down in accordance with the procedure provided for in Article 11.

Article 8

1. Member States shall provide forecasts of the number of pig slaughterings broken down by two-monthly periods, for the periods 1 December to 30 September, 1 April to 31 January and 1 August to 31 May. The periods may be altered in accordance with the procedure provided for in Article 11.

2. The results of the forecasts referred to in paragraph 1 shall be forwarded to the Commission within the time limits to be laid down in accordance with the procedure provided for in Article 11.

Article 9

The Commission shall, in consultation and permanent cooperation with the Member States, examine:

- (a) the results submitted;
- (b) the technical problems raised by, in particular, the preparation and conduct of the surveys and forecasts;
- (c) the interpretation to be placed on the results of the surveys and forecasts.

Article 10

Every three years, starting in 1978, the Commission shall submit to the European Parliament and the Council, a report on the experience gained in surveying and forecasting pig production.

Article 11

1. Where the procedure laid down in this Article is to be followed, the matter shall be referred by its

Chairman to the Standing Committee for Agricultural Statistics set up by Decision 72/279/EEC (hereinafter called 'the Committee'), 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 give its opinion within a time limit to be set by the Chairman in accordance with the urgency of the matter. Opinions shall be adopted by a majority of 41 votes, the votes of Member States being weighted as laid down in Article 148 (2) of the Treaty. The Chairman shall not vote.

3. (a) The Commission shall adopt the proposed measures when they are in accordance with the opinion of the Committee.

(b) When the proposed measures are not in accordance with the opinion of the Committee, or where no opinion is delivered, the Commission shall forthwith submit to the Council a proposal on the measures to be taken. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 12

Directives 68/161/EEC ⁽¹⁾, 72/281/EEC ⁽²⁾ and 73/359/EEC are hereby repealed with effect from 1 December 1976.

Article 13

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 1976 at the latest.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 20 July 1976

For the Council

The President

A.P.L.M.M. van der STEE

⁽¹⁾ OJ No L 76, 28. 3. 1968, p. 13.

⁽²⁾ OJ No L 179, 7. 8. 1972, p. 5.

COUNCIL DIRECTIVE

of 20 July 1976

concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (France — overseas departments)

(76/631/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas ⁽¹⁾, as amended by Directive 76/400/EEC ⁽²⁾, and in particular Article 2 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas the Government of the French Republic has communicated to the Commission, in accordance with Article 2 (1) of Directive 75/268/EEC, a list of areas situated in the overseas departments of Martinique, Guadeloupe, Reunion and Guyana and eligible for inclusion in the Community list of less-favoured farming areas, together with the relevant information concerning the characteristics of these areas;

Whereas the index used for defining the very difficult climatic conditions referred to in the first indent of Article 3 (3) of Directive 75/268/EEC is for each commune an average altitude of more than 800 metres;

Whereas the index used for defining steep slopes as referred to in the second indent of Article 3 (3) of Directive 75/268/EEC is a percentage greater than 20;

Whereas where there is a combination of the two abovementioned factors, the criteria used are a minimum altitude of 500 metres and an average slope of 15%, or a minimum altitude of 400 metres and an average slope of 16%;

Whereas the indices used to define the presence of infertile land referred to in Article 3 (4) (a) of Directive 75/268/EEC are a value of final agricultural production per hectare not exceeding 77% of the average of Metropolitan France (FF 1 840 and FF 2 400 respectively), or a livestock density of 0.17 livestock units (L.U.) per forage hectare;

Whereas the index used to establish the existence, referred to in Article 3 (4) (b) of Directive 75/268/EEC, of economic results appreciably lower than the mean, is the fact that the gross farm income per family worker amounts to approximately 27 % of the national average of Metropolitan France (FF 7 700 and FF 28 400 respectively);

Whereas the index used to define a low population as referred to in Article 3 (4) (c) of Directive 75/268/EEC is the fact that the actual density is not greater than one inhabitant per square kilometre; whereas the percentage of the total active population engaged in agriculture is at least 30%;

Whereas the characteristics used for defining the areas affected by specific handicaps within the meaning of Article 3 (5) of Directive 75/268/EEC are, on the one hand, the unfavourable aspects of natural conditions of production — climatic phenomena of an adverse nature and of frequent occurrence such as cyclones, prolonged periods of drought and of very irregular rainfall, and often very rugged land surfaces — and, on the other hand, handicaps resulting from insularity and remoteness from the mother country; whereas these characteristics give rise to an increase in the cost of products, especially production materials; whereas moreover the overall extent of

⁽¹⁾ OJ No L 128, 19. 5. 1975, p. 1.

⁽²⁾ OJ No L 108, 26. 4. 1976, p. 21.

⁽³⁾ OJ No C 79, 5. 4. 1976, p. 37.

⁽⁴⁾ OJ No C 131, 12. 6. 1976, p. 28.

these areas does not exceed 2.5% of the area of the Member States concerned (0.46% of the combined area of Metropolitan France and the overseas departments);

Whereas the indices thus used by the Government of the French Republic to define the three classes of area in the overseas departments communicated to the Commission satisfy, respectively, the characteristics of the mountain areas, the less-favoured areas and the areas affected by specific handicaps referred to in Article 3 (3), (4) and (5) of Directive 75/268/EEC;

Whereas the communication of the Member State concerned does not describe the present situation in the areas in question with regard to the infrastructure referred to in Article 3 (2) of Directive 75/268/EEC; whereas it appears that the infrastructure is inadequate; whereas moreover the absence of information about current or proposed programmes prevents an assessment of the period within which a definite improvement will occur in this situation; whereas it nevertheless appears expedient to include the areas in question in the Community list of less-favoured farming areas, on the understanding that the Government of the French Republic will present shortly a detailed communication to the Commission on this subject,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The areas situated in the overseas departments of Guadeloupe, Reunion, Martinique and Guyana which are listed in the Annex shall be included in the Community list of less-favoured farming areas within the meaning of Article 3 (3), (4) and (5) of Directive 75/268/EEC.

Article 2

The Member State concerned shall forward to the Commission by the end of 1976 at the latest, a detailed communication indicating the period within which measures for the substantial improvement of infrastructure will be effective in the areas listed in Annex.

Article 3

This Directive is addressed to the French Republic.

Done at Brussels, 20 July 1976.

For the Council

The President

A.P.L.M.M. van der STEE

ANHANG — BILAG — ANNEX — ANNEXE — ALLEGATO — BIJLAGE

Zones défavorisées au sens de l'article 3 paragraphe 3 de la directive 75/268/CEE

Département de la Guadeloupe

Parties de communes : Deshaies, Pointe-Noire, Bouillante, Vieux-Habitants, Baillif, Saint-Claude, Gourbeyre, Vieux-Fort, Trois-Rivières, Capesterre, Sainte-Anne, Morne-à-l'Eau, Gosier, Abymes.

Département de la Martinique

Communes : Fonds-Saint-Denis, Le Morne-Rouge, Le Morne-Vert.

Parties de communes : L'Ajoupa-Bouillon, Basse-Pointe, Bellefontaine, Le Carbet, Case-Pilote, Fort-de-France, Grand-Rivière, Gros-Morne, Le Lorrain, Macouba, Le Marigot, Le Prêcheur, Saint-Joseph, Sainte-Marie, Saint-Pierre, Schoelcher.

Département de la Réunion

Communes : Cilaos, Plaine-des-Palmistes, Salazie.

Parties de communes : Les Avirons, Bras-Panon, Entre-Deux, L'Étang-Salé, Petite-Ile, La Possession, Saint-André, Saint-Benoît, Saint-Denis, Saint-Leu, Saint-Louis, Saint-Joseph, Sainte-Marie, Saint-Paul, Saint-Philippe, Saint-Pierre, Sainte-Rose, Sainte-Suzanne, Le Tampon, Les Trois Bassins.

Zones défavorisées au sens de l'article 3 paragraphe 4 de la directive 75/268/CEE

Département de la Guyane

Zone des communes côtières entre la côte et la limite de l'ancienne colonie de la Guyane : Saint-Laurent-du-Maroni, Mana, Iracoubo, Sinnamary, Kourou, Macouria-Tonate, Montsinery-Tonnegrande, Cayenne, Matoury, Remire-Montjoly, Roura, Regina, Ouanary, Saint-Georges-de-l'Oyapok.

