

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

DECISION NO 845 /2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 AMENDING DECISION NO 163/2001/EC ON THE IMPLEMENTATION OF A TRAINING PROGRAMME FOR PROFESSIONALS IN THE EUROPEAN AUDIOVISUAL PROGRAMME INDUSTRY (MEDIA-TRAINING) (2001-2005)	1
DECISION NO 846/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 AMENDING COUNCIL DECISION 2000/821/EC ON THE IMPLEMENTATION OF A PROGRAMME TO ENCOURAGE THE DEVELOPMENT, DISTRIBUTION AND PROMOTION OF EUROPEAN AUDIOVISUAL WORKS (MEDIA PLUS – DEVELOPMENT, DISTRIBUTION AND PROMOTION) (2001-2005)	4
REGULATION (EC) NO 847/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 ON THE NEGOTIATION AND IMPLEMENTATION OF AIR SERVICE AGREEMENTS BETWEEN MEMBER STATES AND THIRD COUNTRIES	7
DECISION NO 848/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 ESTABLISHING A COMMUNITY ACTION PROGRAMME TO PROMOTE ORGANISATIONS ACTIVE AT EUROPEAN LEVEL IN THE FIELD OF EQUALITY BETWEEN MEN AND WOMEN	18
DIRECTIVE 2004/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 APRIL 2004 REPEALING CERTAIN DIRECTIVES CONCERNING FOOD HYGIENE AND HEALTH CONDITIONS FOR THE PRODUCTION AND PLACING ON THE MARKET OF CERTAIN PRODUCTS OF ANIMAL ORIGIN INTENDED FOR HUMAN CONSUMPTION AND AMENDING COUNCIL DIRECTIVES 89/662/EEC AND 92/118/EEC AND COUNCIL DECISION 95/408/EC	33
DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS ⁽¹⁾	45
COUNCIL DIRECTIVE 2004/74/EC OF 29 APRIL 2004 AMENDING DIRECTIVE 2003/96/EC AS REGARDS THE POSSIBILITY FOR CERTAIN MEMBER STATES TO APPLY, IN RESPECT OF ENERGY PRODUCTS AND ELECTRICITY, TEMPORARY EXEMPTIONS OR REDUCTIONS IN THE LEVELS OF TAXATION	87

⁽¹⁾ Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.
The titles of all other acts are printed in bold type and preceded by an asterisk.

Contents (continued)

COUNCIL DIRECTIVE 2004/75/EC OF 29.4.2004 AMENDING DIRECTIVE 2003/96/EC AS REGARDS THE POSSIBILITY FOR CYPRUS TO APPLY, IN RESPECT OF ENERGY PRODUCTS AND ELECTRICITY, TEMPORARY EXEMPTIONS OR REDUCTIONS IN THE LEVELS OF TAXATION	100
COUNCIL DIRECTIVE 2004/76/EC OF 29.4.2004 AMENDING DIRECTIVE 2003/49/EC AS REGARDS THE POSSIBILITY FOR CERTAIN MEMBER STATES TO APPLY TRANSITIONAL PERIODS FOR THE APPLICATION OF A COMMON SYSTEM OF TAXATION APPLICABLE TO INTEREST AND ROYALTY PAYMENTS MADE BETWEEN ASSOCIATED COMPANIES OF DIFFERENT MEMBER STATES	106

II *Acts whose publication is not obligatory*

Council

2004/465/EC

COUNCIL DECISION OF 29.4.2004 ON A COMMUNITY FINANCIAL CONTRIBUTION TOWARDS MEMBER STATES FISHERIES CONTROL PROGRAMMES	114
--	-----

2004/466/EC

COUNCIL DECISION OF 29.4.2004 AMENDING THE COMMON MANUAL IN ORDER TO INCLUDE PROVISION FOR TARGETED BORDER CONTROLS ON ACCOMPANIED MINORS	136
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I

(Acts whose publication is obligatory)

**DECISION No 845 /2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL
of 29 April 2004**

amending Decision No 163/2001/EC on the implementation
of a training programme for professionals in the
European audiovisual programme industry
(MEDIA-Training) (2001-2005)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 150(4) thereof,

Having regard to the proposal from the Commission ,

Having regard to the Opinion of the European Economic and Social Committee ¹,

Having regard to the Opinion of the Committee of the Regions ²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

¹ OJ C 10, 14.1.2004, p. 8.

² OJ C 23, 27.1.2004, p. 24.

³ Opinion of the European Parliament of 12 February 2004 (not yet published in the Official Journal) and Council Decision of 26 April 2004.

Whereas:

- (1) By Decision No 163/2001/EC ¹ the European Parliament and the Council established the MEDIA-Training programme, which is a training programme for professionals in the European audiovisual programme industry, to run from 1 January 2001 to 31 December 2005.
- (2) It is essential to ensure the continuity of Community policy for the support of the European audiovisual sector having regard to the objectives followed by the Community under Article 150 of the Treaty.
- (3) It is also essential that the Commission provide a full and detailed assessment report on the MEDIA-Training Programme not later than 31 December 2005, in time for the legislative authority to be able to consider the proposal for a new MEDIA-Training Programme planned to start in 2007, and so that the budgetary authority can evaluate the need for a new financial framework,

HAVE DECIDED AS FOLLOWS:

¹ OJ L 26, 27.1.2001, p. 1. Decision as amended by Decision No /2004/EC (OJ L .., p.).

Article 1

Decision No 163/2001/EC is hereby amended as follows:

- (1) In Article 1, "31 December 2005" shall be replaced by "31 December 2006".
- (2) In Article 4(5), the financial framework set at EUR 52 million shall be replaced by EUR 59,4 million, in accordance with Decision No .../2004 * of the European Parliament and of the Council, amending the reference amounts, in order to take account of the enlargement of the European Union.

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Strasbourg, 29.4.2004

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

*

Note to OJ: Insert here the references of the Decision referred to in the footnote on page 2.

**DECISION No 846/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL
of 29 April 2004**

amending Council Decision 2000/821/EC
on the implementation of a programme to encourage the development, distribution
and promotion of European audiovisual works
(MEDIA Plus – Development, Distribution and Promotion) (2001-2005)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157(3) thereof,

Having regard to the proposal from the Commission ,

Having regard to the Opinion of the European Economic and Social Committee ¹,

Having regard to the Opinion of the Committee of the Regions ²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

¹ OJ C 10, 14.1.2004, p. 8.

² OJ C 23, 27.1.2004, p. 24.

³ Opinion of the European Parliament of 12 February 2004 (not yet published in the Official Journal) and Council Decision of 26 April 2004.

Whereas:

- (1) By Decision 2000/821/EC ¹ the Council established the MEDIA Plus programme, which encourages the development, distribution and promotion of European audiovisual works, to run from 1 January 2001 to 31 December 2005.
- (2) It is essential to ensure the continuity of Community policy for the support of the European audiovisual sector having regard to the objectives followed by the Community under Article 157 of the Treaty.
- (3) It is also essential that the Commission provide a full and detailed assessment report on the MEDIA Plus Programme not later than 31 December 2005, in time for the legislative authority to be able to consider the proposal for a new MEDIA Plus Programme planned to start in 2007, and so that the budgetary authority can evaluate the need for a new financial framework,

HAVE DECIDED AS FOLLOWS:

¹ OJ L 336, 30.12.2000, p. 82.

Article 1

Decision 2000/821/EC is hereby amended as follows:

- 1) In Article 1(1), "31 December 2005" shall be replaced by "31 December 2006."
- 2) In Article 5(2), the reference amount of EUR 350 million shall be replaced by EUR 453,60 million, including the adjustment to take account of enlargement, following the revision of the financial perspective.

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Strasbourg, 29.4.2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

REGULATION (EC) No 847/2004
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2004

on the negotiation and implementation
of air service agreements
between Member States and third countries

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ,

Having regard to the Opinion of the European Economic and Social Committee ¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ²,

¹ OJ C 234, 30.9.2003, p. 21.

² Opinion of the European Parliament of 2 September 2003 (not yet published in the Official Journal), Council Common Position of 5 December 2003 (OJ C 54 E, 2.3.2004, p. 33), Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Council Decision of 14 April 2004.

Whereas:

- (1) International aviation relations between Member States and third countries have been traditionally governed by bilateral air service agreements between Member States and third countries, their Annexes and other related bilateral or multilateral arrangements.
- (2) Following the judgments of the Court of Justice of the European Communities in cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98 and C-476/98, the Community has exclusive competence with respect to various aspects of such agreements.
- (3) The Court has also clarified the right of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access.
- (4) Where it is apparent that the subject-matter of an agreement falls partly within the competence of the Community and partly within that of its Member States, it is essential to ensure close cooperation between the Member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the Community. The Community institutions and the Member States should take all necessary steps to ensure the best possible cooperation in that regard.

- (5) The cooperation procedure between Member States and the Commission established by this Regulation should be without prejudice to the division of competencies between the Community and Member States, in accordance with Community law as interpreted by the Court of Justice.
- (6) All existing bilateral agreements between Member States and third countries that contain provisions contrary to Community law should be amended or replaced by new agreements that are wholly compatible with Community law.
- (7) Without prejudice to the Treaty, and in particular Article 300 thereof, Member States may wish to make amendments to existing agreements and make provision to manage their implementation until such time as an agreement concluded by the Community enters into force.
- (8) It is essential to ensure that a Member State conducting negotiations takes account of Community law, broader Community interests and ongoing Community negotiations.
- (9) If a Member State wishes to involve air carriers in the process of negotiation, all air carriers with an establishment in the territory of the Member State concerned should be treated equally.

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- (10) Establishment on the territory of a Member State implies the effective and real exercise of air transport activity through stable arrangements; the legal form of such an establishment, whether a branch or a subsidiary with a legal personality, should not be the determining factor in this respect. When an undertaking is established on the territory of several Member States, as defined by the Treaty, it should ensure, in order to avoid any circumvention of national law, that each of the establishments fulfils the obligations which may, in accordance with Community law, be imposed by the national law applicable to its activities.
- (11) In order to ensure that the rights of Community air carriers are not unduly restricted, no new arrangements that reduce the number of Community air carriers which may be designated to provide air services in a given market should be introduced in bilateral air service agreements.
- (12) Member States should establish non-discriminatory and transparent procedures for the distribution of traffic rights between Community air carriers. In applying those procedures Member States should have due regard to the need to preserve continuity of air services.
- (13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ¹.
- (14) Any Member State may invoke the confidentiality of the provisions of bilateral agreements it has negotiated and request the Commission not to share the information with other Member States.

