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I

(Acts whose publication is obligatory)

EUROPEAN PARLIAMENT AND COUNCIL DECISION No. 1729/95/EC

of 19 June 1995

on the extension of the 'Europe against AIDS' programme

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 129 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social
Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Whereas the plan of action adopted by Decision
91/317/EEC of the Council and the Ministers of Health
of the Member States, meeting within the Council ⁽⁴⁾, in
the framework of the 'Europe against AIDS' programme
expires at the end of 1993;

Whereas the conclusions of the Council and the Ministers
of Health, meeting within the Council, of 27 May 1993
stressed that it is essential to continue the activities of the
'Europe against AIDS' programme while complying with
the principle of subsidiarity;

Whereas, to that end and in order to avoid any
interruption in Community action against AIDS, the
present programme should be extended, exceptionally in
1994 and 1995, until a new multiannual programme is
adopted;

Whereas, in extending the programme, account should be
taken of the content of the communication from the
Commission to the Council and the European Parliament
on the implementation of the plan of action in 1991 to
1992 in the framework of the 'Europe against AIDS'
programme, of its evaluation as provided for by Decision
91/317/EEC, and of new factors which have emerged in
the fight against AIDS;

Whereas measures to combat AIDS at Community level
must give priority to encouraging cooperation between
the Member States and supporting their activities where
necessary;

Whereas, in its resolution of 13 December 1993 ⁽⁵⁾, the
Council set out guidelines for the continuation of the
programme,

HAVE DECIDED AS FOLLOWS:

Article 1

1. The 'Europe against AIDS' programme shall be
extended for two years until 31 December 1995.

2. The Commission shall implement the 1994 to 1995
plan of action set out in Annex I in close cooperation
with the competent authorities of the Member States in
accordance with the provisions of Article 1 of Decision
91/317/EEC, taking fully into account the guidelines
contained in Annex II.

Article 2

The appropriations allocated for the activities provided
for under the programme referred to in Article 1 shall be
adopted under the budgetary procedure.

⁽¹⁾ OJ No C 133, 16. 5. 1994, p. 16.

⁽²⁾ Opinion of the European Parliament of 17 December 1993
(OJ No C 20, 24. 1. 1994, p. 501). Council common
position of 2 June 1994 (OJ no C 213, 3. 8. 1994, p. 22)
and European Parliament Decision of 16 November 1994
(OJ No C 341, 5. 12. 1994, p. 76) and Council Decision of
22 December 1994.

⁽³⁾ OJ No C 217, 6. 8. 1994, p. 21.

⁽⁴⁾ OJ No L 175, 4. 7. 1991, p. 26.

⁽⁵⁾ OJ No C 15, 18. 1. 1994, p. 4.

Article 3

1. The Commission, in collaboration with the Advisory Committee referred to in Article 1 (1) of Decision 91/317/EEC, shall continuously assess the action undertaken and the priorities set.

2. The Council shall carry out an evaluation of the effectiveness of the action undertaken.

To that end, the Commission shall submit a report to the Council after the termination of the action plan.

The report shall also be forwarded to the European Parliament.

Done at Brussels, 19 June 1995.

*For the
European Parliament
The President
K. HÄNSCH*

*For the Council
The President
A. MADELIN*

ANNEX I

1994 to 1995 PLAN OF ACTION

AREA OF ACTIVITY 1

Assessment of the knowledge, attitudes and behaviour of the general public and certain target groups (populations with high-risk lifestyles or in high-risk environments, marginalized communities), information and awareness-raising campaigns for the public and these groups.

Promotion and assessment of the results of surveys on knowledge, attitudes and behaviour carried out in the Member States and at Community level.

Assessment of the need for, and desirability of, undertaking studies to augment existing information in particular areas at Community level.

Studies of the information campaigns for the general public and target sections of the population, such as homosexuals and bisexuals, minorities and migrants; dissemination of the results; encouragement of exchanges allowing experience in the Member States to be compared.