Zone de l'intérieur : bande de deux kilomètres de largeur le long des fleuves frontières Maroni, à l'Ouest, et Oyapok, à l'Est : Grand-Santi-Papa-Ichton, Maripasoula (à l'ouest sur le Maroni), Saint-Georges-de-l'Oyapok (à l'est sur l'Oyapok).

Zones défavorisées au sens de l'article 3 paragraphe 5 de la directive 75/268/CEE

Département de la Guadeloupe

Grande-Terre

Communes : Anse-Bertrand, Port-Louis, Le Moule, Saint-François, Pointe-à-Pitre, Petit-Canal.

Parties de communes : Sainte-Anne, Morne-à-l'Eau, Le Gosier, Abymes.

Basse-Terre

Communes : Baie-Mahault, Lamentin, Petit-Bourg, Sainte-Rose, Basse-Terre, Goyave.

Parties de communes : Deshaies, Pointe-Noire, Bouillante, Vieux-Habitants, Baillif, Saint-Claude, Gourbeyre, Vieux-Fort, Trois-Rivières, Capesterre.

Dépendances : Les Saintes : Terre-de-Haut, Terre-de-Bas ; La Désirade, Marie-Galante, Saint-Barthélemy, Saint-Martin.

Département de la Martinique

Communes : Les Anses-d'Arlets, Le Diamant, Ducos, Le François, Le Lamentin, Le Marin, Rivière-Pilote, Rivière-Salée, Le Robert, Saint-Esprit, Sainte-Anne, Sainte-Luce, Trinité, Les Trois-Ilets, Le Vauclin.

Parties de communes : L'Ajoupa-Bouillon, Basse-Pointe, Bellefontaine, Le Carbet, Case-Pilote, Fort-de-France, Grand-Rivière, Gros-Morne, Le Lorrain, Macouba, Le Marigot, Le Prêcheur, Saint-Joseph, Sainte-Marie, Saint-Pierre, Schoelcher.

Département de la Réunion

Communes : Le Port

Parties de communes : Les Avirons, Saint-Denis, La Possession, Saint-Paul, Les Trois-Bassins, Saint-Leu, l'Étang-Salé, Saint-Louis, Entre-Deux, Saint-Pierre, Le Tampon, Petit-Ile, Saint-Joseph, Saint-Philippe, Sainte-Rose, Saint-Benoît, Bras-Panon, Saint-André, Sainte-Suzanne, Sainte-Marie.

COUNCIL DECISION

of 22 July 1976

adopting a series of joint projects on data processing

(76/632/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the Council agreed, in its resolution of 15 July 1974 on a Community policy for data processing ⁽³⁾, with a view to giving a Community orientation to policies for encouraging and promoting data processing, to adopt, on a proposal from the Commission, joint projects of European interest in the field of data processing applications;

Whereas, to this end, priority should be given to projects likely to help to meet the needs of users and to increase the ability of the European-based data processing industry to satisfy these needs on the European and world markets;

Whereas, in the interests of public health in the Community, better determination of the compatibility of organs and blood groups is required, and whereas a data processing system for making such comparisons could help to save more human lives;

Whereas, in its resolution on 26 November 1974, the Council made particular reference to the need to establish an inter-institutional computerized legal

information system, and to the advantage of making Community law fully accessible to the Member States and to the need to define a development plan in order to ensure that computerized legal information systems under study or being set up in the Member States and in the institutions of the Communities are compatible;

Whereas improved computer-aided design techniques could strengthen the European electronics industry and could help to increase productivity in the construction industries;

Whereas the aforementioned projects appear necessary for the development of the common policy in the field of data processing;

Whereas the Treaty establishing the European Economic Community has not provided the necessary powers,

HAS DECIDED AS FOLLOWS:

Article 1

A series of three joint data processing projects is hereby adopted covering the following studies:

1. Study on the setting up of a data bank for matching organs and blood (nine months);
2. Study of requirements in the field of legal document retrieval systems in the Community (18 months);
3. Two development studies in computer-aided design (12 and 18 months respectively).

These projects are defined in Annexes I to III.

⁽¹⁾ OJ No C 239, 20. 10. 1975, p. 16.

⁽²⁾ OJ No C 263, 17. 11. 1975, p. 44.

⁽³⁾ OJ No C 86, 20. 7. 1974, p. 1.

Article 2

The Commission shall submit a report to the Council annually.

The appropriations necessary for carrying out these projects shall be entered in the budget of the European Communities.

Done at Brussels, 22 July 1976.

Article 3

The Commission shall be responsible for carrying out the projects. It shall be assisted by the Advisory Committee on the Joint Data Processing Projects.

For the Council

The President

L. J. BRINKHORST

ANNEX I

Study on the setting up of a data bank for matching organs and blood

Content of the project

Phase 1: Analysis of the present mode of operation in the existing transplant organizations and the drawing up, in collaboration with the users, of specifications for running a system for matching kidneys and blood within a common scheme.

Phase 2: After the specifications have been agreed with the users, data processing consultants will investigate the various data processing alternatives and recommend an appropriate system. During this phase, the question of the location of the necessary computer or computers will also be examined and recommendations made.

Phase 3: Detailed specifications for the system will be prepared, including the financial implications of the installation, staffing and running costs of the foundation responsible for directing this common scheme.

ANNEX II

Study of requirements in the field of legal document retrieval systems in the Community

Content of the project

In-depth study of requirements

1. This development study in the field of Community legal documentation will embrace the following tasks:
 - 1.1. An inventory of the data processing or other systems used in the legal documentation centres of the Member States and a survey of their future development plans;
 - 1.2. Investigation and analysis of users' requirements (institutions, Government departments, professions and others) with reference to the information, the type of content, the presentation, etc.;
 - 1.3. Systematic collation and synthesis of the information on technical and documentation standards used for the exchange of files and selective information at European and international level in this field, as a basis for the decisions to be taken on common standards;
 - 1.4. Proposal of a long-term development programme for the gradual introduction of systematic link-ups at Community level with access in Member States, covering technical alternatives and the likely effects of their adoption. If the need for a

network becomes apparent, its technical characteristics should be studied, taking into account the possibility of using networks such as Euronet and Cost 11 which are supported by the Community institutions;

- 1.5. Formulation of recommendations based on test-evaluations for the development of software suited to the application characteristics and the requirements of document retrieval: such software may have wider applications than the project itself;
- 1.6. Formulation of specific proposals for the development in priority phases of systems in the Community, including estimates of cost and time-scale for each phase.
2. These proposals could cover an extension and development of the Commission's own system with a view to meeting the broader requirements of the Community in all the official languages, as well as the corresponding technical extensions and developments in the Member States, in order to ensure effective access to Community law.

ANNEX III

Development studies in computer-aided design (CAD)

1. Content of Study Project No 1

Study of logic circuit design aids

The study programme will embrace the following tasks:

- 1.1. To identify and evaluate work on logic circuit design aids taking place in industry, universities and research centres;
- 1.2. To list and attempt to give a qualitative assessment of all software in use or under development (involving representative European industrial organizations);
- 1.3. To attempt to identify the gaps in software development;
- 1.4. To give advice on the portability of software;
- 1.5. To identify the problems of interfacing the design aid packages to be developed with existing and well-established packages for chip design, PCB design and thick/thin film design as well as simulation and optimization;
- 1.6. To examine the hardware necessary to support such systems and communication interfaces;
- 1.7. To evaluate the economic advantages of using existing techniques;
- 1.8. To examine possible data structures;
- 1.9. To make recommendations concerning further work and the probable advantages therefrom;

- 1.10. To evaluate economic factors as follows:

Although it is the purpose of this study to examine the viability of electronic aids for the logic circuit designer, it would nevertheless be unrealistic to propose it, unless there were good prospects for the development of such aids. The economic benefits to be gained from the application of CAD to logic circuit design could be considerable. Design and perfection of a synchronous logic system for transfer lines and machine tools, etc., can, with present methods, take years. CAD could reduce this period to a few months or even less. Moreover, the final design would produce a more reliable and near optimal result, thereby reducing the cost of maintenance and equipment failure. The savings could run into millions of units of account, and one of the aims of the study should be to estimate the precise amount.

