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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 820/97

of 21 April 1997

**establishing a system for the identification and registration of bovine animals
and regarding the labelling of beef and beef products**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

Whereas the market in beef and beef products has been destabilized by the bovine spongiform encephalopathy crisis; whereas it is necessary to re-establish stability in this market; whereas such re-establishment of stability can most effectively be achieved by improving the transparency of the conditions for the production and marketing of the products concerned particularly as regards traceability;

Whereas to this end it is essential to establish, on the one hand, a more efficient system for the identification and registration of bovine animals at the production stage and, on the other hand, a specific Community labelling system in the beef sector based on objective criteria at the marketing stage;

Whereas, by means of the guarantees provided for such an improvement, certain public interest requirements will also be attained, in particular the protection of human and animal health;

Whereas, as a result, consumer confidence in the quality of beef and beef products will be encouraged;

Whereas Article 3 (1) (c) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain

live animals and products with a view to the completion of the internal market ⁽⁴⁾ states that animals for intra-Community trade must be identified in accordance with the requirements of Community rules and be registered in such a way that the original or transit holding, centre or organization can be traced, and that before 1 January 1993 these identification and registration systems are to be extended to the movements of animals within the territory of each Member State;

Whereas Article 14 of Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽⁵⁾ states that the identification and registration as provided for in Article 3 (1) (c) of Directive 90/425/EEC of such animals must, except in the case of animals for slaughter and registered equidae, be carried out after the said checks have been made;

Whereas the management of certain Community aid schemes in the field of agriculture requires the individual identification of certain types of livestock; whereas the identification and registration systems must, therefore, be suitable for the application and control of such measures;

Whereas it is necessary to ensure the rapid and efficient exchange of information between Member States for the correct application of this Regulation; whereas Community provisions have been established by Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs or agriculture matters ⁽⁶⁾ and by Council Directive 89/608/EEC of 21 November 1989 on mutual

⁽¹⁾ OJ No C 349, 20. 11. 1996, p. 10 and OJ No C 100, 27. 3. 1997, p. 22.

⁽²⁾ OJ No C 85, 17. 3. 1997.

⁽³⁾ OJ No C 66, 3. 3. 1997, p. 84.

⁽⁴⁾ OJ No L 224, 18. 8. 1990, p. 29. Directive as last amended by Directive 92/118/EEC (OJ No L 62, 15. 3. 1993, p. 49).

⁽⁵⁾ OJ No L 268, 24. 9. 1991, p. 56. Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

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

assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters⁽¹⁾;

Whereas the current rules concerning the identification and the registration of bovine animals have been laid down in Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals⁽²⁾; whereas experience has shown that the implementation of that Directive for bovine animals has not been entirely satisfactory and needs further improvement; whereas it is therefore necessary to adopt a specific regulation for bovine animals in order to reinforce the provisions of the Directive;

Whereas, for the introduction of an improved identification system to be accepted, it is essential not to impose excessive demands on the producer in terms of administrative formalities; whereas feasible time limits for its implementation must be laid down;

Whereas for the purpose of rapid and accurate tracing of animals for reasons relating to the control of Community aid schemes, each Member State must create a computerized data base which will record the identity of the animal, all holdings on its territory and the movements of the animals, in accordance with the provisions of Council Directive 97/12/EC of 17 March 1997 amending and updating Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine⁽³⁾, which clarifies the health requirements concerning this data base;

Whereas steps must be taken to ensure that the technical conditions exist to guarantee the best communication possible by the producer with the data base and a comprehensive use of data bases;

Whereas, in order to permit movements of bovine animals to be traced, animals must be identified by an eartag applied in each ear and in principle accompanied by a passport throughout any movement; whereas the characteristics of the eartag and of the passport must be determined on a Community basis; whereas in principle a passport must be issued for each animal to which an eartag has been allocated;

Whereas animals imported from third countries pursuant to Directive 91/496/EEC must be subject to the same identification requirements;

Whereas every animal must keep its eartag throughout its life;

Whereas the Commission is examining on the basis of work performed by the Joint Research Centre the feasibility of using electronic means for the identification of animals;

Whereas keepers of animals, with the exception of transporters, must maintain an up-to-date register of the animals on their holdings; whereas the characteristics of the register must be determined on a Community basis; whereas the competent authority must have access to these registers on request;

Whereas Member States may spread the costs arising from the application of these measures over the entire beef sector;

Whereas the authority or authorities responsible for the application of each Title in this Regulation should be designated;

Whereas, in the context of the labelling system set up by this Regulation, beef shall be taken to mean certain products referred to in Article 1 (1) of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽⁴⁾;

Whereas before 1 January 2000 the labelling system shall be optional for operators and organizations marketing beef in the sense that operators and organizations wishing to label their beef shall do so in accordance with this Regulation; whereas a compulsory beef-labelling system must be introduced which is obligatory in all Member States from 1 January 2000; whereas this compulsory system shall not exclude the possibility for a Member State to decide to apply the system merely on an optional basis to beef sold in that same Member State; whereas the labelling system provided for in this Regulation shall apply until 31 December 1999; whereas, before 1 January 2000, Member States will be able to choose to make the system compulsory under certain circumstances;

Whereas the provisions of this Regulation should not undermine existing Community legislation in the fields of labelling and control of foodstuffs, protection of geographical indications and designations of origin, certificates of specific character for agricultural products and foodstuffs measures to promote and market quality beef and veal, and rules governing health problems affecting intra-Community trade in meat and meat products;

⁽¹⁾ OJ No L 351, 2. 12. 1989, p. 34.

⁽²⁾ OJ No L 355, 5. 12. 1992, p. 32.

⁽³⁾ OJ No L 109, 25. 4. 1997, p. 1.

⁽⁴⁾ OJ No L 148, 28. 6. 1968, p. 24. Regulation as last amended by Regulation (EC) No 894/96 (OJ No L 125, 23. 5. 1996, p. 1).

Whereas an efficient labelling system depends on the possibility of tracing back any labelled beef to the animal or animals of origin; whereas the labelling arrangements of an operator or organization shall be accepted only once a specification has been submitted to, and approved by, the competent authority;

Whereas, in order to identify correctly the person responsible for the information on the label, operators and organizations shall be entitled to label beef only if the label contains their name or their identifying logo; whereas what kind of information the label may contain should be specified;

Whereas operators and organizations importing beef from third countries into the Community may also wish to label their products according to this Regulation; whereas provisions should thus be made for imported beef to be included in the labelling system; whereas these provisions must ensure that labelling arrangements relating to imported beef are of equivalent reliability to those set up for Community beef;

Whereas, with a view to guaranteeing the reliability of the arrangements provided for by this Regulation, it is necessary to oblige the Member States to carry out adequate and efficient control measures; whereas these controls shall be without prejudice to any controls which the Commission may carry out by analogy with Article 9 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽¹⁾; whereas the competent authorities of the Member States shall be authorized to withdraw their approval of any specification in the event of irregularities;

Whereas appropriate penalties should be laid down in the event of a breach of the provisions of this Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I

Identification and registration of bovine animals

Article 1

1. Each Member State shall establish a system for the identification and registration of bovine animals (hereinafter referred to as 'animals'), in accordance with this Title.

2. This Title shall apply without prejudice to Community rules for disease eradication or control purposes and without prejudice to Directive 91/496/EEC and Regulation (EEC) No 3508/92. However, those provisions of Directive 92/102/EEC which relate specifically to

bovine animals shall no longer apply from the date on which those animals must be identified in accordance with this Title.

Article 2

For the purposes of this Title:

- 'animal' shall mean a bovine animal within the meaning of Article 2 of Directive 97/12/EC,
- 'holding' shall mean any establishment, construction or, in the case of an open-air farm, any place situated within the territory of the same Member State, in which animals covered by this Regulation are held, kept or handled,
- 'keeper' shall mean any natural or legal person responsible for animals, whether on a permanent or on a temporary basis, including during transportation or at a market,
- 'competent authority' shall mean the central authority or authorities in a Member State responsible for, or entrusted with, carrying out veterinary checks and implementing this Title or, in the case of the monitoring of premiums, the authorities entrusted with implementing Regulation (EC) No 3508/92.

Article 3

The system for the identification and registration of bovine animals shall comprise the following elements:

- (a) ear tags to identify animals individually;
- (b) computerized databases;
- (c) animal passports;
- (d) individual registers kept on each holding.

The Commission and the competent authority of the Member State concerned shall have access to all information under this Title. The Member States and the Commission shall take the measures necessary to ensure access to this data for all parties concerned, including consumer organizations having a particular interest which are recognized by the Member State, provided that the data confidentiality and protection prescribed by national law are ensured.

Article 4

1. All animals on a holding born after 1 January 1998 or intended for intra-Community trade after 1 January 1998 shall be identified by an ear tag approved by the competent authority, applied to each ear. Both ear tags shall bear the same unique identification code which makes it possible to identify each animal individually together with the holding on which it was born. By way of derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date may be identified in accordance with Directive 92/102/EEC until 1 September

⁽¹⁾ OJ No L 312, 23. 12. 1995, p. 1.

1998. By way of further derogation from the above requirement, animals born before 1 January 1998 which are intended for intra-Community trade after that date with a view to immediate slaughter may be identified in accordance with Directive 92/102/EEC until 1 September 1999. Bulls intended for cultural and sporting events (with the exception of fairs and exhibitions) may, instead of by an eartag, be identified by an identification system offering equivalent guarantees that has been recognized by the Commission.

2. The eartag shall be applied within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the holding on which it was born. That period may not be longer than 30 days up to and including 31 December 1999, and not longer than 20 days thereafter.

However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

No animal born after 1 January 1998 may be moved from a holding unless it is identified in accordance with this Article.

3. Any animal imported from a third country which has passed the checks laid down in Directive 91/496/EEC and which remains within Community territory shall be identified on the holding of destination by an eartag complying with the requirements of this Article, within a period to be determined by the Member State of at most 20 days of undergoing the aforesaid checks, and in any event before leaving the holding. However, it is not necessary to identify the animal if the holding of destination is a slaughterhouse situated in the Member State where such checks are carried out and the animal is slaughtered within 20 days of undergoing the checks.

The original identification established by the third country shall be recorded in the computerized database provided for in Article 5 or, if this is not yet fully operational, in the registers provided for in Article 3, together with the identification code allocated to it by the Member State of destination.

4. Any animal from another Member State shall retain its original eartag.

5. No eartag may be removed or replaced without the permission of the competent authority.

6. The eartags shall be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority.

7. Not later than 31 December 2000 the Council, acting on the basis of a report from the Commission accompanied by any proposals, shall decide on the pos-

sibility of introducing electronic identification arrangements in the light of progress achieved in this field.