Promotion of developments in methodology for measuring changes in knowledge, attitudes and behaviour and for assessing the impact on the latter of prevention measures undertaken in Member States.

Development of ways to increase coordination and links between campaigns in the Member States, and of possible Community measures which could complement or contribute to such campaigns, including the use of the media and production of specific materials, such as those designed to make information easily accessible to opinion-formers and community leaders.

Promotion of measures to increase public understanding and awareness of the problems caused by the epidemic for society as a whole and for the individuals and families directly affected.

Encouragement of the development of telephone and computerized response mechanisms in the Community, and of centres providing information to the public or specific groups; promotion of the exchange of experience between them.

Dissemination of the data on knowledge, attitudes and behaviour and on preventive measures.

AREA OF ACTIVITY 2

Measures for children and young people

Examination and exchange of information about HIV/AIDS education in schools and other educational and training establishments for young people in the Member States and about how such education fits into the provision of sex education and general health education in such establishments.

Exchange of information on HIV/AIDS education programmes designed for children and young people outside the formal educational setting; interaction with general health education programmes within and outside the education system.

Promotion of pilot educational projects on HIV/AIDS which fit into general health education and promotion for children and young people inside and outside the formal education setting, including tailored programmes for minority groups.

AREA OF ACTIVITY 3

Prevention of HIV transmission among particular groups and in particular settings*Travel and tourism*

Studies and exchanges of information and experience on problems related to tourism, people travelling within the Community and to and from third countries, and to border areas with third country States; promotion of pilot projects and networks aimed at taking preventive action in tourist resorts, frontier areas and other relevant locations.

Prisons

Examination and exchange of information on the current regimes in the Community for people with HIV and AIDS in prisons and detention centres, including procedures on admittance, during incarceration and after release, education of prisoners, training of staff and the possibility of specific prevention and harm-reduction measures.

Promotion of pilot projects in cooperation with the Member States which take account of regulations and local circumstances aimed at developing new methods of providing care and support for those with HIV and AIDS, reducing the risks of transmission of HIV and improving the training provided to the staff working in prisons.

Injecting drug users

Evaluation of the knowledge, attitudes and behaviour of injecting drug users with regard to HIV/AIDS and consideration of HIV prevention strategies; exchange of information and sharing of experience on methods concerning the supply of safe injecting equipment; assessment of the possible role of methadone programmes in the prevention of HIV transmission; examination of the interaction of the measures taken in Member States to combat drug abuse with those on HIV/AIDS, and the consequences for the epidemic.

Women exposed to specific risks of infection by HIV

Overview and exchange of information on the situation of women at particular risk of HIV in the Member States, including prostitutes and women drug users, and of the preventive activities being undertaken for such women; promotion of pilot projects on prevention and support aimed at particular groups and settings.

Vertical transmission of HIV from mothers to children

Examination and exchange of information on the transmission of HIV from mothers to children in Member States and on the situation of children and young people with HIV and their families, including access to educational institutions and social and psychological care and support; promotion of pilot projects.

Other groups with high-risk lifestyles

Exchange of information among Member States on prevention measures for groups such as young homosexual men and bisexuals; promotion of pilot projects.

Safety of blood and blood products

Continuation of efforts to promote Community self-sufficiency from voluntary non-remunerated blood donations. Exchange of information among Member States on progress made towards this and in people's knowledge, attitudes and behaviour with regard to transfusions.

AREA OF ACTIVITY 4**Social and psychological support**

Elaboration and dissemination of manuals, information bulletins and directories providing the latest information on prevention of transmission of HIV, care and therapy and on organizations providing information and support; encouragement of networks of organizations, particularly in the non-governmental sector.

Exchange of experience about models of assistance and support for people with HIV and AIDS; promotion of studies on the psycho-social aspects of HIV/AIDS.

AREA OF ACTIVITY 5**Gathering data on HIV/AIDS**

Appropriate support for epidemiological monitoring systems in the Member States to improve the quality and accessibility of data at Community level; work of the European Centre for the Epidemiological Monitoring of AIDS (WHO-EC Collaborative Centre in Paris) in order to ensure the further development of its work in providing accurate surveillance data at the Community level and carrying out analyses of those data.