¹ OJ L 184, 17.7.1999, p. 23.

- (15) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (16) Since the objectives of this Regulation, namely the coordination of negotiations with third countries with a view to concluding air service agreements, the necessity to guarantee a harmonised approach in the implementation and application of those agreements and the verification of their compliance with Community law, cannot be sufficiently achieved by the Member States and can therefore, by reason of the Community-wide scope of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Notification to the Commission

1. A Member State may, without prejudice to the respective competencies of the Community and its Member States, enter into negotiations with a third country concerning a new air service agreement or the modification of an existing air service agreement, its Annexes or any other related bilateral or multilateral arrangement, the subject matter of which falls partly within the competence of the Community, provided that:

- any relevant standard clauses, developed and laid down jointly between Member States and the Commission, are included in such negotiations; and
- the notification procedure set out in paragraphs 2, 3 and 4 is complied with.

Where appropriate, the Commission shall be invited to participate as an observer in any such negotiations.

2. Where a Member State intends to enter into such negotiations it shall notify the Commission of its intentions in writing. This notification shall include a copy of the existing agreement, if available, other relevant documentation and an indication of the provisions to be addressed in the negotiations, the objectives of the negotiations and any other relevant information. The Commission shall make the notification and, on request, the accompanying documentation, available to other Member States, subject to the requirements of confidentiality.

The information shall be transmitted at least one calendar month before formal negotiations are scheduled to commence with the third country concerned. If, due to exceptional circumstances, formal negotiations are scheduled at less than one month's notice, the Member State shall transmit the information as soon as possible.

3. Member States may make comments to the Member State which has notified its intention to enter into negotiations in accordance with paragraph 2. That Member State shall take such comments into account as far as possible in the course of the negotiations.

4. If, within 15 working days of receipt of the notification referred to in paragraph 2, the Commission concludes that the negotiations are likely to:

- undermine the objectives of Community negotiations underway with the third country concerned, and/or
- lead to an agreement which is incompatible with Community law

it shall inform the Member State accordingly.

Article 2

Consultation of stakeholders and participation in negotiations

Insofar as air carriers and other interested parties are to be involved in the negotiations referred to in Article 1, Member States shall treat equally all Community air carriers with an establishment on their respective territories to which the Treaty applies.

Article 3

Prohibition on introducing more restrictive arrangements

A Member State shall not enter into any new arrangement with a third country, which reduces the number of Community air carriers which may, in accordance with existing arrangements, be designated to provide services between its territory and that country, neither in respect of the entire air transport market between the two parties nor on the basis of specific city pairs.

Article 4

Conclusion of agreements

1. Upon signature of an agreement, the Member State concerned shall notify the Commission of the outcome of the negotiations together with any relevant documentation.
2. Where the negotiations have resulted in an agreement which incorporates the relevant standard clauses referred to in Article 1(1), the Member State shall be authorised to conclude the agreement.
3. Where the negotiations have resulted in an agreement which does not incorporate the relevant standard clauses referred to in Article 1(1), the Member State shall be authorised, in accordance with the procedure referred to in Article 7(2), to conclude the agreement, provided that this does not harm the object and purpose of the Community common transport policy. The Member State may provisionally apply the agreement pending the outcome of this procedure.

4. Notwithstanding paragraphs 2 and 3, if the Commission is actively negotiating with the same third country on the basis of a country-specific mandate or on the basis of Council Decision 2004/.../EC of... authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement ¹, the Member State concerned may be authorised, in accordance with the procedure referred to in Article 7(2), to apply provisionally and/or conclude the agreement.

Article 5

Distribution of traffic rights

Where a Member State concludes an agreement, or amendments to an agreement or its Annexes, that provide for limitations on the use of traffic rights or the number of Community air carriers eligible to be designated to take advantage of traffic rights, that Member State shall ensure a distribution of traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure.

Article 6

Publication of procedures

Member States shall inform the Commission without delay of the procedures that they shall apply for the purposes of Article 5 and, where appropriate, Article 2. For information purposes, the Commission shall ensure that these procedures are published in the Official Journal of the European Union within eight weeks of their receipt. Any new procedures and subsequent changes to existing procedures shall be communicated to the Commission at least eight weeks before they enter into force, so that the Commission can ensure their publication in the Official Journal of the European Union within that eight-week period.

¹ OJ L.....

Article 7

Committee procedure

1. The Commission shall be assisted by the committee established under Article 11 of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ¹.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its rules of procedure.

Article 8

Confidentiality

In notifying the Commission of negotiations and their outcome as envisaged in Articles 1 and 4, Member States shall clearly inform the Commission if any information therein is to be considered confidential and whether it can be shared with other Member States. The Commission and Member States shall ensure that any information identified as confidential is treated according to Article 4(1)(a) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ².

¹ OJ L 240, 24.8.1992, p. 8. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

² OJ L 145, 31.5.2001, p. 43.

Article 9

Gibraltar

1. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
2. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 10

Entry into force

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

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

Done at Strasbourg, 29.4.2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

**DECISION No 848/2004/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 29 April 2004**

establishing a Community action programme to promote organisations
active at European level in the field of
equality between men and women

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular, Article 13(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ²,

¹ OJ C 80, 30.3.2004, p. 115.

² Opinion of the European Parliament of 20 November 2003 (not yet published in the Official Journal), Council Common Position of 6 February 2004 (OJ C 95 E, 20.4.2004, p. 1), Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal) and Council Decision of 20 April 2004.

Whereas:

- (1) The principle of equality between men and women is a fundamental principle of Community law, laid down in Article 2 and Article 3(2) of the Treaty and clarified by the case-law of the Court of Justice of the European Communities. Under the Treaty, equality between men and women is one of the Community's specific tasks and objectives and the Community is actively to promote such equality in all fields of Community action.
- (2) Article 13(1) of the Treaty confers on the Council the power to take appropriate action to combat all discrimination based, *inter alia*, on sex. Pursuant to Article 13(2), when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of that objective, it is to act in accordance with the procedure referred to in Article 251 of the Treaty.
- (3) Article 21 of the Charter of Fundamental Rights of the European Union prohibits any discrimination on grounds of sex and Article 23 lays down the principle of equality between men and women in all areas.
- (4) Experience of action at Community level has shown that promoting gender equality calls in practice for a combination of measures and, in particular, of legislation and practical action designed to reinforce one another.
- (5) The Commission's White Paper on European Governance advocates the participation of citizens in shaping and implementing policy, the involvement of civil society and civil society organisations, and more effective and transparent consultation of interested parties.

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- (6) The Fourth World Conference on Women held in Beijing adopted on 15 September 1995 a Declaration and a Platform for Action calling on governments, the international community and civil society to take strategic action to eliminate both discrimination against women and the barriers to gender equality.
- (7) By Decision 2001/51/EC¹, the Council established a Community Action Programme relating to the Community framework strategy on gender equality. These actions should be supplemented by support measures in the areas concerned.
- (8) Budget lines A-3037 (No ABB 040501) and A-3046 (No ABB 040503) of the general budget of the European Union for the year 2003 and preceding years were intended to support the European Women's Lobby and women's organisations working to promote equality between men and women.
- (9) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities², hereinafter referred to as "the Financial Regulation", requires the adoption of a basic act for existing support measures which is in line with its provisions.
- (10) The activities of certain organisations help to promote gender equality, particularly in the case of Community measures targeted specifically at women.

¹ OJ L 17, 19.1.2001, p. 22.

² OJ L 248, 16.9.2002, p. 1.

- (11) The European Women's Lobby, in particular, which comprises most of the women's organisations in the 15 Member States and has over 3 000 members, plays a major role in promoting, monitoring and disseminating Community measures aimed at women with a view to achieving equality between men and women. Its activity serves the general European interest.
- (12) Consequently, a structured programme should be adopted to provide financial assistance to such organisations in the form of an operating grant for activities with aims of general European interest in the area of gender equality or with an objective which forms part of the European Union's policy in this area and in the form of certain grants for action.
- (13) This programme covers a wide geographic area owing to the fact that the new Treaty of Accession was signed on 16 April 2003 and that the Agreement on the European Economic Area (EEA) provides for increased cooperation in the field of gender equality between the European Community and its Member States, on the one hand, and the countries of the European Free Trade Association (EFTA), on the other. The EEA Agreement lays down the procedures for the participation of the EFTA States party to the EEA Agreement in Community programmes in this field. Furthermore, this programme should be opened up for participation by Romania and Bulgaria, in accordance with the conditions set out in their Europe Agreements, in their Additional Protocols and in the decisions of the respective Association Councils, and to Turkey in accordance with the conditions laid down in the Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes ¹.

¹ OJ L 61, 2.3.2002, p. 29.

- (14) The specific nature of organisations active at European level in the field of the promotion of equality between men and women should be taken into account when laying down the procedures for granting such assistance.
- (15) This Decision lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure¹, for the budgetary authority during the annual budgetary procedure.
- (16) The Joint Declaration of the European Parliament, the Council and the Commission of 24 November 2003 on the basic acts for grants provides, on an exceptional basis, for transitional clauses concerning the period of eligibility of expenditure to be introduced in this programme,

HAVE DECIDED AS FOLLOWS:

Article 1

Objective of the programme

1. This Decision hereby establishes a Community Action Programme (hereinafter referred to as "the programme") to promote organisations active at European level in the field of equality between men and women.

¹ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

2. The general objective of the programme is to support the activities of such organisations, of which an ongoing programme of work or a specific action serves the general European interest in the field of equality between men and women or pursues an objective which is part of the European Union's policy in this area.
3. The programme shall start on 1 January 2004 and shall end on 31 December 2005.

Article 2

Access to the programme

1. In order to be eligible for a grant, an organisation active at European level in the field of equality between women and men must comply with the provisions laid down in the Annex and its activities must:
 - (a) contribute to the development and implementation of Community actions to promote equality between men and women;
 - (b) be in accordance with the principles underlying, and the legal provisions governing, Community action in the policy area of equality between men and women;
 - (c) have transnational potential.
2. The organisation in question must have been legally established for more than one year, acting alone or in the form of various coordinated associations.

