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Information and Notices

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Note (see inside back cover)



⁽¹⁾ Text with EEA relevance

NOTICE

On 3 April 2002, in the *Official Journal of the European Communities* C 79 A, the 'Common catalogue of varieties of agricultural plant species — 13th supplement to the 21st complete edition' will be published.

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I

(Information)

EUROPEAN PARLIAMENT
COUNCIL
COMMISSION

INTERINSTITUTIONAL AGREEMENT

of 28 November 2001

on a more structured use of the recasting technique for legal acts

(2002/C 77/01)

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

- (1) The European Council, meeting in Edinburgh in December 1992 underlined the importance for the Community of making Community legislation more accessible and comprehensible.
- (2) On 20 December 1994, following the guidelines drawn up by the European Council, the European Parliament, the Council and the Commission concluded an Interinstitutional Agreement on an accelerated working method for official codification of legislative texts ⁽¹⁾ with a view to substantially improving the readability of legal acts which have been extensively amended.
- (3) Experience shows, however, that despite the use of the accelerated method, the Commission's submission of official codification proposals and the legislature's adoption of official codification acts are often delayed, in particular because new amendments to the legal act in question have been adopted in the meanwhile, which leads to the codification work having to start all over again.
- (4) It is therefore advisable, in particular with regard to frequently amended legal acts, to use a legislative technique which enables amendments to, and codification of, acts to be carried out within the framework of a single legislative text.
- (5) In that context, where a substantive amendment has to be made to an earlier legal act, the recasting technique permits the adoption of a single legislative text which simultaneously makes the desired amendment, codifies that amendment with the unchanged provisions of the earlier act, and repeals that act.
- (6) Consequently, in so far as it prevents the proliferation of isolated amending acts which often make regulations difficult to understand, the recasting technique is an appropriate means of ensuring the readability of Community legislation on a permanent and universal basis.
- (7) A more structured use of the recasting technique forms part of the measures undertaken by the institutions to make Community legislation more accessible, such as the adoption of the accelerated working method for official codification and the establishment of common guidelines for the quality of drafting of Community legislation through the Interinstitutional Agreement of 22 December 1998 ⁽²⁾.
- (8) The European Council meeting in Helsinki in December 1999 wished an Interinstitutional Agreement on the use of the recasting technique to be concluded as quickly as possible by the European Parliament, the Council and the Commission,

HAVE AGREED AS FOLLOWS:

1. The aim of this Agreement is to lay down procedural rules enabling a more structured use to be made of the recasting technique pursuant to the Community's normal legislative process.

⁽¹⁾ OJ C 102, 4.4.1996, p. 2.

⁽²⁾ OJ C 73, 17.3.1999, p. 1.

2. Recasting shall consist in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act.

3. A proposal for recasting submitted by the Commission shall deal with the substantive amendments which it makes to an earlier act. On a secondary level, the proposal shall include the codification of the unchanged provisions of the earlier act with those substantive amendments.

4. For the purposes of this Agreement:

— 'earlier act' shall mean a legal act which is in force, and which may have been amended by one or more amending acts,

— 'substantive amendment' shall mean any amendment which affects the substance of the earlier act as opposed to purely formal or editorial changes,

— 'unchanged provision' shall mean any provision of the earlier act which, although it may be affected by purely formal or editorial changes, has not undergone any substantive amendment.

A new legal act shall not constitute a recast act if, with the exception of standardised provisions or wordings, it makes substantive amendments to all the provisions of the earlier act, which it replaces and repeals.

5. The Community's normal legislative process shall be complied with in full.

6. A proposal for recasting shall satisfy the following criteria:

(a) The explanatory memorandum accompanying the proposal shall:

(i) state expressly that it relates to a proposal for recasting and explain the reasons for adopting such an approach;

(ii) state the reasons for each proposed substantive amendment;

(iii) specify which provisions of the earlier act remain unchanged.

(b) The proposed legislative text shall be presented in a way which:

(i) enables the substantive amendments and new recitals to be clearly distinguished from the provisions and recitals which remain unchanged;

(ii) with regard to the provisions and recitals which remain unchanged, is similar to the method used for presenting proposals for the official codification of legislative acts.

7. To ensure clarity and legal certainty, all recasting acts shall comply *inter alia* ⁽¹⁾ with the following rules of legislative drafting:

(a) The first recital shall indicate that the new legal act constitutes a recasting of the earlier act.

(b) The article repealing the earlier act shall provide that references to that act shall be regarded as references to the recasting act and should be read in accordance with a correlation table annexed to the recasting act.

(c) Moreover, in an act recasting a Directive:

(i) the repealing article shall provide that Member States' obligations arising from the transposition period ⁽²⁾ and, where appropriate, the implementation period as set out in the Directive repealed by the recasting act shall not be affected by such repeal;

(ii) the periods referred to in point (i) shall be set out in an annex in the form of a table;

(iii) the article relating to the obligation to transpose ⁽³⁾ into national law a recast Directive shall refer only to those provisions which have undergone substantive amendment and which have been precisely identified as such. Those provisions which remain unchanged in the recast Directive shall be transposed in accordance with the earlier Directives.

⁽¹⁾ See, in particular, the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1).

⁽²⁾ That is, the period laid down for implementing the laws, regulations and administrative provisions necessary for complying with the provisions of the Directive.

⁽³⁾ That is, the obligation to implement the laws, regulations and administrative provisions necessary for complying with the provisions of the Directive.

8. Where, in the course of the legislative procedure, it appears necessary to introduce substantive amendments in the recasting act to those provisions which remain unchanged in the Commission's proposal, such amendments shall be made to that act in compliance with the procedure laid down by the Treaty according to the applicable legal basis.

9. A Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission shall examine the proposal for recasting. It shall deliver an opinion as soon as possible for submission to the European Parliament, the Council and the Commission to the effect that the proposal does not comprise any substantive amendments other than those identified as such.

10. This agreement shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply to any proposal for recasting submitted from the date of its entry into force.

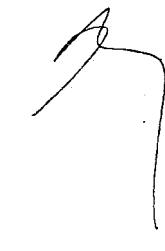
An assessment of the application of this Agreement shall take place three years after its entry into force. For this purpose the Legal Services of the institutions signatory to the Agreement shall submit an assessment report and propose, where appropriate, any changes required.

Done at Brussels on the twenty-eighth day of the year two thousand and one.

For the European Parliament
The President



For the Council
The President



For the Commission
The President



DECLARATIONS

Joint Declaration on point 2

The European Parliament, the Council and the Commission note that recasting may be either 'vertical' (whereby the new legal act replaces a single earlier act) or 'horizontal' (whereby the new legal act replaces several parallel earlier acts relating to the same subject).

Joint Declaration on point 4

The European Parliament, the Council and the Commission agree that, where an isolated amendment within a provision in fact amends the substance of that provision, such a provision shall be identified as having been amended in its entirety.

Declaration of the European Parliament and the Council on point 6(b)

The European Parliament and the Council take note of the fact that the Commission provides for substantive amendments and any new recital to be identified by the use of 'shaded' type in any COM document which it submits.

Joint Declaration on point 9

The European Parliament, the Council and the Commission note that, for the purpose of giving proper effect to this Agreement, their Legal Services should have access to the appropriate human resources so that they have a sufficient number of representatives within the Consultative Working Party to enable the proposals for recastings submitted by the Commission to be considered rapidly with a view to delivery of an opinion to the institutions as soon as possible.

COMMISSION

Euro exchange rates ⁽¹⁾

27 March 2002

(2002/C 77/02)

1 euro	=	7,4332	Danish krone
	=	9,0221	Swedish krona
	=	0,6139	Pound sterling
	=	0,8746	United States dollar
	=	1,3897	Canadian dollar
	=	115,92	Japanese yen
	=	1,4656	Swiss franc
	=	7,711	Norwegian krone
	=	87,37	Icelandic króna ⁽²⁾
	=	1,6569	Australian dollar
	=	2,0068	New Zealand dollar
	=	10,0579	South African rand ⁽²⁾

⁽¹⁾ Source: reference exchange rate published by the ECB.

⁽²⁾ Source: Commission.

COMMISSION INTERPRETATIVE COMMUNICATION ON COMMUNITY DRIVER LICENSING

(2002/C 77/03)

This interpretative communication aims at providing background information on the current stage of Community driving licence law. This information shall assist administrative authorities as well as citizens in assessing the scope, effects and implications of the current legal system of Community driver licensing rules.

In Part I, background information on the current stage of Community driver licensing is provided, outlining the legal framework and determining a comparative view of driver licensing related aspects, which have, so far, not been harmonised.

Part II of this document provides for legal guidelines established by interpreting the existing Community framework. These guidelines shall assist in a consistent application of driving licence rules throughout the Community.

Definitions

In this communication:

'EC' (in combination with the number of an Article): means the Treaty establishing the European Community as last amended by the Treaty of Amsterdam;

'EEA': means the European Economic Area;

'First Directive': means Council Directive 80/1263/EEC on the introduction of a Community driving licence ⁽¹⁾;

'Second Directive': means Council Directive 91/439/EEC on driving licences ⁽²⁾;

'Group 1 licences': means licences of one of the following vehicle (sub-)categories: A, B, BE, A1 and B1, as defined by Directive 91/439/EEC (Annex III, point 1.1. thereof);

'Group 2 licences': means licences of one of the following vehicle (sub-)categories: C, CE, D, DE, C1, C1E, D1 and D1E, as defined by Directive 91/439/EEC (Annex III, point 1.2. thereof);

'Host Member State': means the Member State, in which a licence holder is normally resident, but which did not issue the initial driving licence (but may have exchanged/renewed the licence of the issuing Member State);

'Issuing Member State': means the Member State, which issued the first driving licence to the relevant licence holder (who does not necessarily have to be citizen of the issuing State);

'ECJ': means the European Court of Justice.

⁽¹⁾ OJ L 375, 31.12.1980, p. 1.

⁽²⁾ OJ L 237, 24.8.1991, p. 1.

Part I

DESCRIPTIVE SUMMARY OF COMMUNITY DRIVER LICENSING

The legal framework of EC legislation, ECJ case-law and those aspects which have, so far, not been harmonised, will be outlined below.

A. LEGAL FRAMEWORK: EC LEGISLATION AND CASE-LAW

A.1. Council Directive 80/1263/EEC on the introduction of a Community driving licence ⁽³⁾

This Directive has been fully repealed by Article 13 of Directive 91/439/EEC. Nevertheless, it applies to a variety of practical cases, which occurred during the regime of the First Directive, but which may still deploy effects at present due to their particular constellation (for description and interpretation of such cases, see Part II).

A.2. Directive 91/439/EEC on driving licences

The Second Directive on driving licences constitutes the core of the legal framework of Community driver licensing. It came into force on 1 July 1996. In very general terms, the Second Directive harmonises licence categories, introduces minimum ages as a prerequisite for the entitlement to drive vehicles, as well as a mandatory theory and practical driving examination. Furthermore, the Directive lays down the principle of mutual recognition of licences issued by a Member State and defines normal residence as a prerequisite for obtaining a licence. The Second Directive also contains detailed provisions on minimum health criteria and introduces a harmonised Community model driving licence. Additional provisions refer to the effect of cancellation, withdrawal and restriction of licences.

The Second Directive is only one point in the development of the field of Community driver licensing and contributes to stepwise and gradual harmonisation. Aspects which have not been harmonised by the Second Directive will be highlighted below (section B). The Second Directive has been amended firstly by Council Directive 94/72/EC ⁽⁴⁾, which amended Article 1(1) of Directive 91/439/EEC, granting a transitional period to Finland and Sweden until 31 December 1997, as regarded their plastic model driving licences.

Subsequent amendments have been carried out by Council Directive 96/47/EC ⁽⁵⁾, introducing a Community plastic card model as an alternative to the paper licence model. The amendment was inserted into the Second Directive as 'Annex Ia'.

⁽³⁾ OJ L 375, 31.12.1980, p. 1.

⁽⁴⁾ OJ L 337, 24.12.1994, p. 86.

⁽⁵⁾ OJ L 235, 17.9.1996, p. 1.

Commission Decision 96/427/EEC ⁽⁶⁾ concerns a derogation from the provisions of Annex III of the Second Directive as to correcting glasses for eyesight deficiencies.

Council Directive 97/26/EC ⁽⁷⁾ introduced a Management Committee on driving licences, to which limited legislative power was transferred in the field of adaptations of the list of Community codes, Annexes II and III of the Second Directive to technical and scientific progress. It also specified further harmonised Community codes for driving restrictions and vehicle adaptations.

Commission Decision 2000/275/EC ⁽⁸⁾ established tables of equivalences for each valid driving licence model between categories of driving licences which have been issued before implementation of Directive 91/439/EEC and the harmonised categories as defined in Article 3 thereof. This Decision was adopted in accordance with the obligation laid down in Article 10 of the Directive.

Finally, Commission Directive 2000/56/EC ⁽⁹⁾ further specified the list of harmonised Community codes for driving restrictions and vehicle adaptations. The Directive also revised Annex II of Directive 91/439/EEC on theory and practical driving examinations, adapting this Annex thus to technological and scientific progress in the field.

A.3. Case-law

— ECJ Judgment 16/78 — Choquet

In this first Judgment referring directly to driver licensing, the Court highlighted the lack of harmonisation in the field at that time. This loophole rendered recognition of driving licences in other Member States virtually impossible and represented an obstacle to the free movement of persons. This Judgment was the major impetus for the first initiatives towards harmonisation in driver licensing on a Community level.

— ECJ Judgment C-193/94 — Skanavi

This Judgment referred to the situation before 1 July 1996. In addition, it interprets specific aspects of the legal situation after entry into force of the Second Directive. The Court referred to the obligation to exchange licences in accordance with the First Directive and the relation of this obligation to the scope of application of Article 43 EC. Moreover, the Court clarified the proportionality of national fines, the distinction between the right to drive and the licence document, the problems deriving from progressive harmonisation in driver licensing and the range of the principle of mutual recognition.

⁽⁶⁾ OJ L 175, 13.7.1996, p. 34.

⁽⁷⁾ OJ L 150, 7.6.1997, p. 41.

⁽⁸⁾ OJ L 91, 12.4.2000, p. 1.

⁽⁹⁾ OJ L 237, 21.9.2000, p. 45.

— ECJ Judgment C-230/97 — Awoyemi

This Judgment clarifies the situation for holders of licences issued in third countries and interprets the exchange requirement laid down in Directive 80/1263/EEC. Moreover, reference is made to the scope and the legal implications of the principle of mutual recognition.

B. COMPARATIVE VIEW OF ASPECTS WHICH HAVE NOT BEEN HARMONISED

This part aims at establishing a comparative view of all those aspects of driver licensing, which to date have not been harmonised at the Community level. For most of those aspects, harmonisation has been explicitly exempt by specific provisions of the Second Directive. Articles quoted in the titles are references to those exemptions.

As regards the majority of sections in this part, the Second Directive has already achieved a certain degree of harmonisation. Nonetheless, the Directive leaves room for manoeuvre for Member States as regards the subjects described in those sections, e.g. by prescribing minimum standards only or by providing for a choice between two options as it is the case for the Community model driving licence. Thus considerable practical and legal differences persist in those fields in the national licensing systems.

NB: The comparative view is not entirely exhaustive, since the degree of cooperation from the side of the Member States differed. In some cases, the relevant information is not complete or not available.

B.1. Period of validity and periodicity of medical examinations

General exemption in Article 1(3)

Different periods of validity throughout the Member States are the result of the derogation from harmonisation laid down by Article 1(3) of the Second Directive. This provision exempts validity periods from harmonisation on a Community level by allowing Member States to impose national provisions. Some Member States do not impose any limits to validity periods of specific categories: unlimited periods of validity still apply for car and motorcycle licences in:

— Belgium,

— Germany,

— France,

— Austria.

Different intervals for medical examinations derive from provisions in Annex III of the Second Directive. Annex III, point 1 of the Second Directive introduces a classification of

drivers into two distinct groups, which are defined as 'Group 1' and 'Group 2' licences (see definitions).

Annex III, point 3 lays down that applicants for Group 1 licences have to undergo a medical examination only in case substantial doubts with respect to the applicants' fitness to drive arise in the course of the application procedure. After a driving licence has been issued, no mandatory medical examination is prescribed for holders of Group 1 licences. For holders of Group 2 licences Annex III point 4 stipulates that they have to undergo a medical examination before first issue of such a licence. Thereafter, the Directive foresees the imposition of periodic examinations without specifying particular intervals.

The two issues described above are closely linked to each other: in most legal systems, the period of validity of a certain licence category coincides with the intervals of the imposition of a medical examination. This means that a licence holder has to undergo a medical examination at the same time he renews his expired licence.

Comparative view of national provisions as regards the validity of licences

The precise legal reference to national law is indicated in brackets for each Member State. Unless stated otherwise, the indication of a specific validity period implies the imposition of a medical examination upon renewal of the licence in question.

