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I

(Information)

COMMISSION

Ecu ⁽¹⁾

22 June 1992

(92/C 156/01)

Currency amount for one unit:

Belgian and Luxembourg franc	42,2214	United States dollar	1,30514
Danish krone	7,89874	Canadian dollar	1,56252
German mark	2,05169	Japanese yen	165,975
Greek drachma	249,544	Swiss franc	1,85122
Spanish peseta	128,961	Norwegian krone	8,02338
French franc	6,90683	Swedish krona	7,40800
Irish pound	0,767371	Finnish markka	5,58863
Italian lira	1550,51	Austrian schilling	14,4414
Dutch guilder	2,31141	Icelandic krona	74,3149
Portuguese escudo	170,256	Australian dollar	1,74089
Pound sterling	0,701879	New Zealand dollar	2,39169

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

(¹) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Reference numbers for the notification of the export of certain dangerous chemicals

(92/C 156/02)

The following is published so as to comply with Article 4 of Council Regulation (EEC) No 1734/88 ⁽¹⁾.

The Regulation introduced a notification procedure for the export of chemicals which are banned or severely restricted in the European Community. This requires that the first export of such a chemical be accompanied by a notification, that each notification be given a reference number, and that that number accompany subsequent exports of the chemical from the Community to the same third country.

Article 4 of the Regulation specifies that the Commission shall periodically publish a list of these reference numbers in the *Official Journal of the European Communities*, stating the chemical concerned and the third country of destination.

Below is the list of current reference numbers for the banned or severely restricted chemicals that have been exported to 31 March 1992:

Specific chemicals

Name of chemical	Third country of destination	Export reference number
Aldrin	Malaysia	EC/206-215-8/rev.2/MY
Heptachlor	Senegal	EC/200-962-3/SN
Dimercury dichloride	Pakistan	EC/233-307-5/rev.1/PK
Mercury monoxide	Hong Kong Lebanon Poland Syria USA	EC/244-654-7/rev.1/HK EC/244-654-7/rev.1/LB EC/244-654-7/rev.1/PO EC/244-654-7/rev.1/SY EC/244-654-7/rev.1/USA
Toxaphene	Israel	EC/232-283-3/rev.2/IL
<i>Name of preparation</i>		
CHLORDANE 30 % WP Active constituent: chlordane	French Polynesia	EC/200-349-0/PO2/PF
CHLORDANE 80 % EC Active constituent: chlordane	French Polynesia	EC/200-349-0/PO1/PF

⁽¹⁾ OJ No L 155, 22. 6. 1988, p. 2.

Alkoxyalkyl and aryl mercury compounds

Name of chemical	Third country of destination	Export reference number
Diphenyl[μ -[(tetrapropenyl)succinato (2-)-0:0']] dimercury	Chile	EC/248-355-2/CL
Merbromin	Canada Lebanon USA	EC/204-933-6/CA EC/204-933-6/LB EC/204-933-6/USA
Phenylmercury acetate	Argentina Australia South Africa Uruguay	EC/200-532-5/rev.1/AR EC/200-532-5/rev.1/AU EC/200-532-5/rev.1/ZA EC/200-532-5/rev.1/UY
Phenylmercury chloride	Australia	EC/202-865-1/rev.1/AU
<i>Name of preparation</i>		
SUPER AD IT; (321 EXTRA)		
Active constituent: diphenyl[μ -[(tetrapropenyl)succinato (2-)-0:0']]dimercury	Indonesia Kuwait Lebanon Libya New Zealand Poland Saudi Arabia Singapore Thailand Trinidad and Tobago	EC/248-355-2/PO1/ID EC/248-355-2/PO1/KW EC/248-355-2/PO1/LB EC/248-355-2/PO1/LY EC/248-355-2/PO1/NZ EC/248-355-2/PO1/PL EC/248-355-2/PO1/SA EC/248-355-2/PO1/SG EC/248-355-2/PO1/TH EC/248-355-2/PO1/TT

Inorganic mercury compounds

Name of chemical	Third country of destination	Export reference number
Aminomercury chloride	Chile Lebanon Pakistan	EC/233-335-8/rev.2/CL EC/233-335-8/rev.2/LB EC/233-335-8/rev.2/PK
Mercury dichloride	Guatemala Japan Lebanon Morocco Paraguay Peru USA Zaire	EC/231-299-8/rev.1/GT EC/231-299-8/rev.1/JP EC/231-299-8/rev.1/LB EC/231-299-8/rev.1/MA EC/231-299-8/rev.1/PY EC/231-299-8/rev.1/PE EC/231-299-8/rev.1/USA EC/231-299-8/rev.1/ZR
Mercury diiodide	Dominican Republic	EC/231-873-8/rev.1/DO
Mercury dinitrate	USA	EC/233-152-3/rev.1/USA
Mercury (II) sulphide	USA	EC/215-696-3/rev.1/USA

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the legal protection of databases

(92/C 156/03)

