COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,02.05.1996
COM(96) 185final

94/0285(COD)

OPINION OF THE COMMISSION
pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

concerning the creation of a supplementary protection
certificate for plant protection products

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty

1. BACKGROUND

a) On 12 December 1994, the Commission sent to the Council a proposal for a regulation concerning the creation of a supplementary protection certificate for plant protection products (COM (94) 579 final)[1].

b) On 27 April 1995, the Economic and Social Committee delivered its opinion[2].

c) On 15 June 1995, the Parliament adopted in first reading a favourable resolution containing 4 amendments to the proposal of the Commission[3].

d) On 6 October 1995, the Commission adopted, pursuant to Article 189A (2) of the EC Treaty, an amended proposal which fully incorporated these 4 amendments (COM (95) 456 final)[4].

e) On 27 November 1995, the Council adopted a common position[5].

f) On 7 December 1995, the Commission accepted this common position and communicated its opinion to the European Parliament (SEC(95) 1841 final).

g) On 12 March 1996, the European Parliament voted in second reading for one amendment to the common position.

2. THE REGULATION'S OBJECTIVE

The proposal has as its objective the harmonisation and the prolongation of the duration of protection for patents for inventions in the plant protection products sector (insecticides, fungicides, herbicides and growth regulators) in the Union. Equally, it also strives for the objective of the industrial policy which favours research in the plant protection product sector. These objectives are achieved by the creation of a new form of industrial property, the supplementary protection certificate. This will take effect upon the expiration of the basic patent and can last up to a maximum of 5 years. It will operate so as to provide a supplementary protection to that which is obtained by a patent.

3. OPINION OF THE COMMISSION TOWARDS THE AMENDMENT OF THE EP

The European Parliament adopted, during its second reading, a single amendment to the Council's common position. This amendment seeks to change into a "recital" a declaration that the Council and the Commission wanted to include in an annex to

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1 JO n° C 390 of 31.12.1994, p.21.

2 JO n° C 155 of 21.06.1995, p.14.

3 JO n° C 166 of 03.07.1995, p.89.

4 JO n° C 335 of 13.12.1995, p.15.

5 JO n° C 353 of 30.12.1995, p.36.

the minutes of the meeting of the Council which will adopt the legislation in its final form.

The objective of the European Parliament (which is shared by the Council and the Commission) is to ensure a uniform application and interpretation of the two regulations which create supplementary protection certificates, namely the present regulation establishing a supplementary protection certificate for plant protection products and the Council's regulation N° 1768/92 of 18 June 1995 concerning the creation of a supplementary protection certificates for medicines.

There are two advantages obtained by changing the declaration in the minutes of the Council to a "recital":

1) greater transparency since the declaration will be made public in this manner;

2) greater legal security and, if the case arises, the possibility of intervention by the Court of justice.

However, the formulation of the amendment as adopted by the European Parliament could give the impression that it seeks to modify certain clauses of a regulation - regulation N° 1768/92 of the Council - for which a proposal for modification has not been presented by the Commission.

Consequently, in order to meet the chosen objectives of the three institutions, together with ensuring that there is adequate legal coherence between the two regulations, the Commission accepts the spirit and the aim of the amendment adopted by the European Parliament but proposes a slightly different formulation.

Amended Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND COUNCIL

concerning the creation of a supplementary protection certificate for plant protection products

(presented by the Commission pursuant to Article 189 A, paragraph 2 of the EC Treaty)

- common position of the Council -	- Modified Text -
Preamble 16A (new)	
	(16A) whereas the present regulation, in particular recitals 12, 13 and 14 and Articles 3(2), 4, 8(1)(c) and 17(2), and the regulation of the Council N° 1768/92 of 18 June 1992 concerning the creation of supplementary protection certificates for medicinal products, in particular recital 9 and Articles 3, 4, 8(1)(c) and 17, must be interpreted and applied in a uniform way;

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DOCUMENTS

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