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Information and Notices

<u>Notice No</u>	Contents	Page
	<i>I Information</i>	
	Commission	
92/C 73/01	Ecu.....	1
92/C 73/02	Commission communication pursuant to Article 9 (2) of Council Directive 88/378/EEC regarding the list of bodies approved by the Member States responsible for carrying out the EC type-examination referred to in Articles 8 (2) and 10 of that Directive (safety of toys)	2
92/C 73/03	State aid — C 58/91 (NN 144/91) — Federal Republic of Germany	2
	<i>II Preparatory Acts</i>	
	Commission	
92/C 73/04	Proposal for a Council Directive on excise duties on motor fuels from agricultural sources	6
92/C 73/05	Amended proposal for a Council Directive on unfair terms in consumer contracts ..	7
	<i>III Notices</i>	
	Commission	
92/C 73/06	Outcome of the invitations to tender (Community food aid)	13

<u>Notice No</u>	Contents (continued)	Page
92/C 73/07	Phare — computer equipment — Notice of invitation to tender issued by the Commission of the European Communities on behalf of the Government of Romania for a project financed by the Phare programme	14
92/C 73/08	Fishery resources — Call for an expression of interest	15
Economic and Social Committee		
92/C 73/09	Recruitment Notices	17
<hr/>		
Corrigenda		
92/C 73/10	Corrigendum to prior notification of a concentration (Case No IV/M. 192 — Banesto/Totta) (OJ No C 70, 19. 3. 1992)	18

I

(Information)

COMMISSION

Ecu ⁽¹⁾

23 March 1992

(92/C 73/01)

Currency amount for one ecu:

Belgian and Luxembourg franc	42,0704	Portuguese escudo	176,024
German mark	2,04414	United States dollar	1,22440
Dutch guilder	2,30126	Swiss franc	1,85803
Pound sterling	0,713437	Swedish krona	7,41313
Danish krone	7,93106	Norwegian krone	8,02227
French franc	6,93011	Canadian dollar	1,45826
Italian lira	1536,27	Austrian schilling	14,3843
Irish pound	0,766112	Finnish markka	5,56735
Greek drachma	236,811	Japanese yen	163,666
Spanish peseta	129,024	Australian dollar	1,60957
		New Zealand dollar	2,22618

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).

Commission communication pursuant to Article 9 (2) of Council Directive 88/378/EEC ⁽¹⁾ regarding the list of bodies approved by the Member States responsible for carrying out the EC type-examination referred to in Articles 8 (2) and 10 of that Directive (safety of toys)

(92/C 73/02)

List of bodies notified by Italy pursuant to Article 9 (1) of Directive 88/378/EEC in conformity with the conditions laid down in Annex III to the said Directive:

Distinguished number:

88/378 — I — 0037 Istituto italiano sicurezza dei giocattoli, Via del Ricardo n. 18, I-20128 Milano, tel. 02/26 30 02 70, telefax 02/26 30 02 78.

The Commission ensures the updating of this list ⁽²⁾.

⁽¹⁾ OJ No L 187, 16. 7. 1988, p. 1.

⁽²⁾ OJ No C 154, 23. 6. 1990, p. 3.

OJ No C 162, 3. 7. 1990, p. 25.

OJ No C 278, 6. 11. 1990, p. 3.

OJ No C 320, 20. 12. 1990, p. 3.

OJ No C 13, 19. 1. 1991, p. 3.

OJ No C 32, 7. 2. 1991, p. 6.

OJ No C 68, 16. 3. 1991, p. 3.

OJ No C 264, 10. 10. 1991, p. 4.

OJ No C 272, 17. 10. 1991, p. 3.

OJ No C 279, 26. 10. 1991, p. 4.

OJ No C 282, 29. 10. 1991, p. 12 (corrigendum).

OJ No C 307, 27. 11. 1991, p. 3.

OJ No C 25, 1. 2. 1992, p. 3.

STATE AID

C 58/91 (NN 144/91)

Federal Republic of Germany

(92/C 73/03)

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

Commission notice pursuant to Article 93 (2) of the EEC Treaty to other Member States and interested parties concerning aid awarded by the German Government to Carl Zeiss Jena, Jenoptik and Jenaer Glaswerk

In its letter reproduced below, the Commission informed the German Government of its decision to initiate the Article 93 (2) procedure.

‘Further to several requests for information your Government informed the Commission, by letter dated 22 October 1991, of the terms on which Jenoptik Carl Zeiss Jena and Jenaer Glaswerk had been privatized.