Article 3

Participation of third countries

In addition to organisations established in the Member States, participation in the programme shall be open to organisations active at European level in the field of equality between men and women which are established in:

- (a) Accession States which signed the Treaty of Accession on 16 April 2003;
- (b) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement;
- (c) Romania and Bulgaria, on the basis that the conditions for their participation are to be laid down in accordance with the European Agreements, their additional Protocols and the Decisions of the respective Association Councils;
- (d) Turkey, on the basis that the conditions for its participation are to be laid down in accordance with the Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes.

Article 4

Selection of beneficiaries

1. Operating grants shall be awarded directly to the beneficiaries referred to in point 2.1 of the Annex.
2. The award of an operating grant on the basis of an ongoing programme of work, or the award of a grant for a specific action, to an organisation which is pursuing an objective of general European interest forming part of the European Union's policy of promoting equality between men and women must meet the general criteria laid down in the Annex. Organisations entitled to receive grants under points 2.2 and 2.3 of the Annex shall be selected following a call for proposals.

Article 5

Awarding of the grant

1. Operating grants awarded under points 2.1 and 2.2 of the Annex to organisations active at European level in the field of equality between men and women may cover no more than 80% of the organisation's total eligible expenditure for the calendar year for which the grant is awarded.
2. Pursuant to Article 113(2) of the Financial Regulation, and by reason of the nature of the organisations covered by this Decision, a derogation shall be made from the principle of degressivity for grants awarded under the programme.

Article 6

Financial provisions

1. The financial framework for the implementation of the programme for the period from 2004 to 2005 shall be EUR 2,2 million.
2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 7

Transitional clauses

For grants awarded in 2004, it will be possible for the period of eligibility of expenditure to start on 1 January 2004, provided that the expenditure does not precede the date on which the grant application was lodged or the date on which the beneficiary's budgetary year starts.

During 2004, in the case of beneficiaries whose budgetary year starts before 1 March, an exception may be granted to the obligation to sign the grant agreement within the first four months of the start of the beneficiary's budgetary year, as referred to in Article 112(2) of the Financial Regulation. In this case, the grant agreement should be signed by 30 June 2004 at the latest.

Article 8

Monitoring and evaluation

By 31 December 2006 at the latest, the Commission shall submit a report to the European Parliament and the Council on the achievement of the objectives of the programme. That report shall be based on the results obtained by the beneficiaries and shall assess, in particular, their effectiveness in achieving the objectives set out in Article 1 and the Annex.

Article 9

Entry into force

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2004.

Done at Strasbourg, 29.4.2004

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

ANNEX

1. Activities to be supported

The general objective laid down in Article 1 is to reinforce Community action in the field of equality between men and women and the effectiveness of such action by offering financial support to organisations active at European level in the field of equality between women and men, including the European Women's Lobby.

1.1. The activities of organisations working to promote equality between men and women which may help reinforce and increase the effectiveness of Community action will include the following:

- the representation of interested parties at Community level,
- awareness-raising activities aimed at promoting gender equality, in particular through studies, campaigns and seminars,
- the dissemination of information on Community action to promote gender equality;
- action promoting, inter alia, the reconciliation of working and family life, the involvement of women in decision-making, the fight against gender-related violence, gender stereotyping and discrimination at work,
- measures fostering cooperation with women's organisations in third countries and raising awareness of the situation of women worldwide.

- 1.2. Activities carried out by the European Women's Lobby in representing and coordinating non-governmental women's organisations, and in relaying information on women to the European institutions and non-governmental organisations, will include the following:
- following-up the Beijing Platform for Action (United Nations),
 - working towards improving European legislation on gender equality and the inclusion of women in all policy areas,
 - participation at meetings and conferences on gender equality,
 - taking action to ensure that the views and interests of women are included in national and European policies, in particular by encouraging their participation in decision-making,
 - reinforcing equality between men and women in the EU enlargement process and developing cooperation with women's organisations in the acceding Member States.
2. Carrying-out of the activities to be supported

The activities carried out by organisations which are eligible to receive a Community grant under the programme will come under one of the following strands:

2.1. Strand 1: ongoing activities of the European Women's Lobby, whose members are inter alia, women's organisations in the Member States of the European Union, subject to observance of the following principles:

- it must be free to select its members,
- it must be free to pursue its activities in accordance with point 1.2.

2.2. Strand 2: ongoing activities of an organisation pursuing an objective of general European interest in the field of gender equality or an objective forming part of the European Union's policy in this area.

In accordance with Article 2, this applies to a non-profit-making body carrying out its activities exclusively in order to achieve equality between women and men or an organisation with a wider aim which carries out part of its activities exclusively to promote equality between women and men.

An annual operating grant may be awarded to support the implementation of such an organisation's ongoing programme of work.

2.3. Strand 3: specific actions of an organisation pursuing an objective of general European interest in the field of equality between women and men or an objective forming part of the European Union's policy in this area.

3. Selection of beneficiaries

3.1. An operating grant may be awarded directly to the European Women's Lobby under Strand 1 of the programme upon approval of an appropriate workplan and budget.

3.2. Organisations entitled to receive an operating grant under Strand 2 of the programme will be selected on the basis of calls for proposals.

3.3. Organisations entitled to receive a grant for specific action under Strand 3 of the programme will be selected on the basis of calls for proposals.

4. Checks and audits

4.1. The beneficiary of an operating grant is to keep available for the Commission all the supporting documents, including the audited financial statement, regarding expenditure incurred during the grant year, for a period of five years following the last payment. The beneficiary of a grant is to ensure that, where applicable, supporting documents in the possession of partners or members of the organisations are made available to the Commission.

- 4.2. The Commission may arrange for an audit of the use made of the grant to be carried out either by its own staff or by any other qualified outside body of its choice. Such audits may be carried out at any time during the lifetime of the grant agreement and during a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- 4.3. Commission staff and outside personnel authorised by the Commission are to have an appropriate right of access, in particular to the beneficiary's offices and to all such information, including information in electronic format, as may be needed in order to conduct such audits.
- 4.4. The Court of Auditors and the European Anti-Fraud Office (OLAF) are to enjoy the same rights, especially of access, as the Commission.
- 4.5. In order to protect the European Communities' financial interests against fraud and other irregularities, the Commission may carry out on-the-spot checks and inspections under the programme in accordance with Council Regulation (Euratom, EC) No 2185/96¹. Where necessary, investigations shall be conducted by the European Anti-Fraud Office (OLAF) and these shall be governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council².
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¹ OJ L 292, 15.11.1996, p. 2.

² OJ L 136, 31.5.1999, p. 1.

**DIRECTIVE 2004/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 April 2004**

repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37, 95 and 152(4)(b) thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ³,

¹ OJ C 365 E, 19.12.2000, p. 132.

² OJ C 155, 29.5.2001, p. 39.

³ Opinion of the European Parliament of 3 June 2003 (not yet published in the Official Journal), Council Common Position of 27 October 2003 (OJ C 48 E, 27.2.2004, p. 1) and Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal).

Whereas:

- (1) Several Directives lay down animal and public health rules for the production and placing on the market of products of animal origin.
- (2) The following acts contain new rules recasting and updating the rules in those Directives:
 - Regulation (EC) No.../2003 of the European Parliament and of the Council of..... on the hygiene of foodstuffs ¹;
 - Regulation (EC) No.../2003 of the European Parliament and of the Council of laying down specific hygiene rules for food of animal origin ²;
 - Regulation (EC) No.../2003 of the European Parliament and of the Council of laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ³; and
 - Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁴.

¹ See p. of this Official Journal.

² See p. of this Official Journal.

³ See p. of this Official Journal.

⁴ OJ L 18, 23.1.2003, p. 11.

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- (3) It is therefore appropriate to repeal the earlier Directives. Since Regulation (EC) No.../2003 * provides for the repeal of Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs ¹, this Directive need only repeal the Directives concerning products of animal origin.
- (4) The requirements of Council Directive 72/462/EEC ² should continue to apply only to the import of live animals, since the new hygiene rules and Directive 2002/99/EC will supersede its rules on fresh meat and meat products.
- (5) It is necessary, however, to provide for certain implementing rules to remain in force pending the taking of necessary measures under the new legal framework.
- (6) Amendments to Council Directives 89/662/EEC ³ and 92/118/EEC ⁴ and to Council Decision 95/408/EC ⁵ are also necessary to take account of the recasting exercise,

* Note for Official Journal: Please insert here the No. of Regulation in first indent of Recital (2).

¹ OJ L 175, 19.7.1993, p. 1.

² Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (OJ L 302, 31.12.1972, p. 28). Directive as last amended by Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

³ Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ L 395, 30.12.1989, p. 13). Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁴ Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A, Chapter I to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC (OJ L 62, 15.3.1993, p. 49). Directive as last amended by Commission Decision 2003/42/EC (OJ L 13, 18.1.2003, p. 24).

⁵ Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs (OJ L 243, 11.10.1995, p. 17). Decision as last amended by Regulation (EC) No 806/2003.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, the "relevant date" shall mean the date of application of Regulations (EC) No.../2003 ^{*}, No.../2003 ^{**} and No.../2003 ^{***}.

Article 2

The following Directives shall be repealed with effect from the relevant date:

- 1) Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat; ¹
- 2) Council Directive 71/118/EEC of 15 February 1971 on health problems affecting the production and placing on the market of fresh poultry meat; ²
- 3) Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat; ³
- 4) Council Directive 77/96/EEC of 21 December 1976 on the examination for trichinae (*Trichinella spiralis*) upon importation from third countries of fresh meat derived from domestic swine; ⁴

^{*} Note for Official Journal: Please insert here the No. of Regulation in first indent of recital (2).

^{**} Note for Official Journal: Please insert here the No. of Regulation in second indent of recital (2).

^{***} Note for Official Journal: Please insert here the No. of Regulation in third indent of recital (2).

¹ OJ L 121, 29.7.1964, p. 2012/64. Directive as last amended by Directive 95/23/EC (OJ L 243, 11.10.1995, p. 7).

² OJ L 55, 8.3.1971, p. 23. Directive as last amended by Regulation (EC) No 807/2003.

³ OJ L 302, 31.12.1972, p. 24. Directive as last amended by Regulation (EC) No 807/2003.

⁴ OJ L 26, 31.1.1977, p. 67. Directive as last amended by Regulation (EC) No 807/2003.