COM(92) 24 final — SYN 393

(Submitted by the Commission on 15 April 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas databases are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;
2. Whereas such differences in the legal protection offered by the legislation of the Member States have direct and negative effects on the establishment and functioning of the internal market as regards databases and in particular on the freedom of individuals and companies to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension.
3. Whereas existing differences having a distortive effect on the establishment and functioning of the internal market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the establishment and functioning of the internal market or the development of an information market within the Community need not be addressed in this Directive;
4. Whereas copyright protection for databases exists in varying forms in a number of Member States according to legislation or case-law and such unharmonized intellectual property rights, being territorial in nature, can have the effect of preventing the free movement of goods or services within the Community if differences in the scope, conditions derogations or term of protection remain between the legislation of the Member States;
5. Whereas although copyright remains an appropriate form of exclusive right for the legal protection of databases and in particular an appropriate means to secure the remuneration of the author who has created a database, in addition to copyright protection, and in the absence as yet of a harmonized system of unfair competition legislation or of case-law in the Member States, other measures are required to prevent unfair extraction and re-utilization of the contents of a database;
6. Whereas database development requires the investment of considerable human, technical and financial resources while such databases can be copied at a fraction of the cost needed to develop them independently;
7. Whereas unauthorized access to a database and removal of its contents constitute acts which can have the gravest economic and technical consequences;
8. Whereas databases are a vital tool in the development of an information market within the

Community; whereas this tool will be of use to a large variety of other activities and industries;

as texts, sounds, images, numbers, facts, data or combinations of any of these;

9. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;
10. Whereas a correspondingly high rate of increase in publications of literary, artistic, musical and other works necessitates the creation of modern archiving, bibliographic and accessing techniques, to enable consumers to have at their disposal the most comprehensive collection of the Community's heritage;
11. Whereas there is at the present time a great imbalance in the level of investment in database creation both as between the Member States themselves, and between the Community and the world's largest database-producing countries;
12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of authors of databases and the repression of acts of piracy and unfair competition;
13. Whereas this Directive protects collections, sometimes called compilations, of works or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;
14. Whereas the criteria by which such collections shall be eligible for protection by copyright should be that the author, in effecting the selection or the arrangement of the contents of the database, has made an intellectual creation;
15. Whereas no criteria other than originality in the sense of intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;
16. Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, data or combinations of any of these;
17. Whereas the protection of a database should extend to the electronic materials without which the contents selected and arranged by the maker of the database cannot be used, such as, for example, the system made to obtain information and present information to the user in electronic or non-electronic form, and the indexation and thesaurus used in the construction or operation of the database;
18. Whereas the term database should not be taken to extend to any computer programme used in the construction or operation of a database, which accordingly remain protected by Council Directive 91/250/EEC⁽¹⁾;
19. Whereas the Directive should be taken as applying only to collections which are made by electronic means, but is without prejudice to the protection under copyright as collections, within the meaning of Article 2(5) of the Berne Convention for the Protection of Literary and Artistic Works (text of Paris Act of 1971) and under the legislation of the Member States, of collections made by other means;
20. Whereas works protected by copyright or by any other rights, which are incorporated into a database, remain the object of their author's exclusive rights and may not therefore be incorporated into or reproduced from the database without the permission of the author or his successors in title;
21. Whereas the rights of the author of such works incorporated into a database are not in any way affected by the existence of a separate right in the original selection or arrangement of these works in a database;
22. Whereas the moral rights of the natural person who has created the database should be owned and exercised according to the provisions of the legislation of the Member States consistent with the provisions of the Berne Convention, and remain therefore outside the scope of this Directive;
23. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the availability of his work to unauthorized persons;

⁽¹⁾ OJ No L 122, 17. 5. 1991, p. 42.

24. Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database, for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;
25. Whereas if the user and the rightholder have not concluded an agreement regulating the use which may be made of the database, the lawful user should be presumed to be able to perform any of the restricted acts which are necessary for access to and use of the database;
26. Whereas in respect of reproduction in the limited circumstances provided for in the Berne Convention, of the contents of the database by the lawful user, whether in electronic or non-electronic form, the same restrictions and exceptions should apply to the reproduction of such works from a database as would apply to the reproduction of the same works made available to the public by other forms of exploitation or distribution;
27. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be downloaded and re-arranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;
28. Whereas in addition to protecting the copyright in the original selection or arrangement of the contents of a database this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting data by providing that certain acts done in relation to the contents of a database are subject to restriction even when such contents are not themselves protected by copyright or other rights;
29. Whereas such protection of the contents of a database is to be achieved by a special right by which the maker of a database can prevent the unauthorized extraction or re-utilization of the contents of that database for commercial purposes; whereas this special right (hereafter called 'a right to prevent unfair extraction') is not to be considered in any way as an extension of copyright protection to mere facts or data;
30. Whereas the existence of a right to prevent the extraction and re-utilization for commercial purposes of works or materials from a given database should not give rise to the creation of any independent right in the works or materials themselves;
31. Whereas, in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed, whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licensed are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;
32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder;
33. Whereas such licences should not be requested for reasons of commercial expediency such as economy of time, effort or financial investment;
34. Whereas in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of arbitration should be provided for by the Member States;
35. Whereas licences may not be refused in respect of the extraction and re-utilization of works or materials from a publicly available database created by a public body providing that such acts do not infringe the legislation or international obligations of Member States or the Community in respect of matters such as personal data protection, privacy, security or confidentiality;
36. Whereas the objective of the provisions of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means of securing the remuneration of the author who has created the database, is different from the aims of the proposal for a Council Directive concerning the protection of individuals in relation to the processing

of personal data⁽¹⁾, which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to the data protection legislation;