- 1.11. The economic benefits of collaboration over the study are to be derived from the elimination of duplication and the problems of communication arising out of the language barrier.

2. Content of Study Project No 2

Study of the relationship to construction management

- 2.1. The aim of the study will be to identify the sources of expertise and existing systems, to define the areas common to the variety of uses envisaged, thereby testing the feasibility of the approach outlined.

The ultimate objective will be to recommend how further development should proceed if it appears feasible and desirable.

- 2.2. The study should embrace industry as well as research and development organizations throughout the Community and should cover the following areas in three phases with interim reports to be submitted at the end of phases 1 and 2 and a final report after phase 3.

2.3. Phase 1

1. To identify and list existing sources of expertise.
2. To examine existing systems and those under development.
3. To identify gaps in software development.
4. To consider the portability of software.

Phase 2

5. To examine hardware and system response requirements.
6. To examine the relationship between system design and the scope of the application programme.
7. To examine the economic benefit for the system of handling application programmes which are independent of the data base.

Phase 3

8. To produce broad outline systems specifications and development strategies.
-

COUNCIL DECISION

of 22 July 1976

setting up an Advisory Committee on the Joint Data Processing Projects adopted in
Council Decision 76/632/EEC

(76/633/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the
European Economic Community,Having regard to the draft Decision submitted by the
Commission,Whereas the establishment of a Community policy
on data processing is one of the objectives of the
Community, as recognized in the Council resolution
on 15 July 1974 ⁽¹⁾;Whereas, in order that the Commission may have the
necessary data for the satisfactory implementation of
the projects adopted by the Council as part of this
policy, there must be provision for enlisting the aid
of a body consisting of representatives of the Member
States;Whereas an Advisory Committee on the Joint Data
Processing Projects adopted in Decision 76/
632/EEC ⁽²⁾ should be set up for this purpose,

HAS DECIDED AS FOLLOWS:

*Article 1*An Advisory Committee on the Joint Data Processing
Projects, hereinafter called 'the Committee', is hereby
set up.The Committee shall consist of representatives who
are appointed by the Member States and who may
call on the assistance of experts or advisers according
to the nature of the project. The Committee shall be
chaired by a representative of the Commission.The Commission shall provide the secretariat services
for the Committee.The Committee shall adopt its own rules of
procedure.*Article 2*The Committee shall assist the Commission in the
execution of the joint data processing projects
adopted in Decision 76/632/EEC.The Committee shall be consulted in particular on
the following:

- choice of project directors,
- choice of the organizations to which the work is
to be entrusted,
- composition and responsibilities of the technical
subcommittees.

*Article 3*For each of the projects adopted by Decision
76/632/EEC a technical subcommittee shall be set up
to assist and advise the project director in carrying
out the project. The Committee shall, at its request,
be assisted by the technical subcommittees and the
project directors.

Done at Brussels, 22 July 1976.

*For the Council**The President*

L. J. BRINKHORST

⁽¹⁾ OJ No C 86, 20. 7. 1974, p. 1.⁽²⁾ See page 11 of this Official Journal.

COUNCIL DIRECTIVE

of 22 July 1976

amending Directives 69/74/EEC, 69/75/EEC and 71/235/EEC on the harmonization of provisions laid down by law, regulation or administrative action relating respectively to customs warehousing procedure, free zones and to the usual forms of handling which may be carried out in customs warehouses and in free zones

(76/634/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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas it is necessary to ensure uniform application of the common rules laid down by Directives 69/74/EEC ⁽³⁾ and 69/75/EEC ⁽⁴⁾, as amended by the Act of Accession ⁽⁵⁾, and by Directive 71/235/EEC ⁽⁶⁾ on the harmonization of provisions laid down by law, regulation or administrative action relating respectively to customs warehousing procedure, free zones and to the usual forms of handling which may be carried out in customs warehouses and in free zones; whereas to this end a Community procedure should be established to enable detailed arrangements for the application of those rules to be adopted within appropriate time limits;

Whereas, in order to bring about close and effective cooperation between the Member States and the Commission in these fields, the terms of reference of the Committee for Customs Processing Arrangements set up by Article 26 of Council Directive 69/73/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing ⁽⁷⁾, as

last amended by Directive 76/119/EEC ⁽⁸⁾, must be extended to include customs warehousing procedure, free zones, and the usual forms of handling which are carried out in such warehouses and zones,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following Articles shall be inserted in Directive 69/74/EEC:

(a) *'Article 11a*

The Committee for Customs Processing Arrangements set up by Article 26 of Directive 69/73/EEC ⁽²⁾, as last amended by Directive 76/119/EEC ⁽³⁾, may examine any matter concerning the application of this Directive raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

⁽²⁾ OJ No L 58, 8. 3. 1969, p. 1.

⁽³⁾ OJ No L 24, 30. 1. 1976, p. 58.

(b) *'Article 11b*

The provisions necessary for implementing Articles 5, 6, 8 and 10 (1) shall be adopted in accordance with the procedure laid down in Article 28 (2) and (3) of Directive 69/73/EEC.

(c) *'Article 11c*

Member States shall lay down such provisions of law, regulation or administrative action as may be necessary to enable the competent authorities to apply the measures provided for in the

⁽¹⁾ OJ No C 79, 5. 4. 1976, p. 44.

⁽²⁾ OJ No C 131, 12. 6. 1976, p. 52.

⁽³⁾ OJ No L 58, 8. 3. 1969, p. 7.

⁽⁴⁾ OJ No L 58, 8. 3. 1969, p. 11.

⁽⁵⁾ OJ No L 73, 27. 3. 1972, p. 14.

⁽⁶⁾ OJ No L 143, 29. 6. 1971, p. 28.

⁽⁷⁾ OJ No L 58, 8. 3. 1969, p. 1.

⁽⁸⁾ OJ No L 24, 30. 1. 1976, p. 58.

provisions adopted in pursuance of Article 11b with effect from the date fixed by the latter provisions.’.

Article 2

The following Articles shall be inserted in Directive 69/75/EEC:

(a) ‘Article 8a

The Committee for Customs Processing Arrangements set up by Article 26 of Directive 69/73/EEC ⁽¹⁾, as last amended by Directive 76/119/EEC ⁽²⁾, may examine any matter concerning the application of this Directive raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

⁽¹⁾ OJ No L 58, 8. 3. 1969, p. 1.

⁽²⁾ OJ No L 24, 30. 1. 1976, p. 58.’.

(b) ‘Article 8b

The provisions necessary for implementing Articles 5, 6 and 8 shall be adopted in accordance with the procedure laid down in Article 28 (2) and (3) of Directive 69/73/EEC.’.

(c) ‘Article 8c

Member States shall lay down such provisions of law, regulation or administrative action as may be necessary to enable the competent authorities to apply the measures provided for in the provisions adopted in pursuance of Article 8b with effect from the date fixed by the latter provisions.’.

Article 3

The following Articles shall be inserted in Directive 71/235/EEC:

(a) ‘Article 5a

The Committee for Customs Processing Arrangements set up by Article 26 of Directive 69/73/EEC ⁽¹⁾, as last amended by Directive 76/119/EEC ⁽²⁾, may examine any matter concerning the application of this Directive raised by its Chairman either on his own initiative or at the request of the representative of a Member State.

⁽¹⁾ OJ No L 58, 8. 3. 1969, p. 1.

⁽²⁾ OJ No L 24, 30. 1. 1976, p. 58.’.

(b) ‘Article 5b

The provisions necessary for implementing Articles 4 and 5 shall be adopted in accordance with the procedure laid down in Article 28 (2) and (3) of Directive 69/73/EEC.’.

(c) ‘Article 5c

Member States shall lay down such provisions of law, regulation or administrative action as may be necessary to enable the competent authorities to apply the measures provided for in the provisions adopted in pursuance of Article 5b with effect from the date fixed by the latter provisions.’.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 22 July 1976.

