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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 16 December 1991

supplementing the common system of value added tax and amending Directive 77/388/EEC
with a view to the abolition of fiscal frontiers

(91/680/EEC)

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 ⁽¹⁾,

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

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

Whereas Article 8a of the Treaty defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas the completion of the internal market requires the elimination of fiscal frontiers between Member States and that to that end the imposition of tax on imports and the remission of tax on exports in trade between Member States be definitively abolished;

Whereas fiscal controls at internal frontiers will be definitively abolished as from 1 January 1993 for all transactions between Member States;

Whereas the imposition of tax on imports and the remission of tax on exports must therefore apply only to transactions

with territories excluded from the scope of the common system of value added tax;

Whereas, however, in view of the conventions and treaties applicable to them, transactions originating in or intended for the Principality of Monaco and the Isle of Man must be treated as transactions originating in or intended for the French Republic and the United Kingdom of Great Britain and Northern Ireland respectively;

Whereas the abolition of the principle of the imposition of tax on imports in relations between Member States will make provisions on tax exemptions and duty-free allowances superfluous in relations between Member States; whereas, therefore, those provisions should be repealed and the relevant Directives adapted accordingly;

Whereas the achievement of the objective referred to in Article 4 of the First Council Directive of 11 April 1967 ⁽⁴⁾, as last amended by the Sixth Directive 77/388/EEC ⁽⁵⁾, requires that the taxation of trade between Member States be based on the principle of the taxation in the Member State of origin of goods and services supplied without prejudice, as regards Community trade between taxable persons, to the principle that tax revenue from the imposition of tax at the final consumption stage should accrue to the benefit of the Member State in which that final consumption takes place;

Whereas, however, the determination of the definitive system that will bring about the objectives of the common system of value added tax on goods and services supplied

⁽¹⁾ OJ No C 252, 22. 9. 1987, p. 2,
OJ No C 176, 17. 7. 1990, p. 8 and
OJ No C 131, 22. 5. 1991, p. 3.

⁽²⁾ OJ No C 324, 24. 12. 1990, p. 97.

⁽³⁾ OJ No C 237, 12. 9. 1988, p. 19,
OJ No C 332, 31. 12. 1990, p. 121.

⁽⁴⁾ OJ No 71, 14. 4. 1967, p. 1301/67.

⁽⁵⁾ OJ No L 145, 13. 6. 1977, p. 1.

between Member States requires conditions that cannot be completely brought about by 31 December 1992;

Whereas, therefore, provision should be made for a transitional phase, beginning on 1 January 1993 and lasting for a limited period, during which provisions intended to facilitate transition to the definitive system for the taxation of trade between Member States, which continues to be the medium-term objective, will be implemented;

Whereas during the transitional period intra-Community transactions carried out by taxable persons other than exempt taxable persons should be taxed in the Member States of destination, at those Member States' rates and under their conditions;

Whereas intra-Community acquisitions of a certain value by exempt persons or by non-taxable legal persons and certain intra-Community distance selling and supplies of new means of transport to individuals or exempt or non-taxable bodies should also be taxed, during the transitional period, in the Member States of destination, at those Member States' rates and under their conditions, in so far as such transactions would, in the absence of special provisions, be likely to cause significant distortions of competition between Member States;

Whereas the necessary pursuit of a reduction of administrative and statistical formalities for undertakings, particularly small and medium-sized undertakings, must be reconciled with the implementation of effective control measures and the need, on both economic and tax grounds, to maintain the quality of Community statistical instruments;

Whereas advantage must be taken of the transitional period of taxation of intra-Community trade to take measures necessary to deal with both the social repercussions in the sectors affected and the regional difficulties, in frontier regions in particular, that might follow the abolition of the imposition of tax on imports and of the remission of tax on exports in trade between Member States; whereas Member States should therefore be authorized, for a period ending on 30 June 1999, to exempt supplies of goods carried out within specified limits by duty-free shops in the context of air and sea travel between Member States;

Whereas the transitional arrangements will enter into force for four years and will accordingly apply until 31 December 1996; whereas they will be replaced by a definitive system for the taxation of trade between Member States based on the principle of the taxation of goods and services supplied in the Member State of origin, so that the objective referred to in Article 4 of the First Council Directive of 11 April 1967 is achieved;

Whereas to that end the Commission will report to the Council before 31 December 1994 on the operation of the

transitional arrangements and make proposals for the details of the definitive system for the taxation of trade between Member States; whereas the Council, considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, will decide before 31 December 1995 on the arrangements necessary for the entry into force and the operation of the definitive system, the transitional arrangements being automatically continued until the entry into force of the definitive system and in any event until the Council has decided on the definitive system;

Whereas, accordingly, Directive 77/388/EEC, as last amended by Directive 89/465/EEC ⁽¹⁾, should be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

1. Article 3 shall be replaced by the following:

'Article 3

- (1) For the purposes of this Directive:

- "territory of a Member State" shall mean the territory of the country as defined in respect of each Member State in paragraphs 2 and 3,
- "Community" and "territory of the Community" shall mean the territory of the Member States as defined in respect of each Member State in paragraphs 2 and 3,
- "third territory" and "third country" shall mean any territory other than those defined in paragraphs 2 and 3 as the territory of a Member State.

- (2) For the purposes of this Directive, the "territory of the country" shall be the area of application of the Treaty establishing the European Economic Community as defined in respect of each Member State in Article 227.

- (3) The following territories of individual Member States shall be excluded from the territory of the country:

- Federal Republic of Germany:
the Island of Heligoland,
the territory of Bisingen,
- Kingdom of Spain:
Ceuta,
Melilla,
- Republic of Italy:
Livigno,
Campione d'Italia,
the Italian wates of Lake Lugano.

⁽¹⁾ OJ NO L 226, 3. 8. 1989, p. 21.

The following territories of individual Member States shall also be excluded from the territory of the country:

- Kingdom of Spain:
the Canary Islands,
- French Republic:
the overseas departments,
- Hellenic Republic
Αγιο Όρος.

(4) Member States shall take the measures necessary to ensure that transactions originating in or intended for

- the Principality of Monaco are treated as transactions originating in or intended for the French Republic,
- the Isle of Man are treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland.

(5) If the Commission considers that the provisions laid down in paragraphs 3 and 4 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council.

2. Article 7 shall be replaced by the following:

'Article 7

Imports

1. "Importation of goods" shall mean:

- (a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles 9 and 10 of the Treaty establishing the European Economic Community or, where the goods are covered by the Treaty establishing the European Coal and Steel Community, are not in free circulation;
- (b) the entry into the Community of goods from a territory specified in the second subparagraph of Article 3 (3) or from the Channel Islands.

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1 (a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16 (1) (B), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.

Similarly, where goods referred to in paragraph 1 (b) are placed, on entry into the Community, under the

internal Community transit procedure provided for in Article 33a (1) (b), the place of import shall be the Member State within the territory of which this procedure ceases to apply.'

3. In Article 8 (1) (a), 'in a country other than' shall be replaced by 'in a Member State other than', and 'the Member State into which the goods are imported' shall be replaced by 'the Member State within the territory of which the installation or assembly is carried out'.

4. The following subparagraph shall be added to Article 8 (1):

'(c) in the case of goods supplied on board ships, aircraft or trains during transport the places of departure and destination of which are within the territory of the Community: the place where the goods are at the time of departure of the transport.'

5. Article 8 (2) shall be replaced by the following:

'2. By way of derogation from paragraph 1 (a), where the place of departure of the consignment or transport of goods is in a third territory, the place of supply by the importer as defined in Article 21 (2) and the place of any subsequent supplies shall be deemed to be within the Member State of import of the goods.'

6. Article 10 (3) shall be replaced by the following:

'3. The chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7 (3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and the tax shall become chargeable when the chargeable event for those Community duties occurs and those duties become chargeable.

Where imported goods are not subject to any of those Community duties, Member States shall apply the provisions in force governing customs duties as regards the occurrence of the chargeable event and the moment when the tax becomes chargeable.'

7. In Article 11 (B):

— paragraph 1 shall be replaced by the following:

'1. The taxable amount shall be the value for customs purposes, determined in accordance with the Community provisions in force.'

— paragraph 2 shall be deleted.

8. Article 11 (B) (3) shall be replaced by the following:

'3. The taxable amount shall include, in so far as they are not already included:

- (a) taxes, duties, levies and other charges due outside the importing Member State and those due by reason of importation, excluding the value added tax to be levied;
- (b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the importing Member State.

'First place of destination' shall mean the place mentioned on the consignment note or any other document by means of which the goods are imported into the importing Member State. In the absence of such an indication, the first place of destination shall be taken to be the place of the first transfer of cargo in the importing Member State.

Equally, Member States may include in the taxable amount the incidental expenses referred to above where they result from transport to another place of destination within the territory of the importing Member State if that place is known when the chargeable event occurs.'

9. In Article 11 (B) (5), 'from the Community' shall be added after 'have been temporarily exported', 'abroad' shall be replaced by 'outside the Community' and 'and the re-importation is not exempt under the provisions of Article 14 (1) (f)' shall be deleted.

10. Article 11 (C) (2) shall be replaced by the following:

'2. Where information for determining the taxable amount on importation is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate shall be determined in accordance with the Community provisions governing the calculation of the value for customs purposes.

Where information for the determination of the taxable amount of a transaction other than an import transaction is expressed in a currency other than that of the Member State where assessment takes place, the exchange rate applicable shall be the latest selling rate recorded, at the time the tax becomes chargeable, on the most representative exchange market or markets of the Member State concerned, or a rate determined by reference to that or those markets, in accordance with the down by that Member State. However, for some of those transactions or for certain categories of taxable person, Member States may continue to apply the exchange rate determined in accordance with the Community provisions in force governing the calculation of the value for customs purposes.'

11. In Article 14 (1):

- subparagraph (b) shall be deleted,
- subparagraph (c) shall be replaced by the following:
 - '(c) goods imported for possible sale as defined in Article 29 of Directive 85/362/EEC (*), as last amended by Directive 90/237/EEC (**);

(*) OJ No L 192, 24. 7. 1985, p. 20.

(**) OJ No L 133, 24. 5. 1990, p. 91.'

- in subparagraph (d), 'or which would qualify therefor if they were imported from a third country' and 'on the home market' shall be deleted,
- in subparagraph (e), 'or would qualify therefor if they were imported from a third country' shall be deleted,
- subparagraph (f) shall be deleted,
- in subparagraph (g), 'or would qualify therefor if they were imported from a third country' shall be deleted.

12. The heading of Article 15 shall be replaced by the following:

'Exemption of exports from the Community and like transactions and international transport'.

13. In Article 15 (1) and (2), 'outside the territory of the country as defined in Article 3' shall be replaced by 'outside the Community'.

14. Article 15 (3) shall be replaced by the following:

- '3. The supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory of the Community, and dispatched or transported out of the Community by the person providing the services or by the customer if established in a third country or on behalf of either of them;'

15. The following indent shall be added to the first subparagraph of Article 15 (10):

- to another Member State and intended for the forces of any Member State which is a party to the North Atlantic Treaty, other than the Member State of destination itself, for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in the common defense effort.'

16. In the second subparagraph of Article 15 (10), 'subject to conditions and limitations laid down by Member States' shall be replaced by 'subject to conditions and limitations laid down by the host Member State'.
17. In Article 15 (12), 'from the Community' shall be added after 'which export them', and 'abroad' shall be replaced by 'outside the Community'.
18. Article 15 (13) shall be replaced by the following:
- '13. The supply of services including transport and ancillary transactions but excluding the supply of services exempt pursuant to Article 13, when they are directly linked:
- to the external transit or the export of goods from the Community or to the import of goods eligible under Articles 14 (1) (c) or 16 (1) (A),
 - to goods referred to in Article 7 (1) (b) which are subject to the internal Community transit procedure provided for in Article 33a (1) (b).'
19. In Article 15 (14), 'outside the territory of the country as defined in Article 3' shall be replaced by 'outside the Community'.
20. In Article 16 (1):
- A shall be replaced by the following:

'A. imports of goods which are intended to be placed under warehousing arrangements other than customs;'
 - B shall be replaced by the following:

'B. supplies of goods which are intended to be

 - a) produced to customs and, where applicable, placed in temporary storage;
 - b) placed in a free zone or in a free warehouse;
 - c) placed under customs warehousing arrangements or inward processing arrangements;
 - d) admitted into territorial waters:
 - in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland,
 - for the fuelling and provisioning of drilling or production platforms;
- e) placed under warehousing arrangements other than customs.
- The places referred to in (a), (b), (c) and (d) shall be as defined by the Community customs provisions in force;'
- C shall be replaced by the following:

'C. supplies of services relating to the supplies of goods referred to in B;'
 - D shall be replaced by the following:

'D. supplies of goods and of services carried out in the places listed in B and still subject to one of the arrangements specified therein;'
 - the following point E shall be added:

'E. supplies:

 - of goods referred to in Article 7 (1) (a) still subject to arrangements for temporary importation with total exemption from import duty or to external transit arrangements,
 - of goods referred to in Article 7 (1) (b) still subject to the internal Community transit procedure provided for in Article 33a,
 as well as supplies of services relating to such supplies.'
21. The following paragraph shall be inserted in Article 28:
- '3a. Pending a decision by the Council, which, under Article 3 of Directive 89/465/EEC (*), is to act on the abolition of the transitional derogations provided for in paragraph 3, Spain shall be authorized to exempt the transactions referred to in point 2 of Annex F in respect of services rendered by authors and the transactions referred to in points 23 and 25 of Annex F.
- (*) OJ No L 226, 3. 8. 1989, p. 21.'
22. The following Title XVIa and Articles 28a to 28m shall be inserted:
- 'TITLE XVIa
- TRANSITIONAL ARRANGEMENTS FOR THE
TAXATION OF TRADE BETWEEN MEMBER STATES
- Article 28a*
- Scope**
1. The following shall also be subject to value added tax:
- a) intra-Community acquisitions of goods for consideration within the territory of the country by a taxable person acting as such or by a non-taxable

legal person where the vendor is a taxable person acting as such who is not eligible for the tax exemption provided for in Article 24 and who is not covered by the arrangements laid down in the second sentence of Article 8 (1) (a) or in Article 28b (B) (1).