Encouragement of efforts to increase and improve epidemiological training in HIV/AIDS and related fields in the Community and to build upon links between the responsible institutions in the Member States.

Examination of the specific circumstances and exchange of information concerning infected persons who remain asymptomatic for long periods; examination of issues concerning the role of other diseases implicated in AIDS.

Exchange of information on significant developments in each Member State and at Community level in the development of the epidemic and related problems, including economic issues, such as the costs for statutory services and on the measures being taken in response.

AREA OF ACTIVITY 6

Combating discrimination against people with HIV and AIDS and those close to them

Analysis at Community level, in cooperation with Member States, of actual and potential discriminatory situations in the Member States, notably in the fields of employment, insurance, housing, education and the health-care system.

Study of the situation concerning the implementation in Member States of the provisions on the fight against discrimination contained in the resolution of the Council and the Ministers for Health of the Member States meeting within the Council of 22 December 1989 ⁽¹⁾; examination and exchange of information, in cooperation with the Member States, on the measures taken in the Member States to avoid or alleviate discrimination, notably in the abovementioned areas.

AREA OF ACTIVITY 7

Coordination with other programmes related to HIV/AIDS

Promotion of closer links with other Community programmes related to HIV/AIDS, including research and international assistance, and enhancement of Community added value.

⁽¹⁾ OJ No C 10, 16. 1. 1990, p. 3.

ANNEX II

**GUIDELINES FOR THE CONTINUATION OF THE 1991 TO 1993 PLAN OF ACTION IN THE
CONTEXT OF THE 'EUROPE AGAINST AIDS' PROGRAMME**

These guidelines are based on the Council's mid-term assessment on the basis of the Commission's report on the implementation of the action plan in 1991 to 1992.

I. STRUCTURE OF THE PROGRAMME**(a) Objective**

ensure Community support for the activities carried out by the Member States under the programme.

(b) Improvements

- strengthen and make optimum use of the human and financial resources allocated to the programme,
- ensure that the Advisory Committee fully carries out its role,
- strengthen coordination with national structures and programmes, within the Commission, especially as regards research, both between the Commission and international organizations.

II. EVALUATION OF THE PROGRAMME**(a) Objective**

improve the transparency of the decision-making mechanism and strengthen the continuous evaluation of the programme to assess the effectiveness of the action undertaken.

(b) Improvements

- establish more precise selection criteria,
 - direct selected projects towards targeted and coherent objectives, of a social and less exclusively medical nature,
 - provide for continuous evaluation of all projects,
 - tailor the programme to the development of the disease,
 - inform the Member States of the whole content of the said projects.
-

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/26/EC

of 29 June 1995

amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular the first and third
sentences of Article 57 (2) thereof,

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

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

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽³⁾ in the light of the joint text
approved by the Conciliation Committee on 11 May
1995,

- (1) Whereas certain events have shown that it is appropriate to amend in certain respects certain Council Directives, specifying the general framework within which credit institutions, insurance undertakings, investment firms and undertakings for investment in transferable securities (Ucits) may carry on their business, namely Directives 77/780/EEC ⁽⁴⁾ and 89/646/EEC, Directives 73/239/EEC ⁽⁵⁾ and 92/49/EEC, Directives 79/267/EEC ⁽⁶⁾ and 92/96/EEC, Directive 93/22/EEC ⁽⁷⁾ and Directive 85/611/EEC ⁽⁸⁾, with a view to reinforcing prudential supervision; whereas it is desirable to adopt similar measures throughout the financial services sector;

⁽¹⁾ OJ No C 229, 25. 8. 1993, p. 10.

⁽²⁾ OJ No C 52, 14. 2. 1994, p. 15.

⁽³⁾ Opinion of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 61), Council common position of 6 June 1994 (OJ No C 213, 3. 8. 1994, p. 29), European Parliament Decision of 26 October 1994 (OJ No C 323, 21. 11. 1994, p. 56).