Article 5

The competent authority of the Member States shall set up a computerized database in accordance with Articles 14 and 18 of Directive 97/12/EC.

The computerized databases shall become fully operational no later than 31 December 1999, after which they shall store all data required pursuant to the aforementioned Directive.

Article 6

1. As from 1 January 1998, the competent authority shall, for each animal which has to be identified in accordance with Article 4, issue a passport within 14 days of the notification of its birth, or, in the case of animals imported from third countries, within 14 days of the notification of its re-identification by the Member State concerned in accordance with Article 4 (3). The competent authority may issue a passport for animals from another Member State under the same conditions. In such cases, the passport accompanying the animal on its arrival shall be surrendered to the competent authority, which shall return it to the issuing Member State.

However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances under which the maximum period may be extended.

2. Whenever an animal is moved, it shall be accompanied by its passport.

3. By way of derogation from the first sentence of paragraph 1 and from paragraph 2, Member States:

— which have a computerized database which the Commission deems to be fully operational before 1 January 2000 in accordance with Article 5 may determine that a passport is to be issued only for animals intended for intra-Community trade and that those animals shall be accompanied by their passports only when they are moved from the territory of the Member State concerned to the territory of another Member State, in which case the passport shall contain information based on the computerized database.

In these Member States, the passport accompanying an animal imported from another Member State shall be surrendered to the competent authority on its arrival,

— may until 1 January 2000 authorize the issue of collective animal passports for herds moved within the Member State concerned provided that such herds have the same origin and destination and are accompanied by a veterinary certificate.

4. In the case of the death of an animal, the passport shall be returned by the keeper to the competent authority within seven days after the death of the animal. If the animal is sent to the slaughterhouse, the operator of the slaughterhouse shall be responsible for returning the passport to the competent authority.

5. In the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported.

Article 7

1. With the exception of transporters, each keeper of animals shall:

— keep an up-to-date register,

— once the computerized database is fully operational, report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, within 15 days and, as from 1 January 2000, within seven days of the event occurring. However, at the request of a Member State and in accordance with the procedure referred to in Article 10, the Commission may determine the circumstances in which Member States may extend the maximum period.

2. Where applicable and having regard to Article 6, each animal keeper shall complete the passport immediately on arrival and prior to departure of each animal from the holding and ensure that the passport accompanies the animal.

3. Each keeper shall supply the competent authority, upon request, with all information concerning the origin, identification and, where appropriate, destination of animals which he has owned, kept, transported, marketed or slaughtered.

4. The register shall be in a format approved by the competent authority, kept in manual or computerized form, and be available at all times to the competent authority, upon request, for a minimum period to be determined by the competent authority but which may not be less than three years.

Article 8

Member States shall designate the authority responsible for ensuring compliance with this Title. They shall inform each other and the Commission of the identity of this authority.

Article 9

Member States may charge to keepers as referred to in Article 2 the costs of the systems referred to in Article 3 and of the controls referred to in this Title.

Article 10

The Commission shall adopt detailed rules for the implementation of this Title in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70. These detailed rules shall cover in particular:

- (a) provisions concerning eartags;
- (b) provisions concerning the passport;
- (c) provisions concerning the register;
- (d) minimum level of controls to be carried out;
- (e) application of administrative sanctions;
- (f) transitional provisions for the start-up period of the system.

Article 11

Article 5 of Regulation (EEC) No 3508/92 shall be supplemented by the following:

‘... and Regulation (EC) No 820/97’.

TITLE II

Labelling of beef and beef products

Article 12

1. If an operator or an organization, as defined in Article 13, wishes to label beef at the point of sale in such a way as to provide information concerning the origin or certain characteristics or production conditions of the labelled meat or of the animal from which it derives, it shall do so in accordance with this Title.

However, this Title shall not affect:

- compulsory indications as referred to in Article 3(1) of Council Directive 79/112/EEC with the exception of point 7,
- the indications that are protected in accordance with Regulations (EEC) No 2081/92 and (EEC) No 2082/92,
- the indications as referred to in Regulations (EEC) No 1208/81 and (EEC) No 1186/90,
- indications relating to the health mark as provided for in Directive 64/433/EEC and other similar indications provided for in the relevant veterinary legislation,
- labels containing only information which can be easily checked at the point of sale, such as, in particular, the indication of product weight or the name of the cut.

2. Notwithstanding paragraph 1, the following shall continue to apply:

- Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products⁽¹⁾,
- Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat⁽²⁾,
- Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer⁽³⁾,
- Council Directive 93/99/EEC of 29 October 1993 on additional measures concerning the official control of foodstuffs⁽⁴⁾,
- Council Directive 94/65/EC of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations⁽⁵⁾,
- Council Regulation (EEC) No 1208/81 of 28 April 1981 determining the Community scale for the classification of carcasses of adult bovine animals⁽⁶⁾,
- Council Regulation (EEC) No 1186/90 of 7 May 1990 extending the scope of the Community scale for the classification of carcasses of adult bovine animals⁽⁷⁾,
- Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽⁸⁾,
- Council Regulation (EEC) No 2082/92 of 14 July 1992 on certificates of specific character for agricultural products and foodstuffs⁽⁹⁾,
- Council Regulation (EEC) No 2067/92 of 30 June 1992 on measures to promote and market quality beef and veal⁽¹⁰⁾.

Article 13

For the purposes of this Title, the following definitions shall apply:

- 'beef' shall mean all products falling within CN codes 0201, 0202, 0206 10 95 and 0206 29 91,

⁽¹⁾ OJ No 30, 20. 4. 1962, p. 993/62.

⁽²⁾ OJ No 121, 29. 7. 1964, p. 2012/64.

⁽³⁾ OJ No L 33, 8. 2. 1979, p. 1.

⁽⁴⁾ OJ No L 290, 24. 11. 1993, p. 14.

⁽⁵⁾ OJ No L 368, 31. 12. 1994, p. 10.

⁽⁶⁾ OJ No L 123, 7. 5. 1981, p. 3.

⁽⁷⁾ OJ No L 119, 11. 5. 1990, p. 32.

⁽⁸⁾ OJ No L 208, 24. 7. 1992, p. 1.

⁽⁹⁾ OJ No L 208, 24. 7. 1992, p. 9.

⁽¹⁰⁾ OJ No L 215, 30. 7. 1992, p. 57.

— 'labelling' shall mean the attachment of a label to an individual piece or pieces of meat or to their packaging material, including the supply of information to the consumer at the point of sale,

— 'organization' shall mean a group of operators from the same or different parts of the beef trade.

Article 14

1. Each operator or organization shall submit a specification for approval to the competent authority of each Member State in which production or sale of the beef in question takes place. The competent authority may also establish specifications to be used in the Member State concerned, provided that use thereof is not compulsory.

Such specifications shall indicate:

- the information to be included on the label,
- the measures to be taken to ensure the accuracy of the information,
- the control system which will be applied at all stages of production and sale, including the controls to be carried out by an independent body recognized by the competent authority and designated by the operator or the organization. These bodies shall comply with the criteria set out in European Standard EN/45011 not later than 31 December 1999,
- in the case of an organization, the measures to be taken in relation to any member which failed to comply with the specifications.

Member States may decide that controls by an independent body can be replaced by controls by a competent authority. The competent authority shall in that case have at its disposal the qualified staff and resources necessary to carry out the requisite controls and shall submit to the Commission its working plan as well as an activity report.

The costs of controls provided for under this Title shall be borne by the operator or organization using the labelling system.

2. The approval of any specification shall be subject to the assurance of the competent authority, obtained on the basis of a thorough examination of its components as referred to in paragraph 1, of the proper and reliable functioning of the labelling system envisaged and, in particular, of its control system. A competent authority shall refuse any specification which does not ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the animals concerned.

Specifications which provide for labels containing misleading or insufficiently clear information shall also be refused.

3. Where the production and/or sale of beef takes place in two or more Member States, the competent authorities of the Member States concerned shall examine and, if appropriate, approve the specifications submitted in so far as the elements contained therein relate to operations taking place within their respective territories. In such case, the Member State concerned shall recognize the approvals granted by any other Member State concerned.

If, within a period to be fixed in accordance with Article 18, counting from the day following the date of submission of the application, approval has not been refused or given, or supplementary information has not been asked for, the specification shall be considered to be approved by the competent authority.

4. Where the competent authorities of all the Member States concerned approve the specification submitted, the operator or organization concerned shall be entitled to label beef, provided that the label contains its name or logo.

5. By way of derogation from the preceding paragraphs, the Commission, following the procedure referred to in Article 18, may provide for an accelerated or simplified procedure for approval in specific cases, in particular for beef in small retail packages or primal beef cuts in individual packages, labelled in a Member State according to an approved specification and introduced into the territory of another Member State, provided that no information is added to the initial label.

6. Any entitlement shall apply without prejudice to Article 13 of Regulation (EEC) No 2081/92 and to Article 13 of Regulation (EEC) No 2082/92.

Article 15

1. Where the production of beef takes place, in full or in part, in a third country, operators and organizations shall be entitled to label beef according to this Regulation only if, in addition to observing the requirements set out in Article 14, they have obtained approval of their specifications by the competent authority designated for that purpose by each third country concerned.

2. The validity within the Community of any approval granted by a third country shall be subject to prior notification by the third country to the Commission of:

- the competent authority which has been designated,
- the procedures and criteria to be followed by the competent authority when examining the specification,
- each operator and organization to which the competent authority has granted approval of their specification.

The Commission shall transmit these notifications to the Member States.

Where, on the basis of the above notifications, the Commission reaches the conclusion that the procedures and/or criteria applied in a third country are not equivalent to the standards set out in this Regulation, the Commission shall, after consultation with the third country concerned, decide that approvals granted by the third country concerned shall not be valid within the Community.

Article 16

1. A label shall not contain any information relating to the animal from which the beef originates other than that which appears in the following list:

- Member State, third country or holding of birth,
- Member States, third countries or holdings where all or any part of fattening took place, with partial fattening having to be specified,
- Member State, third country or slaughterhouse where slaughter took place,
- identification number and sex of the animal,
- method of fattening or other information relating to feeding,
- information on slaughtering, such as the age at slaughter and the date of slaughter or the period during which the beef was matured,
- any other information which the operator or the organization wishes to indicate and to which the competent authority concerned has agreed.

If beef originates from an animal born, raised and slaughtered in one and the same Member State, the mention of that Member State on the label shall suffice.

2. Where beef from different animals is mixed, the label shall contain only information which is common to all such beef.