For the Council

The President

L. J. BRINKHORST

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/274/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Austria

(76/635/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2837/72 of 19 December 1972 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Austria ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/274/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Austria ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Austria in accordance with Article 26 of the Agreement between the European Economic Community and the Republic of Austria;

Whereas consultations have been held with Austria in accordance with Article 27 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/274/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

For the Council

The President

L. J. BRINKHORST

⁽¹⁾ OJ No L 300, 31. 12. 1972, p. 94.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/272/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Finland

(76/636/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3288/73 of 3 December 1973 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Finland ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/272/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Finland ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Finland in accordance with Article 26 of the Agreement between the European Economic Community and the Republic of Finland;

Whereas consultations have been held with Finland in accordance with Article 27 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/272/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

*For the Council**The President*

L. J. BRINKHORST

⁽¹⁾ OJ No L 338, 7. 12. 1973, p. 2.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/273/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Iceland

(76/637/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2843/72 of 19 December 1972 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Iceland ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/273/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Iceland ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Iceland in accordance with Article 27 of the Agreement between the European Economic Community and the Republic of Iceland;

Whereas consultations have been held with Iceland in accordance with Article 28 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/273/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

For the Council

The President

L. J. BRINKHORST

⁽¹⁾ OJ No L 301, 31. 12. 1972, p. 162.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/275/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Norway

(76/638/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1692/73 of 25 June 1973 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Norway ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/275/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Norway ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Norway in accordance with Article 26 of the Agreement between the European Economic Community and the Kingdom of Norway;

Whereas consultations have been held with Norway in accordance with Article 27 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/275/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

*For the Council**The President*

L. J. BRINKHORST

⁽¹⁾ OJ No L 171, 27. 6. 1973, p. 103.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/277/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Sweden

(76/639/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2839/72 of 19 December 1972 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Sweden ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/277/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Sweden ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Sweden in accordance with Article 26 of the Agreement between the European Economic Community and the Kingdom of Sweden;

Whereas consultations have been held with Sweden in accordance with Article 27 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/277/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

*For the Council**The President*

L. J. BRINKHORST

⁽¹⁾ OJ No L 300, 31. 12. 1972, p. 186.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 22 July 1976

extending the period of validity of Decision 76/276/EEC authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Switzerland

(76/640/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2841/72 of 19 December 1972 concerning safeguard measures provided for in the Agreement between the European Economic Community and the Swiss Confederation ⁽¹⁾, and in particular Article 4 thereof,

Having regard to the proposal from the Commission,

Whereas following the adoption of Council Decision 76/276/EEC of 24 February 1976 authorizing Ireland to take protective measures in respect of footwear with uppers of leather originating in Switzerland ⁽²⁾, the Irish footwear industry has continued to encounter serious difficulties which are liable to persist; whereas statistics available for 1976 indicate a further increase in imports, a decline in exports and a continuing deterioration in the production and employment situation;

Whereas the period of validity of Commission Decision 76/176/EEC of 22 December 1975 authorizing Ireland to take protective measures in respect of footwear with uppers of leather, falling within Common Customs Tariff subheading 64.02 A, under Article 135 of the Act concerning the conditions of accession and the adjustments to the Treaties ⁽³⁾, has been extended by Decision 76/571/EEC ⁽⁴⁾;

Whereas, therefore, similar measures should be taken in respect of imports of this product originating in Switzerland in accordance with Article 26 of the Agreement between the European Economic Community and the Swiss Confederation;

Whereas consultations have been held with Switzerland in accordance with Article 27 of the aforementioned Agreement,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 76/276/EEC '31 December 1976' shall be substituted for '30 June 1976'.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 22 July 1976.

For the Council

The President

L. J. BRINKHORST

⁽¹⁾ OJ No L 300, 31. 12. 1972, p. 284.

⁽²⁾ OJ No L 58, 5. 3. 1976, p. 9.

⁽³⁾ OJ No L 32, 6. 2. 1976, p. 22.

⁽⁴⁾ OJ No L 182, 8. 7. 1976, p. 24.

COUNCIL DECISION

of 27 July 1976

amending Decision 73/391/EEC on consultation and information procedures in matters
of credit insurance, credit guarantees and financial credits

(76/641/EEC)

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, by its Decision 73/391/EEC ⁽¹⁾, the Council
set up consultation and information procedures in
matters of credit insurance, credit guarantees and
financial credits ;

Whereas the provisions of the said Decision have
applied since 1 January 1974;

Whereas it is advisable that, on the basis of the
experience acquired in applying these procedures,
certain amendments should be made thereto,

HAS ADOPTED THIS DECISION:

Article 1

Section A of Annex 1 to the Annex to Decision
73/391/EEC is hereby replaced by the following:

'A. Duration of credits

The duration of any credit granted, whether supplier credit for financial credit, must not exceed five years calculated from the following starting points:

1. *Capital goods consisting of individual items usable in themselves (for example, locomotives):*
 - the mean date, or actual dates, on which the buyer is to take physical possession of the goods in his own country.
2. *Capital goods for complete plants or factories where the supplier has no responsibility for commissioning:*
 - the date on which the buyer is to take physical possession of the entire goods (excluding spare parts) supplied under the contract.
3. *Construction contracts where the contractor has no responsibility for commissioning:*
 - the date on which construction has been completed.
4. *Installation (or construction) contracts where the supplier (or contractor) has a contractual responsibility for commissioning:*
 - the date on which the supplier (or contractor) has completed installation (or construction) and preliminary tests to ensure that it is ready for operation, whether or not the installation (or construction) is handed over to the buyer at that time

⁽¹⁾ OJ No L 346, 17. 12. 1973, p. 1

in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier (or contractor) may have entered into, for example to guarantee its effective functioning or to train local personnel.

5. *In the case of points 2, 3 and 4, where the contract involves the separate execution of individual parts of a project:*

- the date of the starting-point for each separate part, or the mean date of those starting-points or, where the supplier has entered into a contract not for the whole project but for an essential part of it, the starting-point appropriate to the project as a whole.'

Article 2

Annex 2 to the Annex to Decision 73/391/EEC is hereby replaced by the following:

'SCALE OF VALUES TO BE USED

Category I:	up to	750 000 special drawing rights.
Category II:	from	600 000 to 1 200 000 special drawing rights.
Category III:	from	1 000 000 to 2 200 000 special drawing rights.
Category IV:	from	2 000 000 to 3 200 000 special drawing rights.
Category V:	from	3 000 000 to 5 000 000 special drawing rights.
Category VI:	from	4 800 000 to 7 600 000 special drawing rights.
Category VII:	from	7 400 000 to 11 200 000 special drawing rights.
Category VIII:	from	10 000 000 to 22 000 000 special drawing rights.
Category IX:	from	20 000 000 to 44 000 000 special drawing rights.
Category X:	over	40 000 000 special drawing rights.'

Article 3

The revised provisions shall replace those adopted previously by the Council.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 27 July 1976.

For the Council

The President

M. van der STOEL

COMMISSION

COMMISSION DECISION

of 9 June 1976

relating to a proceeding under Article 86 of the Treaty establishing the European Economic Community (IV/29.020 — Vitamins)

(Only the German text is authentic)

(76/642/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 86 thereof,

Having regard to Regulation No 17 of 6 February 1962 ⁽¹⁾, and in particular Articles 1, 3, 15 and 16 thereof,

Having regard to the Commission Decision of 16 July 1975 to commence proceedings on its own initiative under Article 3 (1) of Regulation No 17 against the Hoffmann-La Roche group, Basle, Switzerland (hereinafter called 'Roche'),

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC, of 25 July 1963 ⁽²⁾,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions obtained pursuant to Article 10 of Regulation No 17 on 17 December 1975,

WHEREAS:

I. The facts

1. This Decision concerns certain agreements concluded by Roche with the following undertakings which are all engaged in production and sale in the common market:

Afico (Société d'Assistance Technique pour produits Nestlé), (on behalf of the Nestlé Group)
La Tour de Peilz, Switzerland,

American Cyanamid Company,
Wayne, New Jersey, USA,

Animedica International GmbH,
Frankfurt on Main, Federal Republic of Germany,

Beecham Group Ltd,
Brentford, United Kingdom,

Capsugel SA, (On behalf of the Parke Davis Group),
Basle, Switzerland,

Dawe's Laboratories,
Saint-Nicolas, Belgium,

Guyomarc'h,
Paris, France,

Isaac Spencer & Co, Ltd,
Aberdeen, United Kingdom,

Merck,
Darmstadt, Federal Republic of Germany,

Nitrovit Ltd,
Dalton, United Kingdom,

Organon NV,
Oss, Netherlands,

Pauls and Whites Foods Ltd,
Ipswich, United Kingdom,

Protector SA,
Anderlecht, Belgium,

Provimi (Bonda's Veevoederfabriek Provimi BV),
Rotterdam, Netherlands,

Radar NV,
Astene, Belgium,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

Ralston Purina Europe,
Brussels, Belgium,

Ramikal Werk,
Hamburg, Federal Republic of Germany,

Sandoz AG,
Basle, Switzerland,

Trouw & Co. NV International,
Putten, Netherlands,

Unilever Inkoop Mij NV,
Rotterdam, Netherlands,

Upjohn International Inc.,
Kalamazoo, Michigan, USA,

Wyeth International Limited,
Philadelphia, USA.