37. Whereas, notwithstanding the right to prevent unfair extraction from a database, it should still be possible for the lawful user to quote from or otherwise use, for commercial and private purposes, the contents of the database which he is authorized to use, providing that this exception is subject to narrow limitations and is not used in a way which would conflict with the author's normal exploitation of his work or which would unreasonably prejudice his legitimate interests;
38. Whereas the right to prevent unfair extraction from a database may only be extended to databases whose authors or makers are nationals or habitual residents of third countries and to those produced by companies or firms not established in a Member State within the meaning of the Treaty if such third countries offer comparable protection to databases produced by nationals of the Member States or habitual residents of the Community;
39. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unfair extraction from a database;
40. Whereas in addition to the protection given under this Directive to the database by copyright, and to its contents against unfair extraction, other legal provisions existing in the law of the Member States relevant to the supply of database goods and services should continue to apply,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

1. 'database' means a collection of works or materials arranged, stored and accessed by electronic means, and the electronic materials necessary for the

operation of the database such as its thesaurus, index or system for obtaining or presenting information; it shall not apply to any computer programme used in the making or operation of the database;

2. 'right to prevent unfair extraction' means the right of the maker of a database to prevent acts of extraction and re-utilization of material from that database for commercial purposes;
3. 'insubstantial part' means parts of a database whose reproduction, evaluated quantitatively and qualitatively in relation to the database from which they are copied, can be considered not to prejudice the exclusive rights of the maker of that database to exploit the database;
4. 'insubstantial change' means additions, deletions or alterations to the selection or arrangement of the contents of a database which are necessary for the database to continue to function in the way it was intended by its maker to function.

Article 2

Object of protection: copyright and right to prevent unfair extraction from a database

1. In accordance with the provisions of this Directive, Member States shall protect databases by copyright as collections within the meaning of Article 2 (5) of the Berne Convention for the Protection of Literary and Artistic Works (text of the Paris Act of 1971).
2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or materials arranged, stored or accessed by non-electronic means, which accordingly remain protected to the extent provided for by Article 2 (5) of the Berne Convention.
3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.
4. The copyright protection of a database given by this Directive shall not extend to the works or materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or materials themselves.
5. Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its

⁽¹⁾ OJ No C 277, 5. 11. 1990, p. 3.

contents, in whole or in substantial part, for commercial purposes. This right to prevent unfair extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.

Article 3

Authorship: copyright

1. The author of a database shall be the natural person or group of natural persons who created the database or, where the legislation of the Member States permits, the legal person designated as the rightholder by that legislation.

2. Where collective works are recognized by the legislation of a Member State, the person considered by that legislation to have created the database shall be deemed to be its author.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

4. Where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract.

Article 4

Incorporation of works or materials into a database

1. The incorporation into a database of bibliographical material or brief abstracts, quotations or summaries which do not substitute for the original works themselves shall not require the authorization of the rightholder in those works.

2. The incorporation into a database of other works or materials remains subject to any copyright or other rights acquired or obligations incurred therein.

Article 5

Restricted acts: copyright

The author shall have, in respect of:

— the selection or arrangement of the contents of the database, and

— the electronic material referred to in point 1 of Article 1 used in the creation or operation of the database,

the exclusive right within the meaning of Article 2 (1) to do or to authorize:

(a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part;

(b) the translation, adaptation, arrangement and any other alteration of the database;

(c) the reproduction of the results of any of acts listed in (a) or (b);

(d) any form of distribution to the public, including rental, of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy, with the exception of the right to control further rental of the database or a copy thereof;

(e) any communication, display or performance of the database to the public.

Article 6

Exceptions to the restricted acts enumerated in Article 5: copyright in the selection or arrangement

1. The lawful user of a database may perform any of the acts listed in Article 5 which is necessary in order to use that database in the manner determined by contractual arrangements with the rightholder.

2. In the absence of any contractual arrangements between the rightholder and the user of a database in respect of its use, the performance by the lawful acquirer of a database of any of the acts listed in Article 5 which is necessary in order to gain access to the contents of the database and use thereof shall not require the authorization of the rightholder.

3. The exceptions referred to in paragraphs 1 and 2 relate to the subject matter listed in Article 5 and are without prejudice to any rights subsisting in the works or materials contained in the database.

Article 7

Exceptions to the restricted acts in relation to the copyright in the contents

1. Member States shall apply the same exceptions to any exclusive copyright or other rights in respect of the contents of the database as those which apply in the legislation of the Member States to the works or materials themselves contained therein, in respect of brief quotations, and illustrations for the purposes of teaching, provided that such utilization is compatible with fair practice.