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- 5) Council Directive 77/99/EEC of 21 December 1976 on health problems affecting the production and marketing of meat products and certain other products of animal origin;¹
 - 6) Council Directive 80/215/EEC of 22 January 1980 on animal health problems affecting intra-Community trade in meat products;²
 - 7) Commission Directive 89/362/EEC of 26 May 1989 on general conditions of hygiene in milk production holdings;³
 - 8) 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;⁴
 - 9) Council Directive 91/492/EEC of 15 July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs;⁵
 - 10) Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products;⁶
 - 11) Council Directive 91/494/EEC of 26 June 1991 on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultry meat;⁷

¹ OJ L 26, 31.1.1977, p. 85. Directive as last amended by Regulation (EC) No 807/2003.

² OJ L 47, 21.2.1980, p. 4. Directive as last amended by Regulation (EC) No 807/2003.

³ OJ L 156, 8.6.1989, p. 30.

⁴ OJ L 212, 22.7.1989, p. 87. Directive as last amended by Regulation (EC) No 806/2003.

⁵ OJ L 268, 24.9.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003.

⁶ OJ L 268, 24.9.1991, p. 15. Directive as last amended by Regulation (EC) No 806/2003.

⁷ OJ L 268, 24.9.1991, p. 35. Directive as last amended by Directive 1999/89/EC (OJ L 300, 23.11.1999, p. 17).

- 12) Council Directive 91/495/EEC of 27 November 1990 concerning public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat;¹
- 13) Council Directive 92/45/EEC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild-game meat;²
- 14) Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products;³
- 15) Council Directive 92/48/EEC of 16 June 1992 laying down the minimum hygiene rules applicable to fishery products caught on board certain vessels in accordance with Article 3(1)(a)(i) of Directive 91/493/EEC;⁴ and
- 16) Council Directive 94/65/EC of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations.⁵

¹ OJ L 268, 24.9.1991, p. 41. Directive as last amended by Regulation (EC) No 806/2003.

² OJ L 268, 14.9.1992, p 35. Directive as last amended by Regulation (EC) No 806/2003.

³ OJ L 268, 14.9.1992, p. 1. Directive as last amended by Regulation (EC) No 806/2003.

⁴ OJ L 187, 7.7.1992, p. 41.

⁵ OJ L 368, 31.12.1994, p. 10. Directive as amended by Regulation (EC) No 806/2003.

Article 3

Directive 92/118/EEC shall be amended as follows with effect from the relevant date:

- 1) all references to "Annexes I and II" shall be replaced by references to "Annex I";
- 2) in Article 4(1), the words "and Annex II as regards public health aspects" shall be deleted; and
- 3) Annex II shall be repealed.

Article 4

1. With effect from the relevant date, references to the Directives referred to in Article 2 or to Annex II to Directive 92/118/EEC shall be construed as being made, as the context demands, to:

- (a) Regulation (EC) No.../2003 *;
- (b) Regulation (EC) No.../2003 ** or
- (c) Directive 2002/99/EC.

2. Pending the adoption of microbiological criteria and temperature control requirements in accordance with Article 4 of Regulation (EC) No .../2003 ***, any such criteria or requirements laid down in the Directives referred to in Article 2, Annex II to Directive 92/118/EEC, or their implementing rules shall continue to apply.

* Note for Official Journal: Please insert here the No. of the Regulation in second indent of recital (2).

** Note for Official Journal: Please insert here the No. of the Regulation in third indent of recital (2).

*** Note for the Official Journal: Please insert here the No. of the Regulation in the first indent of recital (2).

3. Pending the adoption of the necessary provisions on the basis of Regulations (EC) No.../2003 ^{*}, No.../2003 ^{**}, No.../2003 ^{***}, or Directive 2002/99/EC, the following acts shall continue to apply *mutatis mutandis*:

- (a) implementing rules adopted on the basis of the Directives referred to in Article 2;
- (b) implementing rules adopted on the basis of Annex II to Directive 92/118/EEC, with the exception of Decision 94/371/EC¹;
- (c) implementing rules adopted on the basis of Directive 72/462/EEC; and
- (d) provisional lists of third countries and third country establishments drawn up in accordance with Decision 95/408/EC.

Article 5

1. As from 1 January 2005, the animal health rules laid down in Directive 72/462/EEC shall continue to apply only to the import of live animals.

2. With effect from the relevant date, Directive 72/462/EEC shall continue to apply only to the import of live animals.

* Note for Official Journal: Please insert here the No. of Regulation in first indent of recital (2).

** Note for Official Journal: Please insert here the No. of Regulation in second indent of recital (2).

*** Note for Official Journal: Please insert here the No. of Regulation in third indent of recital (2).

¹ OJ L 168, 2.7.1994, p. 34.

Article 6

Directive 89/662/EEC shall be amended as follows with effect from the relevant date:

1) The references:

- (a) in Article 1, to "products of animal origin which are covered by the Directives listed in Annex A"; and
- (b) in Article 4(1), to "products obtained in accordance with the Directives referred to in Annex A",

shall be replaced by "products of animal origin covered by the acts referred to in Annex A";

2) Annex A shall be replaced by the following:

"ANNEX A

CHAPTER I

Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption *

Regulation (EC) No /2003 ⁺ of the European Parliament and of the Council of laying down specific hygiene rules for food of animal origin **

CHAPTER II

Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A, Chapter I to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC ***

Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ****

* OJ L 18, 23.1.2003, p. 11.

** OJ L ... ⁺⁺.

*** OJ L 62, 15.3.1993, p. 49. Directive as last amended by Commission Decision 2003/42/EC (OJ L 13, 18.1.2003, p. 24).

**** OJ L 273, 10.10.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 808/2003 (OJ L 117, 13.5.2003, p. 1)".

⁺ Note to Official Journal: Please insert here the number and date of the Regulation referred to in the second indent of recital (2).

⁺⁺ Note to Official Journal: Please insert here the publication references of the Regulation referred to in the second indent of recital (2).

Article 7

Article 9 of Decision 95/408/EC shall be replaced by the following, with effect from the date of entry into force of this Directive:

"Article 9

This Decision shall apply until the "relevant date", as defined in Article 1 of Directive 2003/.../EC⁺ of the European Parliament and of the Council of repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption.*

* OJ L ...⁺⁺.

Article 8

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by the relevant date at the latest. They shall forthwith inform the Commission thereof.

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

⁺ Note to Official Journal: Please insert here number and date of this Directive.

⁺⁺ Note to Official Journal: Please insert here the publication references of this Directive.

Article 9

This Directive shall enter into force on the date of its publication in the Official Journal of the European Union.

Article 10

This Directive is addressed to the Member States.

Done at Strasbourg, 29.4.2004

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

**DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2004**

**on the enforcement
of intellectual property rights**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ¹,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ²,

¹ OJ C 32, 5.2.2004, p. 15.

² Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 26 April 2004.

Whereas:

- (1) The achievement of the Internal Market entails eliminating restrictions on freedom of movement and distortions of competition, while creating an environment conducive to innovation and investment. In this context, the protection of intellectual property is an essential element for the success of the Internal Market. The protection of intellectual property is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness.
- (2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his invention or creation. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.
- (3) However, without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the Internal Market.

- (4) At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on Trade-Related Aspects of Intellectual Property (the "TRIPS Agreement"), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC¹ and concluded in the framework of the World Trade Organisation.
- (5) The TRIPS Agreement contains, in particular, provisions on the means of enforcing intellectual property rights, which are common standards applicable at international level and implemented in all Member States. This Directive should not affect Member States' international obligations, including those under the TRIPS Agreement.
- (6) There are also international conventions to which all Member States are parties and which also contain provisions on the means of enforcing intellectual property rights. These include, in particular, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

¹ OJ L 336, 23.12.1994, p. 1.

- (7) It emerges from the consultations held by the Commission on this question that, in the Member States, and despite the TRIPS Agreement, there are still major disparities as regards the means of enforcing intellectual property rights. For instance, the arrangements for applying provisional measures, which are used in particular to preserve evidence, the calculation of damages, or the arrangements for applying injunctions, vary widely from one Member State to another. In some Member States, there are no measures, procedures and remedies such as the right of information and the recall, at the infringer's expense, of the infringing goods placed on the market.
- (8) The disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community. This situation does not promote free movement within the Internal Market or create an environment conducive to healthy competition.

- (9) The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the Internal Market in this field. This causes a loss of confidence in the Internal Market in business circles, with a consequent reduction in investment in innovation and creation. Infringements of intellectual property rights appear to be increasingly linked to organised crime. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite for the proper functioning of the Internal Market.
- (10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.
- (11) This Directive does not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of decisions in civil and commercial matters, or deal with applicable law. There are Community instruments which govern such matters in general terms and are, in principle, equally applicable to intellectual property.

- (12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. The measures provided for in this Directive should not be used to restrict unduly competition in a manner contrary to the Treaty.
- (13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and/or by the national law of the Member State concerned. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, including parasitic copies, or similar activities.
- (14) The measures provided for in Articles 6(2), 8(1) and 9(2) need to be applied only in respect of acts carried out on a commercial scale. This is without prejudice to the possibility for Member States to apply those measures also in respect of other acts. Acts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end-consumers acting in good faith.

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- (15) This Directive should not affect substantive law on intellectual property, Directive 95/46/EC of 24 October 1995 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data ¹, Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures ² and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ³.
- (16) The provisions of this Directive should be without prejudice to the particular provisions for the enforcement of rights and on exceptions in the domain of copyright and related rights set out in Community instruments and notably those found in Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs ⁴ or in Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ⁵.

¹ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

² OJ L 13, 19.1.2000, p. 12.

³ OJ L 178, 17.7.2000, p. 1.

⁴ OJ L 122, 17.5.1991, p. 42. Directive as amended by Directive 93/98/EEC (OJ L 290, 24.11.1993, p. 9).

⁵ OJ L 167, 22.6.2001, p. 10.

- (17) The measures, procedures and remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.
- (18) The persons entitled to request application of those measures, procedures and remedies should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.
- (19) Since copyright exists from the creation of a work and does not require formal registration, it is appropriate to adopt the rule laid down in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. A similar presumption should be applied to the owners of related rights since it is often the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy.