Belgium: (*Article 21, Article 44, Arrêté Royal relatif au permis de conduire, 23.3.1998*)

Group 1: unlimited validity;

Group 2: valid for five years up to the age of 50; when the driver is 48-50 years of age: valid up to the holder's 53rd birthday; valid for three years when the holder is older than 50.

Denmark: (*Articles 45-46, Bekendtgørelse om kørekort, 11.3.1997*)

Group 1: valid up to the holder's 70th birthday;

valid for four years when the holder is 71, for three years when he is 72 and for two years when he is 73-79 years of age;

for one year when the holder is older than 80.

Group 2: valid up to the holder's 50th birthday;

for five years when the holder is 50-70;

for four years when he is 71, for three years when he is 72 and for two years when he is 73-79 years of age;

for one year when the holder is older than 80.

Germany: (§ 23 Fahrerlaubnisverordnung, 26.8.1998)

- Group 1: unlimited validity;
- C1, C1E: valid up to the holder's 50th birthday; thereafter for five years.
- C, CE: valid for five years.
- D1, D, D1E, DE: valid for five years; when the holder is 46-49: up to his 50th birthday; for five years when the holder is older than 50.

Greece: (Article 4, Presidential Decree 19/95, 31.1.1995)

- Group 1: valid up to the holder's 65th birthday; thereafter for three years.
- Group 2, B+E and B professional: valid for five years until the holder's 65th birthday; thereafter for three years.

Spain: (Article 16-17, RD 772/97 — Reglamento General de Conductores, 30.5.1997)

- Group 1: valid for 10 years up to the holder's 45th birthday;
- for five years when the holder is 45-70;
- for two years when the holder is older than 70.
- Group 2: valid for five years up to the holder's 45th birthday;
- for three years when the holder is 45-60;
- for two years when the holder is older than 60.

France:

- Group 1: unlimited validity;
- Group 2: valid for five years up to holder's 60th birthday;
- for two years when the holder is 60-76;
- for one year when the holder is older than 76.

Ireland:

- Group 1: valid for three-10 years (optional) up to the holder's 60th birthday;
- for three years when the holder is 60-69;
- for one to three years (determined by medical check) when the holder is older than 70.
- Group 2: valid for three-10 years (determined by medical check) up to the holder's 60th birthday;

- for three years when the holder is 60-69;
- for one to three years (determined by medical check) when the holder is older than 70.

Italy: (Article 126, Codice della Strada)

- Group 1: valid for 10 years up to the holder's 50th birthday;
- for five years when the holder is 51-70;
- for three years when the holder is older than 70.
- C, CE: valid for five years up to the holder's 65th birthday;
- for two years when the holder is older than 65.
- D, DE: valid for five years up to the holder's 60th birthday;
- for one year when the holder is 60-65;
- no renewal after the age of 65.

Luxembourg: (Règlement grand ducal, 11.8.1996)

- Group 1: valid up to the holder's 50th birthday;
- for 10 years when the holder is 51-70;
- for three years when the holder is older than 70;
- for one year when the holder is older than 80.
- Group 2: valid for 10 years up to the holder's 50th birthday;
- for five years when the holder is older than 50;
- for three years when the holder is older than 70;
- no renewal after the age of 75.

Netherlands: (Article 122 WVV 1994)Validity:

- Group 1: for 10 years up to the holder's 60th birthday;
- up to the holders 70th birthday, when he is 60-65;
- for 5 years when the holder is older than 64.
- Group 2: for 10 years up to the holder's 60th birthday;
- up to the holders 70th birthday, when he is 60-65;
- for five years when the holder is older than 64.

Periodical medical examinations:

- Group 1: at the age of 70; at five yearly intervals thereafter.
- Group 2: at the age of 70; at 5 yearly intervals thereafter (under revision).

Austria: (Article 20-21 Führerscheingesetz 30.10.1997)

- Group 1: unlimited validity (de facto: according to § 27(1)4. FSG the licence is valid for 100 years);
- Group 2: valid for five years up to the holder's 60th birthday;
for two years when the holder is older than 60.

Portugal: (Article 7, Decreto Regulamentar 65/94, 18.11.1994)

- Group 1: valid up to the holder's 65th birthday;
for five years when the holder is older than 65;
for two years when the holder is older than 70.
- C, CE: valid up to the holder's 40th birthday;
for five years when the holder is older than 40;
for three years when the holder is older than 65;
for two years when the holder is older than 68.
- D, DE: valid up to the holder's 40th birthday;
for five years when the holder is older than 40;
no renewal when the holder is older than 65.

Finland: (Article 33, Decree 5.1.1996)Validity:

- B: initial validity of two years; after the expiry of this period: valid up to the holder's 70th birthday;
for five years when the holder is older than 70.
- A1, A, C1, C: valid up to the holder's 70th birthday;
for five years when the holder is older than 70.
- C1E, CE, D1, D1E, D, DE: valid up to the holder's 70th birthday;
no renewal when the holder is older than 70.

Periodic medical examination:

- Group 1: at the age of 45, 60, 70; at five yearly intervals thereafter.
- Group 2: at the age of 45; at five yearly intervals thereafter.

Sweden:Validity:

- Group 1: for 10 years.
- Group 2: for 10 years.

Periodical medical examination:

- Group 1: at the age of 70.
- Group 2: at the age of 45;
at five yearly intervals thereafter.

United Kingdom:Validity:

- Group 1: Paper licence: until the holder's 70th birthday; plastic card licence: 10 years;
for three years when the holder is older than 70.
- Group 2: valid until the holder's 45th birthday;
for five years when the holder is older than 45;
for 1 year when the holder is older than 65.

Periodic medical examinations:

- Group 1: at the age of 70; at three-yearly intervals thereafter
- Group 2: at the age of 45;
at five-yearly intervals when the holder is older than 45;
every year when the holder is older than 65.

Norway:

- Group 1: valid until the holder's 100th birthday.
- Group 2: for 10 years up to the holder's 60th birthday;
for five years when the holder is older than 60;
for one year when the holder is older than 70.

Medical examinations of Group 1 drivers at first issue of the licence — Annex III

At present, only a minority of Member States imposes a medical examination at the moment of first issue of a Group 1 licence. In practice, the only requirement is to submit a medical certificate, which is considered sufficient confirmation of the applicant's fitness to drive.

B.2. Equivalences of vehicle categories — Article 10

Article 10 of the Second Directive lays down that Member States, after consulting the Commission, may establish equivalences between categories of driving licences which have been issued before transposition of the Second Directive, and those categories, which are defined in Article 3 thereof. Community law hence does not harmonise vehicle categories of those licences, which have been issued before entry into force of the Second Directive.

In practice, national categorising systems varied widely before the entry into force of Community legislation in this field. Differing standards of categorising vehicles in the past will continue to affect a considerable number of Community citizens. In particular, those effects will be noticeable as regards licences issued in Member States, which did not impose any limitations as to periods of validity, so that licences with unharmonised vehicle categories recorded on them will continue to be in circulation.

In accordance with Article 10 of the Second Directive tables of equivalences have recently been established and are contained in a Commission Decision on equivalences⁽¹⁰⁾. The tables reveal that more than 80 different driving licence models are currently valid and in circulation throughout the European Economic Area, most of them issued before transposition of the Second Directive.

A solution to the present situation can be offered by one of the two following approaches:

- A general revocation of all licences which have been issued before entry into force of the Second Directive and which are still circulating. In exchange, driving licences in compliance with the requirements set out in the Second Directive, would be issued.
- Introduction of a harmonised validity period for all licence categories. Such an approach could eventually phase out old licence models.

⁽¹⁰⁾ Commission Decision 2000/275/EC of 21 March 2000 on equivalences between certain categories of driving licences (OJ L 91, 12.4.2000, p. 1).

B.3. Aspects relating to specific vehicle (sub)categories

— Introduction of subcategories — Article 3(2)

Article 3(2) of the Second Directive stipulates that for driving specific vehicles covered by vehicle categories A, B, B+E, C, C+E, D and D+E, some or all of the following subcategories may be introduced in a Member State⁽¹¹⁾:

- A1: light motorcycles with a cylinder capacity of more than 50 cm³ or a maximum speed of more than 45 km/h and less than 125 cm³ and of a power not exceeding 11 kW;
- B1: motor-powered tricycles and quadricycles with a cylinder capacity of more than 50 cm³ or more than 45 km/h and a mass not exceeding 550 kg (unladen);
- C1: lorries of more 3,5 tonnes maximum authorised mass, but not exceeding 7,5 tonnes;
- C1+E: combination of vehicles where the tractor vehicle is in subcategory C1, provided that the mass of the combination does not exceed 12 tonnes; the maximum authorised mass of the trailer may not exceed the unladen mass of the towing vehicle;
- D1: buses with more than eight, but not more than 16 seats (the driver's seat not included);
- D1+E: combinations of buses which fall within subcategory D1, with a trailer with more than 750 kg; the maximum authorised mass of the combination may not exceed 12 tonnes and the maximum authorised mass of the trailer may not exceed the unladen mass of the towing vehicle; the trailer may not be used for the carriage of persons;

The following subcategories have been introduced in the Member States:

Belgium: C1, D1, C1+E, D1+E;

Denmark: *no subcategories*;

Germany: A1, C1, D1, C1+E, D1+E;

Greece: A1;

Spain: A1, C1, D1, C1+E, D1+E;

France: A1, B1;

Ireland: A1, C1, D1, C1+E, D1+E;

Italy: A1;

⁽¹¹⁾ The precise wording of the definitions derives from a combined reading of Articles 3(2) and 3(3) of the Second Directive.

Luxembourg: A1, C1, D1, C1+E;

Netherlands: *no subcategories*;

Austria: C1, C1+E;

Portugal: A1;

Finland: A1, C1, D1, C1+E, D1+E;

Sweden: A1;

United Kingdom: A1, B1, C1, D1, C1+E, D1+E.

— *Additional criteria for category A1 — Article 3(5)*

Article 3(5) provides that Member States may impose additional restrictive rules for subcategory A1. The following two Member States introduced additional restrictions:

Germany: Drivers of under 18 years of age are not entitled to drive motorcycles with a maximum speed exceeding 80 km/h. (Article 5 § 28 Fahrerlaubnisverordnung 18.8.1998)

Spain: Motorcycles driven under an A1 category may not have a power/weight ratio exceeding 0,11 kW/kg. (Article 5.1 Real Decreto 772/97).

No other Member State imposes any additional criteria for subcategory A1.

— *Driving a vehicle of category B1 with an A1 or A licence — Article 5(3)(a)*

For driving on national territory only, Member States may grant the entitlement to drive vehicles of category B1 with an A1 or A licence. The following list establishes an overview of the prerequisites for driving a B1 vehicle, when this category has been introduced in the respective Member State.

Belgium: B1 only with a B licence

Denmark: Tricycles may be driven with an A or B licence, quadricycles may only be driven with a B licence

Germany: B1 only with a B licence (§ 6 Fahrerlaubnisverordnung 18.8.1998)

Greece: B1 only with a B licence. (Article 4.7 of the Presidential Decree 19/95)

Spain: B1 with an A licence (Real Decreto 772/1997, Article 5)

France: B1 with an A or with A1 licence

Ireland: B1 only with a B licence

Italy: B1 with an A or A1 licence

Luxembourg: B1 only with a B licence

Netherlands: B1 only with a B licence

Austria: B1 vehicles with a maximum authorised mass not exceeding 400 kg may be driven with an A or B licence; B1 vehicles with a maximum authorised mass exceeding 400 kg may only be driven with a B licence (§ 2.1 Führerscheingesetz 30.10.1997)

Portugal: B1 with an A or A1 licence

Finland: B1 with an A licence

United Kingdom: B1 with an A licence (Regulation No 2824/1996, Article 6(8))

Norway: B1 only with a B licence.

— *Driving a vehicle of category A1 with a B licence — Article 5(3)(b)*

For driving on national territory only, Member States may grant the entitlement to drive light motorcycles (which would be included in subcategory A1) with a B licence. This entitlement, however, does not have to be recognised by any other Member State.

The following overview refers only to those Member States, which have introduced the above entitlement and describes the additional requirements.

Belgium: two years of practical experience with a B licence

Spain: two years of experience with a B licence and a theory test

France: two years of experience with a B licence. A voluntary training of six hours is currently under consideration. This training may become compulsory in the future

Italy: the entitlement has been introduced as such with no additional requirements

Austria: five years of experience with a B licence and six hours of compulsory practical driver training.

— *Driving a vehicle of category C1 or D1 with a B licence* —
Article 5(4)

According to Article 5(4)(a), Member States may, after consulting the European Commission, authorise the driving on their territory of vehicles of category D1 by holders of 21 years of age with a driving licence of category B, which has been held for at least two years. Only non-commercial bodies may use those vehicles for social purposes and the driver must provide his services on a voluntary basis.

Only the United Kingdom has introduced this entitlement.

Article 5(4)(b) provides for the entitlement, under certain circumstances other than those described in Article 5(4)(a), to drive vehicles of category C with a B licence.

No Member State has introduced this entitlement.

— *Direct access to heavy motorcycles* — Article 6(1)(b)

The above Article stipulates that Member States may waive the requirement of two years of practical experience on motorcycles with lower specifications under an A licence, in case the candidate for a category A licence is at least 21 years old (direct access ⁽¹²⁾).

The following Member States do not provide for direct access to heavy motorcycles at the age of 21:

Germany:	direct access not possible before the age of 25
Ireland:	direct access never possible, two years of practical experience is always required
Spain:	direct access never possible, two years of practical experience is always required.

All other Member States allow direct access to heavy motorcycles for applicants of 21 years of age.

⁽¹²⁾ Article 6(1)(b) in combination with Annex II, point 8.1.2. of the Second Directive provides for the following distinction between direct and progressive access to heavy motorcycles:
progressive access: access to the driving of motorcycles with a power exceeding 25 kW or a power/weight ratio exceeding 0,16 kW/kg shall be subject to a minimum of 2 years experience on a motorcycle with a lower specification under an A licence.
direct access: the requirement as to previous experience may be waived if the candidate is at least 21 years old, subject to the candidate's passing a specific test of skills and behaviour.

B.4. Aspects relating to minimum ages

— *Lower age limit for driving category B* — Article 6(2)

According to Article 6(2) Member States may derogate from the minimum age requirements laid down for categories A, B, and B+E (18 years) and issue such driving licences from the age of 17 years.

In the following Member States the minimum age is lower than 18 years:

Germany:	17 years in the framework of vocational training for C and D
Ireland:	17 years; no additional requirements
Austria:	17 years in the framework of 'Vorgezogene Lenkberechtigung' (accompanied driving);
United Kingdom:	17 years; no additional requirements.

The age limit in all other Member States is 18 years.

— *Recognition of B licences issued to holders of less than 17 years of age* — Article 6(3)

Member States may refuse to recognise the validity in their territory of driving licences, issued in accordance with Article 6(2).

Germany, Austria, Ireland and the United Kingdom recognise licences issued in accordance with Articles 6(2) and 6(3).

Denmark and Luxembourg recognise such licences for tourists, but not for drivers who take up residence in their territory.

All other Member States do not recognise B licences of holders under 18 years of age and therefore do not permit them to drive on the territory before they reach the age of 18 years.

B.5. Licences issued in third countries — Article 8(6)

Member States do not have to recognise licences which have been issued in countries outside the EU. In accordance with Article 8(6), the right to refuse recognition also applies in case the licence which had been issued originally has already been exchanged to a Community model licence of another Member State in the meantime (but only in case the holder establishes his normal residence in another Member State).

B.6. Driving licence model — Annex I and Annex Ia

Directive 96/47/EC, amending the Second Directive, introduced a plastic card model driving licence as an alternative to the paper model in Annex I of the Directive. This plastic card model has been inserted into the Second Directive as 'Annex Ia'. Member States are free to choose which of the two models they wish to have.

The form of driving licences has not been completely harmonised yet. The reason is not only because of the above right to choose between the two models. Community law at present provides neither for a mandatory exchange of driving licence models which have been issued before entry into force of the First or Second Directives, nor for a harmonised limited validity period. Thus in practice more than 80 different models of driving licences are still valid and in circulation throughout the Member States of the European Economic Area.

This number will diminish gradually with time, as licences, which expire in application of provisions of national law, are exchanged for either of the two harmonised Community models in all Member States today. In those Member States with unlimited validity periods for specific vehicle categories, this development, however, will last for decades if no accompanying legislative measures are adopted.

The contents (i.e. entitlements) of licences issued prior to the implementation of Community law are treated in the section on the equivalences of vehicle categories.

Paper model (Annex I)	Plastic card model (Annex Ia)
Belgium	Denmark
Greece	Germany
Spain (plastic card in preparation)	Italy
France	Portugal
Ireland	Finland
Luxembourg	Sweden
Netherlands	United Kingdom
Austria	Norway
Liechtenstein (plastic card in preparation)	Iceland

B.7. Provisional licences and certificates

In the United Kingdom and Ireland so-called 'provisional licences' may be issued which, under certain circumstances, entitle to drive on national territory. According to national law those licences are considered part of practical driver training. However, they are issued without the obligation to pass a driving exam.