The sales contract between the Treuhandanstalt (THA), the Länder Baden-Württemberg and Thuringia, Jenoptik

Carl Zeiss Jena, Carl Zeiss Oberkochen, Jenaer Glaswerk and Schott Glaswerk was concluded on 25 June 1991. The contract provides that Jenoptik Carl Zeiss Jena is split up into two companies:

— Carl Zeiss Jena (CZJ), and

— Jenoptik.

Jenaer Glaswerk will retain its name.

The contract provides for various interventions with public funds, some of which could well constitute aid:

- the THA will provide DM 110 million to CZJ in the form of capital,
 - the THA will provide DM 477 million to Thuringia with the understanding that this sum will be transferred to CZJ; part of it will be used for compensating losses CZJ is expected to make in the coming five years; a second part, which will be used to finance assets taken over by CZJ from Jenoptik Carl Zeiss Jena, could also well constitute aid, unless it can be demonstrated that this part is offset by a higher sales price for the assets in question,
 - Jenoptik (the former Jenoptik Carl Zeiss Jena minus the core activities taken over by CZJ) will be owned by Thuringia. The THA will provide Thuringia with DM 921 million, with which loans will be repaid, redundancies and pension rights will be financed and initial losses will be covered,
 - Jenoptik will also receive DM 800 million from Thuringia's own funds, with which its restructuring will be financed,
 - the THA and Thuringia are willing to provide up to DM 300 million to Jenoptik for covering unforeseen additional losses in the first five years,
 - the THA will transfer DM 240 million to Thuringia with which to provide Jenaer Glaswerk with capital and to cover losses up to 31 December 1994; in this context your Government is requested to inform the Commission of the amount of "Altschulden" contained in this sum,
 - Thuringia will provide DM 45 million to Jenaer Glaswerk from its own funds,
 - the THA is willing to cover part of additional excessive losses of Jenaer Glaswerk in this period.
- Apart from these measures which the Commission believes constitute aid, there are also certain interventions on which the Commission would like to be informed in order to verify whether they involve additional aid:
- the waiving of environmental liabilities for Jenoptik, CZJ and Jenaer Glaswerk: your Government is requested to confirm that only pollution caused before 1 July 1990 falls under these waivers, in conformity with the Commission's decision on the activities of the THA,
 - the waiving of debts originating in the former system — DM 992 million for Jenoptik and part of the sum of DM 240 million for Jenaer Glaswerk: your Government is requested to confirm that these waivers are in conformity with the terms of the Commission's decision on the activities of the THA,
 - the price paid by CZJ for the assets taken over from the former company Jenoptik Carl Zeiss Jena — originally DM 140 million, later reduced to DM 115 million: your Government is requested to inform the Commission of the modalities used to arrive at this amount,
 - similarly, your Government is invited to inform the Commission on how the symbolic prices paid Carl Zeiss Oberkochen for 51 % of CZJ and by Schott Glaswerk for 51 % of Jenaer Glaswerk were arrived at; the Commission also wishes to be informed of the price and conditions at which Carl Zeiss Oberkochen will purchase the remaining 49 % of CZJ from Jenoptik and at which Schott Glaswerk will purchase the remaining 49 % of Jenaer Glaswerk from Thuringia,
 - the Commission also wishes to be informed in detail on how the waiving of claims by the Carl Zeiss Stiftung is reflected in the sales prices and the various measures described above,
 - more in general, the Commission would like to know whether the contract in question came about as a result of an open, unconditional bid, or whether the reunification of Carl Zeiss was an overriding concern to your Government.
- On the basis of the information available to it, the Commission considers that the various aid measures are caught by Article 92 (1) of the EEC Treaty. CZJ, Jenaer

Glaswerk and, at least to a certain extent, Jenoptik will be producing and selling optical equipment and optical and special glass from the start. This production is to increase over the years, until the whole of the respective workforces is engaged in productive activities. For Jenoptik it should also be noted that this company will carry out contract research and will attract hi-tech investment to Jena, activities which may also well distort competition and affect trade between Member States. The Commission would like to receive more detailed information on the restructuring, the planned production of CZJ, Jenoptik and Jenaer Glaswerk in the coming five years in terms of volume and type of products and on the prospects for viability of these companies. The Commission also wishes to be informed of the definition of "core activities" taken over by CZJ and of the nature of the remaining productive and other activities in Jenoptik. The Commission also wishes to know the instruments with which Jenoptik is to attract investments to Jena. Finally, the Commission notes that no indication at all was provided on the activities carried out by Jenaer Glaswerk, nor of the workforce of this company.