⁽⁴⁾ OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

⁽⁵⁾ OJ No L 228, 16. 8. 1973, p. 3. Directive as last amended by Directive 92/49/EEC (OJ No L 228, 11. 8. 1992, p. 1).

⁽⁶⁾ OJ No L 63, 13. 3. 1979, p. 1. Directive as last amended by Directive 92/96/EEC (OJ No L 360, 9. 12. 1992, p. 1).

⁽⁷⁾ OJ No L 141, 11. 6. 1993, p. 27.

⁽⁸⁾ OJ No L 375, 31. 12. 1985, p. 3. Directive as amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

- (2) Whereas those Directives lay down, *inter alia*, the conditions which must be fulfilled before the competent authorities may grant authorization for the taking-up of business;
- (3) Whereas the competent authorities should not authorize or continue the authorization of a financial undertaking where they are liable to be prevented from effectively exercising their supervisory functions by the close links between that undertaking and other natural or legal persons; whereas financial undertakings already authorized must also satisfy the competent authorities in that respect;
- (4) Whereas the definition of 'close links' in this Directive lays down minimum criteria and that does not prevent Member States from applying it to situations other than those envisaged by the definition;
- (5) Whereas the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of this Directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking;
- (6) Whereas the reference to the supervisory authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a financial undertaking where the provisions of Community law so provide; whereas, in such cases, the authorities applied to for authorization must be able to identify the authorities competent to exercise supervision on a consolidated basis over that financial undertaking;
- (7) Whereas the principles of mutual recognition and of home Member State supervision require that Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution of the activities actually carried on indicate clearly that a financial undertaking has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it carries on or intends to carry on the greater part of its activities; whereas a

financial undertaking which is a legal person must be authorized in the Member State in which it has its registered office; whereas a financial undertaking which is not a legal person must have its head office in the Member State in which it has been authorized; whereas, in addition, Member States must require that a financial undertaking's head office always be situated in its home Member State and that it actually operates there;

- (8) Whereas it is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system; whereas, in order to preserve the confidential nature of the information forwarded, the list of addressees must remain within strict limits;
- (9) Whereas certain behaviour, such as fraud and insider offenses, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than financial ones;
- (10) Whereas it is necessary to specify the conditions under which such exchanges of information are authorized;
- (11) Whereas, where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions;
- (12) Whereas exchanges of information between, on the one hand, the competent authorities and, on the other, central banks and other bodies with a similar function in their capacity as monetary authorities and, where appropriate, other public authorities responsible for supervising payment systems should also be authorized;
- (13) Whereas the same obligation of professional secrecy on the authorities responsible for authorizing and supervising Ucits and the undertakings that take part in those activities and the same possibilities for exchanging information as those granted to the authorities responsible for authorizing and supervising credit institutions, investment firms and insurance undertakings, should be included in Directive 85/611/EEC;
- (14) Whereas this Directive coordinates all the provisions governing information exchanges between authorities for the entire financial sector as provided for in Directive 93/22/EEC;
- (15) Whereas, for the purpose of strengthening the prudential supervision of financial undertakings and protection of clients of financial undertakings, it should be stipulated that an auditor must have a duty to report promptly to the competent

authorities, wherever, as provided for by this Directive, he becomes aware, while carrying out his tasks, of certain facts which are liable to have a serious effect on the financial situation or the administrative and accounting organization of a financial undertaking;

- (16) Whereas, having regard to the aim in view, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a financial undertaking;
- (17) Whereas the duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a financial undertaking which they discover during the performance of their tasks in a non-financial undertaking does not in itself change the nature of their tasks in that undertaking nor the manner in which they must perform those tasks in that undertaking;
- (18) Whereas adopting this Directive is the most appropriate means of achieving the objectives in view, and in particular of reinforcing the powers of the competent authorities; whereas this Directive restricts itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Wherever the term 'financial undertaking' is used in this Directive, it shall be replaced by:

- 'credit institution' where this Directive amends Directives 77/780/EEC and 89/646/EEC;
- 'insurance undertaking' where this Directive amends Directives 73/239/EEC and 92/49/EEC, and 'life assurance undertaking' where this Directive amends Directives 79/267/EEC and 92/96/EEC;
- 'investment firm' where this Directive amends Directive 93/22/EEC;
- 'undertaking for collective investment in transferable securities (Ucits) or an undertaking contributing towards its business activity' where this Directive amends Directive 85/611/EEC.