Article 1(2) of Directive 91/439/EEC lays down that driving licences issued by Member States have to be mutually recognised. The above provisional licences, however, are not full driving licences in the sense of the Directive. Article 7 of the Directive foresees that the issue of driving licences shall be subject to the passing of a test of skills and behaviour. Therefore provisional licences are a national document issued within the framework of driver training and do not entitle to drive outside the territory of the issuing Member State.

Furthermore, a variety of different certificates are issued throughout the Member States, e.g. test pass certificates, provisional certificates for lost or stolen licences, medical certificates etc. Those certificates are not driving licences and thus do not have to be recognised by other Member States. In case a licence is expired, lost or stolen the holder has to obtain a new licence document in order to benefit from the principle of mutual recognition.

B.8. Endorsements on licence documents

National provisions in the United Kingdom foresee that a driving licence consists of the licence document and a counterpart. On the latter traffic convictions in form of penalty points are recorded in a visual way. Since presently national systems of penalty points are not harmonised and traffic convictions can only be pursued according to bilateral agreements⁽¹³⁾, such endorsements are not of relevance in other Member States.

As regards endorsements on licences issued in other Member States, point 4 of Annex I (for the paper model) and paragraph 3(a) of Annex Ia (for the plastic card model) apply: a host Member State may enter in the licence such information as is essential for administering it, provided that it also enters this type of information in the licences which it issues and provided that there remains enough space for the purpose.

⁽¹³⁾ A Convention drawn up on the basis of Article K.3 TEU (Article 31 EU) foresees multilateral recognition of driving disqualifications (Convention on driving disqualifications (OJ C 216, 10.7.1998, p. 2) and could thus improve this situation. To date, however, only one Member State has ratified this Convention.

C. OVERVIEW OF EXISTING DRIVING LICENCE CATEGORIES

Group 1

Category A	Category B	Category B+E
<p><u>Motorcycles</u>: a cubic capacity exceeding 125 cm³ and a power exceeding 11 kW;</p> <p><u>Heavy motorcycles</u>: a power exceeding 25 kW or a power/weight ratio exceeding 0,16 kW/kg (access: either 21 years of age or 2 years of experience on a 'light' A)</p>	<p><u>Motor vehicles</u> with a maximum authorised mass not exceeding 3 500 kg and less than nine seats; they may be combined with a <u>trailer</u> not exceeding 750 kg;</p> <p><u>combinations</u>: with a maximum authorised mass not exceeding 3 500 kg; the maximum authorised mass of the trailer shall not exceed the unladen mass of the tractor vehicle</p>	<p><u>Combination</u> of vehicles consisting of a tractor vehicle in category B and a trailer, where the combination does not come within category B</p>
Subcategory A1	Subcategory B1	
<p><u>Light motorcycles</u>: a cubic capacity not exceeding 125 m³ and a power not exceeding 11 kW</p> <p><u>Mopeds</u> with a max. speed of less than 45 km/h or a cubic capacity of less than 50 cm³ <u>are not covered by the Directive</u></p>	<p><u>Three- and four-wheeled vehicles</u> with a maximum design speed of over 45 km/h or a cubic capacity of more than 50 cm³; the unladen mass shall not exceed 550 kg</p>	

Group 2

Category C	Category C+E	Category D	Category D+E
<p><u>Motor vehicles</u> other than those in category D, whose maximum authorised mass is over 3 500 kg; may be combined with a <u>trailer</u> not exceeding 750 kg</p>	<p><u>Combinations</u> of vehicles where the tractor vehicle is in category C and its trailer has a maximum authorised mass of over 750 kg</p>	<p><u>Motor vehicles</u> used for the carriage of persons and having more than nine seats; may be combined with a <u>trailer</u> having a maximum authorised mass not exceeding 750 kg</p>	<p><u>Combinations</u> of vehicles where the tractor vehicle is in category D and its trailer has a maximum authorised mass of over 750 kg</p>
Subcategory C1	Subcategory C1+E	Subcategory D1	Subcategory D1+E
<p><u>Motor vehicles</u> other than in category D and whose maximum authorised mass is over 3 500 kg but not more than 7 500 kg; they may be combined with a <u>trailer</u> having a maximum authorised mass not exceeding 750 kg</p>	<p><u>Combinations</u>: the tractor vehicle is in subcategory C1 and its trailer has a maximum authorised mass of over 750 kg; the maximum authorised mass of the combination shall not exceed 12 000 kg and the maximum authorised mass of the trailer shall not exceed the unladen mass of the tractor vehicle</p>	<p><u>Motor vehicles</u> used for the carriage of passengers and having more than nine seats but not more than 17 seats; they may be combined with a <u>trailer</u> having a maximum authorised mass which does not exceed 750 kg</p>	<p><u>Combinations</u>: tractor vehicle of subcategory D1 and trailer with a maximum authorised mass of over 750 kg; the total maximum authorised mass shall not exceed 12 000 kg and the trailer maximum authorised mass shall not exceed the unladen mass of the tractor vehicle; the trailer shall not be used for transport of persons</p>

Part II

LEGAL GUIDELINES FOR THE INTERPRETATION OF DIRECTIVE 91/439/EEC

This Part establishes a legal interpretation of specific provisions of Directive 91/439/EEC on driving licences in order to ensure a consistent practical application of this Directive in conformity with the principles of Community law. Practical experience shows that a concise descriptive summary of those situations which arise most frequently in practice, and the legally correct interpretation of existing Community law to be adopted, is indispensable for enforcement authorities, local administrations and citizens themselves.

The different interpretative sections follow an identical structure: the problem is outlined from a legal point of view, (a) practical example(s) further illustrate(s) the issue and at the end of each section a legal interpretation is given.

A. REQUIREMENT TO EXCHANGE LICENCES

A.1. Legal position

Article 8 of the First Directive stipulated that driving licences of holders who established their normal residence in another Member State were valid for one year. Within this period of time, the host Member State required the **mandatory exchange** of a licence issued in another Member State.

The wording of Article 8(1) was as follows:

'The Member States shall provide that, if the holder of a valid national driving licence or valid Community model licence issued by a Member State takes up normal residence in another Member State his licence shall remain valid there for up to a maximum of a year following the taking up of residence. At the request of the holder within that period, and against surrender of his licence, the State in which he has taken up normal residence shall issue him with a driving licence (Community model) for the corresponding category or categories without subjecting him to the conditions laid down in Article 6 [. . .]'

However, Article 13 of the Second Directive repealed the First Directive as of 1 July 1996 and Article 1(2) of the Second Directive introduced the **principle of mutual recognition** of licences issued by Member States, thus removing the above obligation to exchange licences.

The ninth recital in the preamble of Directive 91/439/EEC states that the obligation to exchange licences itself constituted an obstacle to the free movement of persons and therefore is inadmissible in the light of progress made towards European integration.

Since the coming into force of Directive 91/439/EEC, an exchange of driving licences issued in Member States is in general purely voluntary, since Article 8(1) of this Directive stipulates the following:

'Where the holder of a national driving licence has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence.'

An exchange of licences, however, remains admissible in a very limited number of cases under the regime of the Second Directive:

- (i) According to Article 8(2), a Member State may exchange a licence for the purpose of the application of national criminal and police laws. In view of the above general principle in Article 8(1), such a practice has to remain of a restrictive nature and shall be applied to severe traffic offences only.
- (ii) For the purpose of the renewal of licences which expire outside the territory of the issuing State, an exchange of the document has to be carried out. This exchange, however, is rather the practical effect of the renewal than an exchange as such.

A.2. Practical situations

Example 1:

A licence holder establishes his/her normal residence in France after 1 July 1996. He/she fails to exchange his licence. In 1997, French authorities require him/her to exchange the licence. He/she claims recognition of his/her original licence according to Article 1(2) of Directive 91/439/EEC without any formalities ⁽¹⁴⁾; in addition, he/she claims that Article 1(2) is vested with direct effect ⁽¹⁵⁾.

Example 2:

The facts are identical with example 1, except that the licence holder establishes normal residence in the other Member State between 1 July 1995 and 1 July 1996.

Example 3:

The facts are identical with example 1, except that the licence holder establishes normal residence in the other Member State before 1 July 1995.

⁽¹⁴⁾ The ECJ pointed out in paragraph 26 of C-193/94 (Skanavi), that driving licences have to be recognised without any formalities.

⁽¹⁵⁾ In paragraph 43 of the ECJ judgment C-230/97 (Awoyemi) it is stated explicitly, that Article 1(2) of the Second Directive is vested with direct effect.

A.3. Interpretation by the ECJ in case C-193/94 (Skanavi)

Some of the provisions of Directive 80/1263/EEC were clarified by the ECJ in C-193/94 of 29 February 1996 (Skanavi). Despite the First Directive having been repealed by Directive 91/439/EEC, reference has to be made to the above judgment, since the effects of provisions of the First Directive on present cases can be identified.

In this judgment, the ECJ separates the **right to drive** a vehicle from the **licence document**. The right to drive was not affected if the holder failed to exchange the licence document within the period of one year, prescribed by Directive 80/1263/EEC. Article 8(1) of the First Directive, in force until 1 July 1996, stipulated that *within* the period of one year a Member State required the holder of a licence, which has been issued in another Member State, to exchange it (for the wording of this Article see above).

Furthermore, the Court stated that the issue of a licence in exchange does not constitute a new right to drive on the territory of the host Member State but is just evidence of the existence of such a right. This right has been conferred to the holder by another Member State and is expressed by the licence document issued in exchange. The ECJ pointed out that the original licence remained valid in the Member State which issued it and continued to be recognised by the other Member States, irrespective whether it was exchanged or not (paragraph 32).

Regarding the **proportionality of fines** for failure to exchange, the ECJ stated that Article 43 EC precludes driving by a person who did not make the exchange from being treated as driving without a licence (paragraph 39 of the judgment). This legal evaluation is of predominant importance for the assessment of the proportionality of fines.

A.4. Solution

In view of the existing principles of Community legislation, which have been further specified by the ECJ, the following shall be applied to the practical examples described above:

A.4.1. *The holder changed his normal residence after 1 July 1996*

The principle of mutual recognition in Article 1(2) of Directive 91/439/EEC is directly applicable as of coming into force of this Directive on 1 July 1996⁽¹⁶⁾. Therefore, exchange cannot be required since that date and is of a purely voluntary nature, in accordance with Article 8(1) of the Second Directive. Thus in example 1 Member States cannot impose a mandatory exchange.

⁽¹⁶⁾ See ECJ in C-230/97, paragraph 43.

A.4.2. *The holder changed his normal residence between 1 July 1995 and 1 July 1996*

As described above, Article 8(1) of the First Directive required mandatory exchange of licences within one year. Directive 91/439/EEC, which came into force on 1 July 1996, introduced an exchange regime of a purely voluntary nature. The combination of the two differing provisions in the First and Second Directives led to a factual retroactive abolition of mandatory exchange as of 1 July 1995, one year before coming into force of the Second Directive. In example 2, therefore, a licence holder cannot be obliged to exchange his licence.

A.4.3. *The holder changed his normal residence before 1 July 1995*

In this case the licence holder was driving with a document which became invalid after the expiry of the period of one year, hence constituting an infraction of national administrative law. Nonetheless, the original licence normally remained valid in the Member State that issued it and continued to be recognised by all other Member States. For this reason, and because exchange became purely voluntary since the coming into force of Directive 91/439/EEC, a mandatory exchange of a licence after the commencement of the Directive has to be regarded as legal formality which constitutes an infringement of the rules governing free movement of persons⁽¹⁷⁾.

In example 3 a licence holder can thus be obliged to exchange his licence only under very exceptional circumstances, notably if a national provision is being applied before 1 July 1996 to facts which occurred before that date. However, a Community citizen may appeal against the application of rules imposing mandatory exchange after 1 July 1996, since this application then is in contradiction with Community law even without the Second Directive being transposed in the applying Member State.

Example 3 is of a theoretical nature insofar as, to the knowledge of the European Commission, no such case is pending before a national court in any Member State.

A.4.4. *The imposition of fines for failure to exchange a licence*

As regards infringements committed *before 1 July 1995* (example 3), the following derives from the principles established by the ECJ: the failure to exchange the licence within one year under the regime of the First Directive did not have any effect on the right to drive but rather represented a failure to comply with an administrative obligation. The Court therefore qualified the imposition of *criminal penalties* for non-compliance with the exchange requirement as generally *disproportionate*, even if the imposed penalties are only financial in nature (paragraph 37 of C-193/94 Skanavi).

⁽¹⁷⁾ In analogous application of rules established by the ECJ in case C-265/88 Messner (see in particular paragraph 8 thereof).

Nonetheless, Member States may impose *administrative sanctions*. However, those sanctions must be appropriate and not disproportionate to the nature of the infringement. In particular, they may not be so severe as to become an obstacle to the free movement of persons. These restrictions to the imposition of sanctions were consistently held by ECJ case law⁽¹⁸⁾. Furthermore, such an imposition of fines may only be applied subject to the condition that national law does not provide for the retroactive application of more favourable provisions of criminal law, which might have come into force while the relevant case was pending before a court. In addition, Community law does not prevent a national court from applying Articles 1(2) and 8(1) of the Second Directive, even when the offence occurred before 1 July 1995 (see ECJ case 230/97, point 2 of the operative part of the judgment).

In the case where a Community citizen changed his normal residence *after 1 July 1995* (examples 1 and 2) and does not exchange his licence, the licence holder has not committed any infringement since exchange had become voluntary. In these cases the imposition of any sanction, either criminal or administrative, is precluded.

B. MUTUAL RECOGNITION OF LICENCES

B.1. Recognition of licences which were given reduced entitlements on the occasion of exchange

B.1.1. *Legal position*

Under the regime of the First Directive, the original licence remains valid in the issuing Member State. A driving licence issued in exchange only produces evidence of the right to drive, but does not determine the right, since the scope of the right to drive is defined by the issuing Member State⁽¹⁹⁾. At the level of secondary Community law, following the coming into force of Directive 91/439/EEC, no distinction is made between the licence document and the right to drive. Since the Directive, among other aspects, harmonises licence categories, minimum ages and the conditions for issuing a licence, and licences thus reflect the entitlements conferred to the driver in a clear way, *all* entitlements recorded on a licence have to be recognised according to the principle of mutual recognition.

The extent of entitlements of licences which have been obtained before 1 July 1996 cannot be determined by the recordings on the document. To those licences, Article 10 of the Second Directive applies: tables of equivalences, which have been established in accordance with Article 10 of the Second Directive, determine the actual entitlement in terms of Article 3 of the Second Directive. Moreover, Article 8 of Directive 80/1263/EEC stipulated that the host Member State should issue a driving licence for the *corresponding* category or

categories to the relevant licence holder. The restriction of entitlements which have been obtained in other Member States (which was widely practised before coming into force of Directive 91/439/EEC) can therefore only be justified if it is qualified as a restriction of the document, rather than of the initial right to drive.

Since the holder was obliged to obtain a different licence document in exchange, he could not produce evidence of his initial right with the (restricted) document. Hence he was not entitled to drive vehicles of categories other than those for which an entitlement was recorded on the licence.

Since a restriction which had been imposed by the host Member State under Directive 80/1263/EEC, applied only on national territory, other Member States were not bound to recognise the restriction whenever the licence holder changed his normal residence to another Member State. Therefore the entitlements of a licence holder, which were restricted in the host Member State, could have been both further restricted or extended in case of a subsequent change of residence to a third Member State.

In accordance with Article 8(1) (last sentence) of Directive 80/1263/EEC, the host Member State was entitled to refuse the exchange of a licence only in the case that its national provisions precluded the issue of a licence.

B.1.2. *Practical situations*

Example 4:

A German licence holder establishes normal residence in France before 1 July 1995. According to the exchange practice being applied at that time, he/she is granted a French category B licence, containing entitlements to drive vehicles of up to 3,5 tonnes, in exchange for his/her German 'Klasse 3' licence, containing the right to drive vehicles of up to 7,5 tonnes (and even up to 18,25 tonnes with certain combinations) on German territory. Still being resident in France, he/she claims the full entitlement deriving from the initial German right to drive after 1 July 1996, with reference to the principle of mutual recognition.

Example 5:

As in example 4 the initial entitlement has been restricted. After 1 July 1996 the licence holder moves to a third Member State and claims full recognition of the initial right to drive there.

Example 6:

As in example 4 the initial entitlement has been restricted. After 1 July 1996 the licence holder moves back to the issuing State and claims the full initial entitlement there, according to the initial right to drive, which has been granted on the occasion of the issue of the original licence in the issuing State.

⁽¹⁸⁾ See in particular cases C-265/88 Messner, paragraph 14, and C-24/97 Commission v Germany, paragraph 14.