- (20) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property rights, it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available. The procedures should have regard to the rights of the defence and provide the necessary guarantees, including the protection of confidential information. For infringements committed on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.
- (21) Other measures designed to ensure a high level of protection exist in certain Member States and should be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods or services, the distribution channels and the identity of any third parties involved in the infringement.
- (22) It is also essential to provide for provisional measures for the immediate termination of infringements, without awaiting a decision on the substance of the case, while observing the rights of the defence, ensuring the proportionality of the provisional measures as appropriate to the characteristics of the case in question and providing the guarantees needed to cover the costs and the injury caused to the defendant by an unjustified request. Such measures are particularly justified where any delay would cause irreparable harm to the holder of an intellectual property right.

- (23) Without prejudice to any other measures, procedures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right. The conditions and procedures relating to such injunctions should be left to the national law of the Member States. As far as infringements of copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. Article 8(3) of Directive 2001/29/EC should therefore not be affected by this Directive.
- (24) Depending on the particular case, and if justified by the circumstances, the measures, procedures and remedies to be provided for should include prohibitory measures aimed at preventing further infringements of intellectual property rights. Moreover there should be corrective measures, where appropriate at the expense of the infringer, such as the recall and definitive removal from the channels of commerce, or destruction, of the infringing goods and, in appropriate cases, of the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.

- (25) Where an infringement is committed unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, Member States should have the option of providing for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such use or supply should remain prohibited.
- (26) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the rightholder should take account of all appropriate aspects, such as loss of earnings incurred by the rightholder, or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the rightholder. As an alternative, for example where it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question. The aim is not to introduce an obligation to provide for punitive damages but to allow for compensation based on an objective criterion while taking account of the expenses incurred by the rightholder, such as the costs of identification and research.

- (27) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions in intellectual property infringement cases.
- (28) In addition to the civil and administrative measures, procedures and remedies provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.
- (29) Industry should take an active part in the fight against piracy and counterfeiting. The development of codes of conduct in the circles directly affected is a supplementary means of bolstering the regulatory framework. The Member States, in collaboration with the Commission, should encourage the development of codes of conduct in general. Monitoring of the manufacture of optical discs, particularly by means of an identification code embedded in discs produced in the Community, helps to limit infringements of intellectual property rights in this sector, which suffers from piracy on a large scale. However, these technical protection measures should not be misused to protect markets and prevent parallel imports.
- (30) In order to facilitate the uniform application of this Directive, it is appropriate to provide for systems of cooperation and the exchange of information between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.

- (31) Since, for the reasons already described, the objective of this Directive can best be achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of that Charter,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Objective and scope

Article 1

Subject-matter

This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.

Article 2

Scope

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.

2. This Directive shall be without prejudice to the specific provisions on the enforcement of rights and on exceptions contained in Community legislation concerning copyright and rights related to copyright, notably those found in Directive 91/250/EEC and, in particular, Article 7 thereof or in Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 thereof.

3. This Directive shall not affect:

- (a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC, in general, and Articles 12 to 15 of Directive 2000/31/EC in particular;
- (b) Member States' international obligations and notably the TRIPS Agreement, including those relating to criminal procedures and penalties;
- (c) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.

CHAPTER II

Measures, procedures and remedies

Section 1

General provisions

Article 3

General obligation

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 4

Persons entitled to apply for the application of the measures, procedures and remedies

1. Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Chapter:
 - (a) the holders of intellectual property rights, in accordance with the provisions of the applicable law,
 - (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
 - (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,
 - (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 5

Presumption of authorship or ownership

For the purposes of applying the measures, procedures and remedies provided for in this Directive,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner;
- (b) the provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

Section 2

Evidence

Article 6

Evidence

1. Member States shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.

2. Under the same conditions, in the case of an infringement committed on a commercial scale Member States shall take such measures as are necessary to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 7

Measures for preserving evidence

1. Member States shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

2. Member States shall ensure that the measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 4.
3. Member States shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.
4. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.
5. Member States may take measures to protect witnesses' identity.

Section 3

Right of information

Article 8

Right of information

1. Member States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;

- (c) was found to be providing on a commercial scale services used in infringing activities; or
- (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:
- (a) grant the rightholder rights to receive fuller information;
 - (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
 - (c) govern responsibility for misuse of the right of information; or
 - (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right; or
 - (e) govern the protection of confidentiality of information sources or the processing of personal data.

Section 4

Provisional and precautionary measures

Article 9

Provisional and precautionary measures

1. Member States shall ensure that the judicial authorities may, at the request of the applicant:
 - (a) issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;

(b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

3. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 2, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

4. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder. In that event, the parties shall be so informed without delay after the execution of the measures at the latest.

A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

5. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.

6. The competent judicial authorities may make the provisional measures referred to in paragraphs 1 and 2 subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 7.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

Section 5

Measures resulting from a decision on the merits of the case

Article 10

Corrective measures

1. Without prejudice to any damages due to the rightholder by reason of the infringement, and without compensation of any sort, Member States shall ensure that the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:

- (a) recall from the channels of commerce,
- (b) definitive removal from the channels of commerce, or
- (c) destruction.

2. The judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article 11

Injunctions

Member States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Member States shall also ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.

Article 12

Alternative measures

Member States may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in this Section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this Section if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Section 6

Damages and legal costs

Article 13

Damages

1. Member States shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him as a result of the infringement.

When the judicial authorities set the damages:

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement;

or

- (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.

Article 14

Legal costs

Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

Section 7

Publicity measures

Article 15

Publication of judicial decisions

Member States shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Member States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

CHAPTER III

Sanctions by Member States

Article 16

Sanctions by Member States

Without prejudice to the civil and administrative measures, procedures and remedies laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.

CHAPTER IV

Codes of conduct and administrative cooperation

Article 17

Codes of conduct

Member States shall encourage:

- (a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;
- (b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

Article 18

Assessment

1. Three years after the date laid down in Article 20(1), each Member State shall submit to the Commission a report on the implementation of this Directive.

On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary and in the light of developments in the Community legal order, by proposals for amendments to this Directive.

2. Member States shall provide the Commission with all the aid and assistance it may need when drawing up the report referred to in the second subparagraph of paragraph 1.

Article 19

Exchange of information and correspondents

For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the national correspondent(s) to the other Member States and to the Commission.

CHAPTER V

Final provisions

Article 20

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. 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 reference shall be laid down by Member States.

2. 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.

^{*} Twenty-four months after the date of adoption of this Directive.

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 29.4.2004.

For the European Parliament
The President
P. COX

For the Council
The President
M. McDOWELL

COUNCIL DIRECTIVE 2004/74/EC
of 29 April 2004

**amending Directive 2003/96/EC as regards the possibility for certain Member States
to apply, in respect of energy products and electricity, temporary exemptions
or reductions in the levels of taxation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ¹,

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

¹ Opinion delivered on 30 March 2004 (not yet published in the Official Journal).

² Opinion delivered on 31 March 2004 (not yet published in the Official Journal).

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity¹ replaced, with effect from 1 January 2004, Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils² and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils³. It defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity.
- (2) The minimum rates set by Directive 2003/96/EC are liable to create serious economic and social difficulties for certain Member States, namely Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition of those Member States, their relatively low income levels and their limited ability to offset that additional tax burden by reducing other taxes. In particular, the price increases brought about by application of the minimum rates set by Directive 2003/96/EC are likely to have adverse effect on their citizens and national economies, creating for instance an unbearable burden for small and medium-sized enterprises.
- (3) Those Member States should therefore be permitted, on a temporary basis, to apply additional exemptions from or reduced levels of taxation, where it will not be detrimental to the proper functioning of the internal market and will not result in the distortion of competition. Moreover, consistent with the principles in accordance with which transitional periods were originally granted under Directive 2003/96/EC, any such measures should be designed to bring about a progressive alignment with the applicable Community minimum rates.

¹ OJ L 283, 31.10.2003, p. 51.

² OJ L 316, 31.10.1992, p. 12. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

³ OJ L 316, 31.10.1992, p. 19. Directive as amended by Directive 94/74/EC.

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- (4) The 2003 Treaty of Accession ¹ provides for transitional arrangements, in the case of Poland and Cyprus, for the implementation of Directives 92/81/EEC and 92/82/EEC. The Treaty also provides for specific measures on issues relating to energy in Lithuania and Estonia. Those measures should be adequately taken into account in the context of permitting dedicated tax exemptions.
- (5) This Directive should not prejudice the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It should not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty.
- (6) Certain provisions of Directive 2003/96/EC should be clarified as regards the references to the transitional period set out therein.
- (7) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

¹ OJ L 236, 23.09.2003, p. 17.

Article 1

Directive 2003/96/EC is hereby amended as follows:

1, Article 18 is hereby amended as follows:

(a) in paragraph 1, the first subparagraph shall be replaced by the following: ‘By way of derogation from the provisions of the present Directive, the Member States specified in Annex II are authorised to continue to apply the reductions in the levels of taxation or the exemptions set out in that Annex .’;

(b) in paragraph 2, ‘in paragraphs 3 to 12’ shall be replaced by ‘in paragraphs 3 to 13’;

2. the following Article shall be inserted:

‘Article 18a

1. By way of derogation from the provisions of the present Directive, the Member States specified in Annex III are authorised to apply the reductions in the levels of taxation or the exemptions set out in that Annex.

Subject to a prior review by the Council, on the basis of a proposal from the Commission, this authorisation shall expire on 31 December 2006 or on the date specified in Annex III.

2. Notwithstanding the periods set out in paragraphs 3 to 11 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.

3. The Czech Republic may apply total or partial exemptions or reductions in the level of taxation of electricity, solid fuels and natural gas until 1 January 2008.

4. The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 330 per 1 000 l. However, the level of taxation on gas oil used as propellant shall be no less than EUR 245 per 1 000 l as from 1 May 2004.

The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l as from 1 May 2004.

The Republic of Estonia may apply a total exemption from taxation of oil shale until 1 January 2009. Until 1 January 2013, it may furthermore apply a reduced rate in the level of taxation of oil shale, provided that it does not result in taxation at below 50 % of the relevant Community minimum rate as from 1 January 2011.

The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on shale oil used for district heating purposes to the minimum level of taxation.

The Republic of Estonia may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output electricity taxation system.

5. The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1 000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 l as from 1 January 2008.