By way of derogation from the first subparagraph, value added tax shall not be chargeable on intra-Community acquisitions of goods other than new means of transport and other than products subject to excise duty effected:

- by a taxable person who is eligible for the flat-rate scheme provided for in Article 25, by a taxable person who carries out only supplies of goods or of services that are not deductible, or by a non-taxable legal person,
- for a total amount, less value added tax due or paid in the Member State from which the goods are dispatched or transported, not exceeding, during the current calendar year, a threshold which Member States shall determine but which may not be less than the equivalent in national currency of ECU 10 000, and
- provided that the total amount, less value added tax due or paid in the Member State from which the goods are dispatched or transported, of intra-Community acquisitions of goods other than new means of transport and other than products subject to excise duty did not, during the previous calendar year, exceed the threshold referred to in the second indent.

Member States shall grant taxable persons and non-taxable legal persons eligible under the second subparagraph the right to opt for the general scheme laid down in the first subparagraph. Member States shall determine the detailed rules for the exercise of that option, which shall in any case apply for two calendar years;

- (b) intra-Community acquisitions of new means of transport effected for consideration within the country by taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of (a) or by any other non-taxable person.

2. For the purposes of this Title:

- (a) the following shall be considered as 'means of transport': vessels exceeding 7,5 metres in length, aircraft the take-off weight of which exceeds 1 550 kilograms and motorized land vehicles the capacity of which exceeds 48 cubic centimetres or the power

of which exceeds 7,2 kilowatts, intended for the transport of persons or goods, except for the vessels and aircraft referred to in Article 15 (5) and (6);

- (b) the means of transport referred to in (a) shall not be considered as 'new' where both of the following conditions are fulfilled:

- they were supplied more than three months after the date of first entry into service,
- they have travelled more than 3 000 kilometres in the case of land vehicles, sailed for more than 100 hours in the case of vessels or flown for more than 40 hours in the case of aircraft.

Member States shall lay down the conditions under which the above facts can be regarded as established.

3. 'Intra-Community acquisition of goods' shall mean acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are dispatched or transported.

Where goods acquired by a non-taxable legal person are dispatched or transported from a third territory and imported by that non-taxable legal person into a Member State other than the Member State of arrival of the goods dispatched or transported, the goods shall be deemed to have been dispatched or transported from the Member State of import. That Member State shall grant the importer as defined in Article 21 (2) a refund of the value added tax paid in connection with the importation of the goods in so far as the importer establishes that his acquisition was subject to value added tax in the Member State of arrival of the goods dispatched or transported.

4. Any person who from time to time supplies a new means of transport under the conditions laid down in Article 28c (A) shall also be regarded as a taxable person.

The Member State within the territory of which the supply is effected shall grant the taxable person the right of deduction on the basis of the following provisions:

- the right of deduction shall arise and may be exercised only at the time of the supply,
- the taxable person shall be authorized to deduct the value added tax included in the purchase price or paid on the importation or intra-Community acquisition of the means of transport, up to an amount not exceeding the tax for which he would be liable if the supply were not exempt.

Member States shall lay down detailed rules for the implementation of these provisions.

5. The following shall be treated as supplies of goods effected for consideration:

(a) the delivery to another taxable person of contract work, as defined in Article 5 (5) (a), physically carried out within a Member State other than that within the territory of which the customer is identified for purposes of value added tax, where the following conditions are fulfilled:

- the materials used by the person undertaking the work have been dispatched or transported by or on behalf of the customer from the Member State within the territory of which the customer is identified for purposes of value added tax,
- the work finished or assembled by the person undertaking the work is transported or dispatched to the customer in the Member State in which the customer is identified for purposes of value added tax;

(b) the transfer by a taxable person of goods from his undertaking to another Member State.

The following shall be regarded as having been transferred to another Member State: any tangible property dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community for the purposes of his undertaking, other than for the purposes of one of the following transactions:

- the supply of the goods in question by the taxable person within the territory of the Member State of arrival of the dispatch or transport under the conditions laid down in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1),
- the supply of the goods in question by the taxable person under the conditions laid down in Article 8 (1) (c),
- the supply of the goods in question by the taxable person within the territory of the country under the conditions laid down in Article 15 or in Article 28c (A),
- the supply to the taxable person, under the conditions set out in (a), of contract work carried out in the Member State of arrival of the dispatch or transport of the goods in question,
- the supply of a service performed for the taxable person and involving work on the goods in question physically carried out in the Member State of arrival of the dispatch or transport of the goods,

- temporary use of the goods in question within the territory of the Member State of arrival of the dispatch or transport of the goods for the purposes of the supply of services by the taxable person established within the territory of the Member State of departure of the dispatch or transport of the goods,

- temporary use of the goods in question, for a period not exceeding 24 months, within the territory of another Member State in which the import of the same goods from a third country with a view to temporary use would be eligible for the arrangements for temporary importation with full exemption from import duties.

6. The intra-Community acquisition of goods for consideration shall include the use by a taxable person for the purposes of his undertaking of goods dispatched or transported by or on behalf of that taxable person from another Member State within the territory of which the goods were produced, extracted, processed, purchased, acquired as defined in paragraph 1 or imported by the taxable person within the framework of his undertaking into that other Member State.

7. Member States shall take measures to ensure that transactions which would have been classed as "supplies of goods" as defined in paragraph 5 or Article 5 if they had been carried out within the territory of the country by a taxable person acting as such are classed as "intra-Community acquisitions of goods".

Article 28b

Place of transactions

A. *Place of the intra-Community acquisition of goods*

1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.

2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a (1) (a) shall, however, be deemed to be within the territory of the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in accordance with paragraph 1.

If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be

reduced accordingly in the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition.

B. *Place of the supply of goods*

1. By way of derogation from Article 8 (1) (a) and (2), the place of the supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that of arrival of the dispatch or transport shall be deemed to be the place where the goods are when dispatch or transport to the purchaser ends, where the following conditions are fulfilled:

- the supply of goods is effected for a taxable person eligible for the derogation provided for in the second subparagraph of Article 28a (1) (a), for a non-taxable legal person who is eligible for the same derogation or for any other non-taxable person,
- the supply is of goods other than new means of transport and other than goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

Where the goods thus supplied are dispatched or transported from a third territory and imported by the supplier into a Member State other than the Member State of arrival of the goods dispatched or transported to the purchaser, they shall be regarded as having been dispatched or transported from the Member State of import.

2. However, where the supply is of goods other than products subject to excise duty, paragraph 1 shall not apply to supplies of goods dispatched or transported to the same Member State of arrival of the dispatch or transport where:

- the total value of such supplies, less value added tax, does not in one calendar year exceed the equivalent in national currency of ECU 100 000, and
- the total value, less value added tax, of the supplies of goods other than products subject to excise duty effected under the conditions laid down in paragraph 1 in the previous calendar year did not exceed the equivalent in national currency of ECU 100 000.

The Member State within the territory of which the goods are when dispatch or transport to the purchaser ends may limit the thresholds referred to above to the equivalent in national currency of ECU 35 000 where that Member State fears that the threshold of ECU 100 000 referred to above would lead to serious distortions of the conditions of competition. Member States which exercise this

option shall take the measures necessary to inform the relevant public authorities in the Member State of dispatch or transport of the goods.

Before 31 December 1994, the Commission shall report to the Council on the operation of the special ECU 35 000 thresholds provided for in the preceding subparagraph. In that report the Commission may inform the Council that the abolition of the special thresholds will not lead to serious distortions of the conditions of competition. Until the Council takes a unanimous decision on a Commission proposal, the preceding subparagraph shall remain in force.

3. The Member State within the territory of which the goods are at the time of departure of the dispatch or transport shall grant those taxable persons who effect supplies of goods eligible under paragraph 2 the right to choose that the place of such supplies shall be determined in accordance with paragraph 1.

The Member States concerned shall determine the detailed rules for the exercise of that option, which shall in any case apply for two calendar years.

C. *Place of the supply of services in the intra-Community transport of goods*

1. By way of derogation from Article 9 (2) (b), the place of the supply of services in the intra-Community transport of goods shall be determined in accordance with paragraphs 2, 3 and 4. For the purposes of this Title the following definitions shall apply:

- “the intra-Community transport of goods” shall mean transport where the place of departure and the place of arrival are situated within the territories of two different Member States,
- “the place of departure” shall mean the place where the transport of goods actually starts, leaving aside distance actually travelled to the place where the goods are,
- “the place of arrival” shall mean the place where the transport of goods actually ends.

2. The place of the supply of services in the intra-Community transport of goods shall be the place of departure.

3. However, by way of derogation from paragraph 2, the place of the supply of services in the intra-Community transport of goods rendered to customers identified for purposes of value added tax in a Member State other than that of the departure of the transport shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

4. Member States need not apply the tax to that part of the transport corresponding to journeys made over waters which do not form part of the territory of the Community as defined in Article 3.

D. *Place of the supply of services ancillary to the intra-Community transport of goods*

By way of derogation from Article 9 (2) (c), the place of the supply of services involving activities ancillary to the intra-Community transport of goods, rendered to customers identified for purposes of value added tax in a Member State other than that within the territory of which the services are physically performed, shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

E. *Place of the supply of services rendered by intermediaries*

1. By way of derogation from Article 9 (1), the place of the supply of services rendered by intermediaries, acting in the name and for the account of other persons, where they form part of the supply of services in the intra-Community transport of goods, shall be the place of departure.

However, where the customer for whom the services rendered by the intermediary are performed is identified for purposes of value added tax in a Member State other than that of the departure of the transport, the place of the supply of services rendered by an intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him.

2. By way of derogation from Article 9 (1), the place of the supply of services rendered by intermediaries acting in the name and for the account of other persons, where they form part of the supply of services the purpose of which is activities ancillary to the intra-Community transport of goods, shall be the place where the ancillary services are physically performed.

However, where the customer of the services rendered by the intermediary is identified for purposes of value added tax in a Member State other than that within the territory of which the ancillary service is physically performed, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him by the intermediary.

3. By way of derogation from Article 9 (1), the place of the supply of services rendered by

intermediaries acting in the name and for the account of other persons, when such services form part of transactions other than those referred to in paragraph 1 or 2 or in Article 9 (2) (e), shall be the place where those transactions are carried out.

However, where the customer is identified for purposes of value added tax in a Member State other than that within the territory of which those transactions are carried out, the place of supply of the services rendered by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him by the intermediary.

Article 28c

Exemptions

A. *Exempt supplies of goods*

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- (a) supplies of goods, as defined in Articles 5 and 28a (5) (a), dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

This exemption shall not apply to supplies of goods by taxable persons exempt from tax pursuant to Article 24 or to supplies of goods effected for taxable persons or non-taxable legal persons who qualify for the derogation in the second subparagraph of Article 28a (1) (a);

- (b) supplies of new means of transport, dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser out of the territory referred to in Article 3 but within the Community, effected for taxable persons or non-taxable legal persons who qualify for the derogation provided for in the second subparagraph of Article 28a (1) (a) or for any other non-taxable person;

- (c) supplies of goods as defined in Article 28a (5) (b) which would qualify for the exemption provided for in (a) if they were carried out for another taxable person.

B. *Exempt intra-Community acquisitions of goods*

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- (a) the intra-Community acquisition of goods the supply of which by taxable persons would in all circumstances be exempt within the territory of the country;
- (b) the intra-Community acquisition of goods the importation of which would in all circumstances be exempt under Article 14 (1);
- (c) the intra-Community acquisition of goods where, pursuant to Article 17 (3) and (4), the person acquiring the goods would in all circumstances be entitled to full reimbursement of the value added tax due under Article 28a (1).

C. *Exempt transport services*

Member States shall exempt the supply of intra-Community transport services involved in the dispatch or transport of goods to and from the islands making up the autonomous regions of the Azores and Madeira as well as the dispatch or transport of goods between those islands.

D. *Exempt importation of goods*

Where goods dispatched or transported from a third territory are imported into a Member State other than that of arrival of the dispatch or transport, Member States shall exempt such imports where the supply of such goods by the importer as defined in Article 21 (2) is exempt in accordance with paragraph A.