⁽¹⁹⁾ See paragraphs 31, 32 and 34 of the ECJ Judgment C-193/94 — Skanavi.

B.1.3. Solution

In paragraph 32 of case C-193/94, the ECJ clarified that the initial right to drive remained unchanged and valid in the issuing Member State. In addition, Directive 91/439/EEC does not refer to the distinction between the right to drive and the licence document and establishes the principle of mutual recognition of licences. The preservation or full recovery of the initial right to drive is the result of the continuous existence of the original right in the issuing State and independent from the introduction of the principle of mutual recognition.

The recovery of entitlements, which have been restricted, is thus based on different legal grounds than the preservation of extended entitlements (see below).

With respect to the *claim for recognition* of the initial right to drive after entry into force of Directive 91/439/EEC in either the *host* or a *third Member State* (examples 4 and 5), it follows from the above that a licence holder **cannot** demand his full initial entitlement. Member States are only bound to recognise the licence document. In the quoted examples, this document produces evidence of lesser entitlements than the initial right to drive. Since the initial right to drive remained unchanged only in the issuing Member State, a recovery of this right in other Member States cannot be based upon the principle of mutual recognition, since the full extent of the right is not expressly recorded on the document.

In the case that a licence holder claims full recognition of the initial right to drive in the issuing State (example 6), he is entitled to recover this right, as the initial right to drive remained unchanged there in accordance with the principles laid down by ECJ ⁽²⁰⁾.

It is recommended that licence holders who are entitled to reclaim their previous entitlements be granted those more far-reaching entitlements *on demand only* and after surrendering the licence that has been issued in exchange. In this way all entitlements can be recorded on a licence, which will be newly issued by the issuing Member State.

B.2. Recognition of licences which were given additional entitlements on the occasion of exchange

B.2.1. Legal position

It derives from the first and ninth recital of Directive 91/439/EEC, as well as from Article 13 thereof, which fully

⁽²⁰⁾ If the principle of mutual recognition was applied in this case, the issuing Member State would only be obliged to recognise the restricted entitlement recorded on the document which had been exchanged before.

repealed Directive 80/1263/EEC, that only **full** mutual recognition shall apply as of entry into force of the Second Directive. In cases where additional entitlements were granted in exchange, these entitlements do not derive from the initial right to drive but were conferred by virtue of application of national legislation in force in the host Member State. Hence a restriction of the extended entitlements in the case of a subsequent change of residence to another Member State or to the issuing State is admissible in case the second change of residence was carried out *before* entry into force of the Second Directive. This applies because the extended entitlement was conferred by virtue of national law of another Member State.

Only entitlements, which are actually recorded on the licence documents, have to be fully recognised since the entry into force of Directive 91/439/EEC. In the case of a subsequent change of residence of the licence holder *after* 1 July 1996 a restriction of such entitlements is generally precluded, since the possibilities of a restrictive application of national rules are limited in view of Article 1(3) of Directive 91/439/EEC.

B.2.2. Practical situations

Example 7:

A French B licence holder with the entitlement to drive vehicles of up to 3,5 tonnes established normal residence in Germany in 1990. There the usual 'Klasse 3' entitlement was granted in exchange, containing entitlements to drive vehicles of up to 7,5 tonnes (and even 18,25 tonnes). Before 1 July 1996 he/she re-established normal residence in France, where he/she was obliged to change the German licence back to a French licence, restricting the German entitlement. After the coming into force of Directive 91/439/EEC, the holder claims full recognition of the German entitlements.

Example 8:

An Irish B licence holder established normal residence in the United Kingdom in 1993. There a car licence containing the additional entitlement to drive C1 and C1E vehicles, as well as D1 and D1E vehicles 'not for hire and reward', was granted in exchange for the initial licence. As he/she re-established normal residence in Ireland after 1 July 1996, he/she refers to the principle of mutual recognition laid down in Article 1(2) of Directive 91/439/EEC and opposes any change of entitlements from the United Kingdom licence, which had been issued in exchange.

Example 9:

A French licence holder established normal residence in Germany before 1 July 1996, where his/her entitlement was extended to 'Klasse 3'. Before the entry into force of Directive 91/439/EEC he/she changed his normal residence from Germany to a third Member State, where he/she demands full recognition of the extended entitlement.

Example 10:

As in example 9, the initial entitlement is extended on the occasion of exchange. After the entry into force of Directive 91/439/EEC, the licence holder establishes normal residence in a third Member State and claims full recognition of the extended entitlement according to the principle of mutual recognition.

B.2.3. Solution

In the case where the licence was extended on the occasion of exchange, but restricted again due to a subsequent change of residence back to the issuing State before 1 July 1996 (example 7), this restriction may be retained, even after the coming into force of Directive 91/439/EEC. A licence holder whose licence was extended for a certain period of time in the past, but has been restricted again before entry into force of the principle of mutual recognition, has no legal grounds whereupon he can base his claim for retention of the extension of entitlements. The document of such a holder, carrying the extended entitlements, has been exchanged and now contains the initial entitlement; the initial right to drive remained unchanged.

If the licence was extended on the occasion of exchange and the holder changed his normal residence back to the issuing State after 1 July 1996 (example 8), his extended entitlements have to be fully recognised in accordance with the principle of mutual recognition. The application of Article 1(2) precludes the subsequent restriction of these extended entitlements as well as any reference to the initial, lesser rights.

If the entitlements were extended and the holder moved to a third Member State before 1 July 1996 (example 9), a subsequent restriction of the extended entitlement remained legally permissible, since the third Member State may have had a more restrictive issuing policy than the Member State where the licence was extended. In addition, the third Member State had to recognise the initial right to drive conferred by the issuing Member State, but could restrict it on its national territory.

If the holder of the extended licence moved to a third Member State after 1 July 1996 (example 10), any third Member State is bound to recognise all entitlements, including those which may have been additionally conferred by a Second Member State, in accordance with the principle of mutual recognition (see example 8).

If a licence is stolen or lost in the case where additional entitlements had been granted (examples 8 and 10), the following applies: the issuing Member State is still in possession of the original licence. In case the licence holder is resident there (example 8), the relevant authorities have to launch inquiries in cooperation with the authorities which

granted the additional entitlements and are bound to issue a new licence containing all entitlements. In example 10, the host Member State is competent to issue a new licence according to Article 8(5), containing all entitlements which had been obtained previously.

It shall be noted that the legal solutions suggested above cannot give rise to new 'licence tourism' ⁽²¹⁾: as Directive 91/439/EEC has been transposed in all Member States, licence categories and the conditions for the issue of licences have been harmonised. Extended rights thus can no longer be obtained since the transposition of the Second Directive. Entitlements which extended those defined in Article 3 of the Directive (e.g. in accordance with Article 5(4)) are valid on national territory only and only the basic entitlement, as defined in Article 3, is recorded on the licence. Other Member States are not bound to recognise such extended entitlements, even though they are granted in accordance with the Second Directive.

B.2.4. Explanatory remark with respect to an alternative solution

A restriction of extended entitlements to the original entitlements in the issuing State after 1 July 1996 would be in contradiction with basic principles of Community law, notably the free movement of persons and the principle of non-discrimination. Every Community citizen may refer to rights, which are conferred to him by the Second Directive, even in relation to his own Member State. Such reference may be made without being subject to discrimination linked to the place of issue of the licence, which is the Member State where the licence holder is normally resident ⁽²²⁾.

Moreover, such an approach would result in a restriction in the issuing State only. In the case where the holder of such an entitlement changes his normal residence to a third country within the EU (see example 10), his full entitlement has to be recognised in the third Member State, in accordance with Article 1(2) of Directive 91/439/EEC.

B.3. Failure to surrender the initial document**B.3.1. Legal position**

If drivers hold more than one licence because they did not exchange the initial licence or wrongfully obtained a duplicate,

⁽²¹⁾ 'Licence tourism' is a practical phenomenon of the following kind: applicants for driving licences pass their driving exams in a country other than their country of residence. The reasons are either that driving licences can be obtained more easily than in the country of residence (e.g. mandatory driving lessons or theory tests are not required) or that total expenditure for obtaining a licence is less than in the country of residence.

⁽²²⁾ For a description of this type of discrimination see ECJ in C-19/92 Kraus and C-212/97 Centros.

it is obvious that Article 7(5) of Directive 91/439/EEC is violated. Being in possession of more than one licence is also in contradiction with the First Directive, since the latter prescribed mandatory exchange of licences within one year after establishing normal residence in another Member State.

Article 7(5) of Directive 91/439/EEC clearly and unambiguously provides that no person may hold a driving licence from more than one Member State. Should a licence holder, who holds more than one licence, refer to the principle of mutual recognition after 1 July 1996, such a reference is abusive.

Moreover, the ECJ has consistently held ⁽²³⁾ that Member States may have legitimate interests in preventing certain of their nationals, by means of facilities created under the Treaty, from attempting to evade the application of their national legislation. Since the legal interest is identical, an analogous application of this rule to *all* residents on the territory, who may be nationals of other Member States, appears appropriate. In such cases Member States may take the appropriate measures to prevent citizens (and residents) referring to provisions of Community law in a fraudulent or abusive way.

B.3.2. Practical situations

Example 11:

An EC citizen established his normal residence in another Member State before 1 July 1995 and exchanged the licence there. The original licence was sent back to the issuing authority, but the licence holder (unlawfully) kept a duplicate of this original licence. After 1 July 1996 he/she claims his initial entitlements in the host Member State, linked to the original right to drive, of which he/she is still able to produce evidence by surrendering the duplicate.

Example 12:

A Community citizen established normal residence in Norway or Sweden before 1 January 1994. In these countries licence holders were not required to surrender their original licences to the authorities after the national licence was issued. (NB: It is likely that this also occurred in other Member States). After the entry into force of Directive 91/439/EEC and in accordance with the principle of mutual recognition in Article 1(2), such a licence holder claimed the original entitlement (without having changed place of residence) for which he/she is able to produce evidence with the original licence.

B.3.3. Solution

Member States should require an individual to surrender all licence documents to the competent authorities in the host

Member State and issue a new licence document thereafter, as soon as they learn that such a holder is in possession of more than one licence. This approach shall be applicable to both examples 11 and 12.

With respect to the extent of entitlements, the situation which would have emerged if Community law had been fully respected in the first place has to be established. If a licence holder is in possession of two licences, one containing more far-reaching entitlements than the other licence, and the latter being the only document he would actually hold if he had complied with Community law in the first place, the additional entitlements may be restricted *even after the coming into force of Directive 91/439/EEC*. This solution shall apply to cases of fraud as shown in example 11.

In the case where the licence holder is a national of the Member State imposing the exchange, the legal basis for the procedure described above derives from relevant ECJ jurisdiction quoted above. Member States may prevent their nationals from referring to Community law (e.g.: the principle of mutual recognition) in an abusive or fraudulent way (example 11).

With respect to the imposition of administrative penalties in case of fraud (example 11), reference is made to the description of the imposition of fines in the context of the failure to exchange the licence (subsection B.4.4. above).

With respect to example 12, however, where the described situation is the result of national rules being in force in countries which have not been EEA Member States at that time and thus were not bound to apply the provisions of the First Directive, no fines whatsoever can be imposed upon holders of more than one licence. The same applies to Member States which put into force an identical practice despite their obligation to comply with Community law, since citizens who are residents in a Member State cannot be fined for legislative omissions or breaches of Community law of their host Member State. Those holders kept their documents lawfully in terms of national legislation in force at the relevant time. With reference to countries which initially were outside the scope of application of Community law, it has to be noted that a retroactive application of Community law when the relevant country has acceded to the EEA is precluded.

C. LICENCES ISSUED IN CONTRADICTION WITH COMMUNITY LAW

C.1. Non-respect of Article 7(1)(a)

C.1.1. *Legal position*

If licences were issued in contradiction with the provisions of Article 7(1)(a) of Directive 91/439/EEC, the authority competent for revoking licences has to be determined in those cases where the holder changed their normal residence within the EU.

⁽²³⁾ See in particular cases C-212/97 Centros Ltd of 9 March 1999, paragraph 24, and C-61/89 Bouchoucha, paragraph 14.

In general terms, a Member State has to recognise licences issued in another Member State according to Article 1(2), even in the case where the issuing Member State does not comply with the rules laid down in Article 7(1)(a) of the Second Directive. Therefore, the host Member State is not entitled to refuse recognition of licences which have not been issued in accordance with provisions of the Directive.

Despite the obligation to recognise licences, the host Member State may apply certain national rules according to Article 1(3). Only in very specific cases, which are described explicitly in Directive 91/439/EEC ⁽²⁴⁾, may the host Member State refuse recognition.

C.1.2. Practical situation

Example 13:

After the date of entry into force of Directive 91/439/EEC, licences are issued in Member State A according to rules of national law previously adopted, which conflict with the provisions of the Directive. Member State B refuses to recognise licences of holders who establish their normal residence in B.

C.1.3. Solution

— The issuing Member State did not transpose the Directive in time

In this case other Member States shall be bound to recognise the licences, which have been issued in contradiction with Community law, according to Article 1(2). The host Member State may only apply its national rules within the limits of Article 1(3). The European Commission engaged several infringement proceedings against Member States that did not transpose the Directive on 1 July 1996 and these Member States have since transposed it. However, millions of licences were issued between the date of coming into force of the Second Directive and the (often-delayed) dates of transposition. Those documents have to be recognised.

— Non-respect of Article 7(1)(a) in spite of transposition of the Second Directive

In this case, a specific procedure shall be applied, in accordance with provisions of the Second Directive and primary legislation.

Firstly, the host Member State shall request additional information from the issuing Member State, in accordance with Article 12(3) of the Directive. In comparison with Directive 80/1263/EEC, the Second Directive puts greater emphasis on mutual assistance between Member States (which derives from the new wording of Article 12(3) in comparison to Article 12(3) of Directive 80/1263/EEC). The Council of the European Communities and the European Commission clarified the scope of the above

provision by stating the following in the course of the adoption procedure of Directive 91/439/EEC:

'The Council and the Commission are of the opinion that the provisions of the Directive with respect to the full mutual recognition of licences require a closer cooperation between the competent authorities in the Member States. In this context, this means in particular to establish an actual exchange of information . . .'

Should the issuing Member State provide only insufficient or unsatisfactory information the host Member State may appeal to the ECJ thereafter, in accordance with Article 227 EC, or may request the Commission to appeal to the Court in accordance with Article 226 EC.

The host Member State is generally not competent to decide upon the non-recognition of licences which might have been issued in contradiction with Community law, otherwise the principle of mutual recognition would be rendered ineffective. Only after the failure of the above procedure and in very exceptional cases ⁽²⁵⁾, the refusal to recognise licences issued in another Member State is admissible.

This right of a Member State derives from an analogous application of rules established by an ECJ Judgment ⁽²⁶⁾ and has to be applied in a very restrictive way. This Judgment also insists on the obvious nature of the inaccuracy. Further reference may be made to the ECJ Judgment C-212/97 (Centros Ltd), which allows Member States to take the appropriate measures in order to prevent certain of its nationals, as well as citizens of other Member States who are residents on the territory, to refer to provisions of Community law (e.g.: the principle of mutual recognition) in a fraudulent or abusive manner ⁽²⁷⁾.

C.2. Non-respect of Article 7(1)(b)

C.2.1. Legal position

The host Member State is bound to recognise licences issued in another Member State according to Article 1(2), regardless of whether or not the licence was issued in conformity with Article 7(1)(b).

Upon application of Article 8(2) of the Second Directive, which has been primarily introduced to pursue severe traffic offences rather than infringements of Community law, the host Member State is competent to restrict the right to use a driving licence issued in another Member State on the territory of the host Member State in specific cases only. Article 8(2) has to be applied with due observation of the principle of territoriality of criminal and police laws.

⁽²⁵⁾ Namely in cases of *manifest and systematic inaccuracies*, for example: organised fraud.

⁽²⁶⁾ Case C-130/88 (Van de Bijl).

⁽²⁷⁾ See in particular paragraphs 24 (with further references to previous ECJ legislation) and 25 of the cited Judgment.

⁽²⁴⁾ For example in Articles 6(3) and 8(4).

In addition, the scope of application of Article 8(2) has been clarified by comments to the proposal for Directive 91/439/EEC:

'National provisions with respect to the suspension or withdrawal of the right to make use of the driving licence will have to be applied to drivers who do not satisfy the required conditions for issue or renewal of licences as regards the knowledge, skills and behaviour linked to driving a power-driven vehicle, as well as with respect to the medical condition of the driver. [. . .]'

Hence the application of Article 8(2) to infringements of the residence requirement is generally precluded, since its wording structurally aims at the imposition of fines for the non-respect of factual conditions (notably health conditions and knowledge requirements), rather than for non-respect of the formal residence requirement.