2. Where the legislation of the Member States or contractual arrangements concluded with the rightholder permit the user of a database to carry out acts which are permitted as derogations to any exclusive rights in the contents of the database, performance of such acts shall not be taken to infringe the copyright in the database itself provided for in Article 5.

Article 8

Acts performed in relation to the contents of a database — unfair extraction of the contents

1. Notwithstanding the right provided for in Article 2 (5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

2. The right to extract and re-utilize the contents of a database shall also be licensed on fair and non-discriminatory terms if the database is made publicly available by a public body which is either established to assemble or

disclose information pursuant to legislation, or is under a general duty to do so.

3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

4. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

5. The lawful user of a database may, without authorization of the database maker, and without acknowledgement of the source, extract and re-utilize insubstantial parts of works or materials from that database for personal private use only.

6. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

Article 9

Terms of protection

1. The duration of the period of copyright protection of the database shall be the same as that provided for literary works, without prejudice to any future Community harmonization of the term of protection of copyright and related rights.

2. Insubstantial changes to the selection or arrangement of the contents of a database shall not extend the original period of copyright protection of that database.

3. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of a period of 10 years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on 1 January of the year following the date when the database was first made available.

4. Insubstantial changes to the contents of a database shall not extend the original period of protection of that database by the right to prevent unfair extraction.

*Article 10***Remedies**

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

*Article 11***Beneficiaries of protection under right to prevent unfair extraction from a database**

1. Protection granted pursuant to this Directive to the contents of a database against unfair extraction or re-utilization shall apply to databases whose makers are nationals of the Member State or who have their habitual residence on the territory of the Community.

2. Where databases are created under the provisions of Article 3 (4), paragraph 1 above shall also apply to companies and firms formed in accordance with the legislation of a Member State and having their registered office, central administration or principal place of business within the Community. Should the company or firm formed in accordance with the legislation of a Member State have only its registered office in the territory of the Community, its operations must possess an effective and continuous link with the economy of one of the Member States.

3. Agreements extending the right to prevent unfair extraction to databases produced in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of any protection extended to databases by virtue of this procedure shall not exceed that available pursuant to Article 9 (3).

*Article 12***Continued application of other legal provisions**

1. The provisions of this Directive shall be without prejudice to copyright or any other right subsisting in the works or materials incorporated into a database as well as to other legal provisions such as patent rights, trade marks, design rights, unfair competition, trade secrets, confidentiality, data protection and privacy, and the law of contract applicable to the database itself or to its contents.

2. Protection pursuant to the provisions of this Directive shall also be available in respect of databases created prior to the date of publication of the Directive without prejudice to any contracts concluded and rights acquired before that date.

*Article 13***Final provisions**

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

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 14

This Directive is addressed to the Member States.

Proposal for a Council Directive concerning the protection of animals kept for farming purposes

(92/C 156/04)

COM(92) 192 final

(Submitted by the Commission on 18 May 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas all Member States have ratified the European Convention for the Protection of Animals kept for Farming Purposes; whereas the Community has also approved this Convention by Decision 78/923/EEC ⁽¹⁾, and has deposited its instrument of approval;

Whereas it is necessary for the Community, as a Contracting Party to the European Convention for the Protection of Animals kept for Farming Purposes, to implement recommendations of the Standing Committee established by the Convention; whereas it is desirable to make provision for those parts of the recommendations which are obligatory to be adopted by a Commission procedure in collaboration with the Member States;

Whereas the European Parliament, in its resolution of 20 February 1987 on animal welfare policy ⁽²⁾, called on the Commission to make proposals for Community rules covering general aspects of the rearing of farm livestock;

Whereas animals are included in the list of products set out in Annex II to the Treaty;

Whereas the keeping of animals for farming purposes is an integral part of agriculture; whereas it constitutes a source of revenue for part of the agricultural population;

Whereas differences which may distort conditions of competition interfere with the smooth running of the organization of the common market in animals and animal products;

Whereas there is therefore a need to establish common minimum standards for the protection of animals kept for farming purposes in order to ensure rational development of production and to facilitate the completion of the internal market in animals and animal products; whereas it is necessary to take account of animal welfare provisions already laid down in Community rules,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

1. This Directive lays down minimum standards for the protection of animals bred or kept for farming purposes.

2. It shall apply without prejudice to Community rules laid down elsewhere for the protection of certain types of animals.

Article 2

For the purpose of this Directive the following definitions shall apply:

1. *animal*: an animal bred or kept for the production of food, wool, skin or fur or for other farming purposes, including animals produced as a result of genetic modifications or novel genetic combinations;

2. *owner or keeper*: any person or persons, either natural or legal, having ownership of the animals, or charged with keeping the said animals, whether or not for financial reward;

⁽¹⁾ OJ No L 323, 17. 11. 1978, p. 12.

⁽²⁾ OJ No C 76, 23. 3. 1987, p. 185.

3. *intensive farming system*: a method of husbandry in which animals are kept in such numbers or density, or in such conditions, or at such production levels, that their welfare depends upon frequent human attention.