The Commission has also made a preliminary investigation of the possibilities for applying one of the exemptions set out in Article 92 to the various aid measures. The Commission notes that the restructuring measures undertaken by the three companies will also be aided through existing aid schemes, in so far as the criteria for eligibility are met. The Commission also notes that the aid of DM 921 million to Jenoptik includes a payment of DM 521 million to redundant workers and a payment of DM 300 million to the workers' pension fund for the period before 28 February 1991. It is the Commission's opinion that these two aids benefit the workers of the former Jenoptik Carl Zeiss Jena without adversely affecting trading conditions in the Community to an extent contrary to the common interest and that they can therefore be considered compatible with the common market.

For the remainder of the aids, the Commission considers that at this stage and on the basis of the information currently available to it, they do not qualify for one of the exemptions provided for in Article 92 of the EEC Treaty.

Accordingly, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of these aid measures.

As part of that procedure, the Commission hereby gives your Government the opportunity to present, within one

month of being notified of this letter, its comments and any information relevant to the aids, in particular the replies to the specific questions put in this letter.

It should be pointed out that, failing a reply from the German Government or in the event of an inadequate reply, the Commission is entitled, pursuant to the recent judgment given by the Court of Justice on 14 February 1990 in Case 301/87 (Boussac), to take a final decision pursuant to Article 93 (2) of the EEC Treaty, assessing the compatibility of the aid measures solely on the basis of the information available to it, and, where appropriate, to require the aid to be abolished and any aid payments recovered.

The Commission notes that the sales contract referred to above was concluded in June 1991, but that the bulk of the aids is to be paid gradually to the three beneficiary companies. The Commission draws the attention of your Government to Article 93 (3) of the EEC Treaty and requests it to confirm within 10 working days of being notified of this letter, that it will refrain from paying any aid falling under the procedure, until the Commission has taken a final decision authorizing such payment. In the absence of the requested confirmation, the Commission reserves the right to take a decision requiring your Government to suspend its payments (see Commission letter dated 4 March 1991 to the Member States concerning the procedures for the notification of aid plans and procedures applicable when aid is provided in breach of the rules of Article 93 (3) of the EEC Treaty).

In addition, the Commission draws the attention of your Government to the communication published in the *Official Journal of the European Communities* No C 318, 24 November 1983, page 3, which indicates that any aid granted unlawfully without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EEC Treaty, may have to be recovered from the recipient firms.

The abolishment of the aid involves repayment, in accordance with the procedures and provisions of German law, in particular those relating to interest on arrears on liabilities towards the State, with interest starting to run on the date on which the unlawful aid was granted. This measure is necessary in order to restore the *status quo* (1) by removing all the financial benefits which the firms receiving the unlawful aid have improperly enjoyed since the date on which the aid was paid.

(1) Judgment of 21 March 1990 in Case C-142/87, Tubemeuse.

The Commission also requests the German authorities to inform the recipient firms without delay of the initiation of the procedure and the fact that they may have to repay any aid improperly received.

The Commission hereby informs your Government that it will publish a notice in the *Official Journal of the European Communities* giving the other Member States and other interested parties concerned notice to submit their comments.⁷

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

Commission of the European Communities,
200, Rue de la Loi,
B-1049 Brussels.

The comments will be communicated to the German Government.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on excise duties on motor fuels from agricultural sources

(92/C 73/04)

COM(92) 36 final

(Submitted by the Commission on 5 March 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 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 fuels from agricultural sources present advantages for the Community's policies concerning both agriculture and energy;

Whereas, for the purpose of limiting harmful emissions, the development and use of less polluting fuels should be encouraged;

Whereas fuels produced from renewable agricultural sources have been identified in general as beneficial to the environment;

Whereas a financial incentive should be provided to encourage the development of these fuels and bring that development to a level of sustained viability;

Whereas the most effective way of providing this incentive is to reduce the rate of excise duty to be charged,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to the provisions on the taxation of motor fuels contained in Council Directive ... on the harmonization of excise duties on mineral oils and Council Directive ... on the harmonization of the

structures of excise duties on mineral oils, Member States shall, in accordance with the provisions of this Directive, charge reduced excise duty on certain motor fuels from agricultural products.

Article 2

For the purposes of this Directive the products to be taxed at the reduced rate are:

1. Ethyl alcohol produced from agricultural products or products of vegetable origin (hereinafter described as bioethanol) falling within subheading 2207 20 00 10/80 of the integrated tariff of the European Communities, which is used directly or through a chemical modification.
2. Methyl alcohol (methanol), falling within CN code 2905 11 00, and produced from agricultural products or products of vegetable origin, which is used directly or through a chemical modification.
3. Vegetable oil falling within CN codes 1507, 1508, 1510, 1511, 1512, 1513, 1514 and 1515.
4. Chemically modified vegetable oil produced from agricultural products and falling within CN code 1518.