C.2.2. Practical situation

Example 14:

A licence holder establishes normal residence in another Member State in 1980 and starts to work there. In 1997 he/she registers at the local administrative body in his/her country of origin where some of his/her relatives are registered, who actually are residents there. Six months later, and still working in the host Member State, this licence holder obtains a driving licence in his/her country of origin during his summer holidays. The licence is not recognised by the host Member State's authorities, which claim that the licence holder has been a permanent resident in the host Member State and not in the issuing State.

C.2.3. Solution ⁽²⁸⁾

In general terms, Member States are not entitled to refuse recognition of licences issued in other Member States, unless they meet the procedural prescriptions described before for general cases. This means that contacts between the relevant Member States have first to be established and that the Commission or Member State have to act thereafter by appealing to the ECJ in accordance with Articles 226 EC and 227 EC.

Member States themselves cannot decide upon the respect of the residence requirement in another Member State. Thus Member States generally are not competent to refuse the recognition of licences which were issued in other Member States, or to revoke the document without complying with the described procedure.

Only the authorities of the Member State where the holder is normally resident are competent to issue or renew licences. If the above procedure proves that the residence requirement had not been fulfilled, the authorities of the host Member State are competent to revoke the document and return it to the issuing

⁽²⁸⁾ NB: The issue of licences in a Member State to holders who are not normally resident in that State, thus being in contradiction with Article 7(1)(b) of Directive 91/439/EEC, appears frequently in practice. Due to the large numbers of licence documents, which have to be issued in the Member States, national authorities will have to find a way to enforce this Article. Member States have to examine the fulfilment of the residence requirement for each applicant at the moment of issue of the documents.

State. In these cases the right to drive as well is forfeited, since the holder did not fulfil all the formal requirements to obtain a licence.

Given that a great many practical cases may be expected, the introduction of an alternative procedure shall be considered.

A formal written declaration on the honour could be demanded from each licence applicant (or at the occasion of renewal of the licence), stating that he is resident in the relevant country and that he is neither in possession of another driving licence, nor that another licence has been withdrawn. Non-compliance with the residence requirement would then be a fraudulent act of the individual and can be pursued directly against him in accordance with the provisions of national criminal law. In such a case the host Member State would revoke the licence (with effect on its territory only) after having applied the above procedure and would send the licence back to the issuing State, which then could revoke the licence with general effect because of a fraudulent act.

D. CALCULATION OF VALIDITY PERIODS

D.1. Legal position

According to Article 1(3) of Directive 91/439/EEC, the host Member State is entitled to apply its national rules on the period of validity of the licences issued in another Member State. The *date of change of residence* is decisive for calculating the period of validity which a host Member State intends to impose upon foreign licence holders when they take up their normal residence in that country.

D.2. Practical situations

Example 15:

A Dutch licence holder established normal residence in France in 2000. His/her Dutch B licence was valid for 10 years and expires in France in 2005. Despite the fact that in France B licences are generally issued for life without having to be exchanged or renewed, this licence holder will then have to renew his/her licence in order to drive with a valid document.

Example 16:

A French licence holder establishes normal residence in The Netherlands in 1995. His/her French B licence was valid for life. The Dutch authorities will apply Article 1(3) and impose their 10-year validity period in 2005.

In such cases the question of which Member State is competent for 'renewal' of these expired licences arises and is based upon which legal grounds such a renewal can be carried out.

D.3. Solution

It derives from Article 1(3) that a Member State may only apply its **own** national rules on the period of validity.

In the case where a licence holder establishes his normal residence in a host Member State where the period of validity is *longer* than in the issuing State (or where licences are issued for life), licences issued in the original Member State cease to be valid upon the original expiry date (in 2005 in example 15). This is based on the fact that the initial (in the example: Dutch) right to drive is limited by time and that the licence document expires regardless whether the holder changes his normal residence or not. It is not permissible to drive with an expired licence. Therefore national rules on the period of validity of the host Member State have to be applied upon expiry of the initial licence document. In example 15, French authorities will issue a French licence, which will be valid for life.

In the case where a licence holder establishes his normal residence in a host Member State where the period of validity is *shorter* than in the issuing State, licences cease to be valid after expiry of the validity period which applies in the host Member State, calculated from the moment of taking up residence (e.g. 2005 in example 16).

Any other method of calculating the remaining period of validity in these cases, notably calculating it from the moment of the *issue of the licence*, would mean factual non-recognition of licences ⁽²⁹⁾.

The different approach to examples 15 and 16 results from the fact that in one case the initial right to drive as such is limited in time and the licence document expires no matter where the licence holder is resident, whereas in the other case a further limitation of the period of validity is newly imposed.

In both cases *only* the host Member State is competent for the renewal of licences, a competence deriving directly from Article 1(3). If the licence *holder failed to exchange the licence* in the host Member State in time, *the host Member State* has to request information from the issuing State in analogous application of Article 8(5) of Directive 91/439/EEC. In accordance with Article 12(3) the requesting Member State is *bound to issue a new licence* upon receipt of information from the issuing State. This derives from the ECJ Judgment C-193/94, separating the right to drive from the licence document, which produces only evidence of the right. The right to drive exists even in case of expiry of the licence document. In this case, therefore, a new document shall be issued.

⁽²⁹⁾ The following example shall illustrate this point: a French driver holds a licence for 12 years. Then he establishes his/her normal residence in The Netherlands. He/she would be obliged to exchange the licence immediately, despite the principle of mutual recognition and despite the fact that the First Directive already guaranteed that licence holders are entitled to drive for a period of one year in another Member State.

E. RENEWAL OF LICENCES

E.1. Cases for renewal

Article 1(2) of Directive 91/439/EEC provides for the principle of mutual recognition of driving licences issued by Member States. This principle applies in the same way to those licences which have been issued before entry into force of the Directive.

Under certain circumstances a driving licence may expire in another Member State whilst the licence holder is resident in that Member State:

- the driving licence is valid for a limited period of time or until the holder reaches a certain age, according to the validity rules applying in the issuing State. In case one of those requirements for expiry is fulfilled while the holder is normally resident in another Member State, the State, which is legally competent for renewal of the licence has to be determined;
- the holder of a valid driving licence changes his normal residence to a Member State where a shorter period of validity applies. In this case the application of the national validity rules in the Member State of normal residence obliges the holder to renew his licence after expiry of the shorter period, and again the competent Member State for renewal has to be determined.

The differing periods of validity and dates of expiry of licences are result of a lack of harmonisation as regards renewal intervals: according to Article 1(3) of the Directive, a Member State may apply its national rules on the period of validity.

E.2. Interpretation of the relevant provisions of the Second Directive

Article 7(1) of the Second Directive lays down:

'Driving licences shall, moreover, be issued only to those applicants, who have their normal residence in the Member State issuing the licence.'

The range of this provision can only be assessed in combination with other provisions of the Directive linked to normal residence. Article 7(1) in combination with the definition of normal residence in Article 9 clarifies, that licence documents shall only be issued to those applicants who live in the issuing Member State for a period exceeding 185 days.

Furthermore, Article 8(1) determines:

'Where the holder of a national driving licence issued by a Member State has taken up normal residence in another Member State, he may request that his driving licence be exchanged for an equivalent licence.'

This Article determines the competence of the Member State of normal residence for the exchange, an interpretation that is also supported by combined reading of Articles 7(1) and 9 of the Second Directive. A voluntary exchange of licences thus may only be carried out by the Member State in which the holder normally resides. This assessment is underlined by the subsequent paragraph of the Directive, Article 8(2):

'[...] the Member States of normal residence may apply its national provisions [...] to the holder of a driving licence issued by another Member State and, if necessary, exchange the licence for that purpose.'

For the purposes of determination of the legal competence for licence exchange, Directive 91/439/EEC does not distinguish between licence holders who exchange their licences voluntarily and those who are obliged to exchange because of the application of national rules (of criminal and 'police' law) by the Member State of normal residence. Taking into consideration the structure of Article 8, Directive 91/439/EEC does not allow for a distinction to be made between holders who are obliged to exchange due to application of national criminal or 'police' laws and those who have to exchange due to application of administrative laws (i.e. provisions on period of validity). It is thus sufficiently clear that in case of a voluntary exchange of a licence the Member State of normal residence is exclusively competent for the exchange.

Another provision of the Directive, Article 8(5), establishes the exclusive legal competence of the Member State of normal residence in another context:

'A replacement of a driving licence, which has [...] been lost or stolen, may be obtained from the competent authorities of the State in which the holder has his normal residence.'

Article 8(5) thus establishes the competence of the Member State of normal residence in a case that has to be regarded as a 'renewal' of the document.

Furthermore, Articles 8(3) and 12(3) of the Directive establish a system of regular exchange of information between Member States, which aims at improving communication of host Member States competent for a variety of aspects of licences issued in other Member States, and the issuing Member States. This system would be rendered entirely ineffective if the competence of host Member States is reduced in the context of renewal of licences that expired or will expire.

E.3. Solution

Directive 91/439/EEC establishes exclusive legal competence of the Member State of normal residence in case of first issue of licences, in case of replacement of licences, in case of application of national provisions of criminal and police laws and in case of voluntary exchange of the licence. In addition, the Directive aims at establishing a mechanism of exchange of information between Member State of normal residence and issuing Member States.

Deriving from that, a competence of the issuing Member State in case of renewal of licences, which expire outside the issuing State, would be in contradiction with the system and the ends of the Directive, as well as with the logical structure of the provisions cited above.

Furthermore, an *argumentum e contrario* underlines the above conclusions: according to Article 1(3), Member States may apply their national rules on the period of validity of licences on all licence holders on their territory. If Member States were entitled to exchange licences of holders who are normally resident in another Member State, they would undermine the competence of the Member State of normal residence to apply its national rules. The provisions in Article 1(3) would be obsolete.

Therefore the Member State of normal residence has to be considered as exclusively competent for all aspects of renewal of licences, including licences which have expired and thus not been renewed when still being valid. With regard to this last aspect, expired licences that have originally been issued by another Member State should be renewed under the same conditions as expired licences issued by the Member State of normal residence. In case the host Member State issues licences which are valid for an unlimited period, renewal of licences issued by another Member State has to be unconditional.

E.4. Procedural aspect

In the context of renewal of licences it has to be underlined that the same administrative procedures for renewal have to be applied **indiscriminately** to all licence holders, regardless of whether the licence has been issued in the Member State carrying out the exchange or in another Member State. This refers to all aspects of the procedure, for example the imposition of administrative fees or the respect of time limits.

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(2002/C 77/04)

(Text with EEA relevance)

Date of adoption of the decision: 11.10.2001

Member State: United Kingdom

Aid No: N 180/01

Title: Measures part-financed by the FIFG in Northern Ireland

Objective: Structural measures in the fisheries and aquaculture sector

Legal basis:

— The Fisheries and Aquaculture Structures (Grants) Regulations (Northern Ireland) 2001

— Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

Budget: EUR 8,14 million

Aid intensity or amount: Subsidies at rates in accordance with those laid down by Regulation (EC) No 2792/1999 for the respective categories of operation

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Aid intensity or amount: In accordance with regional aid map 2000-2006

Duration: Until 31 December 2006

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 31.1.2002

Member State: France

Aid No: N 464/01

Title: Parafiscal charges to fund fisheries committees

Objective: Measures linked to the management of fishery resources and activities to benefit the industry (social measures, information, communication)

Legal basis: Projet de décret (prorogation du décret n° 96-1231 du 27.12.1996)

Budget: FRF 28 million (EUR 4,2 million) per year

Aid intensity or amount: Financing staff costs and other committee operating costs

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 27.2.2002

Member State: Ireland

Aid No: N 436/01

Title: Tourism and recreational angling grant scheme

Objective: To promote and develop the tourism angling product and improve the angling tourism infrastructure

Legal basis: 'National Development Plan' approved by the Irish Government on 2 November 1999 in combination with the Fisheries Act 1980

Budget: EUR 38,48 million

Date of adoption of the decision: 30.10.2001

Member State: Portugal (Setubal)

Aid No: N 613/01

Title: Ford Electronica Visteon

Legal basis: Regime de Apoio à realização de Estratégias Empresariais Integradas

Other information: Notification of the transformation of a subsidised loan into a cash grant in compliance with the conditions set out in the Commission decision of 27 February 1996 (1)

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

(1) See OJ C 102, 4.4.1996, p. 10.

Date of adoption of the decision: 11.12.2001

Member State: The Netherlands

Aid No: N 651/01

Title: Promoting sustainable heat

Objective: Promoting the use of sustainable heat

Legal basis: Artikel 360, vierde lid, Wet belastingen op milieu-grondslag

Budget: NLG 6 million (EUR 2,72 million)

Aid intensity or amount: 17,5 %

Duration: Five years

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 30.10.2001

Member State: Ireland

Aid No: N 6/A/01

Title: Public service obligations imposed on the Electricity Supply Board with respect to the generation of electricity out of peat

Objective: Promote the security of electricity supply in Ireland

Legal basis: Electricity Regulation Act 1999

Budget: Estimated total: EUR 568 million (approximately EUR 30 million per year)

Duration: 19 years: 2001-2019

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 4.2.2002

Member State: United Kingdom

Aid No: N 719/01

Title: Buy-out scheme for salmon fisheries

Objective: Voluntary withdrawal from salmon fishing with nets by giving up licences or fishing rights

Legal basis: Fisheries Act 1966

Budget: GBP 1,5 million

Aid intensity or amount: Fixed after expert evaluation

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 5.5.2000

Member State: The Netherlands

Aid No: N 729/99

Title: Aid statute province of Limburg, Paragraph 4.3

Objective: Encouraging employment and training

Legal basis: Besluit van de Provinciale Staten van de provincie Limburg van 9 juli 1999

Budget: EUR 395 242 per year

Aid intensity or amount: Employment aid: 9,26 % Training aid: 50 %

Duration: 2000-2006

Other information: Annual report. Extension of aid scheme N 185/98 (fund set up by the Province of Limburg to remedy employment bottlenecks), authorised by the Commission in January 1999

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 4.2.2002

Member State: United Kingdom

Aid No: N 760/01

Title: Plan for the withdrawal of fishing vessels from the fleet

Objective: To withdraw fishing vessels over 10 years old and more than 10 metres in length from the fleet (measure part-financed by the FIFG)

Legal basis:

— a statutory instrument

— Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

Budget: GBP 6 million (EUR 9,6 million)

Aid intensity or amount: The applications selected will be those with the lowest 'premium wanted by applicant/tonnage of vessel'

Duration: 2001-2002

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 11.12.2001

Member State: Germany

Aid No: NN 137/01

Title: Reserves for nuclear power station waste management and decommissioning

Objective: Accumulation of financial reserves for the financing of future statutory obligations

Legal basis: Handelsgesetzbuch, Einkommensteuergesetz, Atomgesetz

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

Date of adoption of the decision: 30.10.2001

Member State: Italy

Aid No: NN 92/01

Title: Aid for the permanent withdrawal of fishing vessels

Objective: To withdraw fishing vessels over ten years old from the fleet (measure part-financed by the FIFG)

Legal basis:

— Decree of 22 December 2000 issued by the Ministry of Agricultural Policy

— Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

Budget: EUR 232,2 million (49,99 % Italy, 50,01 % FIFG)

Aid intensity or amount: Within the limits laid down in Article 7 and Annex IV to Regulation (EC) No 2792/1999

Duration: 2000-2006

Other information: Annual report

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at

http://europa.eu.int/comm/secretariat_general/sgb/state_aids

STATE AID — UNITED KINGDOM**Aid C 4/2002 (ex N 594/01) — Vauxhall/Ellesmere Port****Invitation to submit comments pursuant to Article 88(2) of the EC Treaty**

(2002/C 77/05)

(Text with EEA relevance)

By means of the letter dated 23 January 2002, reproduced in the authentic language on the pages following this summary, the Commission notified the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid.

Interested parties may submit their comments on the aid in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42.

These comments will be communicated to the United Kingdom. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

SUMMARY**Procedure**

The aid proposal was notified on 23 August 2001. The Commission asked additional questions on 23 October 2001, to which the United Kingdom replied by letter dated 16 November 2001.

Description

The recipient of the aid would be Vauxhall Motors (UK) Ltd. The aid in question is regional investment aid leading to the retooling from a single model production plant to a two-model plant with the capacity to switch production between two models. After the investment, the plant in Ellesmere Port will be able to produce a mix of Astras and new Vectra models. The Ellesmere Port plant is located in a regionally assisted area in the sense of Article 87(3)(c) EC with a regional ceiling of 15 % net grant equivalent.

The total amount of eligible investments amounts to GBP 156,198 million (net present value of GBP 153,814 million). The planned aid amounts to GBP 10 million (net present value: GBP 9,847 million). The notified aid intensity is 6,4 %. According to the United Kingdom, General Motors Europe considered two alternative sites for the project, Ellesmere Port and Antwerp.

Assessment

The aid is assessed under the Community framework for State aid to the motor vehicle industry. According to this framework, the Commission shall ensure that the aid granted is both necessary for the realisation of the project and proportional to the gravity of the problems.