CHAPTER II

The welfare of animals

Article 3

Member States shall ensure that animals are not caused unnecessary pain, suffering or distress.

Article 4

Member States shall ensure that:

1. the owner or keeper of an animal shall be responsible for and shall take reasonable steps to ensure its welfare;
2. animals shall be cared for by a sufficient number of personnel with adequate theoretical and practical knowledge of the animals and of the husbandry system used.

Article 5

Member States shall ensure that animals shall be housed and provided with food, water and care in a manner which, having regard to their species and to their degree of development, adaptation and domestication, is appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge.

Article 6

Member States shall ensure that natural or artificial breeding or breeding procedures which cause, or are likely to cause, suffering or injury to any of the animals involved are not practised; no animal shall be kept for farming purposes unless it can be reasonably expected, on the basis of its genotype or phenotype, that it can be kept without detrimental effects on its health or welfare.

Article 7

Member States shall ensure that:

1. the freedom of movement appropriate to an animal, having regard to its species and in accordance with established experience and scientific knowledge, shall not be restricted in such a manner as to cause it unnecessary suffering or injury;

2. where an animal is continuously or regularly tethered or confined, it shall be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge.

Article 8

Member States shall ensure that the lighting, temperature, humidity, air circulation, ventilation, and other environmental conditions such as gas concentration or noise intensity in the place in which an animal is housed shall, having regard to its species and to its degree of development, adaptation and domestication, conform to its physiological and ethological needs in accordance with established experience and scientific knowledge.

Article 9

Member States shall ensure that no animal shall be provided with food or liquid in a manner, nor shall such food or liquid contain any substance, which may cause unnecessary suffering or injury.

No other substance with the exception of those given for therapeutic or prophylactic purposes shall be administered to an animal unless it has been demonstrated by scientific studies of animal welfare or established experience that the effect of the substance is not detrimental to the health or welfare of the animal.

Article 10

Member States shall ensure that the condition and state of health and welfare of animals shall be thoroughly inspected at intervals sufficient to avoid unnecessary suffering and in the case of animals kept in intensive stock-farming systems at least once a day.

Article 11

Member States shall ensure that when an animal is to be killed on the farm, this shall be done competently and in any case without causing unnecessary pain or distress to the animal or to other animals.

Article 12

Member States shall ensure that technical equipment used in intensive farming systems is thoroughly inspected at least once daily, and that any defect discovered is remedied with the least possible delay. When a defect cannot be remedied forthwith, all temporary measures necessary to safeguard the welfare of the animals shall be taken immediately.

CHAPTER III

Final provisions*Article 13*

Measures necessary for the application of obligatory recommendations of the Standing Committee of the European Convention for the Protection of Animals kept for Farming Purposes, and any specific rules necessary for the application of this Directive, shall be adopted in accordance with the procedure laid down in Article 17.

Article 14

Member States shall arrange for inspections to be made by the competent authority to ensure compliance with this Directive.

Such inspections, which may be carried out on the occasion of checks made for other purposes, shall cover a statistically representative sample of the farming systems in each Member State each year.

Article 15

Commission veterinary experts may, to the extent necessary for uniform application of this Directive, carry out on-the-spot inspections in collaboration with the competent authorities of the Member States. The Commission shall inform the Member States of the outcome of such inspections.

The Member State on whose territory the inspections are carried out shall provide the experts with all the assistance required for the accomplishment of their task.

Article 16

The Commission shall be assisted by the Standing Veterinary Committee set up by Council Decision 68/361/EEC⁽¹⁾ hereinafter referred to as 'the committee'.

Article 17

Where the procedure laid down in this Article is to be used, the following rules shall apply:

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

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

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

Article 18

Member States shall take the appropriate specific measures to penalize infringements of this Directive.

Article 19

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 20

This Directive is addressed to the Member States.

⁽¹⁾ OJ No L 255, 18. 10. 1968, p. 23.

Proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance (distance selling)

(92/C 156/05)

COM(92) 11 final — SYN 411

(Submitted by the Commission on 21 May 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas measures must be taken for the gradual establishment of the internal market by 31 December 1992; whereas the internal market is to be an area without internal frontiers within which the free movement of goods, persons, services and capital is assured;
2. Whereas cross-frontier distance selling could be one of the main tangible results of the completion of the internal market for consumers, as noted *inter alia* in the communication from the Commission entitled 'Towards a single market in distribution' ⁽¹⁾;
3. Whereas the development of new technologies is multiplying the means available to consumers to have knowledge of the offers being made everywhere in the Community and for placing orders; whereas there is a need to introduce a minimum set of common rules, before each Member State takes different or diverging measures to protect consumers, with negative repercussions on competition between businesses in the single market;
4. Whereas paragraphs 18 and 19 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy ⁽²⁾ point to the need to protect the purchasers of goods

or services against demands for payment for unsolicited goods and against high-pressure selling methods;