Member States shall lay down the conditions governing this exemption with a view to ensuring its correct and straightforward application and preventing any evasion, avoidance or abuse.

E. *Other exemptions*

- (a) Member States shall take the measures necessary to ensure that intra-Community acquisitions of goods placed under one of the arrangements or in one of the situations referred to in Article 16 (1) (B) benefit from the

same provisions as supplies of goods effected within the territory of the country under the same conditions.

- (b) Article 16 (2) shall be replaced by the following:

"2. Subject to the consultation provided for in Article 29, Member States may opt to exempt:

- (a) the intra-Community acquisition of goods by a taxable person, the importation and the supply of goods to a taxable person with a view to exportation, as they are or after processing, to third territories and supplies of services relating to his exporting activities, up to the value of his exports during the preceding 12 months;
- (b) the intra-Community acquisition of goods by a taxable person, the importation and the supply of goods to a taxable person with a view to supply to another Member State under the conditions laid down in Article 28c (A), as well as supplies of services relating to such supplies to another Member State, up to the value of his supplies of goods under the conditions laid down in Article 28c (A), during the preceding 12 months.

Member States may jointly set a maximum value for transactions which they exempt under (a) and (b)."

Article 28d

Chargeable event and chargeability of tax

1. The chargeable event shall occur when the intra-Community acquisition of goods is effected. The intra-Community acquisition of goods shall be regarded as being effected when the supply of similar goods is regarded as being effected within the territory of the country.

2. For the intra-Community acquisition of goods, tax shall become chargeable on the 15th day of the month following that during which the chargeable event occurs.

3. By way of derogation from paragraph 2, tax shall become chargeable on the issue of the invoice where the invoice is issued to the person acquiring the goods before the date laid down in paragraph 2.

4. By way of derogation from Article 10 (2) and (3), tax shall become chargeable for supplies of goods effected under the conditions laid down in Article 28c (A) on the 15th day of the month following that during which the chargeable event occurs.

However, tax shall become chargeable on the issue of the invoice where the invoice is issued before the 15th day of the month following that during which the chargeable event occurs.

Article 28e

Taxable amount and rate applicable

1. In the case of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same elements as those used in accordance with Article 11 (A) to determine the taxable amount for supply of the same goods within the territory of the country. In particular, in the case of the intra-Community acquisition of goods referred to in Article 28a (6), the taxable amount shall be determined in accordance with Article 11 (A) (1) (b).

Member States shall take the measures necessary to ensure that the excise duty due or paid by the person effecting the intra-Community acquisition of a product subject to excise duty is included in the taxable amount in accordance with Article 11 (A) (2) (a).

2. The tax rate applicable to the intra-Community acquisition of goods shall be that in force when the tax becomes chargeable.

3. The tax rate applicable to the intra-Community acquisition of goods shall be that applied to the supply of like goods within the territory of the country.

Article 28f

Right of deduction

1. Article 17 (2), (3) and (4) shall be replaced by the following:

"2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

- (a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person liable for the tax within the territory of the country;
- (b) value added tax due or paid in respect of imported goods within the territory of the country;
- (c) value added tax due pursuant to Articles 5 (7) (a), 6 (3) and 28a (6);

- (d) value added tax due pursuant to Article 28a (1) (a).

3. Member States shall also grant every taxable person the right to the deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

- (a) transactions relating to the economic activities referred to in Article 4 (2), carried out in another country, which would be deductible if they had been performed within the territory of the country;
- (b) transactions which are exempt pursuant to Article 14 (1) (i), 15, 16 (1) (B), (C), (D) or (E) or (2) or 28c (A);
- (c) any of the transactions exempt pursuant to Article 13 (B) (a) and (d) (1) to (5), when the customer is established outside the Community or when those transactions are directly linked with goods to be exported to a country outside the Community.

4. The refund of value added tax referred to in paragraph 3 shall be effected:

- to taxable persons who are not established within the territory of the country but who are established in another Member State in accordance with the detailed implementing rules laid down in Directive 79/1072/EEC (*),
- to taxable persons who are not established within the territory of the Community, in accordance with the detailed implementing rules laid down in Directive 86/560/EEC (**).

(*) OJ No L 331, 27. 12. 1979, p. 11.

(**) OJ No L 326, 21. 11. 1986, p. 40."

2. Article 18 (1) shall be replaced by the following:

"1. To exercise his right of deduction, a taxable person must:

- (a) in respect of deductions pursuant to Article 17 (2) (a), hold an invoice drawn up in accordance with Article 22 (3);
- (b) in respect of deductions pursuant to Article 17 (2) (b), hold an import document specifying him as consignee or importer and stating or permitting the calculation of the amount of tax due;
- (c) in respect of deductions pursuant to Article 17 (2) (c), comply with the formalities established by each Member State;
- (d) when he is required to pay the tax as a customer or purchaser where Article 21 (1) applies, comply with the formalities laid down by each Member State;

- (e) in respect of deductions pursuant to Article 17 (2) (d), set out in the declaration provided for in Article 22 (4) all the information needed for the amount of the tax due on his intra-Community acquisitions of goods to be calculated and hold an invoice in accordance with Article 22 (3)."

3. The following paragraph shall be inserted in Article 18:

"3a. Member States may authorize a taxable person who does not hold an invoice in accordance with Article 22 (3) to make the deduction referred to in Article 17 (2) (d); they shall determine the conditions and arrangements for applying this provision."

Article 28g

Persons liable for payment of the tax

Article 21 shall be replaced by the following:

"Article 21

Persons liable to pay tax to the authorities

The following shall be liable to pay value added tax:

1. under the internal system:

- (a) the taxable person carrying out the taxable supply of goods or of services other than one of the supplies of services referred to in (b).

Where the taxable supply of goods or of services is effected by a taxable person established abroad, Member States may adopt arrangements whereby tax is payable by another person. Inter alios, a tax representative or the person for whom the taxable supply of goods or of services is carried out may be designated as that other person. Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax;

- (b) the customer for a service referred to in Article 9 (2) (e) or Article 28b (C), (D) or (E) and effected by a taxable person established abroad.

However, Member States may require that the supplier of services shall be held jointly and severally liable for payment of the tax;

- (c) any person who mentions the value added tax on an invoice or other document serving as invoice;

- (d) any person effecting a taxable intra-Community acquisition of goods. Where an intra-Community acquisition of goods is effected by a person established abroad, Member States may adopt arrangements whereby tax is payable by another person. Inter alios, a tax representative may be designated as that other person. Member States may also provide that someone other than the person effecting the intra-Community acquisition of goods shall be held jointly and severally liable for payment of the tax;

2. on importation: the person or persons designated or accepted as being liable by the Member State into which the goods are imported."

Article 28h

Obligations of persons liable for payment

Article 22 shall be replaced by the following:

"Article 22

Obligations under the internal system:

1. (a) Every taxable person shall state when his activity as a taxable person commences, changes or ceases.
- (b) Without prejudice to (a), every taxable person referred to in Article 28a (1) (a), second subparagraph, shall state that he is effecting intra-Community acquisitions of goods when the conditions for application of the derogation provided for in that Article are not fulfilled.
- (c) Member States shall take the measures necessary to identify by means of an individual number:
 - every taxable person, with the exception of those referred to in Article 28a (4), who within the territory of the country effects supplies of goods or of services giving him the right of deduction, other than provisions of services for which tax is payable solely by the customer in accordance with Article 21 (1) (b). However, Member States need not identify certain taxable persons referred to in Article 4 (3),

— every taxable person referred to in paragraph 1 (b) and every taxable person who exercises the option provided for in the third subparagraph of Article 28a (1) (a).

(d) Each individual identification number shall have a prefix in accordance with ISO International Standard No 3166 — alpha 2 — by which the Member State of issue may be identified.

(e) Member States shall take the measures necessary to ensure that their identification systems distinguish the taxable persons referred to in (c) and to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions as laid down in this Title.

2. (a) Every taxable person shall keep accounts in sufficient detail for value added tax to be applied and inspected by the tax authority.

(b) Every taxable person shall keep a register of the goods he has dispatched or transported or which have been dispatched or transported on his behalf out of the territory defined in Article 3 but within the Community for the purposes of the transactions referred to in the fourth, fifth, sixth and seventh indents of Article 28a (5) (b).

Every taxable person shall keep a register of materials dispatched to him from another Member State by or on behalf of a taxable person identified for purposes of value added tax in that other Member State with a view to the supply to that taxable person of contract work.

3. (a) Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also issue an invoice, or other document serving as invoice, in respect of the supplies of goods referred to in Article 28b (B) (1) and in respect of goods supplied under the conditions laid down in Article 28c (A). A taxable person shall keep a copy of every document issued.

Every taxable person shall likewise issue an invoice in respect of any payment to account made to him before any supplies of goods referred to in the first subparagraph and in respect of any payment to account made to him by another taxable person or by a non-taxable legal person before the provision of services is completed.

(b) The invoice shall state clearly the price exclusive of tax and the relevant tax at each rate as well as any exemptions.

The invoice shall also indicate:

— in the case of the transactions referred to in Article 28b (C), (D) and (E), the number by which the taxable person is identified in the territory of the country and the number by which the customer is identified and under which the service has been rendered to him,

— in the case of the transactions referred to in Article 28c (A) (a), the number by which the taxable person is identified in the territory of the country and the number by which the person acquiring the goods is identified in another Member State,

— in the case of the supply of new means of transport, the particulars specified in Article 28a (2).

(c) Member States shall lay down the criteria that shall determine whether a document may be considered an invoice.

4. (a) Every taxable person shall submit a return by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however, set different periods provided that they do not exceed one year.

(b) The return shall set out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, where appropriate, and in so far as it seems necessary for the establishment of the basis of assessment, the total value of the transactions relative to such tax and deductions and the value of any exempt transactions.

(c) The return shall also set out:

— on the one hand, the total value, less value added tax, of the supplies of goods referred to in Article 28c (A) on which tax has become chargeable during the period.

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1) effected within the territory of another

Member State for which tax has become chargeable during the return period where the place of departure of the dispatch or transport of the goods is situated in the territory of the country,

- on the other hand, the total value, less value added tax, of the intra-Community acquisitions of goods referred to in Article 28a (1) and (6) on which tax has become chargeable.

The following shall also be added: the total value, less value added tax, of the supplies of goods referred to in the second sentence of Article 8 (1) (a) and in Article 28b (B) (1) effected in the territory of the country on which tax has become chargeable during the return period, where the place of departure of the dispatch or transport of the goods is situated within the territory of another Member State.

5. Every taxable person shall pay the net amount of the value added tax when submitting the regular return. Member States may, however, set a different date for the payment of that amount or may demand an interim payment.

6. (a) Member States may require a taxable person to submit a statement, including all the particulars specified in paragraph 4, concerning all transactions carried out in the preceding year. That statement shall provide all the information necessary for any adjustments.

(b) Every taxable person identified for purposes of value added tax shall also submit a recapitulative statement of the persons acquiring goods identified for purposes of value added tax to whom he has supplied goods under the conditions laid down in Article 28c (A).

The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States, which shall take the measures necessary to ensure that the provisions concerning administrative cooperation in the field of indirect taxation are in any event complied with.

The recapitulative statement shall set out:

- the number by which the taxable person is identified for purposes of value added tax in the territory of the country and under which he effected supplies of goods in the conditions laid down in Article 28c (A),
- the number by which each person acquiring goods is identified for purposes of value added tax in another Member State and under which the goods were supplied to him and, where appropriate,

an indication that supplies of goods as defined in Article 28a (5) (a) were effected for the person acquiring those goods,

- for each person acquiring goods, the total value of the supplies of goods effected by the taxable person. Those amounts shall be declared for the calendar quarter during which the tax became chargeable.

The recapitulative statement shall also set out:

- for the supplies of goods covered by Article 28c (A) (c), the number by means of which the taxable person is identified for purposes of value added tax in the territory of the country, the number by which he is identified in the Member State of arrival of the dispatch or transport and the value of the goods supplied determined in accordance with Article 28e (1),
- the amounts of adjustments made pursuant to Article 11 (C) (1). Those amounts shall be declared for the calendar quarter during which the person acquiring the goods is notified of the adjustment.

Where goods are dispatched or transported by or on behalf of the taxable person out of the territory defined in Article 3 but within the Community, with a view to the supply to the taxable person of contract work under the conditions set out in Article 28a (5) (a), the recapitulative statement drawn up for the quarter during which the goods were thus dispatched or transported shall set out:

- the number by means of which the taxable person is identified for purposes of value added tax in the territory of the Member State of departure of the dispatch or transport of the goods,
- the number by means of which the taxable person to whom the goods have been sent with a view to the supply of contract work is identified in the Member State of arrival of the dispatch or transport of the goods,
- a statement that the goods have been dispatched or transported under the conditions referred to above, for the purposes of contract work physically carried out in the Member State of arrival of the dispatch or transport.

— (c) By way of derogation from (b), Member States may:

- require recapitulative statements to be filed on a monthly basis,

- require that recapitulative statements give additional particulars.