A. VITAMINS

2. The products with which this proceeding is concerned are those bulk synthetic substances which belong to thirteen groups of vitamins: A, B1, B2, B6, B12, C, D, E, K, PP, pantothenic acid (B3), biotin (H) and folic acid (M).

Each group of vitamins includes those interrelated substances which have the same properties in their own biological field. Each has specific metabolic functions and is therefore not interchangeable with the other groups. In addition, the various groups of vitamins when combined have a complementary synergistic effect.

A deficiency in vitamins of a particular group can give rise to certain illnesses or disorders well known to medical science.

Vitamins are used primarily for the following purposes:

(a) *Therapeutic use:* (the oldest use):

vitamins are used either separately or in multivitamin preparations or in conjunction with other medicines (e.g. anti-bacterials and antibiotics with added vitamins).

(b) *Food:*

vitamins are used in the manufacture of foods, particularly those which have lost all or part of their original vitamin content as a result of industrial processing (e.g. margarine, milk, butter, chocolate).

(c) *Animal feed:*

vitamins are used to provide a balanced diet for animals, particularly in intensive livestock production.

The use of vitamins for these three purposes is approximately in the following proportion:

- pharmaceuticals, 25%
- food, 15%
- animal feed, 60%

Each group of vitamins, given its peculiar metabolic properties, is appropriate to meet the constant requirements of the three markets, requirements which cannot be satisfied by other products and certainly not by vitamins of any other group.

Structure of production and supply

3. The synthesis of vitamins, first undertaken between 1930 and 1940, presents no major scientific problem. Mass production of synthetic vitamins however requires heavy investment, since the synthesizing process is in large measure unique to each group of vitamins and highly specialized equipment is necessary. Plant used for manufacturing vitamins of one group cannot therefore be used for producing vitamins of another group, nor is the conversion of plant for such production a simple matter. Since a high level of investment is required, productive capacity is normally geared to the estimated growth in demand over 10 years. (Cf. Minutes of the meeting between Unilever and Roche in London on 11 December 1972).

At present there is surplus capacity throughout the world for the production of vitamins because of the construction of new plant to meet long-term requirements. There was, however, some shortage of vitamins B2 and C in 1971 and 1972.

The market in vitamins is expanding vigorously, and the volume of sales has increased five-fold over the last 15 years.

Vitamin sales in the Community in 1974 amounted to approximately 110 245 000 units of account. More than half of this figure is accounted for by trade within the Community as can be seen from the table below:

Imports from other Member States

1974	Metric tons	Units of account (000's)
France	1 975	16 131
Belgium/Luxembourg	875	4 462
Netherlands	787	5 540
Federal Republic of Germany	599	7 808
Italy	1 663	17 195
United Kingdom	825	6 489
Ireland	1 058	1 481
Denmark	849	7 777
Total	8 631	66 883

4. Only large pharmaceutical groups can undertake investment on the scale required for the manufacture of vitamins; distribution, if it is to be effective, must be entrusted to a very extensive sales network which only such groups possess. These groups normally sell directly to customers in each of the three markets mentioned above.

The leading manufacturers of bulk vitamins in the common market are listed in the following table. An indication is also given of the groups of vitamins actually produced by them and of those groups of vitamins which they only handle by way of resale.

Manufacturer ⁽¹⁾	Group of vitamins												
	A	B1	B2	B6	B12	C	D	E	PP	K	Panto- thenic acid	Biotin	Folic acid
Roche	M	M	M	M	S	M	S ⁽²⁾	M	S	S	M	M	S
Merck (Federal Republic of Germany)	S	S	S	M+S	S	M	S	S	S	—	S	M	S
BASF (Federal Republic of Germany)	M	S	S	S	S	S	S	M	S	—	S	—	—
Rhône Poulenc (France) (including its subsidiary Société de Chimie Organique et Biologique (AEC), France)	M	M	—	S	M	M	M	M	—	—	S	—	—
Philips-Duphar (Netherlands) (including its French subsidiary Prochimex)	M	M	M	S	S	S	M	M	M	M	M	—	M
Glaxo (United Kingdom)	—	S	—	—	M	—	—	—	—	—	—	—	—
Grindstedværket (Denmark)	—	M	M	M	—	M	—	—	M	—	—	—	—
Takeda (Japan)	—	M	—	M	—	M	—	—	—	—	M	—	M
Lonza (Switzerland)	—	—	—	—	—	—	—	—	M	—	—	—	—

⁽¹⁾ M = Manufacturer.
S = Resale only.

⁽²⁾ Roche resells vitamin D3. It also manufactures a small quantity of D2.

As can be seen from the table, the production of Roche includes by far the widest range of vitamin groups, except for Philips-Duphar whose production of certain vitamin groups is not significant.

If those vitamins which Roche does not itself manufacture but only resells are taken into account, Roche is the only supplier offering the full range of vitamins.

5. Roche is the world's largest vitamin manufacturer. Its approximate share of the market, based on

the turnover of the various manufacturers within the common market for the various groups of vitamins, is as follows:

Vitamins manufactured by Roche

Vitamin A:

47 %; the next largest manufacturer accounts for slightly more than half this percentage.

Vitamin B1:	50 %; the rest of the market is almost entirely taken up by the next largest manufacturer.
Vitamin B2:	86 %; the rest of the market is divided among several manufacturers.
Vitamin B6:	95 %.
Vitamin C:	68 %; the next largest manufacturer has a market share less than one-quarter of that of Roche.
Vitamin E:	70 %; the next largest manufacturer has a market share less than one-third of that of Roche.

Biotin (H): 95 %.

Pantothenic acid: 64 %.

Vitamins resold but not manufactured by Roche

Vitamin B12:	13 %.
Vitamin D:	10 %.
Vitamin PP:	68 %.
Folic acid:	47 %.
Vitamin K:	10 %.

The turnover achieved by Roche in 1974 in the common market represented, as a proportion of the total sales of vitamin there, 65 % in respect of all its manufactured vitamins and 60% in respect of all the vitamins which it sold.

6. Hoffmann-La Roche, Basle is at the head of a multinational group which, in terms of sales, is the world's leading pharmaceuticals producer (Sfrs 5 050 million in 1974). Within the common market the group owns the following subsidiaries in the vitamins industry:

Belgium

Produits Roche SA, Brussels: distribution;

Netherlands

Hoffmann-La Roche, Rotterdam: distribution;

Federal Republic of Germany

Hoffmann-La Roche, Grenzach (the most important subsidiary in the EEC in terms of turnover, ranking second to Basle itself): manufacture and sales;

Italy

Produits Roche: sales of pharmaceuticals;

Instituto delle vitamine: premixing of vitamins and proprietary veterinary products;

France

Produits Roche, Neuilly: distribution and production of biotin (H);

United Kingdom

Roche Products Ltd: distribution and production of vitamins B1, B2 and pantothenic acid;

Denmark

Roche A/S: distribution.

Roche thus has a large number of production centres in various countries.