Article 2

1. — In Article 1 of Directive 77/780/EEC, a fifth indent,
- in Article 1 of Directive 92/49/EEC, a point (l),

- in Article 1 of Directive 92/96/EEC, a point (m), and
- in Article 1 of Directive 93/22/EEC, a point 15,

shall be added containing the following definition:

“close links” shall mean a situation in which two or more natural or legal persons are linked by:

- (a) “participation”, which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking or
- (b) “control”, which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC (*), or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(*) OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).’

2. The following subparagraphs shall be added at the end of:

- Article 3 (2) of Directive 77/780/EEC,
- Article 3 (3) of Directive 93/22/EEC,
- Article 8 (1) of Directive 73/239/EEC,
- Article 8 (1) of Directive 79/267/EEC:

‘Moreover, where close links exist between the financial undertaking and other natural or legal persons, the competent authorities shall grant authorization only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorization if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require financial undertakings to provide them with the information

they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.’

Article 3

1. The following paragraph shall be inserted in Article 8 of Directive 73/239/EEC and in Article 8 of Directive 79/267/EEC:

‘1a. Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.’

2. The following paragraph shall be inserted in Article 3 of Directive 77/780/EEC:

‘2a. Each Member State shall require that:

- any credit institution which is a legal person and which, under its national law, has a registered office have its head office in the same Member State as its registered office,
- any other credit institution have its head office in the Member State which issued its authorization and in which it actually carries on its business.’

Article 4

1. In Article 16 of Directive 92/49/EEC and in Article 15 of Directive 92/96/EEC, the following paragraph shall be inserted:

‘5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or
- independent actuaries of insurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,
- information received in this context will be subject to the conditions of professional secrecy imposed in paragraph 1,

- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, person and bodies which may receive information pursuant to this paragraph.'

2. In Article 12 of Directive 77/780/EEC and in Article 25 of Directive 93/22/EEC, the following paragraph shall be inserted:

'5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between, the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.'

3. In Article 12 of Directive 77/780/EEC, in Article 16 of Directive 92/49/EEC, in Article 25 of Directive 93/22/EEC and in Article 15 of Directive 92/96/EEC, the following paragraph shall be inserted:

'5b. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.'

4. In Article 12 of Directive 77/780/EEC and in Article 25 of Directive 93/22/EEC, paragraph 6 shall be replaced by the following:

'6. This Article shall not prevent a competent authority from transmitting:

- to central banks and other bodies with a similar function in their capacity as monetary authorities,
- where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.'

5. In Article 16 of Directive 92/49/EEC and in Article 15 of Directive 92/96/EEC, the following shall be inserted:

'5c. Member States may authorize the competent authorities to transmit:

- to central banks and other bodies with a similar function in their capacity as monetary authorities,
- where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task and may authorize such authorities or bodies to communicate to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.'

6. The following paragraph 8 shall be added to Article 12 of Directive 77/780/EEC:

'8. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member States' markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy referred to in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.'

7. In Article 50 of Directive 85/611/EEC, paragraphs 2, 3 and 4 shall be replaced by the following:

'2. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that Ucits and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an Ucits or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to Ucits or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

4. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information communicated is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of Ucits or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51 (2).

6. Paragraphs 2 and 5 shall not preclude the exchange of information:

- (a) within a Member State, where there are two or more competent authorities; or
- (b) within a Member State or between Member States, between competent authorities; and
 - authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organizations and the authorities responsible for the supervision of financial markets,
 - bodies involved in the liquidation or bankruptcy of Ucits and other similar procedures and of undertakings contributing towards their business activity,
 - persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7. Notwithstanding paragraphs 2 to 5, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities

which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

11. In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the

supervision of Ucits and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.'

