ENGLISH

COMPLETING THE INTERNAL MARKET

1992

CURRENT STATUS DECEMBER 1988

CONDITIONS FOR INDUSTRIAL COOPERATION

Company Law
Intellectual Property
Taxation

A SINGLE PUBLIC PROCUREMENT MARKET

COMMISSION OF THE EUROPEAN COMMUNITIES

DECEMBER 1988

In June 1985, the Commission of the European Communities issued a White Paper "Completing the Internal Market" setting out a target of achieving by 1992 a single European market for goods, services, people and capital.

The White Paper included a detailed legislative timetable containing over 300 measures and proposals.

In March 1988, the Commission issued its "Third Report on the Implementation of the White Paper on Completing the Internal Market". This updated and modified the original legislative timetable contained in the White Paper.

This brochure is one of a series of five intended to summarize the current problems, the 1992 objectives and the measures and proposals contained in the White Paper and Third Report.

The complete series of brochures covers

A common market for services

The elimination of frontier barriers and fiscal controls

Conditions for industrial cooperation
A single public procurement market

A new Community standards policy

Veterinary and plant health controls

These brochures will be updated and reissued at regular intervals until 1992. Details about availability are given on the inside back cover.

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CONDITIONS FOR INDUSTRIAL COOPERATION
A SINGLE PUBLIC PROCUREMENT MARKET

How To Use This Brochure

The aim of this series of brochures is to

- Inform the interested European public about the steps which are being taken to bring about the single market
- Summarize the approach which is being taken in individual business sectors
- Provide a first reference to the content and current status of each proposal which the Commission has drafted to bring about the 1992 Internal Market.

This brochure contains

- A brief description of how the Community makes laws and recommendations
- A general introduction to the issues and problems in creating an Internal Market in industrial cooperation and public procurement
- Specialized introductions to the approach being adopted in individual sectors of industrial cooperation and public procurement
- Brief summaries of every measure which has been adopted or proposed to create the Internal Market for industrial cooperation and public procurement. Proposals mentioned in the White Paper but not yet issued by the Commission will be summarized in the future updates of the brochure.

The reader should

- Ensure he is familiar with how the Community makes laws and recommendations. If not, he should turn to page iii
- Read the general introductions to industrial cooperation and public procurement for an overview of the issues (page 1, 49)
- Select the section(s) which cover sector(s) of interest from the contents (page vii).

The summaries provide references to the appropriate copies of the Official Journal of the European Communities for those readers wishing to examine measures in more detail. Copies of the Official Journal can be obtained from the information offices listed inside the back cover.

HOW THE EUROPEAN COMMUNITY MAKES LAW
AN OUTLINE

It is necessary to be familiar with the procedures by which the Community passes laws in order to understand the detail contained in the summaries. Each summary relates to a specific measure intended to facilitate the creation of the single market. In broad terms

- The Commission (which has both executive and administrative roles) initiates and drafts a proposal which it submits to the Council

- The European Parliament (which is elected by the citizens of the Community) and the Economic and Social Committee (which consists of representatives from employer organizations, trade unions and other interest groups) consider and comment on the proposal

- The Council (whose members represent the governments of the Member States, normally at ministerial level) adopts the proposal which then becomes law. In some cases, this power can be exercised by the Commission.

This brochure contains summaries of different types of measures; their consideration and adoption can follow different procedures. These are discussed below.

1. LAWS AND OTHER MEASURES

Regulations

A *regulation* is a law which is binding and directly applicable in all Member States without any implementing national legislation. Both the Council and the Commission can adopt *regulations*.

Directives

A *directive* is an EEC law binding on the Member States as to the result to be achieved, but the choice of method is their own. In practice national implementing legislation in the form deemed appropriate in each Member State is necessary in most cases. This is an important point as businesses affected by a *directive* have to take account of the national implementing legislation as well as the *directive*.

Decisions

A *decision* is binding entirely on those to whom it is addressed. No national implementing legislation is required. The *decisions* summarised in this brochure are *Council decisions* although in certain cases the Commission has the power to adopt *Commission decisions*.

Recommendations

A *recommendation* has no binding effect (it is not a law). *Recommendations* can be adopted by both the Council and the Commission.

The majority of the measures included in this brochure are *Council Directives*.