7. In the years after 1930, Roche, which had begun by buying a process for the manufacture of vitamin C, pioneered the synthesis of a number of vitamins by developing new manufacturing processes (particularly for vitamins A, B1, B2, B6, E, biotin (H) and pantothenic acid), and obtained licences to produce other vitamins. Roche also played a leading role in introducing the use of vitamins into the food industry (by adding vitamin A to margarine) in conjunction with one of its customers, Unilever, and to meet these requirements of Unilever, Roche in fact built a plant specifically for the manufacture of vitamin A.

8. Although the patents for the manufacture of vitamins have expired, Roche still maintains a certain technological lead over its competitors, for example recent developments in the industrial use of vitamin C (antioxidant, fermentation agent for brewers, etc.), in the incorporation of vitamins into proprietary veterinary products and in the preparation of new compounds for animal feed. This lead is also evident in Roche's highly developed technical service; customers may obtain information and technical assistance in solving problems raised by the use of products, in particular the 'time-sharing service', involving the use of a computer (hardware and software) to provide customers in the animal feed industry with programs for the use of the products.

Roche also has a very extensive and highly specialized sales network and considerable local stocks, enabling the regular and rapid supply of products which are always fresh.

The vitamin catalogues produced by Roche claim that 'in the development of the industrial production of synthetic vitamins, Roche has been playing a leading role and is the largest manufacturer in this field, and also that 'constant improvement of manufacturing methods and strict analytical control justify that Roche is known throughout the world for quality and service'.

Structure of demand

9. The main buyers of bulk vitamins are firms in the pharmaceuticals, food and animal feed industries, which incorporate vitamins in their products. The pattern of demand is highly varied and, in addition to large-scale users or multinational groups operating in the three industries, vitamins are also sold in very small quantities to small and medium-sized firms (e.g. bread, biscuit and cake manufacturers, all types of laboratory) and also to small traders (e.g. bakers).

Roche has about 5 000 customers in the three industries in the common market.

However, the main area of competition involves the large-scale users and multinational groups. From the Commission's inquiries and Roche's publications it emerges that bulk users tend to place large orders with at least two or three suppliers to cover their requirements.

10. Almost all the undertakings which have concluded fidelity agreements (as described below) with Roche are important customers, being among the principal users of vitamins. These firms, with very few exceptions, purchase the entire range of vitamins produced by Roche and obtain all or most of their requirements through such fidelity agreements. These undertakings are set out by industry as follows:

Pharmaceuticals

Beecham, Capsugel (Parke-Davis), American Cyanamid Company, Merck, Sandoz, Upjohn, Wyeth.

Food

Afico (Nestlé), Nitrovit (Imperial Food Ltd), Pauls and Whites Foods Ltd, Isaac Spencer, Unilever.

Animal feed

Animedica, Dawe's, Guyomarc'h, Organon (Akzo), Protector, Provimi (Central Soya), Radar, Ralston Purina, Ramikal Werk, Trouw.

The following table indicates the quantities of vitamins produced and sold by Roche to these firms in 1974.

(in u.a.)	
Firms	Quantities
1. Merck	
2. Animedica International	
3. Unilever	
4. Trouw	
5. Beecham	
6. Ramikal	
7. Radar	
8. Provimi	
9. Nitrovit	
10. Nestlé	
11. Protector	
12. Organon	
13. Dawe's	
14. Ralston Purina	
15. Sandoz	
16. Guyomarc'h	
17. American Cyanamid	
18. Pauls and Whites	
19. Capsugel (Parke Davis)	
20. Isaac Spencer	
21. Wyeth	
22. Upjohn	

In 1974 these customers accounted for 26% of Roche's sales and 16 % of total vitamin sales in the common market.

B. THE CONDUCT IN QUESTION

11. The sales strategy of Roche for bulk synthetic vitamins since 1964 has been to secure either exclusive or preferential agreements with customers, most of whom are important.

These agreements, known as 'fidelity agreements', have the following main features:

- purchasers obtain from Roche all or most of their vitamin requirements in the form of vitamins manufactured by Roche;

- Roche provides purchasers with all or most of their vitamin requirements at the most favourable price obtaining on the customer's domestic market;
- each year, (or in certain cases every six months), Roche pays a rebate to those customers who have obtained all or most of their requirements from Roche calculated on total purchases (the formula for calculating the rebate aggregates all the different groups of vitamins purchased from Roche);
- the amount of the rebate differs from customer to customer and varies between 1% and 5%, although there is one customer who receives rebates of from 12.5% to 20%;

the so-called 'English' clause provides that customers are to inform Roche if any 'reputable' manufacturer charges a price lower than that charged by Roche (this does not apply to dealers and brokers), and if Roche does not lower its price to that level customers are free to obtain supplies from the other manufacturer without losing the fidelity rebate on their purchases from Roche.

12. A number of circulars from the parent company of the Roche group to its subsidiaries and minutes of a meeting of the officers of the company confirm the main features of the 'fidelity' system and clearly show the benefits accruing to Roche. In a circular issued in December 1970, for instance, the following statement appears:

'Fidelity contracts'

According to the experience of various Roche companies, fidelity contracts provide a very efficient protection against competition, especially as far as BASF are concerned. In our today's Management Information we have therefore made a special provision for such contracts and would like to give you a brief definition of their contents and short description of their advantages. A fidelity contract should cover the following points:

- The customer undertakes to purchase at least 90% of his total requirements of vitamins from Roche.
- Roche applies automatically to all purchases of customers their best price for the quantity involved. Should the customer receive a lower

quotation from another vitamin manufacturer, he will give Roche the possibility to meet this quotation before he places the order with the competitor in question. Should Roche not be willing to meet the price submitted to them, the customer is free with regard to this particular purchase without losing his fidelity status. The same principle applies if Roche are unable to cover the entire requirements of the customer due to a shortage.

- At the end of the year the customer receives a fidelity rebate on his overall purchases during the year. This rebate will be cancelled entirely if the customer has not complied with the above principle for any single vitamin required by him and manufactured by Roche.

Since the fidelity rebate is being paid at the end of the year, there is no need for a written contract in cases where customers are not favourable to such a formal way of negotiating.

The fidelity rebate can also be substituted by a turnover contract if the turnover target represents about 90% of the customer's total requirements and is being revised at the end of each year in order to reflect the customer's increased purchasing power.

The advantages of such agreements are obvious. If a feed mill for instance is purchasing vitamin A, E, B2, Carophyll, etc., even the most tempting offer from a competitor like BASF for vitamin A and E alone cannot induce the customer to change its supplier, because they would otherwise lose the fidelity rebate for Carophyll and for the vitamins BASF are not manufacturing. For the same reason it is in many cases possible to make the customer accept somewhat higher prices for individual items than the one offered by the competition, because the overall deal is still favourable for him'.

A circular issued in May 1971 explained the importance to Roche of the loyalty of certain types of customer, stressed the effectiveness of fidelity contracts in protecting the market and examined the possibility of establishing even closer links with such customers.

'One rather serious factor which constantly endangers our market share in the vitamin business is that customers, especially in Europe, tend to purchase their raw materials from at least two different manufacturers. However, if we want to retain a 65% market share it is of cardinal importance that we build up a large circle of entirely faithful customers. In many countries we

are in fact already successfully operating fidelity contracts. However, the question was raised whether we should now go one step further by creating an even more far-reaching relationship based on mutual confidence which resembles a genuine partnership'. ⁽¹⁾

A circular issued in August 1971 on vitamin C contains the following passage on fidelity contracts in general.

'Fidelity contracts

We believe that most customers have realized during the past years with its frequent shortages in the field of fine chemicals, that in the long run it is more important to have a reliable supplier than to shop around for the lowest price. The precarious vitamin C situation, of which customers will soon become aware, provides an excellent opportunity — and possibly the last one for a long time — to convince even the most reluctant firm of the advantage of such a "partnership" between manufacturers and users of the goods.

Fidelity contracts, which are in the first place designed to give security to the customer, may therefore help you to penetrate the market with the mentioned three vitamins without a collapse of the present price levels.'

In a circular issued in September 1970 on biotin (H), Roche told its subsidiaries to take the following steps to cope with increased competition in the market for this vitamin:

'In the third place, you should protect your market through fidelity contracts or other arrangements, such as giving confidential end-year rebates to premixers and feedmills who are willing to use and promote Biotin.