3. Every label shall contain a reference number or reference code ensuring the link provided for in the second sentence of Article 14(2). This number may be the identification number of the animal concerned.

Article 17

Without prejudice to any action taken by the organization itself or the independent control body provided for in Article 14, where it is shown that an operator or organization has failed to comply with the specification referred to in Article 14(1), the Member State may withdraw its approval pursuant to Article 14(2) or impose supplementary conditions to be respected if its approval is to be maintained.

Article 18

The Commission shall adopt detailed rules for the application of this Title and, where necessary, transitional measures in accordance with the procedure laid down in

Article 27 of Regulation (EEC) No 805/68. The detailed rules may cover, in particular, the information which may be contained on labels pursuant to Article 16. They may also extend the list of indications or labels referred to in the second subparagraph of Article 12(1).

Article 19

1. A compulsory beef-labelling system shall be introduced which shall be obligatory in all Member States from 1 January 2000 onwards. However, this compulsory system shall not exclude the possibility for a Member State to decide to apply the system merely on an optional basis to beef sold in that same Member State. The labelling system provided for in this Regulation shall apply until 31 December 1999.

On the basis of the report provided for in paragraph 3, the Council, acting by a qualified majority on a proposal from the Commission, shall therefore take a decision before 1 January 2000 on the general rules for a compulsory beef-labelling system to apply as from that date, in accordance with the Community's international commitments.

2. Save where otherwise decided by the Council, the labelling system compulsory as from 1 January 2000 shall, in accordance with the Community's international commitments, in addition to the labelling information referred to in Article 16(3), also require indication of the Member State or third country where the animal from which the beef is derived was born, the Member States or third countries where the animal was raised and the Member State or third country where the animal was slaughtered.

3. Member States shall submit to the Commission, by 1 May 1999, reports on the implementation of the labelling system for beef. The Commission shall submit to the Council a report on the situation regarding the implementation of beef labelling systems in the different Member States.

4. However, Member States where there is a sufficiently developed identification and registration system for bovine animals may before 1 January 2000 impose a compulsory labelling system for beef from animals born, fattened and slaughtered on their territory. Furthermore, they may decide that one or more of the items of in-

formation referred to in Article 16(1) and (2) must be indicated on labels.

5. A compulsory system as provided for in paragraph 4 must not lead to any disruption of trade between the Member States.

The implementation arrangements applicable in those Member States intending to apply the provisions of paragraph 4 shall require prior approval from the Commission.

6. By 1 January 2000, the Council, acting by a qualified majority on a proposal from the Commission, shall take a decision as to whether compulsory indication of data other than those provided for in paragraph 2 and extension of the scope of this Regulation to products other than those indicated in the first indent of Article 13 are possible and desirable.

Article 20

Member States shall designate the competent authority or authorities responsible for implementing this Title.

TITLE III

Common provisions

Article 21

Member States shall take all the necessary measures to ensure compliance with the provisions of this Regulation. The controls provided for shall be without prejudice to any controls which the Commission may carry out by analogy with Article 9 of Regulation (EC, Euratom) No 2988/95.

Any sanctions imposed by the Member State shall be proportionate to the gravity of the breach. The sanctions may involve, where justified, a restriction on movement of animals to or from the holding of the keeper concerned.

Article 22

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

It shall apply from 1 July 1997.

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

Done at Luxembourg, 21 April 1997.

For the Council

The President

J. VAN AARTSEN

COMMISSION REGULATION (EC) No 821/97

of 6 May 1997

on additional quantities of textile products to be made available to the Socialist Republic of Vietnam

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3030/93⁽¹⁾ of 12 October 1993 on common rules for imports of certain textile products from third countries, as last amended by Commission Regulation (EC) No 447/97⁽²⁾ and in particular Article 8 thereof,

Whereas for certain categories of textile products Vietnam issued export licences in 1996 for amounts in excess of its 1996 quota levels; whereas it is willing to take appropriate export management measures in 1997 to take account of the overlicensing;

Whereas for a number of the product categories export licences have been presented to the competent authorities in the Community in respect of quantities in excess of those actually authorized by the Vietnamese authorities when the licences were issued, with the result that levels for those categories have been exceeded; whereas Vietnam is working in close cooperation with the Community to establish the cause of the discrepancies, which may be the result of fraud;

Whereas the overruns for other product categories are the result of communication problems between the central licensing board and its regional branches;

Whereas this has led to a situation where some importers are unable to get an import licence for goods which have already been shipped to the Community, and the goods are consequently blocked in the port of arrival;

Whereas Vietnam and the Community are currently making efforts to establish a system of control which will

greatly reduce the risk of any recurrence of such overshippments;

Whereas the quantities in question, in relation to total imports of these products into the Community, are unlikely to cause market disruption if the goods are released into free circulation;

Whereas Article 8 of Regulation (EEC) No 3030/93 allows the Commission to open up additional opportunities for imports under particular circumstances;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Textile Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The following quantities shall be made available to allow the release into free circulation of products for which Vietnam has issued 1996 export licences:

— Category 7:	19 846 pieces,
— Category 21:	42 327 pieces,
— Category 26:	64 862 pieces,
— Category 28:	274 112 pieces.

Article 2

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

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

Done at Brussels, 6 May 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ No L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ No L 68, 8. 3. 1997, p. 16.

COMMISSION REGULATION (EC) No 822/97
of 6 May 1997
amending Regulation (EEC) No 2676/90 determining Community methods for
the analysis of wines

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 536/97 ⁽²⁾, and in particular Article 74 thereof,

Whereas the Annex to Commission Regulation (EEC) No 2676/90 ⁽³⁾, as last amended by Regulation (EC) No 69/96 ⁽⁴⁾, contains a description of these analysis methods; whereas a method of analysing the isotope ratio ¹⁸O/¹⁶O of the oxygen in the water of wine has been developed and its validity established in accordance with internationally recognized criteria; whereas the application of this method may constitute a better way of checking the authenticity of wine and other wine products; whereas the description of this new method has been adopted by the International Wine and Wine Office; whereas this method should be added to the said Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

Chapter 43 as shown in the Annex hereto is added to the Annex to Regulation (EEC) No 2676/90.

Article 2

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

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

Done at Brussels, 6 May 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 83, 25. 3. 1997, p. 5.

⁽³⁾ OJ No L 272, 3. 10. 1990, p. 1.

⁽⁴⁾ OJ No L 14, 19. 1. 1996, p. 13.

ANNEX

43. DETERMINATION OF THE ISOTOPIC RATIO $^{18}\text{O}/^{16}\text{O}$ OF THE WATER CONTENT IN WINES

I. DESCRIPTION OF THE METHOD

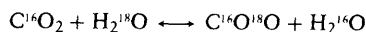
1. Method objective

The objective of the present method is to measure the isotopic ratio $^{18}\text{O}/^{16}\text{O}$ of waters of different origins. The isotopic ratio $^{18}\text{O}/^{16}\text{O}$ can be expressed in deviation δ ‰ in ratio to the value of isotopic ratio of the international reference V.SMOW:

$$\delta_i [\text{‰}] = \left[\frac{R_i}{R_{\text{SMOW}}} - 1 \right] \times 1\,000$$

2. Principle

The isotopic ratio $^{18}\text{O}/^{16}\text{O}$ is determined by mass spectrometry of isotopic ratios (MSIR) from ionic currents m/z 46 ($^{12}\text{C}^{16}\text{O}^{18}\text{O}$) and m/z 44 ($^{12}\text{C}^{16}\text{O}_2$) produced by carbon dioxide obtained after an exchange with the water in wine according to the reaction:



The carbon dioxide in the gaseous phase is used for analysis.

3. Reagents

- Carbon dioxide for analysis
- SMOW (Standard Mean Ocean Water)
- GISP (Greenland Ice Sheet Precipitation)
- SLAP (Standard Light Arctic Precipitation)
- Reference water specific to the laboratory carefully standardized in relation to the reference sample of the International Agency of Atomic Energy in Vienna (IAEA).

4. Laboratory equipment

- mass spectrometer of isotopic ratios with an internal repeatability of 0,05 ‰
- triple collector for simultaneous recording of ions m/z 44, 45 and 46 or, by default, a double collector for measuring ions m/z 44 and 46
- thermostated system ($\pm 0,5^\circ\text{C}$) to carry out the equilibration between CO_2 and the water content in wine
- vacuum pump able to reach an internal pressure of 0,13 Pa
- phials for samples having 15 ml volume and a capillary annex tube with an interior diameter of about 0,015 mm
- Eppendorf pipette with plastic throw-away cone.

5. Experimental determinations

5.1. Manual method

Operational mode of the equilibration method

Introduction of the sample

- Take the Eppendorf pipette at the fixed volume of 1,5 ml, adapt a cone and pump the liquid to be analysed in order to insert it in a balloon flask. Then, place silicon grease around the neck of the balloon flask and attach the balloon flask to the valve while verifying that it is tightly shut,
- Repeat the operation for each balloon flask on the work ramp while introducing the laboratory's reference water into one of the balloons.

Degasing of the ramp

The two ramps are cooled down with liquid nitrogen, then the whole system is purged up to 0,1 mm Hg by opening the valves.

Then, shut the valves off and let it all heat up. The degasing cycle is repeated until there is no more pressure variation.

Equilibration of the water and the CO₂

Cool the work ramps to -70°C (Liquid nitrogen and alcohol mix) to freeze the water and put it all in a vacuum. After stabilization of the vacuum, isolate the ramp by actioning the valve and purge the CO₂ introduction system. Insert the gaseous CO₂ into the work ramp and, after having isolated it from the rest of the system, introduce the ramp in a thermostated bath at 25°C ($\pm 0,5^{\circ}\text{C}$) for 12 hours (one night). To optimize the necessary time for equilibration, it is advisable to prepare the samples at the end of the day and let the balance settle overnight.

Transfer of the CO₂ exchanged in the measuring cells

A sample holder which supports as many measuring cells as balloon flasks containing exchanged CO₂ is adapted on the empty line next to the work ramp. The empty cells are carefully purged and the exchanged gases contained in the ballons are transferred one after the other, into the measuring cells which have been cooled by liquid nitrogen. Then the measuring cells are allowed to heat up at room temperature.

5.2. Use of an automatic exchange apparatus

In order to carry out the equilibration, sample phials are filled with either 2 ml of wine or 2 ml of water (laboratory work reference) and cooled down to -18°C . The sample slides containing the frozen products are adapted to the equilibration system, and after having created a vacuum in the system, carbon dioxide is introduced at a pressure of 800 hPa.

The balance is reached at a temperature of $22 \pm 0,5^{\circ}\text{C}$ after a minimum period of five hours and with moderate agitation. Since the equilibration duration depends on the phial's geometry, the optimum duration should be determined first for the system used.