Article 3

1. The rate of duty on bioethanol shall be not more than 10 % that charged on unleaded petrol within a Member State.

2. The rate of duty on methanol as referred to in Article 2 (2) shall be not more than 10 % of that charged on unleaded petrol within a Member State.

3. The rate of duty on vegetable oils, whether chemically modified or not, shall be not more than 10 % of that charged on diesel within a Member State.

Article 4

Member States shall take all necessary measures to control the manufacture, storage, mixing and distribution of these products and in particular shall ensure that all operations conform to the general regime for the control of excisable products as set out in Council Directive ...

Article 5

For the first time not later than 31 December 1997 and thereafter every two years, the Commission shall report to the Council on the fiscal, economic, agricultural, energy, industrial and environmental aspects of this measure.

Article 6

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1993.

When the Member States adopt such provisions they shall contain a reference to this Directive or shall be accompanied by such a reference on official publication. The Member State shall lay down the manner in which such reference shall be made.

Article 7

This Directive is addressed to the Member States.

Amended proposal for a Council Directive on unfair terms in consumer contracts

(92/C 73/05)

COM(92) 66 final — SYN 285

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 5 March 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,

Whereas it is necessary to adopt measures to progressively establish the internal market before 31 December 1992; whereas the internal market comprises an area which has no internal frontiers and in which goods, persons, services and capital move freely;

Whereas national laws of Member States relating to the terms of contract applicable between the seller of goods or services, on the one hand, and the purchaser of them, on the other hand, show many disparities, with the result that the national markets for the sale of goods and services to consumers differ from each other and that

distortions of competition may arise amongst the sellers and suppliers, notably when they sell and supply in other Member States;

Whereas, in particular, national laws of Member States relating to unfair terms in contracts concluded with consumers show marked divergences, and the same is true of their national laws relating to the obligation of the seller of goods to answer for the quality of them, for their fitness for the purpose for which they are sold, and for their conformity to the contract, and of the supplier of services to answer for the performance of them;

Whereas it is the responsibility of the Member States to ensure that contracts concluded with consumers do not contain unfair terms;

Whereas, generally speaking, consumers do not know the laws which, in other Member States than their own, govern contracts for the sale of goods or services; and whereas this difficulty may deter them from direct transactions of purchase of goods or services in another Member State;

Whereas in order to facilitate the establishment of a single market and to safeguard the citizen in his role as consumer when buying goods and services by contracts

which are governed by the laws of other Member States than his own, it is essential to remove unfair terms from those contracts;

Whereas sellers of goods and services will thereby be helped in their task of selling goods and services, both at home and throughout the single market; and whereas competition between sellers will thus be stimulated, so contributing to increased choice for Community citizens as consumers;

Whereas the Community's programmes for a consumer protection and information policy ⁽¹⁾ underlined the importance of safeguarding consumers in the matter of unfair terms of contract; and whereas this protection ought to be provided by laws and regulations which are either harmonized at Community level or adopted directly at that level;

Whereas in accordance with the principle laid down under the heading 'Protection of the economic interests of the consumers', as stated in those programmes: 'Purchasers of goods and services should be protected against the abuse of power by the seller, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts';

Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all consumer contracts, whether concluded in writing or by word of mouth, and, if in writing, whether by means of one document or several;

Whereas more effective protection of the consumer can be achieved by adopting rules of law which, in the matter of unfair terms, are to apply to all of them; whereas in this respect, a distinction must be made in individual contracts between individually negotiated terms and terms which have not been individually negotiated;

Whereas contracts should be drafted in plain, intelligible language, the consumer should be given a proper opportunity to examine all the terms, and, if in doubt, the interpretation most favourable to the consumer should prevail;

Whereas Member States should ensure that unfair terms are not used in contracts concluded with consumers by a seller or supplier and that if, nevertheless, such terms are so used they will be treated as void, but the remaining

terms will remain valid and the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions;

Whereas it is desirable to identify certain types of terms which must not be used in contracts offered to consumers;

Whereas it is possible that, in certain cases, the consumer may be deprived of protection under this Directive by designating a law of a non-Member State as the law applicable to the contract; whereas it should therefore be laid down that the implementing provisions of this Directive must govern such situations;

Whereas the list of terms always regarded as unfair if not individually negotiated with the consumer is not exhaustive;

Whereas persons or organizations, if regarded under national law as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings;

Whereas the courts or administrative authorities must have powers enabling them to order or obtain the withdrawal from use of unfair terms in contracts concluded with consumers,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.
2. This Directive shall not apply to contracts relating to employment, to succession, to rights under family law, or to contracts relating to the incorporation and organization of companies or partnership agreements.