(d) In the case of supplies of new means of transport effected under the conditions laid down in Article 28c (A) (b) by a taxable person identified for purposes of value added tax to a purchaser not identified for purposes of value added tax or by a taxable person as defined in Article 28a (4), Member States shall take the measures necessary to ensure that the vendor communicates all the information necessary for value added tax to be applied and inspected by the tax authority.

(e) Member States may require taxable persons who in the territory of the country effect intra-Community acquisitions of goods as defined in Article 28a (1) (a) and (6) to submit statements giving details of such acquisitions provided, however, that such statements may not be required for a period of less than one month.

Member States may also require persons who effect intra-Community acquisitions of new means of transport as defined in Article 28a (1) (b) to provide, when submitting the return referred to in paragraph 4, all the information necessary for value added tax to be applied and inspected by the tax authority.

7. Member States shall take the measures necessary to ensure that those persons who, in accordance with Article 21 (1) (a) and (b), are considered to be liable to pay the tax instead of a taxable person established abroad or who are jointly and severally liable for the payment comply with the above obligations relating to declaration and payment.

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

9. (a) Member States may release from certain or all obligations:

- taxable persons carrying out only supplies of goods or of services which are exempt pursuant to Articles 13 and 15,
- taxable persons eligible for the exemption from tax provided for in Article 24 and for

the derogation provided for in Article 28a (1) (a), second subparagraph,

- taxable persons carrying out none of the transactions referred to in paragraph 4 (c).

(b) Member States may release taxable persons other than those referred to in (a) from certain of the obligations referred to in 2 (a).

(c) Member States may release taxable persons from payment of the tax due where the amount involved is insignificant.

10. Member States shall take measures to ensure that non-taxable legal persons who are liable for the tax payable in respect of intra-Community acquisitions of goods covered by the first subparagraph of Article 28a (1) (a) comply with the above obligations relating to declaration and payment and that they are identified by an individual number as defined in paragraph 1 (c), (d) and (e).

11. In the case of intra-Community acquisitions of new means of transport covered by Article 28a (1) (b), Member States shall adopt arrangements for declaration and subsequent payment.

12. Acting unanimously on a proposal from the Commission, the Council may authorize any Member State to introduce particular measures to simplify the statement obligations laid down in paragraph 6 (b). Such simplification measures, which shall not jeopardize the proper monitoring of intra-Community transactions, may take the following forms:

(a) Member States may authorize taxable persons who meet the following three conditions to file one-year recapitulative statements indicating the numbers by which the persons to whom those taxable persons have supplied goods under the conditions laid down in Article 28c (A) are identified for purposes of value added tax in other Member States:

- the total annual value, less value added tax, of their supplies of goods or provisions of services, as defined in Articles 5, 6 and 28a (5), does not exceed by more than ECU 35 000 the amount of the annual turnover which is used as a reference for application of the exemption from tax provided for in Article 24,
- the total annual value, less value added tax, of supplies of goods effected by them under the conditions laid down in Article 28c (A) does not exceed the equivalent in national currency of ECU 15 000,

- supplies of goods effected by them under the conditions laid down in Article 28c (A) are other than supplies of new means of transport;
- (b) Member States which set at over three months the tax period for which taxable persons must submit the returns provided for in paragraph 4 may authorize such persons to submit recapitulative statements for the same period where those taxable persons meet the following three conditions:
 - the overall annual value, less value added tax, of the goods and the services they supply, as defined in Articles 5, 6 and 28a (5), does not exceed the equivalent in national currency of ECU 200 000,
 - the total annual value, less value added tax, of supplies of goods effected by them under the conditions laid down in Article 28c (A) does not exceed the equivalent in national currency of ECU 15 000,
 - supplies of goods effected by them under the conditions laid down in Article 28c (A) are other than supplies of new means of transport."

Article 28i

Special scheme for small undertakings

The following subparagraph shall be added to Article 24 (3):

"In any event supplies of new means of transport effected under the conditions laid down in Article 28c (A) shall be excluded from exemption from tax under paragraph 2."

Article 28j

Common flat-rate scheme for farmers

1. The following subparagraph shall be added to Article 25 (4):

"When they exercise this option, Member States shall take the measures necessary to ensure the correct application of the transitional arrangements for the taxation of intra-Community transactions as laid down in Title XVIa."

2. Article 25 (5) and (6) shall be replaced by the following:

"5. The flat-rate percentages provided for in paragraph 3 shall be applied to the prices, exclusive of tax, of:

- (a) agricultural products supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article;

- (b) agricultural products supplied by flat-rate farmers, under the conditions laid down in Article 28c (A), to non-taxable legal persons not eligible, in the Member State of arrival of the dispatch or transport of the agricultural products thus supplied, for the derogation provided for in Article 28a (1) (a), second subparagraph;
- (c) agricultural services supplied by flat-rate farmers to taxable persons other than those eligible within the territory of the country for the flat-rate scheme provided for in this Article.

This compensation shall exclude any other form of deduction.

6. In the case of the supplies of agricultural products and of agricultural services referred to in paragraph 5, Member States shall provide for the flat-rate compensation to be paid either:

- (a) by the purchaser or customer. In that event, the taxable purchaser or customer shall be authorized, as provided for in Article 17 and in accordance with the procedures laid down by the Member States, to deduct from the tax for which he is liable within the territory of the country the amount of the flat-rate compensation he has paid to flat-rate farmers.

Member States shall refund to the purchaser or customer the amount of the flat-rate compensation he has paid to flat-rate farmers in respect of any of the following transactions:

- supplies of agricultural products effected under the conditions laid down in Article 28c (A) to taxable persons, or to non-taxable legal persons acting as such in another Member State within which they are not eligible for the derogation provided for in the second subparagraph of Article 28a (1) (a),
- supplies of agricultural products effected under the conditions laid down in Article 15 and in Article 16 (1) (B), (D) and (E) to taxable purchasers established outside the Community, provided that the products are used by those purchasers for the purposes of the transactions referred to in Article 17 (3) (a) and (b) or for the purposes of services which are deemed to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21 (1) (b),
- supplies of agricultural services to taxable customers established within the Community but in other Member States or to taxable customers established outside the Community, provided that the services are used by those customers for the purposes of the transactions

referred to in Article 17 (3) (a) and (b) and for the purposes of services which are deemed to be supplied within the territory of the country and on which tax is payable solely by the customers under Article 21 (1) (b).

Member States shall determine the method by which the refunds are to be made; in particular, they may apply Article 17 (4); or

(b) by the public authorities."

3. The following subparagraph shall be added to Article 25 (9):

"Whenever they exercise the option provided for in this Article, Member States shall take all measures necessary to ensure that the same method of taxation is applied to supplies of agricultural products effected under the conditions laid down in Article 28b (B) (1), whether the supply is effected by a flat-rate farmer or by a taxable person other than a flat-rate farmer."

Article 28k

Miscellaneous provisions

The following provisions shall apply until 30 June 1999:

1. Member States may exempt supplies by tax-free shops of goods to be carried away in the personal luggage of travellers taking intra-Community flights or sea crossings to other Member States. For the purposes of this Article:

- (a) "tax-free shop" shall mean any establishment situated within an airport or port which fulfils the conditions laid down by the competent public authorities pursuant, in particular, to paragraph 5;
- (b) "traveller to another Member State" shall mean any passenger holding a transport document for air or sea travel stating that the immediate destination is an airport or port situated in another Member State;
- (c) "intra-Community flight or sea crossing" shall mean any transport, by air or sea, starting within the territory of the country as defined in Article 3, where the actual place of arrival is situated within another Member State.

Supplies of goods effected by tax-free shops shall include supplies of goods effected on board aircraft or vessels during intra-Community passenger transport.

This exemption shall also apply to supplies of goods effected by tax-free shops in either of two Channel Tunnel terminals, for passengers holding valid tickets for the journey between those two terminals.

2. Eligibility for the exemption provided for in paragraph 1 shall apply only to supplies of goods:

- (a) the total value of which per person per journey does not exceed the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

Where the total value of several items or of several supplies of goods per person per journey exceeds those limits, the exemption shall be granted up to those amounts, on the understanding that the value of an item may not be split;

- (b) involving quantities per person per journey not exceeding the limits laid down by the Community provisions in force for the movement of travellers between third countries and the Community.

The value of supplies of goods effected within the quantitative limits laid down in the previous subparagraph shall not be taken into account for the application of (a).

3. Member States shall grant every taxable person the right to a deduction or refund of the value added tax referred to in Article 17 (2) in so far as the goods and services are used for the purposes of his supplies of goods exempt under this Article.

4. Member States which exercise the option provided for in Article 16 (2) shall also grant eligibility under that provision to imports, intra-Community acquisitions and supplies of goods to a taxable person for the purposes of his supplies of goods exempt pursuant to this Article.

5. Member States shall take the measures necessary to ensure the correct and straightforward application of the exemptions provided for in this Article and to prevent any evasion, avoidance or abuse.

Article 28l

Period of application

The transitional arrangements provided for in this Title shall enter into force on 1 January 1993. Before 31 December 1994 the Commission shall report to the Council on the operation of the transitional arrangements and submit proposals for a definitive system.

The transitional arrangements shall be replaced by a definitive system for the taxation of trade between Member States based in principle on the taxation in the Member State of origin of the goods or services supplied. To that end, after having made a detailed examination of that report and considering that the conditions for transition to the definitive system have been fulfilled satisfactorily, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall decide before 31 December 1995 on the arrangements necessary for the entry into force and the operation of the definitive system.

The transitional arrangement shall enter into force for four years and shall accordingly apply until 31 December 1996. The period of application of the transitional arrangements shall be extended automatically until the date of entry into force of the definitive system and in any event until the Council has decided on the definitive system.

Article 28m

Rate of conversion

To determine the equivalents in their national currencies of amounts expressed in ecus in this Title Member States shall use the rate of exchange applicable on 16 December 1991 (*).

(*) OJ No C 328, 17. 12. 1991, p. 4.

23. Article 33 shall be replaced by the following:

'Article 33

1. Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes, provided however that those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

2. Any reference in this Directive to products subject to excise duty shall apply to the following products as defined by current Community provisions:

- mineral oils,
- alcohol and alcoholic beverages,
- manufactured tobacco.'

24. The following Article shall be inserted:

'Article 33a

1. Goods entering the Community from any of the territories specified in the second subparagraph of Article 3 (3) or from the Channel Islands shall be subject to the following provisions:

- (a) the formalities relating to the entry of such goods into the Community shall be completed in accordance with Regulation (EEC) No 717/91 (*).
- (b) the internal Community transit procedure shall apply where, on entry into the Community, those goods are:
 - intended for a Member State other than that within the territory of which they are at the time of their entry into the Community,
 - intended for re-export from the Community after repair, alteration, adjustment, contract or processing work within the Community,
 - placed under temporary importation arrangements within the meaning of Directive 85/362/EEC.

2. Goods originating in the Community and dispatched or transported to any of the territories specified in the second subparagraph of Article 3 (3) or to the Channel Islands shall be subject to the following provisions:

- (a) the formalities relating to the export of those goods with the Community shall be completed in accordance with Regulation (EEC) No 717/91;
- (b) the internal Community transit procedure shall apply where those goods are supplied for export in a Member State other than that from which the goods leave the Community.

(*) OJ No L 78, 26. 3. 1991, p. 1.

Article 2

1. The following Directives shall cease to have effect on 31 December 1992 as regards relations between Member States:

- Directive 83/181/EEC ⁽¹⁾, as last amended by Directive 89/219/EEC ⁽²⁾,
- Directive 85/362/EEC.

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 38.

⁽²⁾ OJ No L 92, 5. 4. 1989, p. 13.

2. The provisions on value added tax laid down in the following Directive shall cease to have effect on 31 December 1992:

- Directive 74/651/EEC ⁽¹⁾, as last amended by Directive 88/663/EEC ⁽²⁾,
- Directive 83/182/EEC ⁽³⁾,
- Directive 83/183/EEC ⁽⁴⁾, as amended by Directive 89/604/EEC ⁽⁵⁾.

3. The provisions of Directive 69/169/EEC ⁽⁶⁾ as last amended by Directive 91/191/EEC ⁽⁷⁾ relating to value added tax shall cease to have effect on 31 December 1992 as regards relations between Member States.

Article 3

1. Member States shall adapt their present value added tax systems to this Directive.

They shall bring into force such laws, regulations and administrative provisions as are necessary for their arrangements thus adapted to Article 1 (1) to (20) and (22) to (24) and 2 of this Directive to enter into force on 1 January 1993.

2. Member States shall inform the Commission of the provisions which they adopt to apply this Directive.

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

4. When Member States adopt such measures they shall include a reference to this Directive or shall accompany them by such a reference on the occasion of their official publication.

The manner in which such references shall be made shall be laid down by the Member States.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1991.

For the Council

The President

W. KOK

⁽¹⁾ OJ No L 354, 30. 12. 1974, p. 6.

⁽²⁾ OJ No L 382, 31. 12. 1988, p. 40.

⁽³⁾ OJ No L 105, 23. 4. 1983, p. 59.

⁽⁴⁾ OJ No L 105, 23. 4. 1983, p. 64.

⁽⁵⁾ OJ No L 348, 29. 11. 1989, p. 28.

⁽⁶⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽⁷⁾ OJ No L 94, 16. 4. 1991, p. 24.