We hope that you will make positive use of these inevitable developments, and we shall be glad to inform you regularly about experience gained on sales progress in other markets.'

The minutes of a meeting of the managers of Roche and its subsidiaries (European Bulk Managers meeting 12 and 13 October 1971) contain the following statement:

⁽¹⁾ The main features of this partnership include automatic entitlement to Roche's lowest prices for similar quantities, the supply of all the requirements of the customer with preferential treatment during shortages and a free technical service.

'Biotin marketing policy

We trust that in the meantime you have been able to study the mentioned documents and to decide on the best course to be followed in your market, particularly concerning the expansion of biotin sales through special arrangements coupled with confidential end-year rebates to selected customers who are prepared to use and promote Roche biotin'.

The Dutch subsidiary expressed the following opinion:

'As far as the threat of competition intruding into our market is concerned we believe to be able to protect our present and possibly future interests in the same way as we presently do with the other vitamins, e.g. in supply agreements with customers for their total or part of their year requirements'.

A number of other subsidiaries advocated greater use of fidelity contracts.

In the same minutes Roche stressed the importance which it attached to agreements with multinational customers in order to obtain 'price quietness'.

'Most Roche companies abroad have already realized the importance of the multi-national customers and have written to Basle about it. Roche Holland says e.g. "We believe it of utmost importance to further tie customers, not on a national but preferably on an international level to Roche. Instead of having to fight each time a customer wants to buy, which in most cases means an open fight on prices between three or more suppliers, international agreements might result in price quietness over a longer period internationally".'

13. The system described above works through direct agreements between the Roche parent company and companies belonging to a group and acting on its behalf. The agreements apply to subsidiaries of these groups in business in vitamins in the various countries involved (which in some cases include some or all of the Member States of the common market). These agreements (hereinafter called 'multinational contracts') are generally the most important in that they are concluded with large firms belonging to multinational groups, whose requirements vary according to the location of their plants.

This system is also applied, following general instructions from the parent company, through direct agreements between Roche subsidiaries and customers in countries where they are in business (hereinafter called 'national contracts').

The proportions of the requirements covered by these contracts and their apportionment between multinational and national contracts are set out below:

Multinational contracts

Requirements covered	Multinational contracts	Commencement of fidelity relationship
100 %	Dawe's	1971
	(Afico) Nestlé	1968
	Merck	1971 (B6), 1972 (A, E)
	Organon	1970
	(Capsugel) Parke Davis	1967
	R. Purina	1970
	Sandoz	1965
	Unilever	1974
	Upjohn	1967
	Wyeth	1963
90 %	Provimi	1972
	American Cyanamid	1971
	Animedica	1973
	Protector	1968
Major proportion	Trouw	1971

National contracts

Requirements covered	National contracts	Commencement of fidelity relationship
100 %	Unilever	1974
80 %	Animedica	1972
70 %	Guyomarc'h	1972
Major proportion	Beecham	1972
	Nitrovit	1973
	Pauls and Whites	1972
	Radar	1971
	Ramikal	1972
	I. Spencer	1973

The fidelity relationship lasted until at least the end of 1974.

14. The various features described are incorporated in the 26 contracts in question as follows:

A number of contracts (Dawe's, Organon, Provimi, Ralston Purina, American Cyanamid, Radar, Animedica (national contract), Guyomarc'h, Beecham (1973), Nitrovit, Pauls and Whites, Isaac Spencer) expressly specify that the customer undertakes to obtain a certain proportion of his requirements from Roche, in return for which Roche grants a rebate and the benefits of the 'English clause' (except for Guyomarc'h).

On 27 November 1974 the Provimi contract was amended: the rebate was reduced from 5% to 2.5% and changed to a 'del credere commission' (see next paragraph).

15. Other contracts (Afico (Nestlé), Capsugel (Parke Davis), Upjohn) provide for a 'del credere commission' to be paid by Roche-Basle to the other party in return for its guarantee to pay the bills of the subsidiaries in the group of which it is a member (in the case of Afico (Nestlé), payment by the companies which are 'linked' with it).

The fidelity commitment takes different forms in the various agreements. Nestlé and Upjohn expressly undertake to cover all their requirements from Roche. In the Capsugel (Parke Davis) contract a number of Parke Davis subsidiaries express their 'intention' to buy all the vitamins they require from Roche.

The English clause is clearly set out in the Afico (Nestlé) and Capsugel (Parke Davis) contracts.

The Upjohn contract requires Roche to sell to Upjohn at the lowest price for the country in question and 'on comparable terms'.

16. In other contracts (Animedica multinational basic contract, Protector, Ramikal, Sandoz, Trouw, Wyeth), the rebate is granted on the 'assumption' of 80% fidelity (Animedica), on the 'expectation' of a similar degree of fidelity (Protector), 'on condition that' most requirements are supplied by Roche (Ramikal), in return for an undertaking to 'recommend' to its subsidiaries that they obtain all their supplies from Roche (Sandoz), having regard to the close link created between Roche and its customer who expresses his intention of obtaining most of his supplies from Roche (Trouw), in return for an undertaking to give Roche preference for all of its requirements (Wyeth).

The English clause expressly appears in the Animedica, Ramikal, Sandoz, Trouw and Wyeth contracts.

17. The Unilever group has concluded one multinational agreement with Roche and one national agreement for vitamin A for the United Kingdom.

The multinational agreement was concluded between Roche-Basle and Unilever Inkoop (Netherlands), which acts as buyer and coordinating agent for the group's European subsidiaries.

This contract provides for supplies by Roche to the Unilever group and indicates the approximate quantities which are fixed in relation to requirements. It also includes the English clause. While there is no express provision for a rebate, Roche-Basle and Unilever Inkoop agree on a special price lower than that charged by Roche subsidiaries; the difference between the price charged by Roche subsidiaries to Unilever subsidiaries and the agreed special price is reimbursed by Roche-Basle to Unilever Inkoop every six months.

18. The contracts between Roche and Merck relating to vitamins A, E and B6 contained the following main features:

Vitamin A

Roche undertook to supply all of Merck's requirements, and Merck promised to place all its orders with Roche. Roche also undertook to offer Merck its lowest price and best terms. The minimum rebate was to be 12.5%, with a ceiling of 20%. The English clause was also included and the agreement was concluded for five years.

Vitamin E

Roche, being obliged substantially to increase its vitamin E production capacity, undertook to supply all of Merck's requirements, while Merck undertook to obtain its supplies exclusively from Roche. The minimum rebate was fixed at 15%, with a ceiling of 20%, and the English clause was also included. Roche would in any event offer Merck its lowest price and best terms. The contract was concluded for five years.

Vitamin B6

Roche, being obliged to double its capacity for the annual production of vitamin B6 (from 500 to 1 000 metric tons), undertook to meet all of Merck's requirements in excess of the latter's own production; Merck undertook in turn to buy exclusively from Roche. A 20% rebate and the English clause were included. It was also agreed that Roche would refrain from any action which might affect Merck's position as a 'co-producer'. The contract was concluded for five years.

II. Infringement of Article 86

19. Under Article 86 of the EEC Treaty any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

The relevant market

20. Each group of vitamins constitutes a distinct market because each group is particularly suited to satisfy stable requirements and is not, or at least not to any significant extent, interchangeable with any other group or with any other products.

The relevant product markets for the purposes of this Decision are the following groups of vitamins; A, B2, B6, C, E, Biotin (H), and pantothenic acid (B3).

The relevant geographical market for the purposes of this Decision is the whole of the common market.

The dominant position

21. Roche enjoys such a complete freedom of action in the relevant markets enabling it to impede effective competition within the common market that it has a dominant position in such markets.

The dominant position results from the following:

- The market share held by Roche for each of the abovementioned vitamins is very considerable since it ranges from 95% for vitamins B6 and H to 47% (the second producer having only about half this share) for vitamin A.
- Roche produces a far wider range of vitamins than its competitors. Since the requirements of many users extend to several groups of vitamins, Roche is able to employ a sales and pricing strategy which is far less dependent than that of other manufacturers on the conditions of competition in each market.