The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1 000 l. However, the level of taxation on unleaded petrol cannot be less than EUR 287 per 1 000 l as from 1 May 2004 and no less than EUR 323 per 1 000 l as from 1 January 2008.

The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on heavy fuel oil used for district heating purposes to the minimum level of taxation.

The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity to the relevant minimum levels of taxation. However, the level of taxation on electricity shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

The Republic of Latvia may apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal and coke to the relevant minimum levels of taxation. However, the level of taxation on coal and coke shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

6. The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1 000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 l as from 1 January 2008.

The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l as from 1 May 2004 and no less than EUR 323 per 1 000 l as from 1 January 2008.

7. The Republic of Hungary may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity, natural gas, coal and coke, used for district heating purposes, to the relevant minimum levels of taxation.

8. The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity. However, the levels of taxation on electricity shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil and kerosene used as propellant to the minimum levels of EUR 330 per 1 000 l. However, the levels of taxation on gas oil and kerosene used as propellant shall be no less than EUR 245 per 1 000 l as from 1 May 2004.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol and leaded petrol used as propellant to the relevant minimum levels of taxation. However, the levels of taxation on unleaded petrol and leaded petrol shall be no less than EUR 287 per 1 000 l and EUR 337 per 1 000 l respectively as from 1 May 2004.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on natural gas used as heating fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to natural gas shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

The Republic of Malta may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to the energy products concerned shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

9. The Republic of Poland may apply a transitional period until 1 January 2009 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l as from 1 May 2004.

The Republic of Poland may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 per 1 000 l and until 1 January 2012 to reach EUR 330. However, the level of taxation on gas oil shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 l as from 1 January 2008.

The Republic of Poland may apply a transitional period until 1 January 2008 to adjust its national level of taxation on heavy fuel oil to the new minimum level of EUR 15 per 1 000 kg. However, the level of taxation on heavy fuel oil shall be no less than EUR 13 per 1 000 kg as from 1 May 2004.

The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for district heating to the relevant minimum level of taxation.

The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for heating purposes other than district heating to the relevant minimum levels of taxation.

The Republic of Poland may, until 1 January 2008, apply total or partial exemptions or reductions for gas oil used as heating fuel by schools, nursery schools and other public utilities, in respect of the activities or transactions in which they engage as public authorities.

The Republic of Poland may apply a transitional period until 1 January 2006 to align its electricity taxation system with the Community framework.

10. The Republic of Slovenia may apply, under fiscal control, total or partial exemption from or reduction in the level of taxation to natural gas. The total or partial exemption or reduction may apply until May 2014 or until the national share of natural gas in final energy consumption reaches 25 %, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20 %, it shall apply a strictly positive level of taxation, which shall increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above.

11. The Slovak Republic may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity and natural gas used as heating fuel to the relevant minimum levels of taxation. However, the level of taxation on electricity and natural gas used as heating fuel shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

The Slovak Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels to the relevant minimum levels of taxation. However, the level of taxation on solid fuels shall be no less than 50 % of the relevant Community minimum rates as from 1 January 2007.

12. Within the transitional periods established, Member States shall progressively reduce their respective gaps with regard to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3 % of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level.;

3. an Annex III, the text of which is set out in the Annex to this Directive, shall be added.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from 1 May 2004. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

This Directive shall enter into force on 1 May 2004.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

*ANNEX**'ANNEX III*

Reduced rates of taxation and exemptions from such taxation referred to in Article 18a(1):

1. Latvia
 - for energy products and electricity used in local public passenger transport vehicles;

2. Lithuania
 - for coal, coke and lignite, until 1 January 2007,
 - for natural gas and electricity, until 1 January 2010,
 - for orimulsion used for purposes other than to produce electricity or heat until 1 January 2010;

3. Hungary
 - for coal and coke, until 1 January 2009;

4. Malta
 - for navigation in private pleasure craft,
 - for air navigation other than that covered by Article 14(1)(b) of Directive 2003/96/EC;

5. Poland
 - for aviation fuel and turbo-combustion engine fuels and engine oils for aviation engines, sold by the producer of such fuels on the order of the Minister of National Defence or the competent minister for internal affairs, for purposes of the aviation industry, or the Agency of Material Reserves to supplement state reserves, or organisational units of sanitary aviation for purposes of such units,

- gas oil for ship engines and engines for sea technology and engine oils for ship engines and for sea technology, sold by the producer of such fuel on the order of the Agency of Stock Reserves to supplement State reserves, or on the order of the Minister of National Defence to be used for purposes of the navy, or on the order of the competent minister for internal affairs to be used for sea engineering,

 - aviation fuel, turbo-combustion engine fuel and gas oil for ship engines and engines for sea technology and oils for aviation engines, ship engines and engines for sea technology, sold by the Agency of Stock Reserves on the order of the Minister of National Defence or the competent minister for internal affairs.’
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COUNCIL DIRECTIVE 2004/75/EC
of 29.4.2004

amending Directive 2003/96/EC as regards the possibility for Cyprus
to apply, in respect of energy products and electricity, temporary exemptions
or reductions in the levels of taxation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ¹,

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

¹ Opinion delivered on 20 April 2004 (not yet published in the Official Journal).

² Opinion delivered on 31 March 2004 (not yet published in the Official Journal).

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ¹ replaced, with effect from 1 January 2004, Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ² and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils ³. It defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity.
- (2) The minimum rates set by Directive 2003/96/EC are liable to create serious economic and social difficulties for certain Member States, among which Cyprus, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition, their relatively low income levels and their limited ability to offset that additional tax burden by reducing other taxes. In particular the price increases brought about by application of the minimum rates set by Directive 2003/96/EC are likely to have adverse effect on their citizens and national economies, creating for instance an unbearable burden for small and medium-sized enterprises.

¹ OJ L 283, 31.10.2003, p. 51.

² OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 2003/96/EC.

³ OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 2003/96/EC.

- (3) Cyprus should therefore be permitted, on a temporary basis, to apply additional exemptions or reduced levels of taxation, where it will not be detrimental to the proper functioning of the internal market and will not result in the distortion of competition. Moreover, consistent with the principles in accordance with which transitional periods were originally granted under Directive 2003/96/EC, any such measures should be designed to bring about a progressive alignment with the applicable Community minimum rates.
- (4) This Directive does not prejudice the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty.
- (5) The wording of Article 30 of Directive 2003/96/EC should be clarified.
- (6) The provisions in this Directive must apply from the date of Accession of the new Member States. The urgency of the matter justifies an exception to the six-week period provided for in point I.3. of the Protocol on the role of national parliaments in the European Union.
- (7) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/96/EC is hereby amended as follows:

(1) The following Article shall be inserted:

"Article 18b

1. Notwithstanding the periods set out in paragraph 2 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.

2. The Republic of Cyprus may apply a transitional period until 1 January 2008 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2010 to reach EUR 330. However, the level of taxation on gas oil and kerosene used as propellant shall be not less than EUR 245 per 1000 l as from 1 May 2004.

The Republic of Cyprus may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004.

3. Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3% of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level."

(2) In Article 30 the following paragraph shall be added:

"References to the repealed Directives shall be construed as references to this Directive."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from the date of entry into force of this Directive. They shall forthwith communicate to the Commission the text of those measures and a correlation table between those measures and this Directive.

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

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

Article 3

This Directive shall enter into force subject to, and as from the date of, the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. It shall be transposed by the Member States into their national law as of the same date. They shall forthwith inform the Commission thereof.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29.4.2004

For the Council
The President
M. McDOWELL

COUNCIL DIRECTIVE 2004/76/EC
of 29.4.2004

amending Directive 2003/49/EC as regards the possibility for certain Member States
to apply transitional periods for the application of a common system of taxation
applicable to interest and royalty payments made between associated companies
of different Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the European Economic and Social Committee³,

¹ OJ C
² OJ C
³ OJ C

Whereas:

- (1) Council Directive 2003/49/EC of 3 June 2003 on the common system of taxation applicable to interest and royalty payments made between associated companies of different Member States¹ provides for the abolition of taxation on those payments in the Member State where they arise, but also ensures that these payments are subject to tax once in a Member State.
- (2) The application of Directive 2003/49/EC is liable to cause budgetary difficulties for the Czech Republic, Latvia, Lithuania, Poland and Slovakia given the rates of withholding tax applied under national law and on the basis of tax conventions on income and capital and the revenue thus collected.
- (3) Those Acceding States should therefore be permitted, on a temporary basis, until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments² not to apply certain provisions of Directive 2003/49/EC concerning, in the case of Latvia and Lithuania, interest and royalty payments, and in the case of the Czech Republic, Poland and Slovakia, royalty payments only.
- (4) The measure provided for in this Directive is not an adaptation within the meaning of Article 57 of the 2003 Act of Accession.

¹ OJ L 157, 26.6.2003, p. 49.

² OJ L 157, 26.6.2003, p. 38.

- (5) Since the Member States are required to grant credit for tax deducted from interest and royalty payments, it is necessary to ensure that this Directive is transposed by the date of entry into force of the 2003 Act of Accession.
- (6) The provisions in this Directive must apply from the date of accession of the new Member States. The urgency of the matter justifies an exception to the six-week period provided for in point I.3. of the Protocol on the role of national parliaments in the European Union,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 6 of Directive 2003/49/EC is hereby amended as follows:

- 1) The title shall be replaced by the following:

"Transitional rules for the Czech Republic, Greece, Spain, Latvia, Lithuania,
Poland, Portugal and Slovakia"

2) Paragraphs 1, 2 and 3 shall be replaced by the following:

"1. Greece, Latvia, Poland and Portugal shall be authorised not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments*. During a transitional period of eight years starting on the aforementioned date, the rate of tax on payments of interest or royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10% during the first four years and 5% during the final four years.

Lithuania shall be authorised not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments**. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10%. During the first four years of the six-year transitional period, the rate of tax on payments of interest made to an associated company of another Member State or to a permanent establishment situated in another Member State must not exceed 10%; and for the following two years, the rate of tax on such payments of interest must not exceed 5%.

Spain and the Czech Republic shall be authorised, for royalty payments only, not to apply the provisions of Article 1 until the date of application referred to in Article 17(2) and (3) of Directive 2003/48/EC. During a transitional period of six years starting on the aforementioned date, the rate of tax on payments of royalties made to an associated company of another Member State or to a permanent establishment situated in another Member State of an associated company of a Member State must not exceed 10%. Slovakia shall be authorised, for royalty payments only, not to apply the provisions of Article 1 during a transitional period of two years starting on 1 May 2004.