Article 5

The following shall be incorporated:

- in Directive 77/780/EEC, an Article 12a,
- in Directive 92/49/EEC, an Article 16a,
- in Directive 92/96/EEC, an Article 15a,
- in Directive 93/22/EEC, an Article 25a,
- and in Directive 85/611/EEC, an Article 50a,

reading as follows:

'1. Member States shall provide at least that:

- (a) any person authorized within the meaning of Directive 84/253/EEC (*), performing in a financial undertaking the task described in Article 51 of Directive 78/660/EEC (**), Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

- constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of financial undertakings, or
- affect the continuous functioning of the financial undertaking, or
- lead to refusal to certify the accounts or to the expression of reservations;

- (b) that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the financial undertaking within which he is carrying out the abovementioned task.

2. The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract of by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

(*) OJ No L 126, 12. 5. 1984, p. 20.

(**) OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).'

Article 6

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 18 July 1996. They shall forthwith inform the Commission thereof.

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

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

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 29 June 1995.

*For the
European Parliament*

The President
K. HÄNSCH

For the Council

The President
M. BARNIER

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 95/27/EC

of 29 June 1995

amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾ in the light of the joint text approved by the Conciliation Committee on 11 May 1995,

Whereas within the framework of the internal market, requirements for noise emissions of hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders, hereinafter referred to as 'earth-moving machines' have to be harmonized, while a high level of protection for the environment has to be achieved without creating obstacles to the free movement of earth-moving machines;

Whereas Directive 86/662/EEC ⁽⁴⁾ provides for the EC type-examination of earth-moving machines, used to perform work on civil engineering and building sites, and whereas that Directive also lays down limits for noise levels and a test method;

Whereas earth-moving machines above 500 kW are predominantly used in quarries and mines and whereas it is therefore deemed appropriate to exclude these machines from the scope of the Directive;

Whereas Directive 86/662/EEC does not provide for permissible sound levels applicable in the period beginning six years after its entry into force, but envisages that after 1994 revised permissible sound levels shall be so determined that their effect on the environment is reduced by approximately 3 dB according to the category of power and type of machine;

Whereas the extension of the validity of Article 3 (1) (a) of Directive 86/662/EEC up to 29 December 1996 and the certificates granted under it up to 29 December 1997 ensure that the industry has sufficient time to prepare itself to the new permissible sound-power levels;

Whereas the reduction of the permissible noise levels, to be achieved at stage 1, corresponds to approximately 4 dB compared to existing standards and is aimed at achieving a high level of protection as far as health and environmental protection are concerned;

Whereas, as technology is evolving and in order to give the appropriate signals to the industries concerned, further reductions of the admissible noise levels have to be laid down for a second stage, subject, however, to reconsideration, where necessary in the light of the progress made;

Whereas the revised test method to be applied after 29 December 1996 has been established according to Directive 86/662/EEC;

Whereas an agreement on a '*modus vivendi*' between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty was reached on 20 December 1994;

HAVE ADOPTED THIS DIRECTIVE;

Article 1

Directive 86/662/EEC is hereby amended as follows:

1. In Article 1 (1), the full stop at the end shall be changed to a comma and the following shall be added: '... as long as their installed power is below 500 kW.'
2. Article 3 shall be replaced by the following:

'Article 3

1. The approved bodies shall issue an EC type-examination certificate for every type of earth-moving machine referred to in Article 1 (1):

- (a) up to and including 29 December 1996, where the sound-power level of airborne noise emitted in the environment measured under the

⁽¹⁾ OJ No C 157, 9. 6. 1993, p. 7.

⁽²⁾ OJ No C 304, 10. 11. 1993, p. 32.

⁽³⁾ Opinion of the European Parliament of 14 July 1993 (OJ No C 255, 20. 9. 1993, p. 70). Council common position of 8 June 1994 (OJ No C 213, 3. 8. 1994, p. 5) and European Parliament Decision of 16 November 1994 (OJ No C 341, 5. 12. 1994, p. 74).