5. Whereas the communication from the Commission to the Council entitled 'A new impetus for consumer protection policy' and approved by the Council resolution of 23 June 1986 ⁽³⁾ states in paragraph 33 that the Commission will present proposals regarding the use of new information technologies enabling consumers to place orders with suppliers from their homes;
6. Whereas the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy ⁽⁴⁾ calls upon the Commission to give priority to the areas referred to in the Annex to the resolution; whereas that Annex refers to 'new technologies involving teleshopping'; whereas the Commission has responded to this resolution by adopting a three-year action plan for consumer protection policy in the EEC (1990 to 1992) ⁽⁵⁾; whereas that plan provides for the adoption of a directive;
7. Whereas contracts negotiated at a distance involve the use of one or more means of communication at a distance; whereas the ongoing evolution of these means of communication does not allow an exhaustive list to be compiled but requires the definition of principles valid even for those that are still little used; whereas it is necessary to establish clearly the difference between advertising and solicitation; whereas there is solicitation from the time the consumer possesses the elements necessary to contract;
8. Whereas the principles set out in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 apply; whereas all matters relating to the collection, storage and processing of personal

⁽¹⁾ COM(91) 41, 11. 3. 1991.

⁽²⁾ OJ No C 92, 25. 4. 1975, p. 1.

⁽³⁾ OJ No C 167, 5. 7. 1986, p. 1.

⁽⁴⁾ OJ No C 294, 22. 11. 1989, p. 1.

⁽⁵⁾ COM(90) 98, 3. 5. 1990.

data fall under Council Directives .../.../EEC and .../.../EEC of ... [on the protection of individuals in relation to the processing of personal data and the protection of privacy]; whereas the consumers's right to freedom from intrusion should be recognized and provision made for possible restrictions on the use of certain means of communication and in particular restrictions deriving from the above Directives;

9. Whereas the consumer's custom is solicited via a variety of means of communication; whereas such solicitations must be clearly identified as commercial propositions; whereas this information must comply with the other relevant Community rules, in particular Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising ⁽¹⁾;
10. Whereas the use of such technologies must not lead to a reduction in the information provided to the consumer; whereas it is therefore necessary to determine the information that is required to be sent to the consumer whatever the means of communication used;
11. Whereas the promotional technique involving the sending of a product or the provision of a service to the consumer in return for payment may not be permitted without a prior request from or the explicit agreement of the consumer;

Whereas it is necessary to prescribe a time limit for performance if this is not specified at the time of ordering;

12. Whereas information disseminated by certain electronic technologies often has an ephemeral character in so far as it is not received on a permanent medium; whereas the consumer must therefore receive written notice of the content of the contract and of all information necessary to its proper performance, not later than at the time of the delivery of the good or the supply of the service;
13. Whereas the consumer is not able to see *in concreto* the product or ascertain the service provided at the moment when his custom is solicited, whereas the consumer should be permitted to cancel the contract after receiving the product or service; whereas, if this right is to be more than formal, the costs borne by the consumer when making use of it must be limited to the charges for return; whereas Council

Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises ⁽²⁾ is to be amended later to ensure harmonization, in particular of the method for calculating the period during which the contract may be cancelled;

14. Whereas this Directive should not prejudice the free movement of radio and television broadcasts, as guaranteed by Articles 59 and 60, third paragraph, of the EEC Treaty, nor the application of the rules of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States, concerning the pursuit of television broadcasting activities ⁽³⁾;
15. Whereas non-compliance with this Directive may harm not only numerous consumers but also competitors; whereas there is therefore a need for provisions permitting trade and consumer organizations to monitor its application in transborder transactions; whereas, to the extent authorized by the legislation of the Member States concerned, these organizations should also be allowed to act in the State from where the conflict originates,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Object

The object of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning contracts negotiated at a distance between consumers and suppliers and the soliciting of custom and preparatory acts with a view to such contracts.

Article 2

Definitions

For the purposes of this Directive:

- 'contract negotiated at a distance' means any contract concerning a product or service concluded after solicitation of custom by the supplier:
- without the supplier and the consumer being simultaneously present, and

⁽¹⁾ OJ No L 250, 19. 9. 1984, p. 17.

⁽²⁾ OJ No L 372, 31. 12. 1985, p. 31.

⁽³⁾ OJ No L 298, 17. 10. 1989, p. 23.

- using a means of communication at a distance to convey the contract solicitation and the order.

This concept does not include arrangements, orders, agreements or individual acts of performance within an overall contract, in particular a contract to be performed by a series of separate operations over a period of time,

- 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade or profession,
- 'supplier' means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity, and anyone acting in the name or on behalf of a supplier,
- 'means of communication at a distance' means any method permitting the exchange of the information required for the negotiation and conclusion of a contract between a consumer and a supplier not in the presence of one another; a non-exhaustive list of the means covered by this Directive is contained in Annex I,
- 'operator of a means of communication' means any public or private natural or legal person making the various means of communication at a distance available to suppliers and/or consumers,
- 'contract solicitation' means any communication at a distance including all the necessary elements to enable the recipient to enter directly into a contractual commitment, simple advertising being excluded,
- 'order' means the expression by the consumer of his intention to enter into a contractual commitment.