EEC Legislation from Start to Finish (Directives and Regulations)

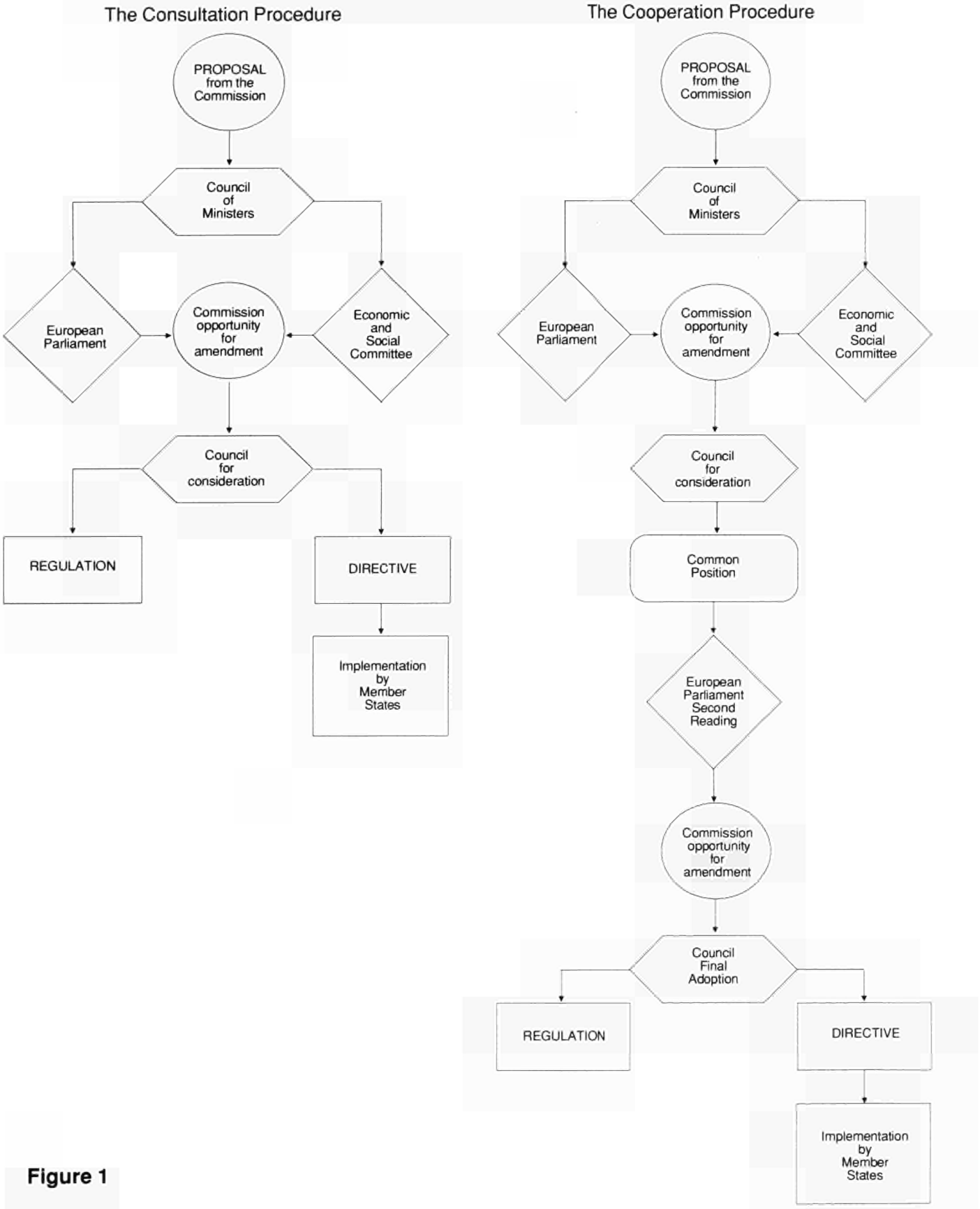

Figure 1

2. PROCEDURES FOR MAKING LAWS

The Community's decision-making procedures are best illustrated by tracing the progress of a *directive*. The following text should be read in conjunction with the flow chart in figure 1.

Since the entry into force of the Single European Act on 1.7.87 there are two distinct procedures for the adoption of a *directive*; the *consultation procedure* and the *cooperation procedure*. The EEC Treaty article upon which a proposal is based dictates which procedure is followed.

In both cases a *directive* begins with a proposal from the Commission to the Council.

Under the *consultation procedure*, the Council requests an opinion from the European Parliament and, in most cases, from the Economic and Social Committee. Once these have been given, the Commission then has the opportunity to amend the proposal if it so wishes. The proposal is then examined by the Council which may adopt it as proposed, adopt it in an amended form, or fail to reach agreement, in which case the proposal remains "on the table".

Under the *cooperation procedure*, the Council requests opinions from the Parliament and the Economic and Social Committee in the same way. Once these opinions have been received the Council has to adopt what is called a *common position*, although it seems that the proposal will again remain "on the table" failing any *common position* being reached. On a *common position* being reached, this is transmitted to the Parliament which has three months to accept, reject, or propose amendments to it, on its *second reading*.

At this stage the Commission may again amend the proposal if it wishes. The proposal is then returned to the Council which has three months to take a final decision. In the absence of a decision, the proposal lapses.

Whether the Council can adopt a proposal by a *qualified majority* or has to reach a *unanimous decision* depends in the first instance upon the article of the Treaty which is the basis for the measure. However, there are certain situations where unanimity must be reached by the Council:

i) to introduce amendments of its own initiative to a proposal

ii) to adopt amendments proposed by the Parliament but not taken up by the Commission

iii) to adopt a measure when the Parliament has rejected the Council *common position* under the *cooperation procedure*.