⁽⁴⁾ OJ No L 384, 31. 12. 1986, p. 1. Directive as amended by Commission Directive 89/514/EEC (OJ No L 253, 30. 8. 1989, p. 35).

conditions of stationary operation set out in Annex I to Directive 79/113/EEC, as amended by Directive 81/1051/EEC and supplemented by Annex I to this Directive, does not exceed the permissible level L_{WA} in dB(A)/1 pW specified with reference to the net installed power P in kW in the following table:

Net installed power P in kW (*)	Permissible sound power level L_{WA} in dB(A)/1 pW
$P \leq 70$	106
$70 < P \leq 160$	108
$160 < P \leq 350$	
(a) hydraulic and rope-operated excavators	112
(b) other earth-moving machines	113
$P > 350$	118

(*) As defined in Section 6.2.1 of Annex I (the value of installed power shall be rounded to the nearest whole kW).

- (b) as from 30 December 1996 and up to and including 29 December 2001, where the sound-power level of airborne noise emitted in the environment measured under the conditions of real dynamic operation set out in Annex I to Directive 79/113/EEC, as amended by Directive 81/1051/EEC and supplemented by Annex II to this Directive, does not exceed the permissible sound-power level L_{WA} in dB(A)/1 pW specified with reference to the net installed power in kW (*) as follows:

- (i) tracked machines,
(except excavators): $L_{WA} = 87 + 11 \log P$
- (ii) wheeled dozers, loaders,
excavator-loaders: $L_{WA} = 85 + 11 \log P$
- (iii) excavators: $L_{WA} = 83 + 11 \log P$.

These formulae are only valid for values greater than the lowest sound-power levels for the three types of machine shown in the table below. These lowest sound-power levels correspond to the lowest values of net installed power for each type of machine. For net installed powers below these values, the permissible sound-power levels are given by the lowest level shown in the table (see Annex VII).

Type of machine	Lowest sound-power level in dB(A)/1 pW
tracked machines (except excavators)	107
wheeled dozers, loaders, excavator-loaders	104
excavators	96

the measured sound-power level and the permissible sound-power level shall be rounded to the nearest whole number (less than 0,5 use lower number; greater than or equal to 0,5 use higher number)

- (c) as from 30 December 2001, where the sound-power level of airborne noise emitted in the environment measured under the conditions of real dynamic operation set out in Annex I of Directive 79/113/EEC, as amended by Directive 81/1051/EEC and supplemented by Annex II to this Directive, does not exceed the permissible sound-power level L_{WA} in dB(A)/1 pW specified with reference to the net installed power P in kW (*) as follows:

- (i) tracked machines
(except excavators): $L_{WA} = 84 + 11 \log P$
- (ii) wheeled dozers, loaders,
excavator-loaders: $L_{WA} = 82 + 11 \log P$
- (iii) excavators: $L_{WA} = 80 + 11 \log P$.

These formulae are only valid for values greater than the lowest sound-power levels for the three types of machine shown in the table below. These lowest sound-power levels correspond to the lowest values of net installed power for each type of machine. For net installed powers below these values, the permissible sound power levels are given by the lowest level shown in the table (see Annex VII).

Type of machine	Lowest sound power level in dB(A)/1 pW
tracked machines (except excavators)	104
wheeled dozers, loaders, excavator-loaders	101
excavators	93

the measured sound power level and the permissible sound power level shall be rounded to the nearest whole number (less than 0,5 use lower number; greater than or equal to 0,5 use higher number)

- (*) As defined in Section 6.2.1 of Annex I (the value of installed power shall be rounded to the nearest whole kW).

2. Up to 29 December 1996, EC type-examination certificates may also be issued under the conditions laid down in paragraph (1) (b).

3. All applications for an EC type-examination certificate in respect of the permissible sound-power levels of a type of earth-moving machine shall be accompanied by an information document conforming to the model shown in Annex IV.