Carbon dioxide contained in the phials is then transferred to the introduction chamber of the mass spectrometer by a capillary tube and the measurement is carried out according to a specific protocol for each kind of equipment.

6. Calculation and expression of the results

The relative difference δ' of the ratio intensities of ions m/z 46 and 44 (I_{46}/I_{44}) between the sample and the reference is expressed in ‰ by means of the following equation:

$$\delta' \text{ sample} = \left[\frac{(I_{46}/I_{44}) \text{ sample}}{(I_{46}/I_{44}) \text{ reference}} - 1 \right] \times 1\,000$$

The ¹⁸O content of the sample compared to the reference V.SMOW on the V.SMOW/SLAP scale, is given by the relation:

$$\delta' ^{18}\text{O} = \left[\frac{\delta' \text{ sample} - \delta' \text{ SMOW}}{\delta' \text{ SMOW} - \delta' \text{ SLAP}} \right] \times 55,5$$

The value accepted for SLAP is equal to $-55,5\text{‰}$ compared to V.SMOW. The isotopic ratio of reference must be determined after each series of 10 measurements on unknown samples.

7. Fidelity

- the repeatability (r) is equal to $0,24\text{‰}$
- the reproductibility (R) is equal to $0,50\text{‰}$.

COMMISSION REGULATION (EC) No 823/97

of 6 May 1997

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2375/96⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 150/95⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 7 May 1997.

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

Done at Brussels, 6 May 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 6 May 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 25	052	90,5
	204	46,3
	212	108,7
	999	81,8
ex 0707 00 20	052	93,9
	999	93,9
0709 90 75	052	93,5
	999	93,5
0805 10 21, 0805 10 25, 0805 10 29	052	64,9
	204	40,8
	212	60,0
	400	54,1
	448	37,9
	600	59,2
	624	60,2
	625	36,7
	999	51,7
0805 30 20	388	61,1
	528	66,9
	600	60,7
	999	62,9
0808 10 61, 0808 10 63, 0808 10 69	060	50,6
	388	76,5
	400	88,9
	404	80,1
	508	80,0
	512	65,1
	528	66,0
	804	96,6
	999	75,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

DIRECTIVE 97/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 April 1997

on a common framework for general authorizations and individual licences in the field of telecommunications services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2), 66 and 100a thereof,

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

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾,

(1) Whereas the Council resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market ⁽⁴⁾, together with the resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures ⁽⁵⁾, as well as the European Parliament resolutions of 20 April 1993 ⁽⁶⁾, 7 April 1995 ⁽⁷⁾ and 19 May 1995 ⁽⁸⁾, have supported the process of complete liberalization of telecommunications services and infrastructures by 1 January 1998, with transition periods for certain Member States;

(2) Whereas the Commission communication of 25 January 1995 on the consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks has confirmed the need for rules at Community level, in order to ensure that general authorization and individual licensing regimes are based on the principle of proportionality and are open, non-discriminatory and transparent; whereas the Council resolution of 18 September 1995 on the implementation of the

future regulatory framework for telecommunications ⁽⁹⁾ recognizes as a key factor for this regulatory framework in the Union the establishment, in accordance with the principle of subsidiarity, of common principles for general authorizations and individual licensing regimes in the Member States, based on categories of balanced rights and obligations; whereas those principles should cover all authorizations which are required for the provision of any telecommunications services and for the establishment and/or operation of any infrastructure for the provision of telecommunications services;

(3) Whereas a common framework should be established for general authorizations and individual licences granted by Member States in the field of telecommunications services; whereas under Community law and in particular under Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services ⁽¹⁰⁾, market entry should be restricted on the basis only of objective, non-discriminatory, proportionate and transparent selection criteria relating to the availability of scarce resources or on the basis of the implementation by national regulatory authorities of objective, non-discriminatory and transparent award procedures; whereas Directive 90/388/EEC also sets out principles regarding, *inter alia*, fees, numbers and rights of way; whereas these rules should be supplemented and enlarged by this Directive to determine this common framework;

(4) Whereas conditions attached to authorizations are necessary in order to attain public interest objectives to the benefit of telecommunications users; whereas under Articles 52 and 59 of the Treaty, the regulatory regime in the field of telecommunications should be compatible and consistent with the principles of freedom of establishment and freedom to provide services and should take into account the need to facilitate the introduction of new services as well as the widespread application of technological improvements; whereas, therefore, general authorization and individual licensing systems should provide for the lightest possible regulation compatible with the

⁽¹⁾ OJ No C 90, 27. 3. 1996, p. 5 and

OJ No C 291, 4. 10. 1996, p. 12.

⁽²⁾ OJ No C 204, 15. 7. 1996, p. 17.

⁽³⁾ Opinion of the European Parliament of 22 May 1996 (OJ No C 166, 10. 6. 1996, p. 78), Council common position of 9 December 1996 (OJ No C 41, 10. 2. 1997, p. 48) and Decision of the European Parliament of 20 February 1997 (OJ No C 88, 17. 3. 1997). Council Decision of 6 March 1997.

⁽⁴⁾ OJ No C 213, 6. 8. 1993, p. 1.

⁽⁵⁾ OJ No C 379, 31. 12. 1994, p. 4.

⁽⁶⁾ OJ No C 150, 31. 5. 1993, p. 39.

⁽⁷⁾ OJ No C 109, 1. 5. 1995, p. 310.

⁽⁸⁾ OJ No C 151, 19. 6. 1995, p. 479.

⁽⁹⁾ OJ No C 258, 3. 10. 1995, p. 1.

⁽¹⁰⁾ OJ No L 192, 24. 7. 1990, p. 10, as last amended by Directive 96/19/EC (OJ No L 74, 22. 3. 1996, p. 13).

fulfilment of applicable requirements; whereas Member States should not be required to introduce or maintain authorization schemes, in particular where the provision of telecommunications services or the establishment and/or operation of telecommunications networks is not subject to an authorization scheme at the date of entry into force of this Directive;

- (5) Whereas this Directive therefore will make a significant contribution to the entry of new operators into the market, as part of the development of the Information Society;
- (6) Whereas Member States may define and grant different categories of authorization; whereas this should not prevent undertakings from determining the type of telecommunications services or networks which they wish to provide, subject to compliance with relevant regulatory obligations;
- (7) Whereas in order to facilitate the Community-wide provision of telecommunications services, priority should be given to market access schemes not requiring authorizations or relying on general authorizations, to be supplemented where necessary by rights and obligations requiring individual licences for those elements which cannot be suitably dealt with by general authorizations;
- (8) Whereas general authorizations permit the provision of a service and the establishment and/or operation of a network without requiring an explicit decision by the national regulatory authority; whereas such general authorizations may take the form of either a set of specific conditions defined in advance in a general manner, such as a class licence, or a general legislation which may allow the provision of the service and the establishment and/or operation of the network concerned;
- (9) Whereas Member States may attach conditions to authorizations in order to ensure compliance with essential requirements; whereas Member States may, in addition, attach other conditions in accordance with the Annex to this Directive;
- (10) Whereas any conditions attached to authorizations should be objectively justified in relation to the service concerned and should be non-discriminatory, proportionate and transparent; whereas authorizations may be the means for applying conditions required by Community law, in particular in the area of open network provision;
- (11) Whereas the harmonization of the procedures associated with the granting of authorizations and the conditions attached to such authorizations should significantly facilitate the free provision of telecommunications services in the Community;
- (12) Whereas any fees or charges imposed on undertakings as part of authorization procedures must be based on objective, non-discriminatory and transparent criteria;
- (13) Whereas the introduction of individual licensing systems should be restricted to limited, pre-defined situations; whereas Member States may limit the number of individual licences for any category of telecommunications services only to the extent required to ensure the efficient use of radio frequencies or for the time necessary to make available sufficient numbers in accordance with Community law;
- (14) Whereas Member States should be allowed to impose specific conditions on undertakings providing public telecommunications networks and telecommunications services by virtue of their market power; whereas the market power of an undertaking is defined by the provisions of the Directive of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (hereinafter referred to as the 'Interconnection Directive');
- (15) Whereas telecommunications services have a role to play in strengthening social and economic cohesion, *inter alia* by furthering the achievement of universal service, in particular in remote, peripheral, landlocked and rural areas and islands; whereas Member States should therefore be allowed to impose universal service obligations by means of individual licences which require the licensee to provide universal service; whereas obligations to contribute to the financing of universal service are not by themselves a justification for imposing individual licences;
- (16) Whereas in order to facilitate the granting of individual licences to undertakings applying for such licences in more than one Member State and in order to facilitate notification procedures in the case of general authorizations, a 'one-stop-shopping procedure' should be established;
- (17) Whereas national regulatory authorities should, where possible, endeavour under the one-stop-shopping procedure to shorten the time limits for taking a decision on the grant of individual licences for certain categories of services in response to commercial needs;

- (18) Whereas the 'one-stop-shopping procedure' should be implemented without prejudice to national provisions relating to the language used in the relevant procedures;
- (19) Whereas a degree of harmonization of the procedures is already provided for in this Directive; whereas further harmonization may be desirable in order to achieve a more integrated telecommunications market; whereas this possibility should be assessed in the report to be drawn up by the Commission;
- (20) Whereas any authorization systems should take account of the establishment of trans-European telecommunications networks as envisaged in Title XII of the Treaty; whereas to this end Member States should ensure that their national regulatory authorities shall coordinate where possible their authorization procedures at the request of an undertaking intending to provide a telecommunications service or to establish and/or operate a telecommunications network in more than one Member State;
- (21) Whereas Community undertakings should have effective and comparable access to third countries' markets and enjoy treatment in third countries similar to that offered in the Community to undertakings owned wholly, controlled through majority ownership or effectively controlled by nationals of the third countries concerned;
- (22) Whereas a committee should be established to assist the Commission;
- (23) Whereas, on the one hand, it is necessary, due to the particular commercial sensitivity of information which may be obtained by national regulatory authorities in the course of issuing, managing, controlling and enforcing licences, to establish common principles applicable to these national regulatory authorities in the field of confidentiality; whereas, on the other hand, in this field the members of the institutions of the Community, the members of committees, and the officials and other servants of the Community are required by Community law and in particular by Article 214 of the Treaty not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components;
- (24) Whereas the functioning of this Directive should be reviewed in due course, in the light of the development of the telecommunications sector and of trans-European networks, as well as in the light of experience gained from the harmonization and one-stop-shopping procedures set out in this Directive;
- (25) Whereas on the basis of the full implementation of a competitive framework, in order to achieve the essential goal of ensuring the development of the internal market in the field of telecommunications and specifically the free provision of telecommunications services and networks throughout the Community, the adoption of this Directive will substantially contribute to the attainment of this goal; whereas Member States should implement this common framework, in particular through their national regulatory authorities;
- (26) Whereas this Directive applies to both existing and future authorizations; whereas certain licences have been granted for periods which go beyond 1 January 1999; whereas clauses in such authorizations contrary to Community law, in particular those conferring on the licensees special or exclusive rights, are, according to the case-law of the Court of Justice, inoperative from the date indicated in the relevant Community measures; whereas regarding other rights which do not affect the interests of other undertakings under Community law, Member States could extend their validity in order to avoid claims for compensation;
- (27) Whereas in principle obligations in authorizations existing at the date of entry into force of this Directive which have not been brought into line with the provisions of this Directive by 1 January 1999 should be inoperative; whereas on request Member States may be granted a deferment of that date by the Commission,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE, DEFINITIONS AND PRINCIPLES

Article 1

Scope

1. This Directive concerns the procedures associated with the granting of authorizations and the conditions attached to such authorizations, for the purpose of providing telecommunications services, including authorizations for the establishment and/or operation of telecommunications networks required for the provision of such services.