In order to demonstrate the necessity for regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project. The technical nature of the investment and the feasibility to carry out the project in Antwerp needs to be clarified.

As regards proportionality, the Commission needs to ensure that the planned aid is in proportion to the regional problems it is intended to resolve. For that, a cost-benefit analysis (hereinafter referred to as CBA) method is used. The CBA notified by the United Kingdom results in a handicap intensity of the project of 11,8 % for the location in Ellesmere Port. However, the Commission has doubts concerning the CBA. These relate in particular to the assumed higher training costs in Antwerp, the assumed inward transport costs, the assumed procurement pattern and the repercussion of carrying out the project in Antwerp on the Vauxhall brand image in the United Kingdom with possible repercussions on market share and sales. At this stage, the Commission cannot exclude that the proposed aid is overcompensating the real regional handicap of the project.

Conclusion

The Commission therefore decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

TEXT OF THE LETTER

The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

Procedure

- (1) The United Kingdom authorities notified the above-mentioned aid proposal to the Commission pursuant to Article 88(3) of the EC Treaty by letter dated 23 August 2001 (registered on 28 August 2001). The Commission asked additional questions on 23 October 2001, to which the United Kingdom replied by letter dated 16 November 2001 (registered on 21 November 2001).

Detailed description of the project

- (2) The recipient of the aid would be Vauxhall Motors (UK) Ltd, which is a wholly owned subsidiary of General Motors Corporation. The aid in question is regional investment aid leading to the retooling from a single model production facility to a two-model plant with the capacity to switch production between two models as demand varies. The plant in question is situated in Ellesmere Port and currently produces the Astra model. After the investment, it will be able to produce a mix of Astras and of the new replacement Vectra passenger car models. The replacement Vectra is to be built in Ellesmere Port from April 2002 onwards. According to the United Kingdom, the project will safeguard 771 jobs at Vauxhall Motors and create approximately 530 jobs in the supply chain.
- (3) The replacement Vectra will be designed to compete in the upper-medium segment of the European passenger car market. The main geographical markets for both the current Astra model and the replacement Vectra model are Germany, the United Kingdom, France, Italy, Holland and Spain, although other smaller western and central European passenger car markets are also supplied.
- (4) According to the notification, the total amount of eligible investments amounts to GBP 156,198 million. The net present value of the eligible investments is GBP 153,814 million. These investments are divided as follows (in GBP million):

Building/land improvements	8,352
Machinery and equipment	131,343
Tools and dies	14,119
Total	153,814

- (5) The aid of GBP 10 million (net present value: GBP 9,847 million) would be provided as regional selective assistance, which is an approved scheme based on the Industrial Development Act from 1982. The notified aid intensity is 6,4 %.
- (6) The Ellesmere Port plant is located in the Westminster ward of Ellesmere Port and Neston in Cheshire. This region was recognised by the Commission as a regionally assisted area in the sense of Article 87(3)(c) EC, under the regional aid map for the period 2000-2006, with a regional ceiling of 15 %.
- (7) According to the United Kingdom, General Motors Europe considered two alternative sites for the project, Ellesmere Port and Antwerp. The final location decision in favour of Ellesmere Port was part of a major restructuring within General Motors Europe with the objective of generating savings sufficient to return GM Europe to profitability. As part of this plan, passenger car production in Luton would cease at the end of the life of the current Vectra model at the end of the first quarter of 2002. From this point forward, the remaining Luton facilities would concentrate on commercial and off-road vehicles, while passenger car production would be concentrated at Ellesmere Port. Ellesmere Port will continue to produce the Astra, incorporate the next-generation Vectra and turn the facility into a two-model flex plant.
- (8) The United Kingdom authorities have provided together with the notification a cost-benefit analysis (hereinafter referred to as CBA) comparing the costs and benefits in the two locations. The CBA indicates a net cost handicap of GBP 18,116 million for the location in Ellesmere Port in comparison with the location in Antwerp. The handicap intensity of the project would be 11,8 %.

Assessment of the aid

- (9) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case-law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.
- (10) The Commission notes that the notified aid is granted through State resources to an individual company favouring it by reducing the costs it would normally have to bear if it wanted to carry out the notified investment project. Moreover, the recipient of the aid, Vauxhall Motors, is a company manufacturing and selling cars, which is an economic activity involving trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

- (11) Vauxhall Motors is active in the motor vehicle industry. Consequently, the aid granted to it shall be assessed according to the Community framework for State aid to the motor vehicle industry⁽¹⁾.
- (12) According to the Community framework for State aid to the motor vehicle industry (hereinafter referred to as the 'car framework'), the Commission shall ensure that the aid granted is both proportional to the gravity of the problems it intended to solve and necessary for the realisation of the project. Both tests, proportionality and necessity, must be satisfied if the Commission is to authorise State aid in the motor vehicle industry.
- (13) According to point 3(2)(a) of the car framework, in order to demonstrate the necessity for regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project. If there were no other industrial site, whether new or in existence, capable of receiving the investment in question within the group, the undertaking would be compelled to carry out its project in the sole plant available, even in the absence of aid.
- (14) The existence of a viable alternative defines the mobility of the project; mobility may if necessary be demonstrated by investors on the basis of studies they have carried out in order to identify the final location. That alternative site need not necessarily always be located in the Community. However, the Commission verifies the likelihood of the alternative, particularly when the relevant markets are considered. Thus, to authorise regional aid, the Commission studies the geographical mobility of the notified project, after checking that the region in question is eligible for aid under Community law. No regional aid may be authorised for a project which is not geographically mobile.
- (15) The Commission notes that according to the new regional map in the United Kingdom, the project would be situated in an assisted area pursuant to Article 87(3)(c) of the EC Treaty with a maximum regional ceiling of 15 % nge.
- (16) The UK authorities have asserted that a real economically realistic alternative location to Ellesmere Port would be to carry out the investment in the car plant in Antwerp, Belgium, which currently produces the Astra model and, until 1998, produced the Vectra model.
- (17) The Commission notes that when assessing the mobility of a project, it tries to take into account all the relevant factors that have or might have influenced a decision to invest in a certain location. Among such factors are, inter alia the location study, the location of the plant in respect of the main markets and the business rationale of an investment decision. The aim is to assess the situation as a whole.
- (18) The United Kingdom stated that the best viable alternative location to Ellesmere Port would be to carry out the investment in Antwerp, Belgium. The Commission notes that, in considering the two alternative sites for the project, General Motors Europe carried out a study, comparing the incremental costs of producing the new Vectra in both locations. The study, as well as additional documents from the decision-making procedure of General Motors Europe, were provided to the Commission. As regards the timing of the decision, Vauxhall Motors approached the United Kingdom authorities in December 2000 for support to help offset the cost advantages of Antwerp. A regional selective assistance offer of GBP 10 million was made to Vauxhall Motors in January 2001, conditional on EC approval. On 1 February 2001, the European Strategy Board of General Motors Europe decided in favour of the Ellesmere Port location. As regards the technical feasibility to carry out the project in the alternative location, the Commission needs to verify whether Antwerp was a real alternative.
- (19) Regional aid intended for modernisation and rationalisation, which is generally not mobile, is not authorised in the motor vehicle sector. However, a transformation, involving a radical change in production structures on the existing site could be eligible for regional aid. The Commission has to verify that the planned project does not include any elements of modernisation, which is completely excluded from all aid.
- (20) According to point 3(2)(c) of the car framework, when considering the mobile aspects of a project, the Commission needs to ensure that the planned aid is in proportion to the regional problems it is intended to resolve. For that, a cost-benefit analysis method (hereinafter referred to as CBA) is used.
- (21) A CBA compares, with regard to the mobile elements, the costs which an investor would bear in order to carry out the project in the region in question with those it would bear for an identical project in a different location, which makes it possible to determine the specific handicaps of the assisted region concerned. The Commission authorises regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.
- (22) The Commission notes that the United Kingdom authorities have provided with their notification a CBA comparing the two locations, Ellesmere Port and Antwerp. In accordance with point 3(2)(c) of the car framework, operating handicaps are assessed over three years in the CBA since the project in question is an expansion project, not a greenfield site. The time period covered by the submitted CBA is April 2002 to March 2005, that is three years from the beginning of production in compliance with point 3(3) of Annex I to the car framework. The CBA, based on exchange rates at the time of the location decision, indicates a net cost handicap of GBP 18,116 million for the location in Ellesmere Port in comparison with the location in Antwerp.
- (23) The Commission has assessed the information contained in the CBA provided and notes that further explanations are necessary before it can reach a final decision. This relates to elements used in the CBA, especially with regard to the following elements.

⁽¹⁾ OJ C 279, 15.9.1997, p. 1.

- (24) The Commission has some doubts on the assumed, necessary training costs in the CBA, which assumes that training cost in Ellesmere Port are significantly higher than in Antwerp. The United Kingdom justifies this assumption by the fact that Antwerp already has been a flexible plant in the recent past and was therefore able to profit from the existing experience and skills base. Furthermore, the Antwerp plant had already produced the current Vectra model until 1998 and has installed a higher level of standardised, modern production techniques. Although the Commission considers it plausible that the necessary training costs are higher in Ellesmere Port than in Antwerp, there are doubts whether the extent of the handicap in the CBA is justified. The CBA assumes that necessary training costs in Ellesmere Port are around four times higher than in Antwerp.
- (25) As regards inward transport costs, which represents the biggest operating cost handicap of Ellesmere Port, the CBA is based on the assumptions that the inward transport cost per vehicle is GBP 203 (EUR 324) in Ellesmere Port and DEM 220 (EUR 112) in Antwerp and that the procurement pattern is the same in both locations. In view of the assumed significant differences in cross-channel transport costs and the fact that Ellesmere Port has already a well developed supplier park it needs to be clarified whether these assumptions on inward transport costs are plausible.
- (26) Even with the grant, Antwerp was still a lower cost location compared to Ellesmere Port. However, according to the United Kingdom, the grant closed the gap to such an extent that General Motors was able to take into account two soft factors in favour of Ellesmere Port when considering the location, namely (a) access to the UK market, and (b) that Ellesmere Port would be a UK project, which would in part mitigate an earlier Luton car plant closure decision. The United Kingdom explained that in view of the job losses in Luton, an unsuccessful bid for the new Vectra in Ellesmere Port would have led to a risk of industrial action in Luton and possibly Ellesmere Port with a resulting impact on public perception in the United Kingdom of Vauxhall as a reliable, quality brand as well as an impact on market share and sales. However, the United Kingdom considers it impossible to accurately quantify the effect of these two

factors. The Commission considers that it might be necessary to incorporate these effects into the CBA and asks the United Kingdom to quantify an estimate of the possible costs.

- (27) Consequently, the Commission has doubts whether all the relevant costs and benefits relating to the two alternative production locations are accurately reflected in the CBA provided by the United Kingdom authorities.
- (28) Finally, the Commission in its analysis considers the question of a 'top-up', which is an increase in the allowable aid intensity intended as a further incentive to the investor to invest in the region in question. Such top-ups are authorised on condition that the investment does not increase the capacity problems facing the motor vehicle industry. Aid proposals in support of investments that potentially aggravate the overcapacity problem of the industry can be modulated by reducing the 'regional handicap ratio' by up to two points. In this respect the Commission notes that, according to the United Kingdom authorities, the production capacity of General Motors Europe amounts to 2 167 932 before the investment and to 2 058 021 after the investment project (around 5 % capacity reduction). Consequently, taking into account the Article 87(3)(c) area status of the region and the capacity reduction of the group, the project would have a 'negligible' impact on competitors.

Decision

- (29) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (30) The Commission wishes to remind the United Kingdom that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.'

**Summary of Community Decisions on marketing authorisations in respect of medicinal products
from 15 February to 15 March 2002**

(Published pursuant to Article 12 or Article 34 of Council Regulation (EEC) No 2309/93⁽¹⁾)

(2002/C 77/06)

— Issuing of a marketing authorisation (Article 12 of Regulation (EEC) No 2309/93): Accepted

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
28.2.2002	Protopic	Fujisawa GmbH Levelingstraße 12 D-81673 München	EU/1/02/201/001-004	5.3.2002
28.2.2002	Protopy	Fujisawa GmbH Levelingstraße 12 D-81673 München	EU/1/02/202/001-004	5.3.2002
5.3.2002	Trisenox	Cell Therapeutics (UK) Limited 1 Ropemaker Street London EC2Y 9HT United Kingdom	EU/1/02/204/001	7.3.2002
8.3.2002	Lumigan	Allergan Pharmaceuticals (Ireland) Ltd Castlebar Road Westport County Mayo Ireland	EU/1/02/205/001	12.3.2002
8.3.2002	Kineret	Amgen Europe BV Minervum 7061 4817 ZK Breda Nederland	EU/1/02/203/001-004	12.3.2002

— Modification of a marketing authorisation (Article 12 of Regulation (EEC) No 2309/93): Accepted

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
5.2.2002	Cea-Scan	Immunomedics Europe Haarlemmerstraat 30 2181 HC Hillegom Nederland	EU/1/96/023/001	19.2.2002
19.2.2002	Renagel	Genzyme Europe BV Gooimeer 10 1411 DD Naarden Nederland	EU/1/99/123/001-011	22.2.2002
19.2.2002	Plavix	Sanofi Pharma Bristol-Myers Squibb SNC 174, avenue de France F-75013 Paris	EU/1/98/069/001a, 001b, 002a, 002b, 003a, 003b	21.2.2002
19.2.2002	Iscover	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/98/070/001a, 001b, 002a, 002b, 003a, 003b	22.2.2002

⁽¹⁾ OJ L 214, 24.8.1993, p. 1.

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
19.2.2002	Thyrogen	Genzyme BV Gooimeer 10 1411 DD Naarden Nederland	EU/1/99/122/001-002	22.2.2002
19.2.2002	SonoVue	Bracco International BV Strawinskylaan 3051 1077 ZX Amsterdam Nederland	EU/1/01/177/001-002	21.2.2002
19.2.2002	Caelyx	Schering Plough Europe Rue de Stalle/Stallestraat 73 B-1180 Brussels	EU/1/96/011/001-004	21.2.2002
19.2.2002	Teslascan	Amersham Health AS Nycoveien 1-2 PO Box 4220 Nydalen N-0401 Oslo	EU/1/97/040/001-002	25.2.2002
19.2.2002	Gonal F	Serono Europe Limited 56 Marsh Wall London E14 9TP United Kingdom	EU/1/95/001/017-020	21.2.2002
19.2.2002	Refludan	Schering AG D-13342 Berlin	EU/1/97/035/001-004	25.2.2002
19.2.2002	Vistide	Pharmacia Enterprises SA 6, Circuit de la Foire Internationale L-1347 Luxembourg	EU/1/97/037/001	22.2.2002
19.2.2002	Thyrogen	Genzyme Europe BV Gooimeer 10 1411 DD Naarden Nederland	EU/1/99/122/001-002	22.2.2002
19.2.2002	Prevenar	Wyeth-Lederle Vaccines SA Rue du Bosquet 15 B-1348 Louvain-La-Neuve	EU/1/00/167/001-005	12.3.2002
19.2.2002	Iscover	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/98/070/001a, 001b, 002a, 002b, 003a, 003b	22.2.2002
19.2.2002	Actos	Takeda Europe R & D Centre Ltd Savanah House 11/12 Charles II Street London SW1Y 4QU United Kingdom	EU/1/00/150/001-008	21.2.2002
19.2.2002	Mabthera	Roche Registration Limited 40 Broadwater Road Welwyn Garden City Hertfordshire AL7 3AY United Kingdom	EU/1/98/067/001-002	21.2.2002
19.2.2002	Karvezide	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/98/085/009-010	22.2.2002

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
19.2.2002	Arava	Aventis Pharma Deutschland GmbH D-65926 Frankfurt am Main	EU/1/99/118/005-008	25.2.2002
19.2.2002	Karvea	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/97/049/013-014	22.2.2002
19.2.2002	Arava	Aventis Pharma Deutschland GmbH D-65926 Frankfurt am Main	EU/1/99/118/001-010	25.2.2002
19.2.2002	Foscan	QuantaNova Limited Castle Business Park Stirling FK9 4TF United Kingdom	EU/1/01/197/001-002	21.2.2002
19.2.2002	Aprovel	Sanofi Pharma Bristol-Myers Squibb SNC 174, avenue de France F-75013 Paris	EU/1/97/046/014-015	25.2.2002
19.2.2002	Prevenar	Wyeth-Lederle Vaccines SA Rue du Bosquet 15 B-1348 Louvain-La-Neuve	EU/1/00/167/001-005	25.2.2002
19.2.2002	Neospect	Amersham Health AS Nycoveien 1-2 PO Box 4220 Nydalen N-0401 Oslo	EU/1/00/154/001-002	25.2.2002
19.2.2002	Coaprovel	Sanofi Pharma Bristol-Myers Squibb SNC 174, avenue de France F-75013 Paris	EU/1/98/086/009-010	25.2.2002
28.2.2002	Refacto	Genetics Institute of Europe BV Fraunhoferstraße 15 D-82152 Planegg/Martinsried	EU/1/99/103/001-003	5.3.2002
28.2.2002	Replagal	TKT Europe-5S AB Rinkebyvägen 11B S-182 36 Danderyd	EU/1/01/189/001	5.3.2002
28.2.2002	Vaniqa	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/01/173/001-003	5.3.2002
28.2.2002	Prevenar	Wyeth-Lederle Vaccines SA Rue du Bosquet 15 B-1348 Louvain-La-Neuve	EU/1/00/167/001-005	5.3.2002
5.3.2002	Viagra	Pfizer Limited Ramsgate Road Sandwich Kent CT13 9NJ United Kingdom	EU/1/98/077/001-012	7.3.2002