COUNCIL DIRECTIVE

of 19 December 1991

amending Directive 90/44/EEC, which amended Directive 79/373/EEC on the marketing of compound feedingstuffs

(91/681/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

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

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

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

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

Whereas Directive 79/373/EEC ⁽⁴⁾, as last amended by Directive 90/654/EEC ⁽⁵⁾, lays down rules for the marketing of compound feedingstuffs within the Community;

Whereas Directive 90/44/EEC ⁽⁶⁾ makes a considerable number of substantial amendments to the rules in force, in particular as regards the provisions to be observed concerning the labelling of compound feedingstuffs; whereas, under that Directive, Member States are required to bring into force, on 22 January 1992 precisely, the provisions necessary to comply with the new rules;

Whereas the abovementioned Directive makes no exception for compound feedingstuffs manufactured before 22 January 1992 which are still being marketed after that date and which bear labelling that does not comply with the new rules; whereas this omission should be remedied by permitting compound feedingstuffs manufactured before 22 January 1992 in accordance with the rules then in force to continue to be marketed bearing that labelling until 31 December 1992,

Article 1

The following subparagraph shall be added to Article 2 of Directive 90/44/EEC:

'However, Member States shall allow compound feedingstuffs manufactured before 22 January 1992 in accordance with the rules then in force in the Member State and which do not comply with the provisions of this Directive to be marketed until 31 December 1992.'

Article 2

Member States shall bring into force on 22 January 1992 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council
The President
P. DANKERT

⁽¹⁾ OJ No C 103, 19. 4. 1991, p. 18.

⁽²⁾ OJ No C 183, 15. 7. 1991, p. 359.

⁽³⁾ OJ No C 191, 22. 7. 1991, p. 27.

⁽⁴⁾ OJ No L 86, 6. 4. 1979, p. 30.

⁽⁵⁾ OJ No L 353, 17. 12. 1990, p. 48.

⁽⁶⁾ OJ No L 27, 31. 1. 1990, p. 35.

COUNCIL DIRECTIVE

of 19 December 1991

on the marketing of ornamental plant propagating material and ornamental plants

(91/682/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

Whereas the production of ornamental plants occupies an important place in the agriculture of the Community;

Whereas satisfactory results in the cultivation of ornamental plants depend to a large extent on the quality and health of the material used for their propagation and of the plants themselves; whereas certain Member States have in consequence introduced rules intended to guarantee the quality and health of the propagating material of ornamental plants and ornamental plants placed on the market;

Whereas the different treatment accorded to propagating material and ornamental plants in different Member States is likely to create barriers to trade and thus hinder the free movement of these goods within the Community; whereas, with a view to achieving the internal market, these barriers should be removed, by adopting Community provisions to replace those laid down by the Member States;

Whereas the establishment of harmonized conditions at Community level will ensure that purchasers throughout the Community receive propagating material and ornamental plants which are healthy and of good quality;

Whereas, so far as they relate to plant health, such harmonized conditions must be consistent with Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction in to the Member States of organisms harmful to plants or plant products ⁽⁴⁾, as last amended by Directive 91/683/EEC ⁽⁵⁾;

Whereas it is appropriate initially to establish Community rules for those genera and species of ornamental plant which are of major economic importance in the Community, with a Community procedure for adding further genera and species later;

Whereas, without prejudice to the plant health provisions of Directive 77/93/EEC, it is not appropriate to apply the Community rules on the marketing of propagating material and ornamental plants when it is shown that such material and plants are intended for export to third countries, as the rules applicable there may be different from those contained in this Directive;

Whereas the determination of plant health and quality standards for each genus and species of ornamental plant requires lengthy and detailed technical and scientific consideration; whereas a procedure should accordingly be established for the determination of these standards;

Whereas in the first instance it is the responsibility of the suppliers of propagating material and/or ornamental plants to ensure that their products fulfil the conditions laid down in this Directive;

Whereas the competent authorities of the Member States must, when carrying out controls and inspections, ensure that suppliers fulfil those conditions;

Whereas Community control measures should be introduced to ensure uniform application in all the Member States of the standards laid down in this Directive;

Whereas it is in the interests of the purchasers of propagating materials and ornamental plants that the names of varieties or of groups of plants be known and that their identity be safeguarded;

Whereas the characteristics specific to the industry operating in the ornamental plant sector are a complicating factor; whereas, accordingly, the objective stated above can best be achieved either through common knowledge of the variety or, in the case of varieties or groups of plants, through the availability of a description drawn up and kept by the supplier;

Whereas, in order to ensure the identity and orderly marketing of propagating material and ornamental plants, Community rules must be laid down concerning the separation of lots and marking; whereas the labels should give the particulars needed both for official control and for the information of the grower;

⁽¹⁾ OJ No C 52, 3. 3. 1990, p. 16 and OJ No C 307, 27. 11. 1991, p. 15.

⁽²⁾ OJ No C 240, 16. 9. 1991, p. 197.

⁽³⁾ OJ No C 182, 23. 7. 1990, p. 21.

⁽⁴⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽⁵⁾ See p. 29 of this Official Journal

Whereas rules should be established permitting, in the case of temporary supply difficulties, the marketing of propagating material and ornamental plants subject to requirements less stringent than those contained in this Directive;

Whereas, as a first step towards harmonized conditions, Member States should be prohibited in the case of the genera and species referred to in the Annex, for which fact sheets will be drawn up, from imposing new conditions or marketing restrictions on propagating material or ornamental plants, other than those provided for in this Directive;

Whereas provision should be made for authorizing the marketing, within the Community, of propagating material and ornamental plants produced in third countries, provided always that they afford the same assurance as propagating material and ornamental plants produced in the Community and complying with Community rules;

Whereas, in order to harmonize technical methods of examination used in the Member States and to compare propagating material and ornamental plants produced in the Community with those produced in third countries, comparative trials should be carried out to check compliance of propagating material and ornamental plants with the requirements of this Directive;

Whereas, in order to facilitate the effective operation of this Directive, the Commission should be entrusted with the task of adopting measures for its implementation and for the amendment of its Annex; whereas such measures should be adopted by a procedure involving close cooperation between the Commission and the Member States within a Standing Committee on Propagating Material and Ornamental Plants,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to the marketing of ornamental-plant-propagating material and ornamental plants within the Community.

2. Articles 2 to 20 and 24 shall apply to the genera and species listed in the Annex.

Rootstocks of other genera or species shall also be subject to the abovementioned Articles if material of one of the said genera or species is grafted on to them.

3. Amendments to the list of genera and species in the Annex shall be adopted in accordance with the procedure laid down in Article 22.

Article 2

This Directive shall not apply to propagating material or ornamental plants shown to be intended for export to third countries, if properly identified as such and kept sufficiently

isolated, without prejudice to the health rules laid down by Directive 77/93/EEC.

Implementing measures for the first subparagraph, with particular reference to identification and isolation, shall be adopted in accordance with the procedure laid down in Article 21.

Article 3

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

- (a) *Propagating material*: seeds, parts of plants and all plant material intended for the propagation and production of ornamental plants and other plants for ornamental purposes;
- (b) *Ornamental plants*: plants intended, after marketing, to be planted or replanted;
- (c) *Supplier*: any natural or legal person carrying out professionally at least one of the following activities with regard to propagating material or ornamental plants: reproducing, producing, preserving and/or treating and placing on the market;
- (d) *Placing on the market*: the holding available or in stock, displaying or offering for sale, selling and/or delivering to another person, in whatever form, of propagating material or ornamental plants;
- (e) *Responsible official body*:
 - 1. the sole and central authority, established or designated by the Member State under the supervision of the national government and responsible for questions concerning quality;
 - 2. any State authority established:
 - either at national level
 - or at regional level, under the supervision of national authorities, within the limits set by the constitution of the Member State concerned.

The bodies referred to in 1 and 2 may, in accordance with their national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority and supervision to any legal person, whether governed by public or by private law, which, under its officially approved constitution, is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

The Member States shall ensure that there is close cooperation between the bodies referred to in 2 and those referred to in 1.

Moreover, in accordance with the procedure laid down in Article 21, other legal persons established on behalf of the body referred to in 1 and acting under the authority and supervision of such body may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

Member States shall notify the Commission of their responsible official bodies. The Commission shall forward that information to the other Member States;

- (f) *Official measures*: measures taken by the responsible official body;
- (g) *Official inspection*: inspection carried out by the responsible official body;
- (h) *Official statement*: statement issued by, or under the responsibility of, the responsible official body;
- (i) *Lot*: a number of units of a single commodity, identifiable by its homogeneity of composition and origin;
- (j) *Laboratory*: a public — or private — law entity carrying out analysis and proper diagnosis, enabling the producer to monitor production quality.

Article 4

In accordance with the procedure laid down in Article 22, a schedule shall be established for each genus or species referred to in the Annex, with a reference to the plant health conditions laid down in Directive 77/93/EEC applying to the genus or species concerned, and laying down:

1. the conditions concerning the quality with which propagating material and ornamental plants must comply, in particular those related to the propagation system applied, the purity of the growing crop and, where appropriate, varietal characteristics;
2. the conditions with which rootstocks of other genera and species must comply if material of the genus or species concerned is grafted onto them.

Article 5

1. Member States shall ensure that suppliers take all the necessary measures to guarantee compliance with the standards set by this Directive at all stages of the production and marketing of ornamental-plant-propagating material and ornamental plants.

2. To that end, the said suppliers shall either carry out themselves, or have carried out by an accredited supplier or the responsible official body, checks based on the following principles:

- identification of critical points in their production process on the basis of the production methods used,
- establishment and implementation of methods for monitoring and checking the critical points referred to in the first indent,
- taking samples for analysis in a laboratory accredited by the responsible official body for the purpose of checking compliance with the standards established by this Directive,
- keeping a written record, or a record registered in an indelible fashion, of the data referred to in the first, second and third indents, as well as records on production and marketing of propagating material and ornamental plants, to be held at the disposal of the responsible official body. These documents and records shall be kept for a period of at least one year.

However, suppliers whose activity in this connection is confined merely to the distribution of propagating material and ornamental plants produced and packaged on premises other than their own shall be required only to keep a written record or a record registered in an indelible fashion of the buying and selling and/or delivery of propagating material and ornamental plants.

This paragraph shall not apply to suppliers whose activity in this connection is confined to the supply of small quantities of propagating material and ornamental plants to non-professional final consumers.

3. If the results of their own checks or any information at the disposal of the suppliers referred to in paragraph 1 reveal the presence of one or more of the harmful organisms listed in the relevant schedules established pursuant to Article 4, the suppliers shall immediately report this to the responsible official body and shall carry out the measures indicated by that body. The supplier shall keep records of all occurrences of harmful organisms on his premises and of all measures taken in relation to such occurrences.

4. Rules for the application of the second subparagraph of paragraph 2 shall be established in accordance with the procedure laid down in Article 21.

Article 6

1. The responsible official body shall accredit suppliers once it has verified that their production methods and establishments meet the requirements of this Directive with regard to the nature of the activities they carry out. The accreditation must be renewed if a supplier decides to carry out activities other than those for which he has received accreditation.

2. The responsible official body shall accredit laboratories once it has verified that these laboratories, their

methods and their establishments meet the requirements of this Directive to be specified according to the procedure laid down in Article 21, with regard to the testing activities they carry out. The accreditation must be renewed if a laboratory decides to carry out activities other than those for which it has received accreditation.

3. The responsible official body shall take the necessary measures if the requirements referred to in paragraphs 1 and 2 cease to be met. To this end, it shall take particular account of the conclusions of any check carried out in accordance with Article 7.

4. The supervision and monitoring of suppliers, establishments and laboratories shall be carried out regularly by or under the responsibility of the responsible official body, which shall at all times have free access to all parts of establishments, in order to ensure compliance with the requirements of this Directive. Implementing measures concerning supervision and monitoring may be adopted, in accordance with the procedure laid down in Article 21.

If such supervision and monitoring reveal that the requirements of this Directive are not being met, the responsible official body shall take appropriate action.

Article 7

1. Experts from the Commission may, in cooperation with the responsible official bodies of the Member States, make on-the-spot checks in so far as this is necessary to ensure the uniform application of this Directive. They may in particular verify whether suppliers are in effect complying with the requirements of this Directive. A Member State in whose territory a check is being carried out shall give all necessary assistance to the experts in carrying out their duties. The Commission shall inform the Member States of the results of the investigations.

2. Detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 21.

Article 8

1. Propagating material or ornamental plants shall not be placed on the market except by accredited suppliers and unless they meet the requirements for propagating material and ornamental plants laid down in the schedule referred to in Article 4.

2. Without prejudice of Directive 77/93/EEC, paragraph 1 shall not apply to propagating material or ornamental plants intended for:

- (a) trials or scientific purposes;
- (b) selection work.

Article 9

1. Propagating material and ornamental plants shall be marketed with a reference either to the variety or to the group of plants to which they belong.

2. The varieties to which reference is made pursuant to paragraph 1 shall be:

- either commonly known, and protected in accordance with provisions on the protection of new varieties of plants, officially registered on a voluntary or other basis,
- or entered on lists kept by suppliers, with their detailed descriptions and relevant denominations. These lists must be accessible, upon request, to the responsible official body of the Member State concerned.