In assessing the dominant position of Roche account should be taken of the following. Roche is the world's largest producer of all vitamins; its turnover exceeds that of all other producers and it has technological and commercial advantages not possessed by its competitors. Furthermore, since any entry into the vitamins market requires large and specialized investment and the programming of capacities over long periods in order to be profitable, it is unlikely that the possibility of entry by new competitors to the market would at present have any appreciable effect on the position of Roche.

The abuse

22. The conduct of Roche described above (paragraphs 10 to 18) constitutes an abuse of a dominant position, because by its nature it hampers the freedom of choice and equality of treatment of purchasers and restricts competition between bulk vitamin manufacturers in the common market and furthermore it is likely to affect trade between Member States.

The abusive nature of this conduct appears from the following:

- (a) The fact that customers are bound by an exclusive or preferential purchasing commitment in favour of Roche for all or for a very large proportion of their requirements either as a result of an express obligation of exclusivity, or fidelity rebates, or other means.
- (b) The fact that the price advantages granted are based not on the differences in costs borne by Roche in relation to the quantities supplied, but on the supply of all or a very large proportion of a customer's requirements.
- (c) The fact that in certain cases the rebate is based on all purchases, so that purchases of vitamins of one group are aggregated with purchases of vitamins of other groups ('across-the-board' rebates).
- (d) The fact that the agreements generally contain a provision known as the 'English clause', the significance of which is as follows; purchasers are obliged to inform Roche of offers from other manufacturers more favourable than those of Roche; should Roche not match such offers, purchasers are free to purchase from such manufacturers without losing the rebate in respect of purchases made from Roche. In some agreements Roche stipulate that the offers should emanate from 'reputable' manufacturers (thereby excluding dealers and brokers).

23. The agreements in question are not identical in so far as the obligations of the purchaser are concerned. Nevertheless, all the agreements are of a type suitable to achieve the desired object, namely that the customer should confine the purchase of all or a large proportion of his requirements of vitamins to Roche. Some agreements contain an express obligation by the purchaser to buy all or almost all of his requirements from Roche. Other agreements provide for fidelity rebates. In yet other agreements it is evident from their context that price advantages are offered in return for an obligation of exclusivity undertaken by the purchaser. The latter

element is present even in those cases where the rebate is described as being in return for a *del credere* guarantee, since such a guarantee is not given here in favour of independent third parties but for associated or subsidiary companies within well-known multinational groups with a sound financial base and whose commercial transactions call for no guarantee.

24. The exclusivity agreed by Roche with its customers in these agreements amounts to an abuse within the meaning of Article 86 because of its incompatibility with the objective of Article 3 (f) of the Treaty, that competition in the common market is not distorted, and more particularly because of its incompatibility with paragraph (c) of Article 86.

The fact of agreeing with purchasers that they will buy all or a very large proportion of their requirements from only one source by its very nature removes all freedom of choice from purchasers in their selection of sources of supply, and ties them to one supplier. The special price offered by Roche is the consideration for the abandonment by its purchasers of their opportunities to obtain substantial proportions of their requirements from competitors. Should a purchaser not observe his obligation of exclusivity — by purchasing some of his requirements from another vitamin manufacturer — the fidelity rebate is forfeited not only in respect of the amount of such purchase, but in respect of all his purchases from Roche. This restrictive effect is aggravated by the fact that the rebate — and hence the exclusivity — is calculated on the basis of all purchases from Roche so that purchases of vitamins of one group are aggregated with purchases of vitamins of other groups ('across-the-board' rebates).

The agreements in question have the further effect of interfering with competition between vitamin manufacturers. The exclusivity established by Roche with its customers denies any access to these customers by other vitamin manufacturers. For quantities of any importance the rate of the rebate given by Roche is such that it is made practically impossible or at the least very onerous for other producers to sell to the customers of Roche.

25. The provision known as the 'English clause' is but a very limited relaxation of the system applied by Roche. The argument that this provision in fact leaves the customer free to purchase from the competitors of Roche is belied by the function of the clause. This provision, whilst enabling Roche to learn of the prices offered by its competitors, leaves to Roche the decision whether the customer in question is free to purchase from the competitor offering vitamins at lower prices; the customer is free to

purchase from the competitor only where Roche decides not to match the price offered. This opportunity is further restricted by the requirement that the offer be from a 'reputable' manufacturer in the customer's territory — thereby excluding offers from other territories or other Member States. It is clear that should the sale in question be of interest to Roche, by reason either of the quantity or the type of vitamin involved or the fact that the offer is from a reputable manufacturer, then Roche with its strength in the vitamins market is put in a position to adjust its price and so preserve exclusivity of supply to the customer in question. It is therefore the decision of Roche in each case, depending on the circumstances, whether to admit partially, or to deny access to, a competitor to the market which Roche has reserved for itself.

26. Moreover, in so far as the agreements in question provide for fidelity rebates in return for the reservation by the purchaser of exclusivity towards Roche, the conditions for the application of Article 86 (c) are met. The rebates in question lead to discrimination and to the disadvantage both of those customers of Roche who do not benefit thereby and of those who do not benefit to the same extent. The system operated by Roche leads to the fixing of quite different prices for two customers who have bought the same quantities from Roche where one of them has made additional purchases from another manufacturer.

By this means dissimilar conditions are applied to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

27. The conduct in question is likely to affect trade between Member States in that it restricts the trading opportunities of users and suppliers of bulk vitamins in different Member States and this has a direct influence on the patterns of trade between Member States so as to impede the attainment of the objectives of a single market. Furthermore, an examination of the statistics for the import of bulk vitamins in the various Member States indicates that nearly half the turnover in bulk vitamins in the Community is taken up by imports within the Community. In this case it is largely a trade within the Community which is impeded by the agreements in question.

The fine

28. Pursuant to Article 15 (2) of Regulation No 17 the Commission may impose fines on undertakings

where either intentionally or negligently they infringe Article 86. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

It is necessary to impose a fine upon Roche.

Roche has intentionally, or at least negligently, committed the infringement described above. The Roche circulars referred to above provide evidence that the object desired and the effects expected by Roche were the substantial restriction of competition. Roche could not have been unaware that behaviour restricting competition to such an extent was incompatible with Article 86.

In assessing the gravity of the infringement account should be taken of the fact that the conduct in question is of a type which forms a major obstacle to competition, that it is evidenced by a large number of agreements relating to large quantities of vitamins and that these agreements were concluded with major purchasers established in several Member States and whose operations extend to most if not all of the common market.

With respect to the duration of the infringement, it may be concluded that the conduct in question began in 1964, that it was evident in an increasing number of agreements, that only at the end of 1974, following intervention by the Commission, were some of the agreements terminated, and that the infringement cannot yet be considered to be at an end since some agreements are still in force.

For the purposes of determining the amount of the fine, however, the Commission only takes into account the period of about five years between 1970, by which date there can be no doubt that Roche was formulating and applying its systematic policy of fidelity agreements, and the end of 1974 when the first terminations of the agreements took place.

29. Although Roche has its registered office outside the common market, it has numerous subsidiaries within the common market, particularly in the Federal Republic of Germany.

In these circumstances, for the payment of the fine, the amount shall be converted from units of account to Deutsche Mark,

HAS ADOPTED THIS DECISION:

Article 1

The Hoffmann-La Roche company has committed an infringement of Article 86 by concluding agreements which contain an obligation upon purchasers, or by the grant of fidelity rebates offer them an incentive, to buy all or most of their requirements exclusively, or in preference, from Hoffmann-La Roche.

Article 2

Hoffmann-La Roche is hereby enjoined to terminate the above infringement forthwith.

Article 3

A fine of 300 000 units of account (three hundred thousand) being 1 098 000 Deutsche Mark (one million ninety-eight thousand) is hereby imposed on

Hoffmann-La Roche. This sum shall be paid within three months of the date of notification of this Decision.

This Decision shall be enforceable in accordance with Article 192 of the Treaty establishing the European Economic Community.

Article 4

This Decision is addressed to Hoffmann-La Roche & Company AG Basle (Switzerland).

Done at Brussels, 9 June 1976.

For the Commission

Patrick J. HILLERY

Vice-President