These transitional rules shall, however, remain subject to the continued application of any rate of tax lower than those referred to in the first, second and third subparagraphs provided by bilateral agreements concluded between the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia and other Member States. Before the end of any of the transitional periods mentioned in this paragraph the Council may decide unanimously, on a proposal from the Commission, on a possible extension of the said transitional periods.

2. Where a company of a Member State, or a permanent establishment situated in that Member State of a company of a Member State:
 - receives interest or royalties from an associated company of Greece, Latvia, Lithuania, Poland or Portugal,
 - receives royalties from an associated company of the Czech Republic, Spain or Slovakia,

-
- receives interest or royalties from a permanent establishment situated in Greece, Latvia, Lithuania, Poland or Portugal, of an associated company of a Member State, or
 - receives royalties from a permanent establishment situated in the Czech Republic, Spain or Slovakia, of an associated company of a Member State,

the first Member State shall allow an amount equal to the tax paid in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal, or Slovakia in accordance with paragraph 1 on that income as a deduction from the tax on the income of the company or permanent establishment which received that income.

3. The deduction provided for in paragraph 2 need not exceed the lower of:
 - (a) the tax payable in the Czech Republic, Greece, Spain, Latvia, Lithuania, Poland, Portugal or Slovakia, on such income on the basis of paragraph 1, or
 - (b) that part of the tax on the income of the company or permanent establishment which received the interest or royalties, as computed before the deduction is given, which is attributable to those payments under the domestic law of the Member State of which it is a company or in which the permanent establishment is situated.

* L 157, 26.6.2003, p. 38.

** L 157, 26.6.2003, p. 38".

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from the date of its entry into force. They shall immediately forward to the Commission the text of these measures, together with a correlation table between such measures and this Directive.

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

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

Article 3

This Directive shall enter into force subject to, and as on the date of, the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29.4.2004.

For the Council
The President
M. McDOWELL

II

(Acts whose publication is not obligatory)

COUNCIL DECISION**of 29.4.2004**

on a Community financial contribution
towards Member States fisheries control programmes

(2004/465/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ¹,

¹ Opinion delivered on 1 April 2004 (not yet published in the Official Journal).

Whereas:

- (1) The Common Fisheries Policy (CFP) sets out general rules on the conservation, management and responsible exploitation, and processing and marketing of living aquatic resources.
- (2) Specific objectives and rules are set out in particular in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ¹.
- (3) Responsibility for ensuring that activities carried out within the scope of the CFP comply with those rules lies primarily with Member States.
- (4) Member States should have the requisite human and financial resources to discharge their responsibility for controlling fishing activities and enforcing the CFP rules.
- (5) Regulation (EC) No 2371/2002 stressed the need to further improve control of fishing activities in order to fight by any means against illegal and undeclared fishing within and outside Community waters. It identified remote control technologies as a tool to better achieve the control objectives under CFP and extended the obligation for remote monitoring by means of vessel monitoring systems to vessels more than 15 metres overall.
- (6) With effect from the date of accession the CFP rules will apply to new Member States which should be able to comply with all the requirements laid down by Community law, in particular in the control field. Those new Member States should be given the means to enable them to carry out their obligations.

¹ OJ L 358, 31.12.2002, p. 59.

- (7) The Community has been granting financial assistance to Member States since 1990 to make controls more efficient and effective and in particular to introduce and extend remote-control technology and information technology networks, to improve staff skills and to equip competent authorities with patrol vessels and surveillance aircraft.
- (8) The current financial scheme under Council Decision 2001/431/EC of 28 May 2001 on a financial contribution by the Community to certain expenditure incurred by the Member States in implementing the control, inspection and surveillance systems applicable to the common fisheries policy¹ expired at the end of 2003. There is evidence, however, that the resources of Member States are still inadequate.
- (9) It is of paramount importance to ensure that CFP rules are effectively enforced throughout the Community. It appears that some of those involved in the administrative or penal procedures are not always fully aware of the need to impose sanctions, which are dissuasive in order to avoid overexploitation of fishing stocks. It is therefore appropriate to promote actions to focus attention on this issue.
- (10) Regulation (EC) No 2371/2002 underlined the need to enhance cooperation and coordination among Member States and with the Commission in order to strengthen control and discourage behaviour contrary to CFP rules. A structure designed to organise cooperation and coordination of control activities and of means dedicated to control purposes is expected to be operational in 2006.

¹ OJ L 154, 9.6.2001, p. 22.

- (11) It is therefore appropriate to continue to provide financial support to Member States until that time. It is necessary to ensure that Community funds are allocated efficiently with a view to reducing identified weaknesses. The funds should be used in accordance with the principle of sound financial management.
- (12) A financial reference amount, within the meaning of point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure¹, is included in this Decision for the entire duration of the period for which financial assistance is to be provided, without thereby affecting the powers of the budgetary authority as defined by the Treaty.
- (13) Member States should assess their programmes and the impact of their expenditure on control, inspection and surveillance, each year and over the whole period covered by this Decision and Decision 2001/431/EC.
- (14) Transitional measures should be established for claims for reimbursement of expenditure on the basis of Decision 2001/431/EC.
- (15) To ensure continuity with Decision 2001/431/EC, this Decision should apply from 1 January 2004,

HAS ADOPTED THIS DECISION:

¹ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

Article 1

Subject-matter

This Decision establishes the conditions under which the Community may grant a financial contribution to Member States for their fisheries control programmes

Article 2

Definitions

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

- 1) "financial contribution" means a financial contribution paid by the Community to a Member State under this Decision;
- 2) "fisheries control programme" means a programme drawn up by a Member State for monitoring, control and surveillance in fields covered by the Common Fisheries Policy (CFP) as required by Regulation (EC) No 2371/2002;
- 3) "new Member State" means a country which accedes to the Community on 1 May 2004.

Article 3

Annual fisheries control programmes

1. Member States wishing to receive a financial contribution shall notify to the Commission an annual fisheries control programme specifying:

- (a) the objectives of the programme;
- (b) the human resources available;
- (c) the financial resources available;
- (d) the number of vessels and aircraft available;
- (e) a list of projects for which a financial contribution is sought;
- (f) the overall expenditure planned for achieving the projects;
- (g) a schedule for completion of each project listed in the programme;
- (h) a list of indicators that will be used to assess the efficacy of the programme.

2. All Member States shall submit their annual fisheries control programme by 1 June 2004 for 2004 and by 31 January 2005 for 2005.

3. Detailed rules on the content of the fisheries control programme are set out in Annex I, Part A.

Article 4

Actions covered

1. The projects for which a financial contribution is sought shall relate to one or more of the following actions:
 - (a) purchase of, installation and technical assistance for, computer technology and setting up of IT networks in order to allow efficient and secure data exchange in connection with monitoring, control and surveillance of fisheries activities;
 - (b) purchase and fitting on board of fishing vessels of:
 - (i) electronic localisation devices enabling vessels to be monitored at a distance by fisheries monitoring centre through a vessel monitoring system (VMS);
 - (ii) electronic recording and reporting devices, allowing data transmission from the vessel;
 - (c) pilot projects relating to and implementation of new technologies on the control of fisheries activities;
 - (d) training and exchange programmes of civil servants responsible for monitoring, control and surveillance tasks in the fisheries area;
 - (e) implementation of pilot inspection and observer schemes;

- (f) cost/benefit analysis and assessment of overall expenditure incurred by the competent authorities in carrying out monitoring, control and surveillance of fisheries activities;
 - (g) initiatives including seminars and media tools aimed at enhancing awareness among fishermen and other players such as inspectors, public prosecutors and judges, as well as among the general public of the need to fight irresponsible and illegal fishing and on the implementation of CFP rules;
 - (h) purchase and modernisation of vessels and aircraft used for inspection and surveillance of fisheries activities by the competent authorities of the Member States.
2. Detailed rules on the actions covered are set out in Annex I, Part B.

Article 5

Community appropriations

1. The financial reference amount for the implementation of the actions for which financial assistance is provided for the period 2004 to 2005 shall be EUR 70 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspectives.
2. In the decision granting a Community financial contribution provided for in Article 6, the Commission shall give priority to the actions which it deems most appropriate in order to improve efficiency in monitoring, control and surveillance activity, taking also into account the performance of Member States in implementing programmes already approved.

Article 6

Decision on financial contribution

1. On the basis of the fisheries control programmes submitted by Member States, a decision shall be taken each year, in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002. The decision shall fix:
 - (a) the global amount of the financial contribution to be granted to each Member State for the actions referred to in Article 4;
 - (b) the rate of the financial contribution;
 - (c) any condition applying to the financial contribution.

2. The rate of the financial contribution shall not exceed 50% of eligible expenditure. However:
 - (a) for the actions referred to in Article 4(1)(b), the Commission may decide to grant a lump sum per vessel localisation device or for a device allowing electronic recording and reporting of data;
 - (b) for the actions referred to in Article 4(1)(c) and (g), the Commission may decide on a rate of contribution higher than 50% of the eligible expenditure;
 - (c) for the actions referred to in Article 4(1)(h) the rate may not exceed 50% of the eligible expenditure for the new Member States and may not exceed 25% for the existing Member States.

Article 7

Advances

At the reasoned request of a Member State, the Commission may grant an advance of up to 50% of the financial contribution for one year. The amount of the advance shall be deducted from the amount of the final payment of the financial contribution to that Member State.

If a binding commitment is not made by the competent authority within the period laid down in Article 8, any advance granted shall be repaid forthwith.

Article 8

Commitment of expenditure

Each Member State shall enter into legal and budgetary commitments within 12 months of the end of the year in which it was notified of the decision referred to in Article 6.

Article 9

Implementation of project

1. Projects shall be started in accordance with the schedule laid down in the annual fisheries control programme and in any case within one year of the date of the commitment.
2. The projects shall be completed according to that schedule.

Article 10

Non-implementation of projects

When a Member State decides not to implement all or part of the projects for which a financial contribution has been granted, it shall immediately inform the Commission, stating the implications for its fisheries control programme.