Each variety shall be described and, as far as possible, bear the same denomination in all the Member States, in accordance with accepted international guidelines.

3. Where reference is made to a group of plants, the supplier should describe and quote the denomination of the group of plants in such a way as to avoid confusion with any of the varieties referred to in paragraph 2.

4. Except where the varietal aspect is explicitly mentioned in the schedules referred to in Article 4, paragraphs 1, 2 and 3 shall not mean any extra responsibility for the responsible official body.

5. A system for the notification of varieties or other groups of plants to the responsible official bodies of the Member States may be set up in accordance with the procedure laid down in Article 21. Additional implementing provisions for the second indent of paragraph 2 may be adopted in accordance with the same procedure.

Article 10

1. While growing and during lifting or removal from the parent material, propagating material or ornamental plants shall be kept in separate lots.

2. If propagating material or ornamental plants of different origins are put together or mixed during packaging, storage, transport or at delivery, the supplier shall keep records including the following data: composition of the lot and origin of the individual components.

3. Member States shall ensure compliance with the requirements referred to in paragraphs 1 and 2 by carrying out official inspections.

Article 11

Without prejudice to Article 10 (2), propagating material and ornamental plants shall be marketed only in sufficiently homogeneous lots.

Propagating material and ornamental plants shall in all cases satisfy the requirements of this Directive and shall be accompanied by a document made out by the supplier in accordance with the conditions laid down in the schedule established pursuant to Article 4. If an official statement appears on this document, it shall be clearly separated from all other contents of the document.

If appropriate, requirements on propagating material and/or ornamental plants for labelling and/or sealing and packaging shall be included in the schedule established pursuant to Article 4.

In the case of retail supply of propagating material or ornamental plants to a non-professional final consumer, requirements on labelling may be confined to appropriate product information.

Article 12

Member States may exempt

- from the application of Article 11, small producers all of whose production and sales of propagating material and ornamental plants is intended for final use by persons on the local market who are not professionally involved in plant production ('local circulation'),
- from the official control provided for in Article 18, the local circulation of propagating materials and ornamental plants produced by such exempt persons.

In accordance with the procedure laid down in Article 21, implementing measures relating to other requirements concerning the exemptions referred to in the first and second indents above, in particular as regards the concepts of 'small producers' and 'local market', and to the relevant procedures, shall be adopted.

Article 13

In the event of temporary difficulties in the supply of propagating material or ornamental plants satisfying the requirements of this Directive, rules may be adopted, in accordance with the procedure laid down in Article 21, concerning the marketing of propagating material and ornamental plants meeting less stringent requirements, without prejudice to the plant-health rules laid down in Directive 77/93/EEC.

Article 14

The marketing of propagating material and ornamental plants which comply with the requirements and conditions of this Directive shall be subject to no restrictions as regards supplier, plant health, growing medium and inspection arrangements, other than those laid down in this Directive.

Article 15

As concerns the products referred to in the Annex, Member States shall refrain from imposing more stringent conditions or marketing restrictions other than the conditions laid down in the schedules established pursuant to Article 4 or those obtaining on the date of adoption of this Directive as the case may be.

Article 16

1. In accordance with the procedure laid down in Article 21, it shall be decided whether propagating material and ornamental plants produced in a third country and affording the same guarantees as regards obligations on the supplier, identity, characteristics, plant health, growing medium, packaging, inspection arrangements, marking and sealing, are equivalent in all these respects to propagating material and ornamental plants produced in the Community and complying with the requirements and conditions of this Directive.

2. Pending the decision referred to in paragraph 1, Member States may, until 1 January 1993, apply to the import of propagating material and ornamental plants from third countries conditions equivalent to those applicable to the production and marketing of products obtained in the Community.

In accordance with the procedure laid down in Article 21, the date referred to in the first subparagraph may, for the various third countries, be put back pending the decision referred to in paragraph 1.

Propagating material and ornamental plants imported by a Member State in accordance with a decision taken by that Member State pursuant to the first subparagraph shall be subject to no marketing restrictions as regards the matters referred to in paragraph 1 in other Member States.

Article 17

Member States shall ensure that propagating material and ornamental plants are officially inspected during production and marketing, at least by random checks, to verify compliance with the requirements and conditions of this Directive.

Article 18

Detailed implementing procedures for the official inspection referred to in Articles 5, 10 and 17, including sampling methods, may be established in accordance with the procedure laid down in Article 21.

Article 19

1. If, during the supervision and monitoring referred to in Article 6 (4), the official inspection referred to in Article 17, or the trials referred to in Article 20, it is found that propagating material or ornamental plants do not meet the requirements of this Directive, the responsible official body

of the Member State shall take appropriate action to ensure that they do comply with the provisions of this Directive or, if that is not possible, to ban the marketing of that propagating material or those ornamental plants in the Community.

2. If it is found that propagating material or ornamental plants marketed by a particular supplier do not comply with the requirements and conditions of this Directive, the Member State concerned shall ensure that appropriate measures are taken against that supplier. If the supplier is forbidden to market propagating material and ornamental plants, the Member State shall notify the Commission and the competent national bodies in the Member States.

3. Any measures taken under paragraph 2 shall be withdrawn as soon as it has been established with adequate certainty that the propagating material or ornamental plants intended for marketing by the supplier will, in future, comply with the requirements and conditions of this Directive.

Article 20

1. Trials, or where appropriate tests, shall be carried out in the Member States on samples to check that propagating material or ornamental plants comply with the requirements and conditions of this Directive, including those relating to plant health. The Commission may organize inspections of the trials by representatives of the Member States and of the Commission.

2. It may be decided in accordance with the procedure laid down in Article 21 that it is necessary to carry out Community trials or tests for the same purpose as mentioned in paragraph 1. The Commission may organize inspections of Community trials by representatives of the Member States and of the Commission.

3. The trials or tests referred to in paragraphs 1 and 2 shall be used to harmonize technical methods of examination of propagating material and ornamental plants. Progress reports shall be made on the trials or tests and sent in confidence to the Member States and to the Commission.

4. The Commission shall ensure that, in appropriate cases, arrangements for coordinating, carrying out and inspecting the trials referred to in paragraphs 1 and 2, and assessing their results, are made within the Committee set up by Article 21. When plant health problems occur, the Commission shall notify the Standing Committee on Plant Health. If necessary, specific arrangements shall be adopted. Propagating material and ornamental plants produced in third countries shall be included in the trials.

Article 21

Where reference is made to the procedure laid down in this Article, the Commission shall be assisted by a Committee,

referred to as the Standing Committee for Propagating Material and Ornamental Plants, chaired by a representative of the Commission.

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

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Standing Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time referred to in the previous paragraph.

Article 22

Where reference is made to the procedure laid down in this Article, the Commission shall be assisted by the Standing Committee for Propagating Materials and Ornamental Plants, chaired by the representative of the Commission.

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

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

Amendments to the schedules established pursuant to Article 4 and to the conditions and detailed rules adopted for the implementation of this Directive shall be adopted in accordance with the procedure laid down in Article 21.

Article 24

1. Member States shall ensure that propagating material and ornamental plants produced in their territory and intended for marketing comply with the requirements of this Directive.

2. If it is found, at an official inspection, that propagating material or ornamental plants cannot, by reason of non-compliance with a condition relating to plant health, be placed on the market, the Member State concerned shall take appropriate official measures to eliminate any consequent plant-health risk.

Article 25

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply

with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be adopted by the Member States.

2. As far as Articles 5 to 11, 14, 15, 17, 19 and 24 are concerned, the date of application for each genera or species referred to in the Annex shall be adopted in accordance with the procedure provided for in Article 21, when the schedule referred to in Article 4 is drawn up. These dates may not fall after 1 January 1993.

Article 26

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council
The President
P. DANKERT

ANNEX

List of genera and species referred to in Article 1 (2)

— <i>Begonia x hiemalis</i> Fotsch	Elatior-Begonia
— <i>Pelargonium</i> L.	<i>Pelargonium</i> (zonale, ivy-leaved, regal)
— <i>Dendranthema x grandiflorum</i> (Ramat.) Kitam.	Chrysanthemum (florists chrysanthemum)
— <i>Dianthus caryophyllus</i> L. and hybrids	Carnation
— <i>Euphorbia pulcherrima</i> wild ex Kletsch	
— <i>Gerbera</i> L.	Gerbera
— <i>Phoenix</i>	
— <i>Rosa</i>	
— <i>Citrus</i> (ornamental)	
— <i>Malus Miller</i> (ornamental)	Ornamental Apple
— <i>Pinus nigra</i> (ornamental)	
— <i>Prunus</i> L. (ornamental)	Ornamental Cherry
— <i>Pyrus</i> L. (ornamental)	Ornamental Pear
— <i>Lilium</i> L.	Lily
— <i>Gladiolus</i> L.	Gladiolus
— <i>Narcissus</i> L.	Daffodil.

COUNCIL DIRECTIVE

of 19 December 1991

amending Directive 77/93/EEC on protective measures against the introduction into the Member States of organisms harmful to plants or plant products

(91/683/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

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

Whereas by Directive 77/93/EEC ⁽⁴⁾, as last amended by Directive 91/27/EEC ⁽⁵⁾, the Council laid down protective measures against the introduction into the Member States of organisms harmful to plants or plant products; whereas the protection of plants against such organisms is absolutely necessary to increase agricultural productivity, which is one of the objectives of the common agricultural policy;

Whereas the completion of the internal market at the end of 1992 will entail the application of the Community plant health regime established by Directive 77/93/EEC, with effect from that time, to the Community as an area without internal frontiers; whereas it is furthermore considered that areas which are not affected by particular harmful organisms need protection wherever they are located in the Community; whereas, accordingly, the scope of the regime should no longer be restricted to trade between Member States and third countries, but should also be extended to marketing within single Member States;

Whereas, in principle, all parts of the Community should benefit from the same degree of protection against harmful organisms; whereas, however, differences in ecological conditions and in the distribution of certain harmful organisms must be taken into account; whereas, in consequence, 'protected zones' exposed to particular plant health risks should be defined and should be accorded special protection under conditions compatible with the internal market;

Whereas to ensure more effective application of the Community plant-health regime in the internal market, it

must be possible to use, for the purpose of plant-health checks, available official manpower other than that of Member States' official plant-protection organizations, whose training shall be coordinated and supported financially by the Community;

Whereas the application of the Community plant health regime to the Community as an area without internal frontiers, and the introduction of protected zones will necessitate a restructuring, based in particular on a more realistic assessment of plant health risks arising from Community products, of the requirements laid down in the Annexes to Directive 77/93/EEC, so as to classify them as applicable to Community products on the one hand and to imports from third countries on the other, and to identify harmful organisms relevant for protected zones; whereas this restructuring should lead to a simplification of the Annexes, in particular by the removal of a number of harmful organisms established in certain parts of the Community and the related requirements;

Whereas some of this restructuring should be entrusted to the Commission assisted by the Standing Committee on Plant Health established by Decision 76/894/EEC ⁽⁶⁾;

Whereas in the context of the internal market it must be possible to rely on plant health checks carried out in consignor Member States; whereas it is accordingly necessary to establish more detailed and more uniform rules for these checks;

Whereas the most appropriate place for carrying out plant-health checks is the place of production; whereas, in respect of Community products, these checks must therefore be made mandatory at the place of production and should extend to all relevant plants and plant products grown, produced, used or otherwise present there, and to the growing medium used there; whereas, for the efficient operation of such a system of checks, all producers should be officially registered;

Whereas, if the results of the checks are satisfactory, instead of the phytosanitary certificate used in international trade, an agreed mark ('plant passport'), adapted to the type of product, should be attached to the product, in order to ensure its free movement throughout the Community or those parts thereof for which it is valid;

⁽¹⁾ OJ No C 29, 8. 2. 1990, p. 10.

⁽²⁾ OJ No C 106, 22. 4. 1991, p. 32.

⁽³⁾ OJ No C 182, 23. 7. 1990, p. 16.

⁽⁴⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽⁵⁾ OJ No L 16, 22. 1. 1991, p. 29.

⁽⁶⁾ OJ No L 340, 9. 12. 1976, p. 25.

Whereas the official measures to be taken when the results of the checks are not satisfactory should be specified;

Whereas, to ensure compliance with the Community plant-health regime in the context of the internal market, a system of official checks during marketing should be established; whereas this system should be as reliable and uniform as possible throughout the Community but should exclude specific controls at borders between Member States;

Whereas, as from completion of the internal market, products originating in third countries should in principle be subjected to plant health checks on first introduction into the Community; whereas, if the results of the checks are satisfactory, third country products should be issued with a plant passport, ensuring free movement, in the same way as Community products;

Whereas, in order to confront the new situation created by the completion of the internal market with the necessary guarantees, it is essential to reinforce the plant-health infrastructure at national and Community level at the Community's external frontiers, paying particular attention to those Member States which, by reason of their geographical situation, are points of entry to the Community; whereas the Commission will propose the inclusion in the General Budget of the European Communities of the necessary appropriations for that purpose;

Whereas, with a view to improving the efficiency of the Community plant health regime in the context of the internal market, the Member States should standardize the practices of the personnel responsible for plant health; whereas the Commission will submit, before 1 January 1993, a Community code of plant health practice;

Whereas it should no longer be possible for Member States to adopt any special plant-health provisions on the introduction into their territory of plants or plant products originating in other Member States; whereas all provisions on plant health requirements for plants and plant products should be established at Community level; whereas Article 18 (2) of Directive 77/93/EEC should therefore be deleted and replaced by a simplified procedure for establishing the coherence of the provisions of the Directive with other Community provisions on plant health requirements,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/93/EEC is hereby amended as follows:

1. The title shall be replaced by the following:

'Council Directive of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community'.