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
5.3.2002	Patrex	Pfizer Limited Ramsgate Road Sandwich Kent CT13 9NJ United Kingdom	EU/1/98/078/001-012	7.3.2002
5.3.2002	Prometax	Novartis Europharm Limited Wimblehurst Road Horsham West Sussex RH12 5AB United Kingdom	EU/1/98/092/001-013	7.3.2002
5.3.2002	Synagis	Abbott Laboratories Ltd Queenborough Kent ME11 5EL United-Kingdom	EU/1/99/117/001-002	7.3.2002
5.3.2002	Rilutek	Aventis Pharma SA 20, avenue Raymond-Aron F-92165 Antony Cedex	EU/1/96/010/001	7.3.2002
5.3.2002	Infergen	Yamanouchi Europe BV Elisabethhof 19 2353 EW Leiderdorp Nederland	EU/1/98/087/001-003	7.3.2002
7.3.2002	Fabrazyme	Genzyme Europe BV Gooimeer 10 1411 DD Naarden Nederland	EU/1/01/188/001-003	11.3.2002
8.3.2002	Avonex	Biogen France SA 55, avenue des Champs-Pierreux F-92012 Nanterre Cedex	EU/1/97/033/001-002	12.3.2002
8.3.2002	Aprovel	Sanofi Pharma Bristol-Myers Squibb SNC 174, avenue de France F-75013 Paris	EU/1/97/046/001-015	12.3.2002
8.3.2002	Karvea	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/97/049/001-015	12.3.2002
8.3.2002	Karvezide	Bristol-Myers Squibb Pharma EEIG 141-149 Staines Road Hounslow TW3 3JA United Kingdom	EU/1/98/085/001-010	12.3.2002
8.3.2002	Puregon	Organon NV Postbus 20 5340 BH Oss Nederland	EU/1/96/008/001-039	12.3.2002
8.3.2002	Coaprovel	Sanofi Pharma Bristol-Myers Squibb SNC 174, avenue de France F-75013 Paris	EU/1/98/086/001-010	12.3.2002

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
13.3.2002	Exelon	Novartis Europharm Limited Wimblehurst Road Horsham West Sussex RH12 5AB United Kingdom	EU/1/98/066/001-013	15.3.2002
14.3.2002	Travatan	Alcon Laboratories (UK) Ltd Boundary Way Hemel Hempstead Herts HP2 7UK United Kingdom	EU/1/01/199/001-002	18.3.2002

— Issuing of a marketing authorisation (Article 34 of Regulation (EEC) No 2309/93): Accepted

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
8.3.2002	Eurifel RCP FelV	Merial 17, rue Bourgelat F-69002 Lyon	EU/2/02/031/001-002	12.3.2002

— Modification of a marketing authorisation (Article 34 of Regulation (EEC) No 2309/93): Accepted

Date of the decision	Name of the medicinal product	Holder of the marketing authorisation	Number of the entry in the Community Register	Date of notification
13.3.2002	Metacam	Boehringer Ingelheim Vetmedica GmbH D-55216 Ingelheim am Rhein	EU/2/97/004/003-005	15.3.2002

Anyone wishing to consult the public assessment report on the medicinal products in question and the decisions relating thereto is invited to contact:

The European Agency for the Evaluation of Medicinal Products
7 Westferry Circus
Canary Wharf
London E14 4HB
United Kingdom.

Overall summary report on the results of inspections carried out at Community level by the Member States pursuant to Article 22 of Council Directive 95/53/EC⁽¹⁾

(2002/C 77/07)

1. LEGAL BASIS

Article 22 of Council Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition⁽²⁾, stipulates that the Member States shall draw up annual programmes setting out the national measures to be taken to achieve the aim of the Directive. These programmes must take into account the specific situation of each Member State and specify the type and frequency of the inspections, which must be performed regularly.

Before 1 April of each year, the Member States shall transmit to the Commission all relevant information concerning the implementation of the abovementioned programmes during the previous year, specifying:

- the criteria used in drawing up the programmes,
- the number and type of inspections carried out,
- the results of the inspections, in particular the number and type of infringements found,
- action taken where infringements have been found.

Before 1 October each year, the Commission shall submit an overall summary report on the results of inspections carried out at Community level, together with a proposal for a recommendation concerning a coordinated inspection programme for the following year.

2. RATIONALE

The purpose of Article 22 of Directive 95/53/EC is to provide each year an overall picture of compliance with Community legislation on animal nutrition in the Member States.

This should enable the proper functioning of the internal market by providing elements to assess the uniform application of Community legislation. Furthermore the information provided helps to identify special situations or critical fields of common interest which may require a coordinated approach at Community level.

The corner-stone of the internal market is the principle that compliance is ensured at the place of origin and therefore systematic controls at place of destination are not needed. Controls at destination are indeed more difficult to perform

⁽¹⁾ See Commission Recommendation 2002/214/EC (OJ L 70, 13.3.2002, p. 20).

⁽²⁾ OJ L 265, 8.11.1995, p. 17.

and more expensive. The exchange of information on the control activities carried out is therefore a keystone for the construction of the European Union.

In this context, the Commission hereby summarises the control activities carried out by the Member States in 2000 according to the information provided so far.

3. SUMMARY OF CONTROL ACTIVITIES CARRIED OUT BY THE MEMBER STATES IN 2000

All Member States provided information in writing on inspection programmes carried out in 2000 to ensure compliance with Community legislation in animal nutrition.

However a number of them presented the information after the deadline of April 2001 and a few of them presented only preliminary information. The situation has very much improved in comparison to the 1999 exercise, which was the first year of implementation of Article 22(2) of the Directive, but it is not yet satisfactory.

1. Most Member States illustrated clearly the criteria used in drawing up the inspection programmes.

Most Member States included in their reports some information on the control system and planned their activities on the basis of figures concerning production, trade and consumption as well as the results of previous years' controls.

In some Member States the exercise of planning a detailed nationwide annual control programme cannot be effectively outlined due to regional differences.

In general it is possible to conclude that, when available, a chapter providing basic statistics helps in understanding of the action planned.

2. Concerning the number and type of inspections carried out, information was provided. Most of the Member States operate a dual system of controls:

- routine operational controls or audits aimed in particular at establishments where processing procedures are examined at intervals chosen by the authorities in accordance with criteria not always outlined but often including the volume of production,

— special controls targeted at specific issues identified at national or Community level as deserving particular attention such as *Salmonella* sp. contamination, the use of feed additives or heavy metals.

Both controls usually involve sampling and testing.

3. Concerning the result of the inspections, the number and type of infringements found are provided; however, their interpretation is sometimes cumbersome because it is difficult to report on the relative importance of an infringement.
4. Most Member States set out what action was taken where infringements were found. However, details other than number of administrative or criminal sanctions, for instance concerning the enforcement of corrective measures at field level, are seldom provided.

4. CONCLUSIONS

The format of the reports provided is not homogeneous and from the activities carried out it is not possible to draw clear

conclusions on areas requiring a coordinated action at Community level. It is therefore necessary to develop an appropriate reporting format for adoption under the procedure laid down in Article 23 of Directive 95/53/EC.

In the meantime during discussions in the Standing Committee, it emerged that it is worthwhile recommending targeted inspections for 2002 at Community level on the following issues:

- dioxins in trace elements and mineral feedingstuffs,
- heavy metals in trace elements and mineral feedingstuffs,
- mycotoxins in feedingstuffs,
- restrictions on the use of processed animal proteins to protect against transmissible spongiform encephalopathies.

Extension of electronic licensing for imports of textiles and clothing imports

(2002/C 77/08)

Paragraph 3 of Article 11 of Annex III to Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries, introduced by Regulation (EC) No 391/2001 of 26 February 2001 ⁽¹⁾, states that 'where a supplier country has entered into administrative arrangements with the Community concerning electronic licensing the relevant information may be transmitted by electronic means to replace the grant of export licences in paper form'.

Electronic licensing has already been introduced in a number of countries as from 1 November 2001 ⁽²⁾ 1 January 2002 ⁽³⁾ and 1 February 2002 ⁽⁴⁾. Since then, the Commission has entered into the necessary arrangements with the following: Cambodia, Thailand, Malaysia and Ukraine. For these, from 1 April 2002, the presentation of the original of the corresponding export licence will no longer be required for the issuance of import licences by the licensing authorities of Member States, and these can therefore be issued upon receipt by the competent authorities of Member States of the data transmitted in electronic form by the supplier countries and confirmation from the Commission that the amounts requested are available and/or of the validity of the electronic license. The competent authorities of the supplier third countries concerned may, however, issue an export licence or any similar documents, including if they consider it appropriate formal export licenses, for the benefit of operators in order to facilitate the transaction.

For any questions, economic operators are invited to address the licensing authorities of Member States, which is published in OJ C 78, 18.3.2000, p. 2.

⁽¹⁾ OJ L 58, 28.2.2001, p. 3.

⁽²⁾ OJ C 308, 1.11.2001, p. 16, (Sri Lanka, Bosnia and Herzegovina, Croatia and Vietnam).

⁽³⁾ OJ C 374, 29.12.2001, p. 58 (Russia, Nepal, Taiwan, Macao and Philippines).

⁽⁴⁾ OJ C 29, 1.2.2002, p. 5 (India, South Korea and Laos).

Notice of initiation of a safeguard investigation concerning imports of certain steel products

(2002/C 77/09)

The Commission has been informed by certain Member States ('the Member States concerned'), pursuant to Article 2 of Council Regulations (EC) No 3285/94⁽¹⁾ and (EC) No 519/94⁽²⁾ respectively, that trends in imports of certain steel products appear to call for safeguard measures.

1. Information provided to the Commission

The Member States concerned have submitted the evidence available to them in relation to the indicators specified in Article 10 of Regulation (EC) No 3285/94 and Article 8 of Regulation (EC) No 519/94, and asked the Commission to open a safeguard investigation and to impose provisional measures.

2. Product

The products in respect of which the Commission has been informed that trends in imports appear to call for safeguard measures are certain steel products ('the products concerned'). The products concerned, together with the CN codes within which they are currently classified, are listed in Annex 1 to this notice.

3. Increase in imports

The information currently available to the Commission indicates that total imports of the products concerned increased from 13 million tonnes in 1999 to 15,8 million tonnes in 2000, and to 16,6 million tonnes in 2001, and indicates that there have been recent sharp increases in imports of each of the products concerned either in absolute terms, or, relative to Community production or consumption.

4. Serious injury or threat of serious injury

The information currently available to the Commission includes data in relation to certain economic indicators specified in Article 10 of Regulation (EC) No 3285/94 and in Article 8 of Regulation (EC) No 519/94 for the main Community producers of each product which is like or directly competing with one of the products concerned. In general, the data shows a situation of stagnant or declining consumption in the Community market in the last 12 months; together with growing imports at low prices, and reduced sales volumes, prices and profitability for Community producers.

5. Procedure

Following the provisions of Article 6 of Regulation (EC) No 3285/94 and Article 5 of Regulation (EC) No 519/94; the Commission has consulted the Advisory Committee established

under Article 4 of each of those regulations. Following that consultation, it is apparent to the Commission that there is sufficient evidence to justify the initiation of an investigation in relation to the products concerned and the Commission has decided to open an investigation, in cooperation with the Member States, to determine whether the necessary conditions exist for the adoption of definitive safeguard measures in relation to those products.

6. Procedure for investigation

The investigation will determine whether, in relation to each of the products concerned, as a result of unforeseen developments, the product is being imported into the Community in such greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to the Community producers of like or directly competing products.

7. Written submissions, questionnaire replies and correspondence

All interested parties are entitled to make known their views in writing and submit information. Any interested party wishing to do so must submit their views and information within 21 days of the date of publication of this notice in the *Official Journal of the European Communities* (unless otherwise specified), failing which their views and information may not be taken into account during the investigation.

In addition, the Commission will send questionnaires to the known producers of the like or directly competing products and to any known associations of producers, in the Community. The completed questionnaires must reach the Commission within 21 days from the date on which they are sent.

All relevant information is to be communicated to the Commission. All submissions and requests made by interested parties must be made in writing (not in electronic format unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax, and/or telex numbers of the interested party.

The Commission address for correspondence is:

European Commission
Directorate-General for Trade
Directorate B
TERV 0/13
B-1049 Brussels
Fax (32-2) 295 65 05
Telex: COMEU B 21877.

⁽¹⁾ OJ L 349, 31.12.1994, p. 53.

⁽²⁾ OJ L 67, 10.3.1994, p. 89.

8. Hearings

The Commission may hear interested parties. Any interested party may apply to be heard orally by the Commission. The Commission will grant an oral hearing to any interested party who applies in writing within 21 days of the date of publication of this Regulation in the *Official Journal of the European Communities*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

9. Inspection of information

Interested parties who have made known their views or submitted information or requested to be heard in accordance with Article 6 of Regulation (EC) No 3285/94 and Article 5 of Regulation (EC) No 519/94, and representatives of the exporting countries, may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the authorities of the Community or its Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 9 of Regulation (EC) No 3285/94 or Article 7 of Regulation (EC) No 519/94, and that it is used by the Commission in the investigation.

Interested parties which have come forward may communicate their views on the information in question to the Commission; and those views may be taken into consideration where they are supported by sufficient evidence.

10. Non-cooperation

When information is not supplied within the time limits set by Regulation (EC) No 3285/94 or Regulation (EC) No 519/94, or

the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.

11. Schedule of the investigation

In accordance with Article 7 of Regulation (EC) No 3285/94 and Article 6 of Regulation (EC) No 519/94, within nine months of the date of the publication of this notice in the *Official Journal of the European Communities*, the Commission shall determine whether or not safeguard measures are necessary.

If the Commission determines that measures are necessary, the Commission shall take the necessary decisions in accordance with Title V of Regulations (EC) No 3285/94 and (EC) No 519/94 respectively, no later than nine months from the date of initiation, unless exceptional circumstances exist, in which case that time limit may be extended by a maximum period of two months. If the time limit is extended, the Commission will publish a Notice in the *Official Journal of the European Communities* setting forth the duration of the extension and a summary of the reasons.

If the Commission considers that safeguard measures are not necessary, it will, after consulting the Advisory Committee, terminate the investigation. The Decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, will be published in the *Official Journal of the European Communities*.