Article 2

For the purposes of this Directive the following terms shall have the following meanings:

- (a) 'unfair terms' the terms of contract defined in Articles 3 and 4;
- (b) 'consumer' any natural or legal person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade, business or profession;

⁽¹⁾ OJ No C 92, 25. 4. 1975, p. 1, and OJ No C 133, 3. 6. 1981, p. 1.

(c) 'seller or supplier' any natural or legal person who, in transactions covered by this Directive, is acting for purposes relating to his trade, business or profession, and in particular the activities of suppliers, whether publicly owned or privately owned, and the sale, hiring out or other provision of appliances by those suppliers.

Article 3

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, of itself or in combination with another term or terms of the same contract, or of another contract upon which it is dependent, contrary to the requirements of good faith:

— it causes to the detriment of the consumer a significant imbalance in the parties' rights and obligations arising under the contract,

or

— it causes the performance of the contract to be significantly different from what the consumer could legitimately expect.

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of that term, particularly in the context of a pre-formulated standard contract.

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Any seller or supplier who claims that a term has been individually negotiated shall thereby wholly assume the burden of proof.

3. The Annex to this Directive contains a non-exhaustive list of terms which shall always be regarded as unfair if they have not been individually negotiated. The clauses listed in 1 (a), (b), (c) and (p) of the Annex shall be regarded as unfair even if they have been individually negotiated.

Article 4

1. A contractual term, whether or not individually negotiated, shall also be regarded as unfair if, of itself or in combination with another term or terms of the same contract, or of another contract upon which it is dependent,

— it causes the performance of the contract to be unduly detrimental to the consumer,

and

— it has been imposed upon the consumer as a result of the economic power of the seller or supplier and/or the consumer's own economic and/or intellectual weakness.

2. In the cases provided for by this Article, the unfairness of a contractual term is to be determined by reference to the time at which the contract is concluded, to the surrounding circumstances at that time and to all the other terms of the contract.

3. This Article shall be without prejudice to national provisions on contract validity.

Article 5

1. In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. Where pre-formulated terms contradict terms added when the contract is concluded, the latter shall prevail.

2. Regardless of whether or not they are unfair, terms which have not been individually negotiated shall be regarded as having been accepted by the consumer only where the latter has had a proper opportunity to examine the terms before the contract was concluded.

Article 6

1. The Member States shall take the necessary measures in order to ensure that the consumer is guaranteed, as purchaser under a contract for the sale of goods, the right to receive goods which are in conformity with the contract and are fit for the purpose for which they were sold, and to complain, within an appropriately extensive period, about any intrinsic defects which the goods may contain.

2. For the purpose of exercising these rights, the Member States shall take the necessary measures in order to ensure that the consumer is guaranteed, the choice of the following available options:

— the reimbursement of the whole of the purchase price,

— the replacement of the goods,

— the repair of the goods at the seller's expense,

— a reduction in the price if the consumer retains the goods,

and the right to compensation for damage sustained by him which arises out of the contract.

3. In cases where the seller transmits to the consumer the guarantee of the manufacturer of the goods, the Member States shall take the necessary measures in order to ensure that the consumer is guaranteed, the right to benefit from the manufacturer's guarantee for a period of 12 months or for the normal life of the goods, where this is less than 12 months, and to enforce payment, either by the seller or by the manufacturer, of the costs incurred by the consumer in obtaining implementation of that guarantee.

4. The Member States shall take the necessary measures in order to ensure that the consumer is guaranteed, as purchaser under a contract for the supply of services, the right:

- to be supplied with those services at the agreed time and with all due efficiency,
- to have the supplier's warranty that the supplier has the requisite skill and expertise to supply the services in the manner specified in the foregoing indent.

Article 7

Member States shall:

- prohibit the use of unfair terms in any contract concluded with a consumer by a seller or supplier, regardless of the law applicable; this prohibition shall be without prejudice to the seller's right to obtain compensation from his own supplier,
- provide that if, notwithstanding this prohibition, unfair terms are used in such a contract they shall be void, and that the remaining terms of the contract shall continue to be valid and the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the void provisions.

Article 8

1. Member States shall ensure that in the interests of consumers and users, competitors and the public generally, adequate and effective means exist for the control of unfair terms in contracts concluded with consumers and of the terms of contracts for the sale of goods and services to them.

2. Such means shall include provisions of law whereby persons or organizations, if regarded under national law as having a legitimate interest in protecting consumers, may take action before the courts or before an administrative authority competent to make a decision for determination of the question whether contractual terms drawn up for general use, regardless of whether they are actually included in individual contracts, are inconsistent with the provisions of this Directive.

3. The measures referred to in the foregoing paragraph may be directed jointly against a number of persons using, preparing to use or recommending the use of the same general contractual terms or identical terms; the decision reached by the competent authorities shall be binding on all the persons concerned.