2. In Article 1, the following paragraphs shall be added:

'5. With effect from 1 January 1993, this Directive shall also concern protective measures against the spread of harmful organisms within the Community by means related to movements of plants, plant products and other related objects within a Member States.

6. Each Member State shall establish or designate one single and central authority responsible, under the control of the national government, in particular for coordination and contacts in matters related to plant health within the context of this Directive. The official plant protection service set up under the International Plant Protection Convention (IPPC) shall preferably be designated for this purpose. This authority and any subsequent change shall be notified to the other Member States and to the Commission.'

3. In Article 2 (1), point (f) shall be replaced by the following points:

'(f) plant passport: shall be considered to mean an official label which gives evidence that the provisions of this Directive related to plant health standards and special requirements are satisfied, and which is:

- standardized at Community level for different types of plants or plant products, and
- prepared by the responsible official body in a Member State and issued in accordance with the implementing rules governing the details of the procedure for issuing plant passports.

For specific types of product, official agreed marks other than a label may be decided on in accordance with the procedure laid down in Article 16a.

The standardization shall be established in accordance with the same procedure. Under this standardization, different marks shall be determined for plant passports which are not valid, in accordance with the second subparagraph, of Article 10 (1), for all parts of the Community.

- (g) The responsible official bodies in a Member State shall be:

- (a) the official plant protection service(s) of a Member State referred to in Article 1 (6); or

- (b) any State authority established

- at national level,

- or, under the supervision, within the limits set by the constitution of the Member State concerned, of national authorities, at regional level,

The bodies referred to in the first subparagraphs (a) and (b) may, in accordance with national legislation, delegate the tasks provided for in this Directive to be accomplished under their authority

and supervision to any legal person, whether governed by public or by private law, which under its officially approved constitution is charged exclusively with specific public functions, provided that such person, and its members, has no personal interest in the outcome of the measures it takes.

The Member States shall ensure that there is close cooperation between the bodies referred to in the first subparagraph (b) and those referred to in (a).

Moreover, in accordance with the procedure laid down in Article 16a, other legal persons established on behalf of the body(ies) referred to in the first subparagraph (a) and acting under the authority and supervision of such body may be approved, provided that such person has no personal interest in the outcome of the measures it takes.

The single central authority referred to in Article 1 (6) shall inform the Commission of the responsible official bodies in the Member State concerned. The Commission shall forward that information to the other Member States.'

4. In Article 2 (1) the following points shall be added:

'(h) protected zone: shall be considered to mean a zone in the Community:

- in which one or more harmful organisms referred to in this Directive, which are established in one or more parts of the Community, are not endemic or established, despite favourable conditions for them to establish there,
- in which there is a danger that certain harmful organisms will establish themselves, given propitious ecological conditions, for particular crops, despite the fact that these organisms are not endemic or established in the Community,

and which has been recognized, in accordance with the procedure laid down in Article 16a, as fulfilling the conditions set out in the first and second indents and, in the case referred to in the first indent, at the request of the Member State(s) concerned and on the grounds that the results of appropriate surveys which have been monitored by the experts referred to in Article 19a under the procedure laid down therein show no evidence to the contrary. Surveys in the eventuality referred to in the second indent are optional.

A harmful organism shall be considered to be established in an area if it is known to occur there and if either no official measures have been taken there with a view to its eradication or such measures have proved, for a period of at least two successive years, to be ineffective.

The Member State(s) concerned shall conduct, with respect to the case provided for in the first

indent of the first subparagraph, regular and systematic official surveys on the presence of organisms in respect of which the protected zone has been recognized. Each finding of such organisms shall immediately be notified to the Commission. The risk arising from such finding shall be assessed by the Standing Committee on Plant Health and appropriate action decided on in accordance with the procedure referred to in Article 16a.

The details of the surveys referred to in the first and third subparagraphs may be established in accordance with the said procedure, account being taken of sound scientific and statistical principles.

The results of the above surveys shall be notified to the Commission. The Commission shall forward this information to the other Member States.

The Commission shall, before 1 January 1998, submit a report to the Council on the operation of the system of protected zones together, if necessary, with any appropriate proposals;

(i) a statement or measure shall be considered to be official if made or taken, without prejudice to the provisions of Article 19a:

- by representatives of the official plant protection organization of a Member State or, under their responsibility, by other public servants, in the case of statements or measures related to the issuing of the certificates specified in Article 7 (1) or Article 8 (2);
- either by such representatives or public servants or by "qualified agents" employed by one of the responsible official bodies as specified in (f) of a Member State, in all other cases, provided that such agents have no personal interest in the outcome of the measures they take, and satisfy minimum standards of qualification.

Member States shall ensure that their public servants and qualified agents have the qualifications necessary for the proper operation of this Directive. In accordance with the procedure laid down in Article 16a, guidelines may be established for such qualifications.

The Commission shall, acting within the Standing Committee on Plant Health, draw up Community programmes, the implementation of which it shall monitor, regarding the further training of the public servants and qualified agents concerned, in an effort to raise the knowledge and experience acquired at national level to the level of the aforementioned qualifications. It shall contribute to the financing of this further training and shall propose the inclusion of the necessary appropriations for that purpose in the Community budget.'

5. In Article 3, paragraphs 4, 5, 6 and 7 shall be replaced by the following:

'4. With effect from 1 January 1993, Member States shall provide that paragraphs 1 and 2 shall be applied also to the spread of the harmful organisms concerned by means connected with the movement of plants, plant products or other objects within the territory of a Member State.

5. Member States shall ban from the same date the introduction into, and the spread within the relevant protected zones, of:

- (a) the harmful organisms listed in Annex I, part B;
- (b) the plants and plant products listed in Annex II, part B, where they are contaminated by the relevant harmful organisms listed therein.

6. In accordance with the procedure laid down in Article 16a:

- (a) the harmful organisms listed in Annexes I and II shall be subdivided as follows:

- organisms not known to occur in any part of the Community and relevant for the entire Community shall be listed in Annex I, part A, section I and Annex II, part A, section I respectively,
- organisms known to occur in the Community but not endemic or established throughout the Community and relevant for the entire Community shall be listed in Annex I, part A, section II and Annex II, part A, section II respectively,
- the other organisms shall be listed in Annex I, part B, and Annex II, part B, respectively, against the protected zone for which they are relevant;

- (b) harmful organisms endemic or established in one or more parts of the Community shall be deleted, save those referred to in the second and third indents of point (a);
- (c) the titles of Annexes I and II, as well as the different parts and sections thereof, shall be adapted to the above.

7. In accordance with the procedure laid down in Article 16a, it may be decided that Member States shall lay down that the introduction into their territories, and the spread within their territories, of specified organisms, whether singly or not, which are considered to be harmful to plants or plant products but are not listed in Annexes I and II, shall be prohibited or require special authorization under conditions specified under the same procedure.

This provision shall also apply to such organisms where they are not affected by Directive 90/220/EEC (*) or

other more specific Community provisions regarding genetically modified organisms.

(*) OJ No L 117, 8. 5. 1990, p. 15.'

6. Article 4 (2) (a) shall be replaced by the following:

'(a) The Member States shall provide that, from 1 January 1993, the introduction of plants, plant products and other objects listed in Annex III, part B, into the relevant protected zones located in their territory is prohibited.'

7. In Article 4, the following paragraphs shall be added:

'3. In accordance with the procedure laid down in Article 16a, Annex III shall be revised in such a way that part A contains plants, plant products and other objects which constitute a plant-health risk for all parts of the Community, and part B contains plants, plant products and other objects which constitute a plant-health risk only for protected zones. The protected zones shall be specified there respectively.

4. With effect from 1 January 1993, paragraph 1 shall no longer apply to plants, plant products and other objects originating in the Community, and paragraph 2 (b) shall be deleted.'

8. In Article 5, the second sentence of paragraph 1 shall be deleted.

9. Article 5 (2) shall be replaced by the following:

'2. Member States shall ban from 1 January 1993 the introduction into and the movement within the protected zones of the plants, plant products and other objects listed in Annex IV, part B, unless the relevant special requirements indicated in that part of the Annex are met.'

10. In Article 5, the following paragraphs shall be added:

'3. In accordance with the procedure laid down in Article 16a, Annex IV shall be amended in accordance with the criteria laid down in Article 3 (6).

4. With effect from 1 January 1993, Member States shall provide that paragraph 1 shall also apply to the movement of plants, plant products and other objects within the territory of a Member State, without prejudice however to Article 6 (6).'

11. In Article 6 (1) the words 'part A' shall be inserted after the words 'Annex V'.

12. In Article 6, the following paragraph shall be inserted after paragraph 1:

'1a. As soon as the measures provided for in Article 3 (6) (a) and in Article 5 (3) are adopted, paragraph 1

shall apply only in respect of Annex I, part A, section II, Annex II, part A, section II and Annex IV, part A, section II. Where, in the course of the examination carried out in accordance with this provision, harmful organisms listed in Annex I, part A, section I or Annex II, part A, section I are detected, the conditions referred to in Article 10 are not deemed to be fulfilled.'

13. In Article 6 (2), the terms 'Article 3 (5), (6) and (7)' shall be replaced by the terms 'Article 3 (4), (5) and (7)'.

14. In Article 6, the following paragraphs shall be added:

'4. With effect from 1 January 1993, and without prejudice to paragraph 6, paragraphs 1, 2 and 3 shall also apply to the movement of plants, plant products and other objects within the territory of a Member State. Paragraphs 1, 2 and 3 shall not apply, as regards the harmful organisms listed in Annex I, part B, or Annex II, part B, and the special requirements set out in Annex IV, part B, to the movement of plants, plant products or other objects through or outside a protected zone.

The official examinations referred to in paragraphs 1, 2 and 3 shall be carried out in accordance with the following provisions:

- (a) They shall extend to the relevant plants or plant products grown, produced or used by the producer or otherwise present on his premises as well as to the growing medium used there.
- (b) They shall be made on the premises, preferably at the place of production.
- (c) They shall be made regularly at appropriate times, at least once a year, and at least by visual observation, without prejudice to the special requirements listed in Annex IV; further action may be taken where this is provided for under paragraph 7.

Any producer for whom the official examination referred to above is required under paragraphs 1 to 4 shall be listed in an official register under a registration number by which to identify him. The official registers thus established shall be accessible to the Commission on request.

The producer is subject to certain obligations established in accordance with paragraph 7. In particular, he shall immediately notify the responsible official body of the Member State concerned of any unusual occurrence of harmful organisms, symptoms or any other plant abnormality.

5. With effect from 1 January 1993, Member States shall provide that producers of certain plants, plant products or other objects not listed in Annex V, part A, specified in accordance with paragraph 7, or collective warehouses or dispatching centres in the production zone, shall also be listed in an official local, regional

or national register in accordance with the last subparagraph of paragraph 4. They may at any time be subjected to the examinations provided for in the second subparagraph of paragraph 4.

In accordance with paragraph 7, a system may be set up so that certain plants, plant products and other objects may if necessary and in so far as possible, be traced back to their origins, bearing in mind the nature of the production or trading conditions.

6. Member States may, in so far as no spreading of harmful organisms is to be feared, exempt

- small producers or processors whose entire production and sale of relevant plants, plant products and other objects are intended for final usage by persons on the local market, and who are not professionally involved in plant production ('local movement'), from official registration as laid down in paragraphs 4 and 5, or
- the local movement of plants, plant products and other objects originating from producers so exempted from the official examination required under paragraphs 4 and 5.

The provisions of this Directive on local movement shall be reviewed by the Council before 1 January 1998 on the basis of a Commission proposal and in the light of experience gained.

7. In accordance with the procedure laid down in Article 16a, implementing provisions relating to:

- less stringent conditions on the movement of plants, plant products and other objects within a protected zone established for the said plants, plant products and other objects in respect of one or more harmful organisms,
- guarantees in respect of the movement of plants, plant products and other objects through a protected zone established for the said plants, plant products and other objects in respect of one or more harmful organisms,
- the frequency and timing of the official examination, including further action referred to in paragraph 4, second subparagraph, (c),
- the obligations on registered producers referred to in paragraph 4, last subparagraph,
- the specification of the products referred to in paragraph 5, and the products for which the system introduced in paragraph 5 is envisaged,
- other requirements regarding the exemption referred to in paragraph 6, in particular as regards the concepts of "small producer" and "local market" and the relevant procedures

shall be adopted.

8. Implementing rules related to the registration procedure and the registration number referred to in paragraph 4, last subparagraph may be adopted in accordance with the procedure laid down in Article 16a.

9. Member States may apply paragraphs 4, 5 and 6 in advance of 1 January 1993, either wholly or in relation to certain regions or certain groups of plants or plant products.