4. For each type of earth-moving machine it certifies, the approved body shall complete all the sections of the type-examination certificate conforming to the model given in Annex III to the framework Directive.

5. EC type-examination certificates granted in accordance with paragraph (1) (a) shall cease to be valid after 29 December 1997.

The period of validity of EC type-examination certificates granted in accordance with paragraphs (1) (b) and (1) (c) shall be limited to five years. This may be extended by five years provided that application is made no sooner than 12 months before the expiry of the first five-year period and that the EC type-examination certificates were issued for earth-moving machines which comply with the permissible sound-power levels applicable when the extension enters into force. However, certificates granted in accordance with the provisions on sound-power levels in paragraph (1) (b) shall cease to be valid only after 29 December 2002.

6. For every earth-moving machine built in conformity with the type certified by EC type-examination, the manufacturer shall complete a certificate of conformity conforming to the model given in Annex IV to the framework Directive and shall indicate thereon the net installed power and the corresponding swivel system.

7. Each earth-moving machine built in accordance with the type certified by EC type-examination shall bear a clear and permanent mark indicating the

- sound-power level in dB(A) in relation to 1 pW,
- sound-pressure level in dB(A) in relation to 20 μ Pa at the operator's position,

guaranteed by the manufacturer and determined as laid down in Annex I to Directive 79/113/EEC, as amended by Directive 81/1051/EEC and supplemented by Annex I or II and III to this Directive, together with the symbol "ε" (epsilon). The model for these marks is given in Annex V to this Directive.'

3. In Article 5 the full stop at the end shall be changed to a comma and the following shall be added:

'...including the possibility of restricting the working hours of earth-moving machines.'

4. Article 7 shall be deleted.

5. Article 8 shall be replaced by the following:

'Article 8

The amendments necessary to adapt the requirements of the Annexes to this Directive to technical progress shall be adopted in accordance with the procedure laid down in Article 5 of Directive 79/113/EEC, as amended by Directive 81/1051/EEC.'

6. Article 9 shall be replaced by the following:

'Article 9

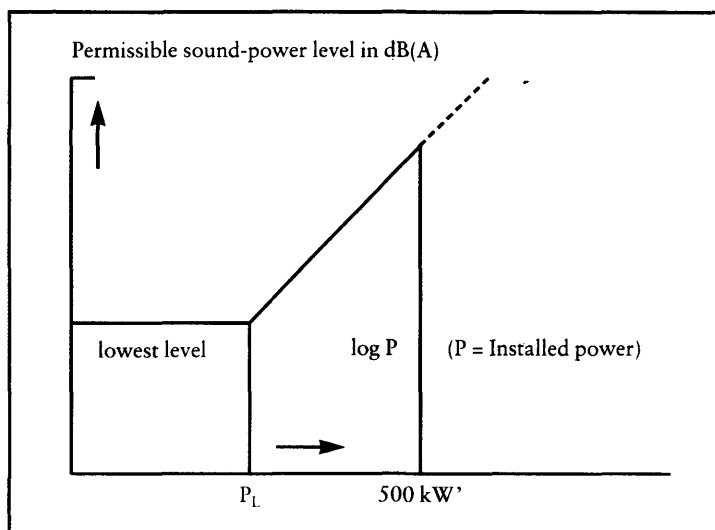
No later than 1 January 2000, the Commission may submit to the Council a proposal for revision of the limit values and the date laid down in Article 3 (1) (c).

Such a proposal must be based on a report on progress made in the technologies taken into consideration when laying down the limit values and date.'

7. The following Annex shall be added:

ANNEX VII

DIAGRAMMATIC SKETCH OF THE PROVISIONS OF ARTICLE (3) (1) (b) AND (c) RELATING TO THE PERMISSIBLE SOUND-POWER LEVEL AS A FUNCTION OF THE NET INSTALLED POWER



Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1995.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference when they are officially published. The methods of making such reference shall be laid down by Member States.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 June 1995.

For the
European Parliament
The President
K. HÄNSCH

For the Council
The President
M. BARNIER