4. As part of the measures referred to in the foregoing paragraphs, the competent authorities shall assess the unfairness of the terms in question in the light of the list of standard terms given in the Annex and, secondarily, by applying the criteria laid down in Article 3 (1).

Article 9

The Commission shall present a report to the Council and the European Parliament concerning the application of this Directive by 31 December 1997 at the latest.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992 and shall forthwith inform the Commission thereof. Those provisions shall apply to all contracts concluded with consumers after 31 December 1992.

The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.

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

Article 11

This Directive is addressed to the Member States.

ANNEX

1. The following types of terms are unfair if they have the object or effect of:
 - (a) excluding or limiting the liability of a seller or supplier in the event of death or personal injury to the consumer resulting from an act or omission of that seller or supplier;
 - (b) excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance of any of the contractual obligations, and in particular the rights described in Article 6 of this Directive;
 - (c) making the signing of the agreement binding on the part of the consumer and non-binding on the part of the seller or supplier;
 - (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to be paid double the amount of the said sums by the seller or supplier where the latter is the party cancelling the contract;
 - (e) authorizing the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid by the consumer where it is the seller or supplier himself who dissolves the contract;
 - (f) enabling the seller or supplier to terminate unilaterally a contract of indeterminate duration without reasonable notice;
 - (g) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to do so is unreasonably early;
 - (h) irrefutably binding the consumer to other contractual requirements;
 - (i) enabling the seller or supplier to alter the terms of contract unilaterally;
 - (j) enabling the seller or supplier to alter unilaterally any characteristics of the product or service to be provided;
 - (k) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price, without giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;
 - (l) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
 - (m) limiting the seller or supplier's obligation to respect commitments undertaken by his agents;
 - (n) obliging the consumer to fulfil all his obligations where the seller or supplier has not performed his;
 - (o) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;
 - (p) requiring any consumer who fails to fulfil his obligations to pay a disproportionately high sum in compensation, without requiring any seller or supplier who fails to fulfil his obligations to pay a similar sum;

-
- (q) restricting the legal possibilities available to the consumer, in particular the possibility of applying for termination of the contract if the seller or supplier fails to fulfil his obligations, or of offsetting a debt owed by the seller or supplier against a debt owed to him;
 - (r) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration, restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie on another party to the contract.
2. (a) Paragraph 1 (f) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice, provided that the supplier is required to inform the other contracting party/parties thereof immediately;
- (b) paragraph 1 (i) is without hindrance to terms by which a supplier of financial services reserves the right to alter the rate of interest payable by or to the consumer or the amount of other charges for financial services without notice, provided that the supplier is required to inform the other contracting party/parties thereof as soon as possible and provided that the latter are free to terminate the contract immediately;
- (c) paragraphs 1 (f) and (i) do not apply to:
- stock exchange transactions,
 - contracts for the purchase of foreign currency, traveller's checks or international money orders denominated in foreign currency;
- (d) paragraph 1 (j) is without hindrance to terms by which a seller or supplier reserves the right to make alterations as a result of technical developments, provided that these do not result in any increase in price or reduction in quality and that the terms give the consumer the possibility of stating the conditions to which his agreement is subject;
- (e) paragraph 1 (k) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.
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III

(Notices)

COMMISSION

Outcome of the invitations to tender (Community food aid)

(92/C 73/06)

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)

17 March 1992

Decision/Regulation	Action No	Lot	Recipient	Product	Quantity (tonnes)	Delivery stage	Number of tenders	Successful tenderer	Awarded price (ECU/tonne)
532/92	1084/91	A	Egypt	HTOUR	1 000	EMB	4	Cebag — AD Zwolle (NL)	676,80
	1086/91	B	Egypt	HTOUR	1 000	EMB	4	Cebag — AD Zwolle (NL)	678,62
	1088/91	C	Egypt	HTOUR	2 000	EMB	7	Vandemoortele — Izegem (B)	576,27
	1089/91	D	Egypt	HTOUR	2 000	EMB	7	Cebag — AD Zwolle (NL)	574,25
531/92	1016/91	A	Egypt	BLT	20 000	EMB	8	Richco — Rotterdam (NL)	108,48
	1017/91	B	Egypt	BLT	20 000	EMB	8	Richco — Rotterdam (NL)	110,48
	1018/91	C	Egypt	BLT	20 000	EMB	8	Richco — Rotterdam (NL)	110,98
533/92	836-838/91	A	ONG/Ethiopia	BLT	2 430	EMB	5	Richco — Rotterdam (NL)	130,48
	936-937/91	B	ONG/Ethiopia	BLT	3 264	EMB	5	Richco — Rotterdam (NL)	130,48