In such cases, the Member States concerned shall immediately inform the Commission and the other Member States of the provisions adopted for that purpose'.

15. In Article 7 (2) and Article 8 (1), 'part A' shall be inserted after 'Annex V'.

16. After Article 9, the following Articles shall be inserted:

'Article 10

1. With effect from 1 January 1993, where it is considered, on the basis of the examination provided for in Article 6 (1), (2) and (3) and carried out in accordance with Article 6 (4), that the conditions of those paragraphs are fulfilled, a plant passport shall be issued in accordance with provisions which may be adopted under paragraph 4, instead of the phytosanitary certificates referred to in Articles 7 or 8.

If the examination does not concern conditions relevant to the protected zones, or if it is considered that such conditions are not fulfilled, the plant passport issued shall not be valid for those zones and it shall have the mark reserved for such cases, pursuant to Article 2 (1) (f).

2. (a) With effect from 1 January 1993, plants, plant products and other objects listed in Annex V, part A, section I, may not be moved within the Community, other than locally within the meaning of Article 6 (6), unless a plant passport valid for the territory concerned and issued in accordance with paragraph 1 is attached to them, to their packaging or to the vehicles transporting them.

(b) With effect from 1 January 1993, plants, plant products and other objects listed in Annex V, part A, section II, may not be introduced into a specified protected zone or move therein, unless a plant passport valid for that zone and issued in accordance with paragraph 1 is attached to them, to their packaging or to the vehicles transporting them. If the conditions laid down in Article 6 (7) with regard to transport through protected zones are fulfilled, this paragraph shall not apply.

3. A plant passport may be replaced at a later date and in any part of the Community by another plant passport, in accordance with the following provisions:

- a plant passport may be replaced only where consignments are divided up or where several

consignments or parts thereof are combined or where the plant-health status of consignments changes, without prejudice to the particular requirements provided for in Annex IV, or in other cases specified in accordance with paragraph 4,

- the replacement may take place only at the request of a natural or legal person, whether a producer or not, listed in an official register, in accordance with Article 6 (4) third subparagraph, *mutatis mutandis*,
- the replacement passport may be prepared only by the responsible official body of the area in which the requesting premises are situated and only if the identity of the product concerned and the absence of any risk of infection due to harmful organisms listed in Annexes I and II since dispatch by the producer can be guaranteed,
- the replacement procedure must comply with the provisions which may be adopted under paragraph 4,
- the replacement passport must bear a special mark, stipulated in accordance with paragraph 4 and including the number of the original producer and, if there was a change in plant-health status, of the operator responsible for that change.

4. In accordance with the procedure laid down in Article 16a, implementing provisions may be adopted for:

- the detailed procedures for issuing plant passports as laid down in paragraph 1,
- the conditions under which a plant passport may be replaced in accordance with paragraph 3, first indent,
- the details of the procedure for the replacement passport as laid down in paragraph 3, third indent,
- the special mark required for the replacement passport as laid down in paragraph 3, fifth indent.

5. Member States which make use of Article 6 (9) may issue plant passports in accordance with paragraph 1, in advance of 1 January 1993, without prejudice to the provisions on the issue of phytosanitary certificates.

Article 10a

1. Where it is not considered, on the basis of the examination provided for in Article 6 (1) (2), and (3) and carried out in accordance with Article 6 (4), that the conditions in those paragraphs are fulfilled, a plant passport shall not be issued, without prejudice to paragraph 2.

2. In the special cases where it is established, taking into account the nature of the findings made in the

examination concerned, that part of the plants or plant products grown, produced or used by the producer or otherwise present on his premises, or part of the growing medium used there, cannot present any risk of spreading harmful organisms, paragraph 1 shall not apply to that part.

3. To the extent that paragraph 1 applies, the plants, plant products or growing medium concerned shall be the subject of one or more of the following official measures:

- appropriate treatment, followed by the issue of the appropriate plant passport in accordance with Article 10 if it is considered that, as a result of the treatment, the conditions are fulfilled,
- a permit for movement, under official control, to zones where they do not present an additional risk,
- a permit for movement, under official control, to places for industrial processing,
- destruction.

In accordance with the procedure laid down in Article 16a, implementing provisions may be adopted concerning:

- the conditions under which one or more of the above measures must or must not be adopted,
- the particular features of and conditions for such measures.

4. To the extent that paragraph 1 applies, the activities of the producer shall be totally or partially suspended until it is established that the risk of spreading harmful organisms is eliminated. As long as this suspension lasts, the relevant provisions of Article 10 shall not apply.

5. Where it is considered, on the basis of the official examination carried out in accordance with Article 6 (5), that products referred to therein are not free of the harmful organisms listed in Annexes I and II, paragraphs 2, 3 and 4 shall apply *mutatis mutandis*.

17. In Article 11, the following paragraphs shall be added:

'7. With effect from 1 January 1993, paragraphs 1, 3 and 3a shall no longer apply and Member States shall instead organize official checks to ensure compliance with the provisions of this Directive, in particular with Article 10 (2), which shall be carried out at random and without any discrimination in respect of the origin of the plants, plant products or other objects, and in accordance with the following provisions:

- occasional checks, at any time and at any place where plants, plant products or other objects are moved,
- occasional checks on premises where plants, plant products or other objects are grown, produced,

stored or offered for sale, as well as on the premises of purchasers,

- occasional checks at the same time as any other documentary check which is carried out for reasons other than plant health.

The checks must be regular in premises listed in an official register in accordance with Article 10 (3) and Article 12 (6) and may be regular in premises listed in an official register in accordance with Article 6 (5).

The checks may be regular and may be targeted if facts have come to light to suggest that one or more provisions of this Directive have not been complied with.

8. Commercial purchasers of plants, plant products or other objects shall, as final users professionally engaged in plant production, retain the related plant passports for at least one year, and make references to them in their records.

Inspectors shall have access to the plants, plant products or other objects at any stage in the production and marketing chain. They shall be entitled to make any investigation necessary for the official checks concerned, including those related to the plant passports and the records.

9. The Member States may be assisted in the official checks by the experts referred to in Article 19a.

10. Where it is established, through the official checks carried out in accordance with paragraphs 7 and 8, that plants, plant products or other objects present a risk of spreading harmful organisms, they shall be the subject of official measures in accordance with Article 10a (3).'

18. In Article 12 (1) and (3a), 'part B' shall be inserted after 'Annex V'.

19. In Article 12 (1) (b), the references to Articles 4, 5 and 9 shall be deleted.

20. In Article 12, the following paragraphs shall be added:

'6. With effect from 1 January 1993, paragraph 1 (a) shall apply, in cases of consignments to a protected zone, to harmful organisms and to the special requirements listed in part B of Annexes I, II and IV respectively. With effect from the same date, paragraphs 3 and 4 shall be deleted. With effect from the same date, paragraph 1 shall apply on the occasion of the first introduction of the plants, plant products or other objects concerned into the Community, without prejudice to specific agreements concluded in this respect between the Community and certain third countries.

Member States shall provide that importers, whether or not producers, must be included in an official register in accordance with Article 6 (4), *mutatis mutandis*.

The inspections, where they are documentary and identity checks and also checks intended to ensure compliance with the provisions of Article 4, must be made at the same place and at the same time as the other administrative formalities concerning import, including customs formalities.

The inspections, where they are plant-health checks, shall be carried out at the places where the inspections are carried out as referred to in the previous subparagraph or near to those places. The competent authorities of the Member States shall forward to the Commission and the other Member States the list of points of entry. However, in these particular cases, plant-health checks may be carried out at the place of destination as long as specific guarantees as regards the transport of the plants, plant products and other objects are provided. Implementing provisions, which may stipulate minimum conditions, shall be adopted in accordance with the procedure laid down in Article 16a. Plant-health checks shall be regarded as being an integral part of the formalities referred to in the previous subparagraph.

Member States may derogate from these provisions only under the conditions laid down as part of the technical arrangements referred to in paragraph 5.

7. With effect from 1 January 1993, Article 10 (1) and (3) shall apply in the same way to the plants, plant products or other objects referred to in paragraph 1 of this Article in so far as they are listed in Annex V, part A, and where it is considered, on the basis of the inspection laid down in paragraph 6, that the conditions referred to in paragraph 1 are fulfilled.

8. With effect from 1 January 1993, where it is not considered on the basis of the inspections provided for in paragraph 6, that the conditions referred to in paragraph 1 are fulfilled, one or more of the following official measures shall be taken immediately:

- appropriate treatment where it is considered that, as a result of the treatment, the conditions are fulfilled,
- removal of infected/infested produce from the consignment,
- imposition of a quarantine period until the results of the examinations or official tests are available,
- refusal or permission to send products to a destination outside the Community,
- destruction.

Article 10a (3), second subparagraph, shall apply *mutatis mutandis*.

21. In Article 14 (3), the following subparagraphs shall be added:

'Each authorization shall apply individually to all or part of the territory of the Community under conditions which take into account the risk of spreading harmful organisms by the product in question in protected zones taking into account the differences in agricultural and ecological conditions. In such cases, the Member States concerned shall be expressly exempted from the obligations derived from the above provisions in the decisions providing for the authorizations.

The risk shall be assessed on the basis of available scientific and technical information. Where such information is insufficient, it shall be supplemented by additional enquiries or, where appropriate, by investigations carried out by the Commission in the country of origin of the plants, plant products or other objects concerned.'

22. The following paragraph shall be inserted into Article 15, and paragraphs 1, 2 and 3 of that Article becoming paragraphs 2, 3 and 4 respectively:

'1. Each Member State shall immediately notify the Commission and the other Member States of the presence in its territory of any of the harmful organisms listed in Annex I, part A, section I, or Annex II, part A, section I, or of the appearance in part of its territory in which their presence was previously unknown of any of the harmful organisms listed in Annex I, part A, section II or in part B, or in Annex II, part A, section II or in part B.

It shall take all necessary measures to eradicate, or if that is impossible, inhibit the spread of the harmful organisms concerned. It shall inform the Commission and the other Member States of the measures taken.'

23. In Article 15 (2) (a), the first sentence shall be replaced by the following:

'Each Member State shall immediately notify the Commission and the other Member States of the actual or suspected appearance of any harmful organisms not listed in Annex I or Annex II whose presence was previously unknown in its territory.'

24. In Article 15 (2) (b), the terms 'referred to in (a)' shall be replaced by the terms 'referred to in paragraphs 1 and 2 (a).'

25. In Article 15 (2) (c), the reference to 'paragraph 2' shall be replaced by a reference to 'paragraph 3'.

26. In Article 15 (3) and (4), 'paragraph 1' shall be replaced in each case by 'paragraphs 1 and 2'.

27. Article 18 (2) shall be replaced by the following:

'2. Amendments to this Directive which are necessary to establish coherence with Community provisions referred to in paragraph 1 shall be adopted in accordance with the procedure laid down in Article 16a.'

28. Annex V shall be replaced by the following:

'ANNEX V

- A. Plants, plant products and other objects originating in the Community.
- A. I. Plants, plant products and other objects which are potential carriers of harmful organisms of relevance for the entire Community.
- A. II. Plants, plant products and other objects which are potential carriers of harmful organisms of relevance for certain protected zones. Without prejudice to the plants, plant products and other objects listed in part A.I.
- B. Plants, plant products and other objects originating in territories other than those referred to in part A.
- B. I. Plants, plant products and other objects which are potential carriers of harmful organisms of relevance for the entire Community.
- B. II. Plants, plant products and other objects which are potential carriers of harmful organisms of relevance for certain protected zones. Without prejudice to the plants, plant products and other objects listed in part B. I.'

Article 2

The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the revised version of Annex V to Directive 77/93/EEC before 1 July 1992.

Article 3

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive six months after the revision of Annexes I to V to Directive 77/93/EEC. They shall forthwith inform the Commission thereof.

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

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

2. Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council
The President
P. DANKERT

COUNCIL DIRECTIVE

of 19 December 1991

amending Directive 89/437/EEC on hygiene and health problems affecting the production and the placing on the market of egg products

(91/684/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 89/437/EEC of 20 June 1989 on hygiene and health problems affecting the production and the placing on the market of egg products ⁽¹⁾, as amended by Directive 89/662/EEC ⁽²⁾, and in particular Article 10 thereof,

Having regard to the proposal from the Commission,

Whereas certain provisions of the Annex should be adapted to scientific and technological progress, in accordance with Article 10 of Directive 89/437/EEC, as regards testing for *staphylococci* in egg products and the storage temperatures for certain egg products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive 89/437/EEC is hereby amended as follows:

1. The third indent of point 1 (b) of Chapter VI shall be replaced by the following:

‘— *Staphylococcus aureus*: absence in 1g of egg product’.

2. The fourth indent of point 3 of Chapter IX shall be deleted.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1991. They shall forthwith inform the Commission thereof.

When Member States adopt the measures referred to in the first subparagraph, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication.

The procedures for making such reference shall be determined by the Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1991.

For the Council
The President
P. DANKERT

⁽¹⁾ OJ No L 212, 22. 7. 1989, p. 87.

⁽²⁾ OJ No L 395, 30. 12. 1989; p. 13.