2. This Directive is without prejudice to the specific rules adopted by the Member States in accordance with Community law, governing the distribution of audiovisual programmes intended for the general public, and the content of such programmes. It is also without prejudice to measures taken by Member States concerning defence and to measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, especially in relation to public morality, public security, including the investigation of criminal activity, and public policy.

Article 2

Definitions

1. For the purposes of this Directive,

(a) 'authorizations' means any permission setting out rights and obligations specific to the telecommunications sector and allowing undertakings to provide telecommunications services and, where applicable, to establish and/or operate telecommunications networks for the provision of such services, in the form of a 'general authorization' or 'individual licence', as defined below:

— 'general authorization' means an authorization, regardless of whether it is regulated by a 'class licence' or under general law and whether such regulation requires registration, which does not require the undertaking concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorization,

— 'individual licence' means an authorization which is granted by a national regulatory authority and which gives an undertaking specific rights or which subjects that undertaking's operations to specific obligations supplementing the general authorization where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

(b) 'national regulatory authority' means the body or bodies, legally distinct and functionally independent of the telecommunications organizations, charged by a Member State with the elaboration of, and supervision of compliance with, authorizations;

(c) 'one-stop-shopping procedure' means a procedural arrangement facilitating the obtaining of individual licences from, or, in the case of general authorizations and if required, the notification to more than one national regulatory authority, in a coordinated procedure and at a single location;

(d) 'essential requirements' means the non-economic reasons in the public interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. Those reasons shall be the security of network operations, the maintenance of network integrity and, where justified, the interoperability of services, data protection, the protection of the environment and town and country planning objectives, as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial technical systems. Data protection may include the protection of personal data, the confidentiality of information transmitted or stored, and the protection of privacy.

2. Other definitions given in Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision⁽¹⁾ and the Interconnection Directive shall apply, where relevant, to this Directive.

Article 3

Principles governing authorizations

1. Where Member States make the provision of a telecommunications service subject to an authorization, the grant of such authorization and the conditions to be attached thereto shall comply with the principles set out in paragraphs 2, 3 and 4.

2. Authorizations may contain only the conditions listed in the Annex. Moreover, such conditions shall be objectively justified in relation to the service concerned, non-discriminatory, proportionate and transparent.

3. Member States shall ensure that telecommunications services and/or telecommunications networks can be provided either without authorization or on the basis of general authorizations, to be supplemented where necessary by rights and obligations requiring an individual assessment of applications and giving rise to one or more individual licences. Member States may issue an individual licence only where the beneficiary is given access to scarce physical and other resources or is subject to particular obligations or enjoys particular rights, in accordance with the provisions of Section III.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1.

4. Member States shall, in the formulation and application of their authorization systems, facilitate the provision of telecommunications services between Member States.

SECTION II

GENERAL AUTHORIZATIONS

Article 4

Conditions attached to general authorizations

1. Where Member States subject the provision of telecommunications services to general authorizations, the conditions which, where justified, may be attached to such authorizations are set out in points 2 and 3 of the Annex. Such authorizations shall entail the least onerous system possible consistent with enforcing the relevant essential requirements and relevant other public interest requirements set out in points 2 and 3 of the Annex.

2. Member States shall ensure that the conditions attached to general authorizations are published in an appropriate manner so as to provide easy access to that information for interested parties. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities*.

3. Member States may amend the conditions attached to a general authorization in objectively justified cases and in a proportionate manner. When doing so, Member States shall give appropriate notice of their intention to do so and enable interested parties to express their views on the proposed amendments.

Article 5

Procedures for general authorizations

1. Without prejudice to the provisions of Section III, Member States shall not prevent an undertaking which complies with the applicable conditions attached to a general authorization in accordance with Article 4 from providing the intended telecommunications service and/or telecommunications networks.

2. Member States may require that, before providing the telecommunications service and/or telecommunications networks, the undertaking enjoying the general authorization shall notify the national regulatory authority of its intention to do so, and shall communicate the information relating to the service concerned which is necessary for the purpose of ensuring compliance with

the applicable conditions attached in accordance with Article 4. The undertaking may be required to wait for up to four weeks after formal receipt of all the information required as published in accordance with paragraph 4, before starting to provide the services covered by the general authorization.

3. Where the undertaking enjoying a general authorization does not comply with a condition attached to a general authorization in accordance with Article 4, the national regulatory authority may inform the undertaking concerned that it is not entitled to avail itself of the general authorization and/or impose on that undertaking, in a proportionate manner, specific measures aimed at ensuring compliance. The national regulatory authority shall, at the same time, give the undertaking concerned a reasonable opportunity to state its views on the application of the conditions and to remedy any breaches within one month starting from the intervention of the national regulatory authority. If the undertaking concerned remedies the breaches, the national regulatory authority shall, within two months of its initial intervention, annul or modify its decision as appropriate and state the reasons for its decision. If the undertaking concerned does not remedy the breaches, the national regulatory authority shall, within two months of its initial intervention, confirm its decision and state the reasons for its decision. The decision shall be communicated within one week of its adoption to the undertaking concerned. Member States shall lay down a procedure for appealing against such a decision to an institution independent of the national regulatory authority.

4. Member States shall ensure that information concerning the procedures relating to general authorizations is published in an appropriate manner, so as to provide easy access to that information. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities*.

Article 6

Fees and charges for general authorizations procedures

Without prejudice to financial contributions to the provision of universal service in accordance with the Annex, Member States shall ensure that any fees imposed on undertakings as part of the authorization procedures seek only to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorization scheme. Such fees shall be published in an appropriate and sufficiently detailed manner, so as to be readily accessible.

SECTION III

INDIVIDUAL LICENCES

Article 7

Scope

1. Member States may issue individual licences for the following purposes only:

- (a) to allow the licensee access to radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services and/or public telecommunications networks, including obligations which require the licensee to provide universal service and other obligations under ONP legislation;
- (d) to impose specific obligations, in accordance with Community competition rules, where the licensee has significant market power, as defined in Article 4 (3) of the Interconnection Directive in relation to the provision of public telecommunications networks and publicly available telecommunications services.

2. Notwithstanding paragraph 1, the provision of publicly available voice telephony services, the establishment and provision of public telecommunications networks as well as other networks involving the use of radio frequencies may be subject to individual licences.

Article 8

Conditions attached to individual licences

1. The conditions which, in addition to those set out for general authorizations, may, where justified, be attached to individual licences are set out in points 2 and 4 of the Annex.

Such conditions shall relate only to the situations justifying the grant of such a licence, as defined in Article 7.

2. Member States may incorporate the terms of the applicable general authorizations in the individual licence by attaching to the individual licence conditions set out in the Annex.

The rights given under and the conditions attached to any general authorizations must not be restricted or complemented by the granting of an individual licence, except in

objectively justified cases and in a proportionate manner, in particular to reflect obligations relating to the provision of universal service and/or the control of significant market power, or obligations corresponding to offers in the course of a comparative bidding process.

3. Without prejudice to Article 20, Member States shall ensure that information concerning the conditions which will be attached to any individual licence is published in an appropriate manner, so as to provide easy access to that information. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities*.

4. Member States may amend the conditions attached to an individual licence in objectively justified cases and in a proportionate manner. When doing so, Member States shall give appropriate notice of their intention to do so and enable interested parties to express their views on the proposed amendments.

Article 9

Procedures for the granting of individual licences

1. Where a Member State grants individual licences, it shall ensure that information concerning the procedures for individual licences is published in an appropriate manner, so as to be readily accessible.

Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities*.

2. Where a Member State intends to grant individual licences:

— it shall grant individual licences through open, non-discriminatory and transparent procedures and, to this end, shall subject all applicants to the same procedures, unless there is an objective reason for differentiation, and

— it shall set reasonable time limits; *inter alia*, it shall inform the applicant of its decision as soon as possible but not more than six weeks after receiving the application. In the provisions adopted to implement this Directive, Member States may extend this time limit to up to four months in objectively justified cases which have been defined specifically in those provisions. In the case of comparative bidding procedures in particular, Member States may further extend this time limit by up to four months. These time limits shall be without prejudice to any applicable international agreements relating to international frequency and satellite coordination.

3. Without prejudice to Article 10 (1), any undertaking which fulfils the conditions decided and published by Member States in accordance with the relevant provisions of this Directive shall be entitled to receive an individual licence. However, where an undertaking applying for an individual licence does not provide the information which is reasonably required in order to demonstrate that it fulfils the conditions imposed in accordance with the relevant provisions of this Directive, the national regulatory authority may refuse to grant the individual licence.

4. Where the beneficiary of an individual licence does not comply with a condition attached to the licence in accordance with the relevant provisions of this Directive, the national regulatory authority may withdraw, amend or suspend the individual licence or impose, in a proportionate manner, specific measures aimed at ensuring compliance. The national regulatory authority shall, at the same time, give the undertaking concerned a reasonable opportunity to state its view on the application of the conditions and, except in the case of repeated breaches by the said undertaking, where the national regulatory authority can immediately take the appropriate measures, to remedy any breaches, within one month starting from the intervention of the national regulatory authority. If the undertaking concerned remedies the breaches, the national regulatory authority shall, within two months of its initial intervention, annul or modify its decision as appropriate and state the reasons for its decision. If the undertaking concerned does not remedy the breaches, the national regulatory authority shall, within two months of its initial intervention, confirm its decision and state the reasons for its decision. The decision shall be communicated within one week of its adoption to the undertaking concerned. Member States shall lay down a procedure for appealing against such a decision to an institution independent of the national regulatory authority.