Article 11

Eligible expenditure

1. In order to be eligible for reimbursement, expenditure must:
 - (a) be provided for in the fisheries control programme;
 - (b) relate to the actions referred to in Article 4;
 - (c) concern projects with a cost exceeding EUR 40 000 except in respect of an action referred to under Article 4(1)(d) and (g);
 - (d) arise from legal and budgetary commitments entered into by Member States in accordance with Article 8;
 - (e) concern projects implemented in accordance with Article 9.
2. Value added tax (VAT) shall not be eligible for reimbursement.

3. Expenditure on projects which benefit from other Community aid shall not be eligible.
4. For the new Member States, expenditure incurred from 1 January 2004 shall be eligible for reimbursement subject to compliance with conditions set out in this Decision and in the decision referred to in Article 6.

Article 12

Claims for reimbursement

1. Member States shall submit to the Commission their claims for reimbursement of expenditure within 9 months of the date on which it was incurred. Claims shall be for an amount not less than EUR 20 000. Claims for an amount less than EUR 20 000 shall not be processed, unless duly justified.

Detailed rules on the content of the claims for reimbursement are set out in Annex I, Part C.

2. Claims for projects which were not completed in accordance with the schedule referred to in Article 3(1)(g) may be accepted only where the delay is duly justified. Where those claims are not accepted, the Community appropriations may be decommitted. In any event, Community appropriations related to this Decision shall be decommitted at the latest by 31 December 2008.
3. When submitting claims for reimbursement, Member States shall verify and certify that the expenditure has been incurred in compliance with the conditions laid down in this Decision, in the decision provided for in Article 6 and with the rules on the award of public contracts. The claim shall include a statement concerning the accuracy and veracity of the transmitted accounts, in accordance with the form set out in Annex II.

4. If the Commission considers that the claim does not comply with the conditions referred to in paragraph 3, it shall request the Member State to submit its observations on the matter. If the examination confirms non-compliance, the Commission shall refuse to reimburse all or part of the expenditure at issue and, where applicable, request reimbursement of advance payments.

Article 13

Currency

All fisheries control programmes, claims for reimbursement of expenditure and claims for payment of advances shall be expressed in Euro.

Member States not participating in the third stage of Economic and Monetary Union shall specify the exchange rate used.

Reimbursement will be made in Euro at the rate for the month in which the claim is received by the Commission.

Article 14

Information

Member States shall provide the Commission and the Court of Auditors with any information it may request as regards the implementation of this Decision and the decision provided for in Article 6.

They shall keep supporting documents available to the Commission and the Court of Auditors for at least five years from the date of reimbursement.

Article 15

Checks

1. Without prejudice to checks carried out by the Member States in accordance with national laws, regulations and administrative provisions, officials of the Commission and of the Court of Auditors may carry out on-the-spot checks on projects benefiting from a financial contribution.

The Commission may also require the Member State concerned to carry out on-the-spot checks on projects benefiting from a financial contribution. Officials of the Commission and of the Court of Auditors may take part in such checks.

2. If the Commission considers that Community resources have not been used in accordance with the conditions laid down in this Decision or in the decision provided for in Article 6, it shall inform the Member State concerned. If those considerations are not refuted, the Commission shall reduce or cancel the financial contribution to the projects at issue. Any amount unduly paid shall be repaid to the Commission, together with interest.

Article 16

Reports from the Member States

Member States shall send the Commission information enabling it to verify the use made of the financial contribution and to assess the impact of the measures provided for in this Decision on control, inspection and surveillance activity.

To that end, they shall submit to the Commission:

- (a) before 30 March each year, an intermediate assessment report on their fisheries control programme for the previous year covering the following:
 - (i) projects completed,
 - (ii) the cost of projects,
 - (iii) the impact on the fisheries control programmes by applying the indicators listed in the programme,
 - (iv) any adjustment to the original programme.

- (b) by 31 December 2006, a final assessment report covering the following:
 - (i) projects completed,
 - (ii) the cost of projects,
 - (iii) the impact on the fisheries control programmes by applying the indicators listed in the programme,
 - (iv) any adjustment to the original programme,
 - (v) the impact of the financial contribution on fisheries control programmes over the whole period from 2001 to 2005.

Article 17

Report to the European Parliament and the Council

On the basis of the information provided by the Member States under Article 16, the Commission shall, by 30 June 2007 at the latest, submit to the European Parliament and to the Council a report on the application of this Decision and Decision 2001/431/EC.

Article 18

Implementing measures

Where appropriate, detailed rules for the implementation of this Decision shall be adopted in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.

Article 19

Transitional provisions

As of 1 May 2004, claims for reimbursement relating to the financial contribution for expenditure approved on the basis of Decision 2001/431/EC shall be submitted in accordance with Article 12 of Annex I, Part C and Annex II to this Decision.

Article 20

Application

This Decision shall apply from 1 January 2004.

Article 21

Addressees

This Decision is addressed to the Member States.

Done at Luxembourg, 29.4.2004.

For the Council
The President
M. McDOWELL

ANNEX I

Part A

Minimum information requirements
for the annual fisheries control programmes as referred to in Article 3

- (1) For each project the annual fisheries control programme must specify one of the actions referred to in Article 4 and the aim, description, owner, location, estimated cost, administrative procedure to be followed and the timetable for its achievement.
- (2) As regards the vessels and aircraft as referred to in Article 4(1)(h), the annual fisheries control programme must also specify:
 - (a) to what extent they will be used by the competent authorities for control purposes as a percentage of their use over a year's total activity;
 - (b) how many hours or days over a year they will be used for fishery control purposes;
 - (c) in the case of modernisation, their life expectancy.
- (3) Whenever possible, there must be publicity as regards the financial support from the Community.

Part B

Detailed rules on eligible actions set out in Article 4

- (1) Vessel localisation devices referred to in Article 4(1)(b)(i) must be in conformity with the provisions laid down by the relevant Community rules.
- (2) Expenditure incurred for the action provided for in Article 4(1)(d) will be reimbursed to the extent that it is eligible for reimbursement in conformity with relevant national rules.
- (3) Expenditure incurred for purchase of equipment referred to in Article 4(1)(h), may be reimbursed to the extent that it is used for control of fishing activity, as declared by the Member State concerned.

Part C

Rules on claims for reimbursement as referred to in Article 12

Claims for reimbursement include the following:

- 1) a reference to the decision referred to in Article 6 and the table annexed thereto specifying the aid granted;
 - 2) a list of all the supporting documents classified by project;
 - 3) the amounts claimed without VAT, classified by project;
 - 4) a brief description of each project for which a reimbursement is claimed on what has been achieved, accompanied by an assessment of the impact of the investment on monitoring, control and surveillance activity and a forecast of its use.
-

ANNEX II

STATEMENT OF EXPENDITURE

PUBLIC EXPENDITURE INCURRED

IN CARRYING OUT THE NATIONAL PROGRAMME FOR
IMPLEMENTING THE CONTROL, INSPECTION AND SURVEILLANCE SYSTEMS ON
FISHERIES ACTIVITIES

as provided for in Article 12 of Council Decision 2004/.../EC

Commission Decision of/No _____
National reference (if any) _____

I, the undersigned _____ representing the authority
_____ responsible for the relevant financial and
control procedures, hereby certify, after verification, that all amounts shown below represent the
total cost, paid in 200_ , in accordance with relevant national legislation, with regard to projects
approved and referring to actions set out in Article 4(1) of Council Decision 2004/.../EC:

- (a) computer technology and IT networks _____ EUR ¹
- (b) remote control technology (vessel localisation _____ EUR
devices and recording and reporting devices)

¹ _____
Exact amount to two decimal places.

(c)	pilot projects on new technologies	_____	EUR
(d)	training and exchange programmes of control department officials	_____	EUR
(e)	pilot inspection and observer schemes	_____	EUR
(f)	assessment of public expenditure in the control area	_____	EUR
(g)	seminars and media	_____	EUR
(h)	acquisition and modernisation of control, inspection and surveillance equipment	_____	EUR
		=====	EUR

I also certify that the statement of expenditure is accurate and the application for payment takes account of any recoveries made.

The operations were carried out in accordance with the objectives laid down in the Council Decision 2004/.../EC, and with the provisions of Regulation (EC) No 2371/2002, in particular as regards:

- compliance with the conditions laid down in this Decision and the Directives concerning the coordination of procedures for the award of public works, supply and service contracts, and in accordance with the detailed rules in Part C of Annex I to this Decision.
- application of management and control procedures, in particular to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to prevent, detect and correct irregularities, pursue fraud, and recover unduly paid amounts.

Date .. / .. /

Name capitals, stamp, position
and signature of competent authority

COUNCIL DECISION**of 29.4.2004**

amending the Common Manual in order to include provision
for targeted border controls on accompanied minors

(2004/466/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance ¹,

Having regard to the initiative of the Italian Republic,

¹ OJ L 116, 26.4.2001, p. 5.

Whereas:

- (1) It is necessary to adopt special procedures for entry and exit checks on persons crossing the external borders, including on accompanied minors, given especially that the persons accompanying or supposedly accompanying minors are in fact often traffickers in human beings, and provision should be made for border control authorities to pay particular attention to all travelling minors.
- (2) Point 5 of the Declaration of the Executive Committee of 9 February 1998 on the abduction of minors states that "it is equally imperative that the authorities responsible for border control systematically check the identity papers and the travel documents of minors. This is particularly important if minors are travelling in the company of just one adult".
- (3) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis, under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall , in accordance with Article 5 of the said Protocol, decide, within a period of six months after the Council has adopted this Decision, whether it will implement it into its national law.

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- (4) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis*, within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 ¹ on certain arrangements for the application of that Agreement.
- (5) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ²; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (6) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ³; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (7) This Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it, within the meaning of Article 3(1) of the Act of Accession,

¹ OJ L 176, 10.7.1999, p.31.

² OJ L 131, 1.6.2000, p.43.

³ OJ L 64, 7.3.2002, p. 20.

HAS ADOPTED THIS DECISION:

Article 1

In the second paragraph of point 6.8.1 of Part II of the Common Manual, the sentence reading: "Staff carrying out checks must pay particular attention to minors travelling unaccompanied" shall be amended as follows: "Staff carrying out checks must pay particular attention to minors, whether travelling accompanied or unaccompanied".

Article 2

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 3

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 29.4.2004.

For the Council
The President
M. McDOWELL