ANNEX I

PRODUCTS CONCERNED

Product No	Product group	CN codes
1	Non-alloy hot-rolled coils	7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 10, 7208 37 90, 7208 38 10, 7208 38 90, 7208 39 10, 7208 39 90
2	Non-alloy hot-rolled sheets and plates	7208 40 10, 7208 40 90, 7208 52 99, 7208 53 90, 7208 54 10, 7208 54 90
3	Non-alloy hot-rolled narrow strip	7211 14 10, 7211 14 90, 7211 19 20, 7211 19 90, 7212 60 11, 7212 60 19, 7212 60 91
4	Alloy hot-rolled flat products	7225 19 10, 7225 30 00, 7225 40 80, 7226 19 10, 7226 91 10, 7226 91 90, 7226 99 20
5	Cold-rolled sheets	7209 15 00, 7209 16 90, 7209 17 90, 7209 18 91, 7209 25 00, 7209 26 90, 7209 27 90, 7209 28 90, 7209 90 10, 7209 90 90, 7225 20 90, 7225 50 00, 7211 23 10, 7211 23 99, 7211 29 20, 7211 29 50, 7211 29 90, 7211 90 11, 7211 90 19, 7211 90 90, 7212 60 93, 7212 60 99, 7226 92 10, 7226 92 90
6	Electrical sheets (other than GOES)	7209 16 10, 7209 17 10, 7209 18 10, 7209 26 10, 7209 27 10, 7209 28 10, 7211 23 91, 7225 19 90, 7226 19 30, 7226 19 90
7	Metallic coated sheets	7210 20 10, 7210 20 90, 7210 30 10, 7210 30 90, 7210 41 10, 7210 41 90, 7210 49 10, 7210 49 90, 7210 61 10, 7210 61 90, 7210 69 10, 7210 69 90, 7210 90 38, 7210 90 90, 7212 20 11, 7212 20 19, 7212 20 90, 7212 30 11, 7212 30 19, 7212 30 90, 7212 50 31, 7212 50 51, 7212 50 58, 7212 50 75, 7212 50 91, 7212 50 93, 7212 50 97, 7212 50 99, 7225 91 10, 7225 91 90, 7225 92 10, 7225 92 90, 7225 99 90, 7226 93 20, 7226 93 80, 7226 94 20, 7226 94 80, 7226 99 80
8	Organic coated sheets	7210 70 39, 7210 70 90, 7212 40 91, 7212 40 93, 7212 40 98
9	Tin mill products	7209 18 99, 7210 11 10, 7210 11 90, 7210 12 11, 7210 12 19, 7210 12 90, 7210 50 10, 7210 50 90, 7210 70 31, 7210 90 33, 7211 23 51, 7212 10 10, 7212 10 91, 7212 10 93, 7212 10 99, 7212 40 10, 7212 40 95
10	Quarto plates	7208 51 30, 7208 51 50, 7208 51 91, 7208 51 99, 7208 52 91, 7208 90 10, 7208 90 90, 7210 90 31, 7225 40 20, 7225 40 50, 7225 99 10
11	Wide flats	7208 51 10, 7208 52 10, 7208 53 10, 7211 13 00
12	Non-alloy merchant bars and light sections	7214 30 00, 7214 91 10, 7214 91 90, 7214 99 31, 7214 99 39, 7214 99 50, 7214 99 61, 7214 99 69, 7214 99 80, 7214 99 90, 7215 90 10, 7228 80 90, 7216 10 00, 7216 21 00, 7216 22 00, 7216 40 10, 7216 40 90, 7216 50 10, 7216 50 91, 7216 50 99, 7216 99 10
13	Alloy merchant bars and light sections	7228 20 11, 7228 20 19, 7228 20 30, 7228 30 41, 7228 30 49, 7228 30 61, 7228 30 69, 7228 30 70, 7228 30 89, 7228 60 10, 7228 70 10, 7228 70 31, 7228 80 10
14	Rebars	7214 20 00, 7214 99 10
15	Stainless bars and light shapes	7222 11 11, 7222 11 19, 7222 11 21, 7222 11 29, 7222 11 91, 7222 11 99, 7222 19 10, 7222 19 90, 7222 20 11, 7222 20 19, 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81, 7222 20 89, 7222 30 10, 7222 30 51, 7222 30 91, 7222 30 98, 7222 40 10, 7222 40 30, 7222 40 91, 7222 40 93, 7222 40 99
16	Stainless wire rod	7221 00 10, 7221 00 90
17	Stainless steel wire	7223 00 11, 7223 00 91, 7223 00 19, 7223 00 99
18	Fittings (< 609,6 mm)	7307 93 11, 7307 93 19
19	Flanges (other than stainless steel)	7307 21 00, 7307 91 00
20	Gas pipes	7306 30 51, 7306 30 59, 7306 30 71, 7306 30 78
21	Hollow sections	7306 60 31, 7306 60 39

Prior notification of a concentration**(Case COMP/M.2755 — Saubermacher/Lafarge Perlmoser/JV)****Candidate case for simplified procedure**

(2002/C 77/10)

(Text with EEA relevance)

1. On 15 March 2002 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, by which the undertakings Saubermacher Dienstleistungs-AG (Saubermacher, Austria), controlled by the German Hypo- und Vereinsbank AG und Lafarge Perlmoser AG (Lafarge, Austria) acquire, within the meaning of Article 3(1)(B) of the Regulation, joint control of the undertaking Thermoteam Alternative-brennstoffverwertungs GmbH (Austria) by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Saubermacher: waste utilisation and disposal,

— Lafarge: production of concrete and cement.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Regulation (EEC) No 4064/89 ⁽³⁾, it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.2755 — Saubermacher/Lafarge Perlmoser/JV, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

⁽³⁾ OJ C 217, 29.7.2000, p. 32.

Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 ⁽¹⁾ on licensing of air carriers ⁽²⁾

(2002/C 77/11)

(Text with EEA relevance)

FINLAND

Operating licences granted

Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Finnish Commuter Airlines Oy Secondary trade name: West Bird Aviation	PL 800 FIN-60101 Seinäjoki	Passengers, mail, cargo	30.5.2001

Operating licences revoked

Category B: Operating licences including the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Airdeal Oy	Helsinki-Vantaan lentoasema FIN-01530 Vantaa	Passengers, mail, cargo	11.12.2001
Cloudex Oy	Tullimiehentie 4-6 FIN-01530 Vantaa	Passengers, mail, cargo	15.10.2001
Etelä-Pohjanmaan Lentokeskus Oy	PL 800 FIN-60101 Seinäjoki	Passengers, mail, cargo	30.5.2001
Forssan Lentotoimintapalvelu	PL 5 FIN-30421 Forssa	Passengers, mail, cargo	15.10.2001
Ivalon Lentopalvelu Ky	PPA 2, Huhtamalla FIN-99800 Ivalo	Passengers, mail, cargo	11.12.2001
Metro Jet Oy Secondary trade name: Nordic Air Ambulance Center	PL 60 FIN-01301 Vantaa	Passengers, mail, cargo	15.10.2001

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ Communicated to the European Commission before 31 December 2001.

Publication of decisions by Member States to grant or revoke operating licences pursuant to Article 13(4) of Council Regulation (EEC) No 2407/92 ⁽¹⁾ on licensing of air carriers ⁽²⁾

(2002/C 77/12)

(Text with EEA relevance)

GERMANY

Operating licences granted

Category A: Operating licences without the restriction of Article 5(7)(a) of Regulation (EEC) No 2407/92

Name of air carrier	Address of air carrier	Permitted to carry	Decision effective since
Deutsche Zeppelin-Reederei GmbH	Allmannsweilerstraße 132 D-88046 Friedrichshafen	Passengers	14.8.2001

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ Communicated to the European Commission before 31 December 2001.

III

(Notices)

EUROPEAN PARLIAMENT

Minutes of the session from 19 to 20 September 2001 published in the *Official Journal of the European Communities* C 77 E

(2002/C 77/13)

These texts are available on:

EUR-Lex: <http://europa.eu.int/eur-lex>

CELEX: <http://europa.eu.int/celex>

COMMISSION

RESERVE LIST

OPEN COMPETITION COM/A/5/01

PRINCIPAL ADMINISTRATORS (A 5/A 4)

IN THE FIELD OF INTERNAL AUDITING

(2002/C 77/14)

ANTOINE-POIREL Frank
CAMBA BARBOLLA Emilio
CLAESSENS Jos
DRIES Rudi
DURAND Regis
GRISARD Anne
HELLMAN Anni
LLEWELYN Iolo
MAGENHANN Bernard
MARTÍNEZ CUESTA Luis-Eduardo
MASON Jeffrey
OVERBEEKE Cornelia
SCHLOESSLEN Pascal
VAN DER ZEE Reinder
VANDROMME Johan
VERMEERSCH Benoit
WEBB Christopher
WELCH Peter

Operation of scheduled air services

Invitation to tender issued by France under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Rennes (Saint-Jacques) and Basle-Mulhouse

(2002/C 77/15)

(Text with EEA relevance)

1. **Introduction:** Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, France has decided to impose a public service obligation on scheduled air services between Rennes (Saint-Jacques) and Basle-Mulhouse. The standards required by this public service obligation were published in the 'Official Journal of the European Communities' C 76 of 27.3.2002.

Insofar as by 1 June 2002 no air carrier has commenced or is about to commence scheduled air services between Rennes (Saint-Jacques) and Basle-Mulhouse in accordance with the public service obligations imposed and without requesting financial compensation, France has decided, in accordance with the procedure laid down by Article 4(1)(d) of that regulation, to limit access to only one air carrier and to offer by public tender the right to operate such services from 1 July 2002.

2. **Subject of the invitation to tender:** Operation from 1 July 2002 of scheduled air services between Rennes (Saint-Jacques) and Basle-Mulhouse in accordance with the public service obligation imposed on this route, as published in the 'Official Journal of the European Communities' C 76 of 27.3.2002.

3. **Participation in the invitation to tender:** Participation is open to all Community air carriers who hold a valid operating licence issued in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

4. **Tender procedure:** This invitation to tender is subject to the provisions of Article 4(1)(d)-(i) of Regulation (EEC) No 2408/92.

5. **Tender dossier:** The full tender dossier, including the specific rules for this invitation to tender and the public service delegation agreement and its technical annex (text of the public service obligation published in the 'Official Journal of the European Communities'), is obtainable free of charge from:

Chambre de Commerce et d'Industrie de Rennes, 2, avenue de la Préfecture, F-35042 Rennes Cedex, tel.: 2 99 33 66 58, fax: 2 99 33 24 28, e-mail: jcmandrillon@rennes.cci.fr.

6. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the route for three years from the planned date of commencement of operation (with an annual breakdown). The exact amount of compensation finally granted will be determined annually ex-post on the basis of the costs and revenue actually generated by the service, within the limits of the amount stated in the tender. This maximum limit may be revised only in the event of unforeseen changes in operating conditions.

The annual payments will be made in the form of instalments and a balance. The balance will be paid only after approval of the carrier's accounts for the route in question and verification that the service has been operated in accordance with the conditions laid down in point 8 below.

In the event of termination of the contract before its normal expiry date, point 8 will be applied as soon as possible to allow payment to the carrier of the balance due, the maximum amount referred to in the first subparagraph being reduced, where appropriate, in proportion to the actual duration of the service.

7. **Duration of the contract:** The duration of the contract (public service delegation agreement) is three years from the date scheduled for the beginning of the services mentioned in point 2 of this invitation to tender.

8. **Verification of the operation of the service and of the carrier's accounts:** The operation of the service and the carrier's cost accounting for the route in question will be examined at least once a year in cooperation with the carrier.

9. **Termination of contract and notice:** The contract may only be terminated by either contracting party before the end of the normal period of validity if six months' advance notice is given. If the carrier fails to respect a public service obligation, it shall be deemed to have terminated the contract without notice if it does not resume the service in accordance with the public service obligations within one month of the serving of formal notice.

10. **Penalties:** Failure by the carrier to observe the period of notice referred to in point 9 will be subject either to an administrative fine of up to 7 622,45 EUR pursuant to Article R.330-20 of the Civil Aviation Code or to a penalty calculated on the basis of the number of months of default and the real operating loss of the service during the year in question, not exceeding the maximum financial compensation provided for in point 6.

In the event of serious breaches of the public service obligation, the contract may be cancelled and the carrier deemed to have terminated the contract without notice.

In the event of minor breaches of the public service obligation, the maximum financial compensation provided for in point 6 shall be reduced, without prejudice to the application of the provisions of Article R.330-20 of the Civil Aviation Code. Such reductions shall take account, where appropriate, of the number of flights cancelled for reasons attributable to the carrier, the number of flights made with a capacity lower than that required, the number of flights which failed to comply with the public service obligation as regards stopovers, the number of days on which the public service obligation was not upheld as regards the day-trip length of stay,

the fares applied or the use of computerized reservation services.

11. **Submission of tenders:** Tenders must be sent by registered letter with acknowledgement of receipt, the postmark serving as proof, or delivered by hand with receipt, at the latest five weeks from the date of publication of this invitation to tender in the 'Supplement to the *Official Journal of the European Communities*' before 17.00 (local time) to the following address:

Chambre de Commerce et d'Industrie de Rennes, 2, avenue de la Préfecture, F-35042 Rennes Cedex. Tel.: 2 99 33 66 58. Fax: 2 99 33 24 28. E-mail: jcmadrillon@rennes.cci.fr.

12. **Validity of the invitation to tender:** In accordance with Article 4(1)(d) of Regulation (EEC) No 2408/92 of 23 July 1992, the validity of this invitation to tender is subject to the condition that no Community carrier presents by 1 June 2002 a programme for operating the route in question as from 1 July 2002, in accordance with the public service obligations imposed and without receiving any compensation.

Operation of scheduled air services

Invitation to tender issued by France pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92 for the operation of scheduled air services between Reims-Champagne and Lyon-Saint-Exupéry

(2002/C 77/16)

(Text with EEA relevance)

- Introduction:** Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, France has decided to impose a public service obligation on scheduled air services between Reims-Champagne and Lyon-Saint-Exupéry. The standards required by this public service obligation were published in the 'Official Journal of the European Communities' C 76 of 27.3.2002.
 - Subject of the invitation to tender:** Operation from 1 July 2002 of scheduled air services between Reims-Champagne and Lyon-Saint-Exupéry in accordance with the public service obligation imposed on this route, as published in the 'Official Journal of the European Communities' C 76 of 27.3.2002.
 - Participation in the invitation to tender:** Participation is open to all EU air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.
 - Tender procedure:** This invitation to tender is subject to the provisions of Article 4(1)(d)-(i) of Regulation (EEC) No 2408/92.
- Insofar as by 1 June 2002 no air carrier has commenced or is about to commence scheduled air services between Reims-Champagne and Lyon-Saint-Exupéry in accordance with the public service obligations imposed and without requesting compensation, France has decided, in accordance with the procedure laid down in Article 4(1)(d) of the Regulation, to limit access to only one air carrier and to offer by public tender the right to operate such services from 1 July 2002.

5. **Tender dossier:** The full tender dossier, including the specific rules for this invitation to tender and the public service delegation agreement and its technical annex (text of the public service obligation published in the '*Official Journal of the European Communities*'), is obtainable free of charge from:

Chambre de Commerce et d'Industrie de Reims et d'Épernay, Secrétariat Général, Service Achats/Marchés Publics, 5, rue des Marmouzets, BP 2511, F-51070 Reims Cedex, tel.: 3 26 50 62 12, fax: 3 26 50 62 87.

6. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the route for three years from the planned date of commencement of operation (with an annual breakdown). The exact amount of compensation finally granted will be determined annually ex-post on the basis of the costs and revenue actually generated by the service, within the limits of the amount stated in the tender. This maximum limit may be revised only in the event of unforeseen changes in operating conditions.

The annual payments will be made in the form of instalments and a balance. The balance will be paid only after approval of the carrier's accounts for the route in question and verification that the service has been operated in accordance with the conditions laid down in point 8 below.

In the event of termination of the contract before its normal expiry date, point 8 will be applied as soon as possible to allow payment to the carrier of the balance due, the maximum amount referred to in the first subparagraph being reduced, where appropriate, in proportion to the actual duration of the service.

7. **Duration of the contract:** The duration of the contract (public service delegation agreement) is three years from the date scheduled for the beginning of the services mentioned in point 2 of this invitation to tender.
8. **Verification of the operation of the service and of the carrier's accounts:** The operation of the service and the carrier's cost accounting for the route in question will be examined at least once a year in cooperation with the carrier.
9. **Termination of contract and notice:** The contract may only be terminated by either contracting party before the end of the normal period of validity if six months' notice is given. If the carrier fails to respect a public service obligation, it shall be deemed to have terminated the contract without notice if it does not resume the service

in accordance with the public service obligations within one month of the serving of formal notice.

10. **Penalties:** Failure by the carrier to observe the period of notice referred to in 9 will be subject either to an administrative fine of up to 7 622,45 EUR pursuant to Article R.330-20 of the Civil Aviation Code, or to a penalty calculated on the basis of the number of months of default and the real operating loss of the service during the year in question, not exceeding the maximum financial compensation provided for in point 6.

In the event of serious breaches of the public service obligation, the contract may be cancelled and the carrier deemed to have terminated the contract without notice.

In the event of minor breaches of the public service obligation, the maximum financial compensation provided for in point 6 shall be reduced, without prejudice to the application of the provisions of Article R.330-20 of the Civil Aviation Code. Such reductions shall take account, where appropriate, of the number of flights cancelled for reasons attributable to the carrier, the number of flights made with a capacity lower than that required, the number of flights which failed to comply with the public service obligation as regards stopovers, the number of days on which the public service obligation was not upheld as regards the day-trip length of stay, the fares applied or the use of computerized reservation services.

11. **Submission of tenders:** Tenders must be sent by registered letter with acknowledgement of receipt, the postmark serving as proof, or delivered by hand with receipt, at the latest six weeks from the date of publication of this invitation to tender in the '*Official Journal of the European Communities*' before 17.00 (local time) to the following address:

Chambre de Commerce et d'Industrie de Reims et d'Épernay, Secrétariat Général, Service Achats/Marchés Publics, 5, rue des Marmouzets, BP 2511, F-51070 Reims Cedex. Tel.: 3 26 50 62 12. Fax: 3 26 50 62 87.

12. **Validity of the invitation to tender:** In accordance with Article 4(1)(d) of Regulation (EEC) No 2408/92 of 23 July 1992, the validity of this invitation to tender is subject to the condition that no Community carrier presents by 1 June 2002 a programme for operating the route in question from 1 July 2002, in accordance with the public service obligation imposed, without receiving any financial compensation.

NOTICE

On 3 April 2002, in the *Official Journal of the European Communities* C 79 A, the 'Common catalogue of varieties of agricultural plant species — 13th supplement to the 21st complete edition' will be published.

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