5. In the event of harmful interference between a telecommunications network using radio frequencies and other technical systems the national regulatory authority may take immediate action to remedy that problem. In such a case the undertaking concerned shall thereafter be given a reasonable opportunity to state its view and to propose any remedies to the harmful interference.

6. Member States refusing to grant or withdrawing, amending or suspending an individual licence shall inform the undertaking concerned of the reasons therefor. Member States shall lay down an appropriate procedure for appealing against such refusals, withdrawals, amendments or suspensions to an institution independent of the national regulatory authority.

Article 10

Limitation on the number of individual licences

1. Member States may limit the number of individual licences for any category of telecommunications services and for the establishment and/or operation of telecommunications infrastructure, only to the extent required to ensure the efficient use of radio frequencies or for the time necessary to make available sufficient numbers in accordance with Community law.

2. Where a Member State intends to limit the number of individual licences granted in accordance with paragraph 1, it shall:

- give due weight to the need to maximize benefits for users and to facilitate the development of competition,
- enable all interested parties to express their views on any limitation,
- publish its decision to limit the number of individual licences, stating the reasons therefor,
- review the limitation at reasonable intervals,
- invite applications for licences.

3. Member States shall grant such individual licences on the basis of selection criteria which must be objective, non-discriminatory, detailed, transparent and proportionate. Any such selection must give due weight to the need to facilitate the development of competition and to maximize benefits for users.

Member States shall ensure that information on such criteria is published in advance in an appropriate manner, so as to be readily accessible. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned.

4. Where, on its own initiative or following a request by an undertaking, a Member State finds, either at the time of entry into force of this Directive or thereafter, that the number of individual licences can be increased, it shall publish this fact and invite applications for additional licences.

Article 11

Fees and charges for individual licences

1. Member States shall ensure that any fees imposed on undertakings as part of authorization procedures seek only to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable

individual licences. The fees for an individual licence shall be proportionate to the work involved and be published in an appropriate and sufficiently detailed manner, so as to be readily accessible.

2. Notwithstanding paragraph 1, Member States may, where scarce resources are to be used, allow their national regulatory authorities to impose charges which reflect the need to ensure the optimal use of these resources. Those charges shall be non-discriminatory and take into particular account the need to foster the development of innovative services and competition.

SECTION IV

PROVISION OF TELECOMMUNICATIONS SERVICES THROUGHOUT THE COMMUNITY

Article 12

Harmonization

1. Wherever necessary, the conditions attached to general authorizations and the procedures for general authorization shall be harmonized.

The harmonization of these conditions and procedures shall aim to develop the least onerous system possible consistent with ensuring compliance with the provisions of this Directive, in particular Articles 3, 4 and 5 thereof and with the relevant essential requirements and other public interest requirements set out in points 1, 2 and 3 of the Annex.

Harmonization shall furthermore aim to establish balanced sets of rights and obligations for the undertakings enjoying authorizations.

2. The Commission shall, in accordance with the procedure laid down in Article 16, give mandates to the European Conference of Postal and Telecommunications Administrations (CEPT)/the European Committee for Telecommunications Regulatory Affairs (Ectra), CEPT/European Radiocommunications Committee (ERC) or other relevant harmonization bodies. These mandates shall define the tasks to be performed and the categories of general authorizations to be harmonized and shall lay down a timetable for the preparation of harmonized conditions and procedures.

3. In the light of the work performed on the basis of paragraph 2 and without prejudice to Article 7, a decision stating that a harmonized general authorization is applicable shall be adopted in accordance with the procedure laid down in Article 17.

Article 13

One-stop-shopping procedure

1. Where appropriate and in conjunction with CEPT/Ectra and CEPT/ERC, the Commission shall take the steps necessary for the operation of a one-stop-shopping procedure for the grant of individual licences and, in the case of general authorizations, for notification procedures, including suitable arrangements for its administration, in accordance with the procedure laid down in Article 17. Information on that one-stop-shopping procedure shall be published in the *Official Journal of the European Communities*.

2. The one-stop-shopping procedure shall comply with the following conditions:

- (a) it shall be open to all undertakings wishing to provide telecommunications services in the Community;
- (b) the submission of applications and notifications shall be possible and one or more bodies to which the applications and the notifications may be submitted shall be designated;
- (c) in the case of individual licences, applications shall be passed to the national regulatory authorities concerned, within seven working days of formal receipt, by the bodies to which they were submitted.

In the case of general authorizations, notifications shall be passed to the national regulatory authorities concerned, within two working days of formal receipt, by the bodies to which they were submitted;

- (d) in the case of individual licences, the national regulatory authorities concerned shall decide on the grant of such a licence within the time limits referred to in Article 9 (2); they shall inform both the applicant and the bodies to which the relevant application was submitted of that decision within one week of taking their decision.

In the case of general authorizations, the national regulatory authorities concerned shall comply with the time limit referred to in Article 5 (2);

- (e) Article 9 and Article 5 shall apply respectively to applications for individual licences and to notifications made by means of the one-stop-shopping procedure;
- (f) the bodies to which the applications and notifications may be submitted shall report annually to the Commission on the operation of the one-stop-shopping procedure, including information on refusals of applications and objections raised to notifications;
- (g) the bodies involved in the one-stop-shopping procedure shall undertake to observe the level of confidentiality prescribed in Article 20.

SECTION V

Article 17

LICENSING COMMITTEE

Article 14

Establishment of the Licensing Committee

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission. The Committee shall be called the Licensing Committee (hereinafter referred to as 'the Committee').

Article 15

Exchange of information

The Commission shall, where necessary, inform the Committee on the outcome of regular consultations with the representatives of telecommunications organizations, users, consumers, manufacturers, service providers and trade unions.

In addition, the Committee shall, taking account of the Community's telecommunications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding the authorization of telecommunications services.

Article 16

Committee procedure No I (*)

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Committee Procedure No II(b) (*)

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

The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures on which it has decided for a period of three months from the date of communication,
- the Council, acting by qualified majority, may take a different decision within the time limit referred to in the first indent.

SECTION VI

GENERAL AND FINAL PROVISIONS

Article 18

Third countries

1. Member States may inform the Commission of any general difficulties encountered, *de jure* or *de facto*, by Community organizations in obtaining authorizations and in operating under authorizations in third countries, which have been brought to their attention.

2. Whenever the Commission is informed of such difficulties, it may, if necessary, submit proposals to the Council for an appropriate mandate for negotiation of comparable rights for Community organizations in these third countries. The Council shall decide by qualified majority.

3. Measures taken pursuant to paragraph 2 shall be without prejudice to the obligations of the Community and of the Member States under relevant international agreements.

(*) Procedures set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ No L 197, 18. 7. 1987, p. 33).

*Article 19***New services**

Without prejudice to Sections II and III, where the provision of a telecommunications service is not yet covered by a general authorization and where such a service and/or network cannot be provided without authorization, Member States shall, not later than six weeks after they have received an application, adopt provisional conditions allowing the undertaking to start providing the service or reject the application and inform the undertaking concerned of the reasons therefor. As soon as possible thereafter, Member States shall adopt definitive conditions or consent to the provision of the service concerned without authorization or provide reasons for any refusal to do so. Member States shall lay down an appropriate procedure for appealing to an institution independent of the national regulatory authority against refusals to adopt provisional or definitive conditions, rejections of applications or refusals to consent to the provision of the service concerned without authorization.

*Article 20***Confidentiality**

1. National regulatory authorities shall not disclose information covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of national regulatory authorities to undertake disclosure where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of undertakings in the protection of their business secrets.

3. Paragraph 1 shall not preclude publication of information on licensing conditions which does not include information of a confidential nature.

*Article 21***Notification**

1. In addition to the information already required under Directive 90/388/EEC, Member States shall supply the Commission with the following information:

— the names and addresses of the national authorities and bodies competent to issue national authorizations,

— information on national authorization regimes.

2. Member States shall notify any changes in respect of the information supplied under paragraph 1, within one month of their entry into force.

*Article 22***Authorizations existing at the date of entry into force of this Directive**

1. Member States shall make all necessary efforts to bring authorizations in force at the date of entry of this Directive into line with its provisions before 1 January 1999.

2. Where application of the provisions of this Directive results in amendments to the terms of authorizations already in existence, Member States may extend the validity of terms, other than those giving special or exclusive rights which have been or are to be terminated under Community law, provided that this can be done without affecting the rights of other undertakings under Community law, including this Directive. In such cases, Member States shall notify the Commission of the action taken to that end and shall state the reasons therefor.

3. Without prejudice to the provisions of paragraph 2, obligations in authorizations existing at the date of entry into force of this Directive which have not been brought into line by 1 January 1999 with the provisions of this Directive shall be inoperative.

Where justified, Member States may, upon request, be granted a deferment of that date by the Commission.

*Article 23***Review procedures**

Before 1 January 2000, the Commission shall prepare a report to be submitted to the European Parliament and Council and to be accompanied, where appropriate, by new legislative proposals. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to the harmonization of the procedures and the scope of individual licences, to other aspects of harmonization and to trans-European services and networks. The report shall also include proposals with a view to consolidating the various committees existing in Community telecommunications legislation. Any amendments necessary to adapt the content of the Annex to new technological developments and appropriate practical procedures, together with Article 7 (2), shall also be considered in this report.

*Article 24***Deferment**

Deferment of the obligations under Articles 3 (3), 7, 9, 10 (1), 12, 13, 22 shall be granted to those Member States identified in the Council's resolutions of 22 July 1993 and 22 December 1994 which benefit from an additional transition period for the liberalization of telecommunications services for as long as and to the extent that they avail themselves of such transition periods. Member States shall inform the Commission of their intention to use them.

*Article 25***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive and publish the conditions and procedures attached to authorizations as soon as possible and, in any event, not later than 31 December 1997. They shall immediately inform the Commission thereof.

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

publication. The methods of making such a reference shall be laid down by the Member States.