BLT: Common wheat
 FBLL: 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
 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

Phare — computer equipment**Notice of invitation to tender issued by the Commission of the European Communities on behalf of the Government of Romania for a project financed by the Phare programme**

(92/C 73/07)

Project title:

Computer equipment for the national agency for privatisation in Romania

L-2920 Luxembourg, bâtiment Jean Monnet, rue Alcide de Gasperi [tél. (352) 43 01 1; télécopieur (352) 43 01 44 33],

F-75007 Paris Cedex 16, 288, boulevard Saint-Germain [tél. (33) 1 40 63 38 38; télécopieur (33) 1 45 56 94 17],

I-00187 Roma, via Poli 29 [tel. (39-6) 678 97 22; telefax (39-6) 679 16 58],

DK-1004 København, Højbrohus, Østergade 61 [tlf. (45) 33 14 41 40; telefax (45) 33 11 12 03],

UK-London SW1P 3AT, Jean Monnet House, 8 Storey's Gate [tel. (44) 71 222 81 22; facsimile (44) 71 222 09 00],

IRL-Dublin 2, 39 Molesworth Street [tel. (353) 1 71 22 44; facsimile (353) 1 71 26 57],

GR-10674 Athens, Vassilissis Sofias 2 [τηλ. (30) 1 724 39 82, τηλεφάξ (30) 1 724 46 20],

E-28001 Madrid, calle de Serrano, 41, 5a planta [tel. (34-1) 435 17 00, 435 15 28; telefax (34-1) 576 03 87, 577 29 23],

P-1200 Lisboa, Centro Europeu Jean Monnet, Largo Jean Monnet 1-10º [tel. (351) 1 54 11 44; telefax (351) 1 55 43 97].

1. Participation and origin

Participation is open on equal terms to all natural and legal persons of the Member States of the European Economic Community and of Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Albania and the Baltic States.

Supplies offered must originate in the above States.

2. Subject

Supply, in 1 lot, of computer equipment for the National Agency for Privatisation.

3. Invitation to tender dossier

The complete tender dossier may be obtained free of charge from:

a) Commission of the European Communities, DG I - Operational Service Phare, 84-86 Rue de la Loi (L84 - 4/21), B-1049 Brussels, telex 21877 COMEUB, facsimile 236 42 51;

b) Offices in the Community:

D-5300 Bonn, Zitelmannstraße 22 [Tel. (49) 228 53 00 90; Telefax (49) 22 85 30 09 50],

NL-2594 AG Den Haag, E.V.D., afdeling PPA, Bezuidenhoutseweg 151 [tel. (31-70) 379 88 11; telefax (31-70) 379 78 78],

4. Tenders

Should arrive, at the latest, on 27. 4. 1992 (17.00), local time, at: Commission of the European Communities, DG I - External Relations, Operational Service Phare, 84-86 Rue de la Loi, 4/21 (attention Mr Daudin), B-1049 Brussels.

They will be opened in public session on 28. 4. 1992 (10.00), local time, same address.

Fishery resources

Call for an expression of interest

(92/C 73/08)

Council Regulation (EEC) No 3499/91 of 28. 11. 1991 providing a Community framework for studies and pilot projects relating to the conservation and management of fishery resources in the Mediterranean ⁽¹⁾ sets out the priority areas in which these studies and projects are to be carried out.

The following is a list of the areas for which expressions of interest are invited which a view to a Community financial contribution for 1992 in accordance with Article 1 of the above Regulation.

1. Demersal resources, including deep-water fisheries

The lack of up-to-date information on certain demersal resources, in particular deep-water stocks on the Mediterranean continental rises and existing fisheries or those under development, justifies a special research effort into:

- charting demersal resources, including deep-water stocks;
- reproduction, growth and mortality parameters;
- population structures, density, biomass;
- exploitation opportunities and, where necessary, characteristics of existing fisheries (fleets, effort, catches);
- distribution of frequency of length or age in catches per stock and fleet or fishery.

2. Selectivity of main fishing gear

Studies covering the selectivity parameters of the main fishing gear for the main commercial species, with the aim of improving inter- and intra-species selectivity, as a function of the geometry of the gear, by using adapted equipment or any other suitable method, including electronic detection.

3. Socio-economic aspects of the main Mediterranean fisheries

Socio-economic analyses of the fisheries of the Mediterranean, particularly those in the eastern Mediterranean, would be of use in assessing the potential for implementing regulations or strategies for managing fishery resources and their chances of success.