Article 3

Exemptions

This Directive shall not apply to:

- automatic vending machines,
- automated commercial premises,
- made-to-measure products,

- services with reservation (a list of the services in question is attached as Annex II),

- contracts for the supply of:

- foodstuffs, beverages or other goods intended for current consumption in the household,
- services for current consumption.

Article 4

Restrictions on the use of certain means of communication at a distance

Member States shall take the necessary measures to ensure that means of communication at a distance are used to solicit custom from consumers only under conditions of fair competition and with due regard for the consumer's privacy, particularly pursuant to Article 17 of Directive .../.../EEC [concerning the protection of individuals in relation to the processing of personal data and privacy in the context of the public digital telecommunications networks].

Article 5

Presentation

1. Member States shall take the necessary measures to ensure that all contract solicitations shall be designed and presented in such a way as to comply with the principles of good faith in commercial transactions, and those for the protection of minors.
2. All contract solicitations shall make their commercial purpose clear.
3. Where the cost of using a means of communication at a distance to place the order or perform the service must be borne by the consumer, he shall be informed of this fact if it is not evident.

Article 6

Content of contract solicitations

At the time when his custom is solicited, the consumer shall be provided with clear and unambiguous information in any way appropriate to the means of communication, comprising in particular:

- the identity of the supplier,
- the main characteristics of the product or service,

- the price and quantity of any transport charges if not included,
- the payment, delivery and performance arrangements,
- the period for which the solicitation remains valid.

Article 7

Contract solicitation by television

In the case of solicitation by television:

- the presentation within the meaning of Article 5 of this Directive must exclusively observe the provisions relating to the protection of minors in Article 22 of Directive 89/552/EEC,
- the supplier must ensure that the information set out in Article 6 is conveyed in writing no later than the moment when direct contact is made between the supplier and the consumer.

Article 8

Inertia selling

1. Member States shall take appropriate steps to ensure that consumers are not supplied with products or services which they have not ordered beforehand and asked either to purchase them or to return them, even at no cost.
2. These steps shall at least include a provision to the effect that if products or services have been so supplied the consumer shall have the right to do as he pleases with them unless there has been an obvious mistake, in which case he shall merely hold them at the disposal of the supplier for a reasonable period and provided their nature so permits.
3. Failure to reply shall not constitute consent.
4. This Article shall not apply to the sending of samples or promotional gifts provided it is made clear that they are completely free of charge with no obligation for the consumer.

Article 9

Performance

If no time limit for performance is stipulated in the contract solicitation, the order shall be performed not more than 30 days after it is received by the supplier.

Article 10

Information on the content of the contract

1. Not later than at the time of delivery, the consumer shall receive the following information in writing and in the language used in the contract solicitation:
 - the identity of the supplier and the address of one of his places of business,
 - main features of the product or service,
 - price and quantity,
 - payment arrangements, including credit terms, or terms for payment by instalments,
 - right of withdrawal within the meaning of Article 11,
 - arrangements for exercising this right.

Where a contract is open-ended, and in particular if it is to be performed by means of repeated operations, the conditions under which it can be terminated must be indicated.

2. Paragraph 1 shall not apply to services supplied directly by telematic means, precisely the performance of which is effected by the use of means of communication at a distance, when they are supplied only on one occasion. Nevertheless, the operator of a technique of communication shall be obliged to indicate to the consumer, on demand, the location of the supplier.

Article 11

Right of withdrawal

1. For any contract negotiated at a distance, the consumer shall have a period of not less than seven days starting from the receipt of the product or service in which he may cancel the contract without penalty. The only costs payable shall be the direct return charges, if appropriate.

For services, this period shall begin when the consumer receives documentation expressing the explicit agreement of the supplier.

2. The consumer must be able to provide a document as evidence of return.

3. Where a product or service is purchased on credit, Member States shall provide for cancellation of credit

agreements concluded with the supplier when the right of return is exercised; if the credit has not been provided directly by the supplier, Article 11 of Council Directive 87/102/EEC⁽¹⁾ on consumer credit shall apply.

4. The present Article shall not apply to:

- services, if an essential part of performance is begun or should have begun before the end of the seven-day period,
- transactions concerning securities and other products or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier,
- contracts concluded in the form of an authenticated document,
- unless otherwise stipulated, to products,
 - which can be immediately reproduced,
 - for personal hygiene,
 - which by reason of their nature cannot be returned.

Article 12

Payment by card

If the owner of a payment card questions the validity of any operation in which the number of the card has been recorded without presentation or electronic identification of the means of payment, the operation shall thereby be cancelled. The supplier's bank account shall then be debited and the owner's account shall be recredited as quickly as possible, without prejudice to any claim for damages in the event of an operation being disputed improperly.

Article 13

Judicial or administrative redress

1. Member States shall ensure that adequate and effective means exist to enforce compliance with this Directive in the interests of consumers and competitors.
2. To this end, Member States shall make provision, among others, for trade and consumer organizations which can, according to their national legislation, demonstrate a legitimate interest in the matter, to be entitled, if it is recognized by the Member State of the

conflict, to take legal action and/or bring complaints before a competent administrative body.