*Article 26***Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

*Article 27***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 10 April 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

A. VAN DOK VAN
WEELE

ANNEX

CONDITIONS WHICH MAY BE ATTACHED TO AUTHORIZATIONS

1. Any conditions which are attached to authorizations must be consistent with the competition rules of the Treaty.
2. Conditions which may be attached to all authorizations, where justified and subject to the principle of proportionality:
 - 2.1. conditions intended to ensure compliance with relevant essential requirements;
 - 2.2. conditions linked to the provision of information reasonably required for the verification of compliance with applicable conditions and for statistical purposes;
 - 2.3. conditions intended to prevent anti-competitive behaviour in telecommunications markets, including measures to ensure that tariffs are non-discriminatory and do not distort competition;
 - 2.4. conditions relating to the effective and efficient use of the numbering capacity.
3. Specific conditions which may be attached to general authorizations for the provision of publicly available telecommunications services and of public telecommunications networks that are required for the provision of such services, where justified and subject to the principle of proportionality:
 - 3.1. conditions relating to the protection of users and subscribers in relation particularly to:
 - the prior approval by the national regulatory authority of the standard subscriber contract,
 - the provision of detailed and accurate billing,
 - the provision of a procedure for the settlement of disputes,
 - publication and adequate notice of any change in access conditions, including tariffs, quality and the availability of services;
 - 3.2. financial contributions to the provision of universal service, in accordance with Community law;
 - 3.3. communication of customer database information necessary for the provision of universal directory information;
 - 3.4. provision of emergency services;
 - 3.5. special arrangements for disabled people;
 - 3.6. conditions relating to the interconnection of networks and the interoperability of services, in accordance with the Interconnection Directive and obligations under Community law.
4. Specific conditions which may be attached to individual licenses, where justified and subject to the principle of proportionality:
 - 4.1. specific conditions linked to the allocation of numbering rights (compliance with national numbering schemes);
 - 4.2. specific conditions linked to the effective use and efficient management of radio frequencies;
 - 4.3. specific environmental and specific town and country planning requirements, including conditions linked to the granting of access to public or private land and conditions linked to collocation and facility sharing;
 - 4.4. maximum duration, which shall not be unreasonably short, in particular in order to ensure the efficient use of radio frequencies or numbers or to grant access to public or private land, without prejudice to other provisions concerning the withdrawal or the suspension of licences;
 - 4.5. provision of universal service obligations in accordance with the Interconnection Directive and Directive 95/62/EC of the European Parliament and of the Council of 13 December 1995 on the application of open network provision (ONP) to voice telephony⁽¹⁾;
 - 4.6. conditions applied to operators having significant market power, as notified by Member States under the Interconnection Directive, intended to guarantee interconnection or the control of significant market power;
 - 4.7. conditions concerning ownership which comply with Community law and the Community's commitments *vis-à-vis* third countries;
 - 4.8. requirements relating to the quality, availability and permanence of a service or network, including the financial, managerial and technical competence of the applicant and conditions setting a minimum period of operation and including, where appropriate and in accordance with Community law, the

⁽¹⁾ OJ No L 321, 30. 12. 1995, p. 6.

mandatory provision of publicly available telecommunications services and public telecommunications networks;

- 4.9. specific conditions relating to the provision of leased lines in accordance with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽¹⁾.

This list of conditions shall be without prejudice to:

- any other legal conditions which are not specific to the telecommunications sector,
 - measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.
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⁽¹⁾ OJ No L 165, 19. 6. 1992, p. 27. Directive as amended by Commission Decision 94/439/EC (OJ No L 181, 15. 7. 1994, p. 40).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 April 1997

terminating the anti-dumping proceeding concerning imports of ball bearings with a greatest external diameter not exceeding 30 mm originating in Japan

(97/287/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as amended by Council Regulation (EC) No 2331/96⁽²⁾, and in particular Article 9 and Article 11 (2), (3), and (7) thereof,

Following consultations within the Advisory Committee,

Whereas:

Council amending the anti-dumping duty in force by Regulation (EEC) No 2685/90⁽³⁾.

- (2) On 1 October 1994, the Federation of European Bearing Manufacturers' Associations (Febma) lodged on behalf on Community producers allegedly representing a major proportion of the total Community production of SBBs a request for an interim review of the anti-dumping measures imposed by Regulation (EEC) No 2685/90.
- (3) The request asserted that the anti-dumping measures in force were not or were no longer sufficient to counteract the dumping which was causing injury since both the dumping and the injury resulting therefrom were alleged to have increased.
- (4) Considering that there was sufficient evidence to warrant the initiation of an interim review under Article 11 (3) of Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community⁽⁴⁾, the Commission published on 23 March 1995⁽⁵⁾ a notice of initiation of an interim review of the anti-dumping measures concerning imports of SBBs originating in Japan.
- (5) The Commission officially advised the Community producers, the importers and the Japanese producers known to be concerned, as well as the representatives of Japan, of the opening of the investigation and gave the parties concerned the opportunity to make known their views in writing and to request a hearing.

A. PROCEDURE

- (1) In July 1984, the Council, by Regulation (EEC) No 2089/84⁽⁶⁾, imposed a definitive anti-dumping duty on imports of ball bearings with a greatest external diameter not exceeding 30 mm (hereinafter referred to as 'SBBs') originating in Japan and Singapore. By notice of 18 June 1988, the Commission initiated a review of the measures in force with regard to imports from Japan⁽⁴⁾ which led to the

⁽¹⁾ OJ No L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ No L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ No L 193, 21. 7. 1984, p. 1.

⁽⁴⁾ OJ No C 159, 18. 6. 1988, p. 2.

⁽⁵⁾ OJ No L 256, 20. 9. 1990, p. 1.

⁽⁶⁾ OJ No L 349, 31. 12. 1994, p. 1, replaced by Regulation (EC) No 384/96.

⁽⁷⁾ OJ No C 71, 23. 3. 1995, p. 4.

- (6) The Commission sought and verified all information it deemed to be necessary for the purpose of its determination.
- (7) The investigation period applied in the present proceeding was from 1 January 1994 to 31 December 1994. For the analysis of the trends of the factors analysed for the purposes of establishing whether the Community industry had suffered injury caused by the imports in question, the period from 1 January 1991 to 31 December 1994 was used.
- (8) For the analysis of injury and in order to ensure comparability of the data collected for the period mentioned in Recital 7, data pertaining to the Community of Fifteen was applied even for the period prior to the enlargement of the Community to include Sweden, Finland and Austria.
- (9) The investigation exceeded the normal period because of the complexity of the assessment of the injury and causality aspects of the proceeding, which were mainly caused by the high number and degree of diversity of the types within the product investigated.
- (10) The Community industry, on behalf of which the request for an interim review was lodged, consists of the following producers:
- SKF France SA (France),
 - SKF Industrie SpA (Italy),
 - ROL Rolamentos Portugueses SARL (Portugal),
 - GRW Gebr. Reinfurt GmbH & Co. KG (Germany), and
 - INA Kugellager Schaeffler KG (Germany).
- (11) During the investigation period, the following companies exported SBBs from Japan to the Community and cooperated with the Commission in the review investigation:
- Sapporo Precision Ltd,
 - NTN Corporation Ltd,
 - Nankai Seiko Co., Ltd,
 - Nachi-Fujikoshi Corp.,
 - Koyo Seiko Co., Ltd,
 - NSK Ltd,
 - Inoue Jikuuke Kogyo Ltd,
 - Izumoto Seiko Co., Ltd,
 - Tottori Yamakei Bearing Seisakusho Ltd,
 - Nakai Bearings Co., Ltd,
 - Fujino Iron Works Ltd, and
 - NSK Micro Precision Ltd.
- (12) The following unrelated importer co-operated with the Commission in the present investigation: ISO Import Standard Office (France).

- (13) In addition, numerous end-users submitted their comments which were taken into account to the extent that they were substantiated by supporting evidence.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (14) The product covered by the proceeding is single-row deep-groove radial ball bearings with a greatest external diameter not exceeding 30 mm falling within CN code 8482 10 10. The principal application for SBB is as intermediary products used in the assembly of consumer and capital goods or for replacement purposes.
- (15) In Japan and in the Community, SBBs are mainly sold to two categories of customers, namely industrial users and distributors.
- (16) It was found that SBBs produced in Japan, sold domestically and exported to the Community and SBBs produced by the Community producers are alike in their physical characteristics and uses. They were therefore considered a like product in accordance with Article 1 (4) of Regulation (EC) No 384/96.

C. DEFINITION OF THE COMMUNITY INDUSTRY

- (17) As for the purposes of Regulation (EEC) No 2685/90 (see recital 32), the Japanese owned companies producing in the Community are not considered part of the Community industry within the meaning of Article 4 (1) (a) of Regulation (EC) No 384/96. This approach was considered justified as the companies are related to exporters from Japan of the product under investigation. The companies sell all their production to sales subsidiaries located in the Community which are also related to exporters from Japan and which are also involved in selling imported SBBs originating in Japan. It is considered that in those circumstances the producing companies located in the Community might therefore benefit from any unfair business practices. In such circumstances, the producers were considered to be behaving not as normal Community producers, but rather as a complementary source of supply for exporters accused of practising dumping.
- (18) One of the Community producers mentioned above in recital 10 did not submit a response to the Commission's questionnaire within the deadline set by the Commission. In view of its non-cooperation, the company in question was excluded from the Community industry as determined by the complaint and thus from the Commission's injury

determination in connection with the present investigation. For the remainder of this analysis, the term Community industry refers to the cooperating Community producers which supported the complaint, whose collective output of SBBs constitutes a major proportion of total Community production within the meaning of Article 4 (1) of Regulation (EC) No 384/96.

D. INJURY

Consumption

- (19) Between 1991 and 1994, the consumption of SBBs in the Community of Fifteen increased from around 390 million pieces to around 536 million pieces, i.e. by around 38 %. The expansion of the market is the result of the influence of the general business cycle on the SBBs market during which the size of the SBBs market varies according to the general level of activity on the part of the users of SBBs.

Volume and market share of imports

- (20) Between 1991 and the investigation period, imports of SBBs originating in Japan decreased from 808 tonnes to 618 tonnes, i.e. by 23,5 %. The sales in the Community of SBBs originating in Japan, measured in pieces, decreased from 19,6 million pieces to 18,7 million pieces, i.e. by 4,5 % in the same period.
- (21) In line with this decrease and contrary to the allegations by the Community industry, the market share of the imports under consideration has decreased steadily since 1991. Their market share has decreased from 5,1 % in 1991 to 3,5 % in 1994.

Prices of imports

- (22) The prices charged for certain types by a representative selection of the Japanese producers that had submitted data on sales prices were compared with the prices charged for identical types by the Community producers, by category of customer in four Member States (Germany, the United Kingdom, France and Italy). Given their overall size and in line with past investigations concerning ball or roller bearings, these markets were considered representative for the situation in the entire Community. Based on this analysis, it was found that there is a certain amount of undercutting by Japanese imports as was determined in Regulation (EEC) No 2685/90 (see recitals 35 and 36). However, it was not considered appropriate to draw any conclusions from this analysis due to the fact that the Japanese companies involved sell too small a number of types which are identical or directly comparable to those manufactured by the Com-

munity producers in sufficient quantities for a comparison with Community producers to be meaningful. In those circumstances, as in Regulation (EEC) No 2685/90, no individual margins for price undercutting have been established for each company involved.