The information to be gathered includes, inter alia:

- level and distribution of costs and income per fleet and type of fishery;
- evaluation of the actual contribution of fishing to the income of producers, in particular for occasional and part-time fishermen;
- financial analysis of the dynamics of the fisheries and fishing enterprises, particularly relating to investments, including investment in sophisticated electronic equipment (navigation, detection);
- analysis of the economic problems resulting from the special features of the Mediterranean region (congestion in coastal areas, including fishing areas, seasonal variations, etc);
- surveys of the perception which fishermen have of the suitability of resource management measures;
- analysis of the strategies producers use to adapt to restrictions imposed by regulations on fisheries, in particular ways of circumventing conservation and management measures;
- types of fleet and fishing activities.

4. Information systems for management purposes in the Mediterranean

Establishing a system for the conservation and management of fishery resources in the Mediterranean, taking into account biological, economic, social and administrative realities at national, regional and local levels, requires the gathering and compilation for analysis purposes of data on fleets and their activities, production costs and catches per fishery zone. Creation of a Mediterranean information system with the aim of quantifying fishing and management effort starts with the establishment of harmonized statistical networks which will require preliminary analysis and design work, including:

- analysis of the requirements of a management/conservation system in terms of biological, economic, social and other data, with the aim of determining what information needs to be gathered, at what frequency and at what level;
- analysis of the existing situation (administrative, scientific, etc, databases);
- proposals on what form a set of mutually compatible, harmonized statistical networks could take.

⁽¹⁾ OJ No L 331, 3. 12. 1991, p. 1.

5. Organization of seminars on fishery conservation and management

Pilot projects concerning, in particular, the conservation/management of fishery resources, stock assessment methods or the economic evaluation of fisheries are envisaged. They could relate to the creation of harmonized statistical networks provided they are already properly defined (as in the case of tuna resources), and cover the organization of:

- meetings between the experts or scientists involved with the aim of harmonizing the systems for collecting the statistical data, adding existing statistics to the databases and evaluating results;
- training seminars relating to Mediterranean fishing;
- symposia on the problems of conservation and management of fishery resources in the Mediterranean.

6. Consultation between authorities and professionals

Consultation between partners asked to participate in implementing a harmonized fishery management system in the Mediterranean would be facilitated if a survey were carried out into their perception of their respective roles and, in the case of direct control of fishing effort, the powers to be granted to them to accomplish their

tasks. There could be meetings between authorities and professionals on this, possibly as part of a symposium on the conservation of fishery resources in the Mediterranean.

7. Address for the submission of expressions of interest:

7.1. Expressions of interest should be posted to or handed in at the following address:

Commission of the European Communities, Directorate-General for Fisheries, For the attention of Mr.Ch. Nordmann, Department XIV-1, 200 Rue de la Loi (JII 99/5-90), B-1049 Brussels.

7.2. The general terms and conditions applying to service contracts with the Commission of the European Communities are available on request from the above address.

8. Final date for receipt of expressions of interest:

31. 5. 1992.

9. Period of validity of expressions of interest:

31. 12. 1992.

ECONOMIC AND SOCIAL COMMITTEE

Recruitment Notices

(92/C 73/09)

The Economic and Social Committee of the European Communities is publishing in *Official Journal of the European Communities* No C 73 A of 24 March 1992 the following Recruitment Notices:

- ESC/62/91 — Director,
- ESC/72/91 — Secretary-General.

The relevant edition of this Official Journal can be obtained on application to the Directorate for Personnel Administration and Finance of the Economic and Social Committee of the European Communities, 2 rue Ravenstein, B-1000 Brussels.

CORRIGENDA

Corrigendum to prior notification of a concentration (Case No IV/M. 192 — Banesto/Totta)

(Official Journal of the European Communities No C 70 of 19 March 1992)

(92/C 73/10)

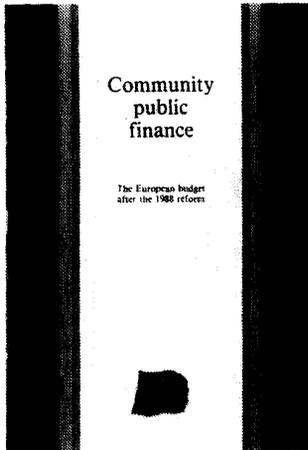
On page 19, in point 1:

for: 'On 13 February 1992',

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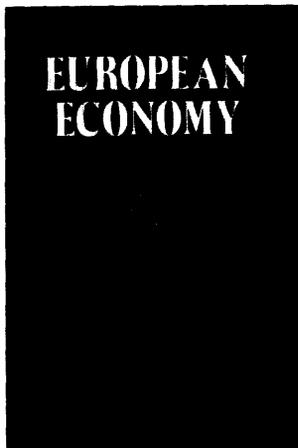
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