3. Member States shall, as necessary, empower the courts and/or administrative authorities, in the event of litigation, to require the supplier to provide proof, in particular of the content of the solicitation, the existence of a prior request, the consumer's consent and compliance with time limits.

4. This Directive shall not exclude voluntary supervision of compliance with its provisions by self-regulatory bodies and recourse to such bodies by the persons or organizations referred to in paragraph 2, if procedures involving such bodies exist in addition to the court or administrative procedures referred to in this Article.

Article 14

Binding nature

The consumer may not waive the rights conferred on him by this Directive.

Article 15

Community rules

Nothing in this Directive shall preclude the application of provisions specific to techniques, products or services under other Community instruments.

Article 16

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1994.

When Member States adopt these measures, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The procedure for such reference shall be laid down by Member States.

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

Article 17

This Directive is addressed to the Member States.

⁽¹⁾ OJ No L 42, 12. 2. 1987, p. 48.

ANNEX I

Examples of means of communication at a distance covered by this Directive:

- unaddressed printed matter
- addressed printed matter
- standard letter
- press advertising with order form
- catalogue
- telephone with human intervention
- telephone without human intervention (automatic calling machine, audiotext),
- radio
- videophone (telephone with screen)
- videotext (microcomputer and television screen, with keyboard or touch screen)
- electronic mail
- fax (facsimile machine)
- television (teleshopping).

ANNEX II

Services with reservation within the meaning of Article 3:

- transport
 - accommodation
 - catering
 - entertainment.
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III

(Notices)

COMMISSION

Outcome of the invitations to tender (Community food aid)

(92/C 156/06)

as provided for in Article 9 (5) of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid

(Official Journal of the European Communities No L 204 of 25 July 1987, page 1)

16 June 1992

Decision/ Regulation	Action No	Lot	Recipient	Product	Quantity (tonnes)	Delivery stage	Num- ber of tender- ers	Successful tenderer	Awarded price (ECU/ tonne)
Decision of 2. 6. 1992	548/92 549-550/92	A	PAM/Jordan	DUR	2 685	EMB	7	n.a. (1)	—
		B	PAM/Tunisia	DUR	11 000	EMB	7	n.a. (1)	—
Decision of 9. 6. 1992	1201/91 1202/91 1213/91	A	IFRC/Ethiopia	BLT	1 090	DEB	7	Cie André, Paris (F)	140,90
		B	IFRC/Ethiopia	BLT	1 500	DEB	7	Cie André, Paris (F)	140,90
		C	IFRC/Ethiopia	BLT	3 000	DEB	7	Cie André, Paris (F)	140,90
Decision of 9. 6. 1992	1212/91	A	IFRC/Honduras	FMAI	50	DEB	4	Agroeuropa, Vercelli (I)	327,00
Decision of 3. 6. 1992	522/92	A	CICR/Somalia	HCOLZ	1 000	DEB	5	AOH, Utrecht (NL)	678,05
Decision of 9. 6. 1992	1214/91	A	PAM/Kenya	HCOLZ	130	EMB	4	AOH, Utrecht (NL)	602,30
	1188/91	B	IFRC/Guyana	HCOLZ	50	DEST	2	n.a. (1)	—
	1189/91	C	IFRC/Haiti	HCOLZ	100	DEST	3	n.a. (1)	—
	1192/91	D	IFRC/Ethiopia	HCOLZ	750	DEB	3	A. C. Toepfer, Hamburg (D)	633,69
	1193/91	E	IFRC/Ethiopia	HCOLZ	75	DEB	4	A. C. Toepfer, Hamburg (D)	633,69
	1195/91	F	IFRC/Sudan	HCOLZ	600	DEB	4	Agripole, Paris (F)	686,00
	1227/91	G	IFRC/Sudan	HCOLZ	565	DEB	4	A. C. Toepfer, Hamburg (D)	681,69

n.a.: No contract was awarded.

(1) Second invitation to tender to be held on 23 June 1992.

BLT: Common wheat
FBLT: Common wheat flour
CBL: Long grain milled rice
CBM: Medium grain milled rice
CBR: Round grain milled rice
BRI: Broken rice
FHAF: Rolled oats
SU: Sugar
ME: Meslin
SOR: Sorghum
DUR: Durum wheat
GDUR: Durum wheat groats

MAI: Maize
FMAI: Maize flour
GMAI: Maize groats
SMAI: Maize meal
LENP: Whole milk powder
LEP: Skimmed-milk powder
LEPv: Vitaminized skimmed-milk powder
CT: Tomato concentrate
B: Butter
BO: Butteroil
HOLI: Olive oil
HCOLZ: Refined rape or colza oil

HPALM: Semi-refined palm oil
HTOUR: Refined sunflower oil
CB: Corned beef
RsC: Currants
BABYF: Babyfood
PA: Pasta
FEQ: Horse beans (*Vicia faba equina*)
FMA: Broad beans (*Vicia faba major*)
SAR: Sardines
DEB: Free at port of landing — landed
DEN: Free at port of landing — ex ship
EMB: Free at port of shipment
DEST: Free at destination