The situation of the Community industry

Sales and market shares

- (23) The sales of SBBs manufactured in the Community by the Community industry increased from 81,6 million pieces to 103,1 million pieces between 1991 and the investigation period, i.e. by 26,2 %. The market share of the Community industry decreased in the same period from 21,1 % to 19,2 %.

Prices

- (24) The Community industry has claimed that the undercutting or lower price offers on the part of the Japanese exporters have had the effect of imposing pressure on prices which forced the Community SBB producers to follow the prices downwards in order to defend their market shares at great financial cost. According to the Community industry, this undercutting prevented it from obtaining price increases during 1994 which was a period of upturn after a period of recession.
- (25) The evolution of prices between 1991 and the end of the investigation period (1994) in the Community of the SBBs sold by the Community producers was analysed in detail for each category of customer in Germany, the United Kingdom, France and Italy in respect of types the turnover of which represented 50 % of their total turnover in the Community. On that basis, it was found that between 1991 and 1994, prices decreased on average (sales to all categories of customers) by 3,9 %. Between 1993 and 1994, however, prices increased by 1,4 %. On a customer category basis, for sales to large industrial manufacturers, which represent a majority of total turnover of the Community producers, prices decreased between 1991 and 1994 by 4,2 % and increased between 1993 and 1994 by 1,7 %. For sales to distributors, there was a price decrease of 3,1 % between 1991 and 1994 and of 0,4 % between 1993 and 1994.
- (26) Since the Community industry's sales volumes increased, thus reducing its production cost, the relatively stable prices benefited the Community industry. In any way, it is considered that the very limited price undercutting did not exert material downward price pressure on the Community industry. That is supported by the fact that the Commission found that the weighted average price of SBBs of Japanese origin sold in the Community increased notably during the period under investigation for the determination of injury.

Profitability

- (27) According to the Community industry, the price undercutting and the resulting evolution of prices had significant effects on its financial results. However, an analysis of the data submitted by the Community producers in connection with the present review shows that, on the contrary, the profitability specifically relating to the product under investigation, net of any extraordinary income or cost item, rose from a profit of 1 % in 1991 to a 13 % profit in 1994, showing a significant recovery in that year.

Production, capacity and capacity utilization

- (28) Between 1991 and 1994, the production of the Community industry increased from 93 million pieces to 135 million pieces, i.e. by 45 %. In the same period, the capacity of the Community industry, expressed in tonnes, increased slightly by 0,5 % and capacity utilization, also expressed in tonnes, increased from 74,9 % to 85,8 %.

Employment

- (29) Between 1991 and the investigation period, employment in the Community industry decreased from 1 418 to 1 177 employees, i.e. by 17 %. It should be noted that during the investigation it appeared that significant restructuring efforts had been undertaken by most of the Community producers during the period under consideration in order to increase productivity in general. In view of public statements made by major Community producers, it is considered that restructuring was necessary to overcome structural deficiencies and to increase productivity in the long term. A comparison of the development of capacity, capacity utilization and production shows that this was accomplished — a fact which is reflected in the improved profitability.

Conclusion on injury

- (30) An analysis of the above-mentioned injury factors such as the Community industry's profitability, production, capacity, capacity utilization and sales shows a positive trend for those factors whilst employment shows a negative trend. As to profitability, the results of the Community industry meet, or in some instances even exceed, internal targets set by certain major Community producers. This leads to the conclusion that the Community industry did not experience economic or financial difficulties.

E. CAUSALITY

- (31) The Community industry has argued that the imports from Japan have had an injurious impact on its results, which would allegedly have been better if it had not been forced to align its prices downwards in order to meet the competition from the prices of the Japanese exporters.
- (32) In accordance with the provisions of Regulation (EC) No 384/96, the Commission therefore investigated whether the volumes and prices of the imports concerned were responsible for the situation of the Community industry and had an impact thereon to a degree which enables it to be classified as material within the meaning of Article 3 (6) of Regulation (EC) No 384/96. In this investigation, care was taken to ensure that any impact on the Community industry caused by other factors was not attributed to the imports concerned.
- (33) In this regard, firstly, the detailed analysis of the prices applied by the Community producers over the period under consideration, as outlined above, demonstrates that the imports in question did not have any material effects on the prices applied by the Community producers, nor therefore on their financial results or on any of the other factors listed above.
- (34) Second, it should be recalled that imports from Japan have decreased both in absolute terms and in terms of market share during the period under investigation. It is acknowledged that the market share of the Community industry also decreased, but the decrease in the market share of the Japanese imports was steeper in percentage terms than that of the Community industry. It therefore seems reasonable to conclude that, contrary to the allegations of the Community industry, it did not lose any market share to Japanese imports.
- (35) Third, the entire period of investigation was characterised by significant imports from countries other than Japan, the market share of such imports increasing from 51,65 % in 1991 to 63,68 % in 1994.
- (36) Fourth, the share of Japanese companies producing in the Community and affiliated to the exporters concerned by the present proceeding was significant throughout the period, decreasing from 12,2 % in 1991 to 10,2 % in 1994.
- (37) Fifth, the Community industry has argued that, weakened by past dumping, it was unable, in a period of economic upturn, to meet the demand of its customers and that, in order to invest in new capacity, it would require a substantial higher return on sales than what was registered during the investigation. However, the Commission is of the

opinion that it is normal business behaviour to reduce costs, particularly when the industry is in an economic recession. On the other hand, in a booming market, it may also be normal to increase capacity and to finance this by normal financial resources. This capacity restriction should therefore not be attributed to the imports in question.

- (38) Finally, regarding the decrease in employment, it should be noted that during the investigation it appeared that significant restructuring efforts had been undertaken to increase productivity in general by most of the Community producers during the period under consideration. In view of public statements made by major Community producers, it is considered that the restructuring was necessary to overcome structural deficiencies and to increase productivity in the long term. A comparison of the development of capacity, capacity utilization and production shows that this was accomplished — a fact which is reflected in the improved profitability.

Conclusion on causation

- (39) Given the above findings, it is concluded that the imports in question did not, in isolation, have a material impact on the situation of the Community industry and the allegations in the Community industry's request for an interim review that the measures in force were insufficient to offset increased injury are therefore rejected. The fact that the Community industry did not have even better results may rather be attributable to other third country imports and Japanese production in the Community.

F. CIRCUMSTANCES SET OUT IN ARTICLE 11 (2) OF REGULATION (EC) No 384/96

- (40) The five-year period provided for in the first subparagraph of Article 11 (2) of Regulation (EC) No 384/96 expired in September 1995. By virtue of Article 11 (7) of Regulation (EC) No 384/96, the present interim review should therefore also cover the circumstances set out in Article 11 (2) of that Regulation. The first subparagraph of Article 11 (2) of Regulation (EC) No 384/96 provides that a definitive anti-dumping measure is to expire five years from its imposition or five years from the date of the conclusion of the most recent review which covered both dumping and injury unless it is determined that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. The second subparagraph of Article 11 (2)

states that such a likelihood may, for example, be indicated by evidence that the removal of the injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

- (41) As was demonstrated above, the facts established show that the measures under review reduced the injurious impact of the imports in question below a material degree within the meaning of Article 3 (6) of Regulation (EC) No 384/96.
- (42) The Community industry has submitted that if the measure currently in force expires it is likely that material injury caused by the imports in question would recur. The Community industry bases its arguments on the following considerations: first, imports from Japan increased, in absolute terms, after the investigation period and were further depressing or suppressing prices. In spite of the data submitted by the Community industry, it cannot be concluded on the basis of the facts available that any increased import volumes will affect the trend in the development of market shares and prices of the Community industry to a material extent. Second, it claims that the imports in question will have a continuing detrimental impact irrespective of their relatively low market share and the significant market shares of the Japanese producers located in the Community. In this respect, it should be recalled that, first, the market share of Japanese imports is decreasing, second, imports from countries other than Japan are increasing and, third, Japanese production facilities located in the Community have a significant and stable market share.
- (43) In view of those economic trends and the above conclusion that the impact of Japanese imports on the situation of the Community industry during the period under investigation was not material and that the Community industry has recovered from past dumping, the Commission considers that it is not likely that the expiry of the anti-dumping measures currently in force would create a situation in which a materially injurious impact of these imports would recur.
- (44) As to the circumstances of the exporters, official statistics demonstrate that production capacity for bearings in Japan remained stable from 1990 to 1994 and subsequently increased in connection with the recovery of demand world-wide, thus supporting the above conclusion.

- (45) With regard to the market conditions it should be reiterated that the situation for the Community industry during 1994 showed a significant recovery in the market for SBBs. That led to increased profitability. That development was sustained and further improved after the investigation period as illustrated by general results of the major Community producers published for 1995. It is not likely that the situation will change as a result of the expiry of the current measures.

G. DUMPING

- (46) In view of the above conclusion, the Commission did not consider it necessary to analyse whether the imports in question were dumped, and if so, whether or not the dumping margin had increased since this would not have any relevance to the above analysis and would consequently not alter the conclusions reached.

H. CONCLUSION

- (47) In view of those findings, it is considered that the result of the interim review of the anti-dumping measures in force with respect to imports of SBBs originating in Japan is that the anti-dumping proceeding regarding those imports should be terminated in accordance with Article 9 of Regulation (EC) No 384/96 and that the anti-dumping measures presently in force should consequently expire in accordance with Article 11 (2) of Regulation (EC) No 384/96.
- (48) The Commission informed the interested parties, including the Community industry, of its findings. After being informed by the Commission of the above facts, findings and conclusions, representatives of the Community industry made further

representations, both in writing and orally, concerning the impact of the Japanese imports in question on the Community industry. The Commission considered those representations, but concluded that they could not reverse its conclusions as mentioned above. Certain Member States raised objections to this course of action within the Advisory Committee. In accordance with Article 9 (2) of Regulation (EC) No 384/96 the Commission submitted to the Council a report on the result of the consultation, together with a proposal that the interim review be terminated and the measures in force allowed to expire. Since the Council, acting by qualified majority, did not decide otherwise within one month, the proceeding is deemed terminated,

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of ball bearings with a greatest external diameter not exceeding 30 mm falling within CN code No 8482 10 10 originating in Japan is hereby terminated with the result that the anti-dumping measures in force concerning such imports shall expire.

Article 2

This Decision shall apply as from the day following that of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 2 April 1997.

For the Commission

Leon BRITTAN

Vice-President