The question of whether a *directive* or a *regulation* is subject to the *cooperation procedure*, the *consultation procedure* or neither of these depends on its legal basis.

There are a limited number of *decisions* summarised in this brochure. The European Parliament and the Economic and Social Committee are consulted on some of these.

There are also a limited number of *recommendations* in this brochure. Some *Council recommendations* are submitted to the European Parliament and the Economic and Social Committee for their opinion before adoption.

3. PUBLICATION OF TEXTS

At certain stages in the Community decision making procedure, texts are published in the Official Journal of the European Communities. There is an 'L' series which contains legislation and a 'C' series which contains other information, such as *communications* issued by the Commission.

This brochure contains summaries of both adopted legislation and proposals for legislation. In the case of adopted legislation, the summary gives the reference to the Official Journal 'L' series in which the text has been published. Readers interested in the legislative history of a measure will find in the text the Official Journal 'C' series references for the corresponding Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee.

In the case of proposals for legislation, the summary gives the Official Journal 'C' series references for the Commission proposal(s) and the opinions of the European Parliament and the Economic and Social Committee, if published by 31.12.88.

The Commission's 1985 White Paper "Completing the Internal Market" contains a legislative programme. In the course of carrying out this programme, certain proposals have been withdrawn and others have been added. Where the Commission has not yet submitted proposals listed in the programme, these are mentioned in the sector introduction.

CONDITIONS FOR INDUSTRIAL COOPERATION

A SINGLE PUBLIC PROCUREMENT MARKET

ADDENDA

Between 31 December 1988 and 24 March 1989, the following references appeared in the Official Journal of the European Communities.

1.7 Take-over bids
Commission Proposal — Official Journal C 64, 14.3.89

2.2 National trademark legislation approximation
Council Adoption — Council Directive 89/104/EEC
Official Journal L 40, 11.2.89

2.5 Legal protection of biotechnological inventions
Commission Proposal — Official Journal C 10, 13.1.89

INTRODUCTION
WHAT CONDITIONS FOR INDUSTRIAL COOPERATION?

1957 Treaty of Rome

This was intended to create a single market across European Community,with free movement of goods, persons, services and capital.

Although a customs union was established very quickly and significant progress made with regard to the free movement of goods and persons, a number of administrative, physical and technical barriers continued to exist which prevented the creation of a genuine single market.

1985 White Paper

Some progress had been made towards creating an environment which encouraged cooperation between businesses in different Member States. However, such cooperation was hampered by excessive legal, fiscal and administrative problems plus occasional problems created by mental attitudes and habits.

It was recognized that the development of the Internal Market will result in companies becoming more and more involved in all manner of intra-Community operations. There will be an ever increasing number of links with associated enterprises, creditors and parties in other Member States.

The Commission published a White Paper 'Completing the Internal Market' which listed over 300 legislative proposals and a timetable for their adoption; it was endorsed by the Heads of State and Government.

1987 Single European Act

This Act, which has modified the EEC treaty and had therefore to be ratified by the governments and parliaments of all Community countries, confirmed the objective of achieving a single European market by 1992 and the timetable of the 1985 White Paper. It adapted the Community's procedures for decision making, and increased the scope for a type of majority (as oppposed to unanimous) voting in the Council of Ministers. The Single European Act should facilitate the adoption of the White Paper measures within the proposed timeframe.

1988 Current Situation

Of the proposals contained in the White Paper, three have been adopted to date; the Regulation creating the European Economic Interest Grouping, the Directive approximating national trademark laws and the Directive on the legal protection of semiconductor products. Of the other proposals, two have still to be tabled by the Commission, while the others are at various stages of the legislative procedure.

1992 Single Market

Deadline set by the 1987 Single European Act for complete elimination of obstacles to European-wide industrial cooperation.

Industrial Cooperation

The measures and proposals outlined in this brochure are intended to create an environment which will favour the development of cooperation between individual businesses in the Community. Such an environment is necessary for a number of reasons. The elimination of internal frontiers, the movement of goods and capital, freedom of establishment and the freedom to supply services are fundamental to the creation of the internal market and will confer enormous benefits on suppliers and consumers of goods and services. It will also create opportunities and incentives for cooperation between businesses in different Member States, for example where complementary expertise and resources are identified. This cooperation could take a variety of forms ranging from mergers or the incorporation of joint subsidiaries to ad hoc cooperation on specific projects. The benefits of such cooperation would not only be felt within the Community itself. It would also strengthen the position of European businesses when competing on world markets.

However, the elimination of internal frontiers is not sufficient to create the optimum environment for cross-frontier cooperation between businesses. At present there are no appropriate forms for such cooperation. Company mergers across frontiers involve the application of differing national laws and often have tax implications which can act as a severe disincentive. The setting up of a joint subsidiary involves at least one partner in an unfamiliar legal system while, again, the tax implications may act as a disincentive. When businesses wish to pursue jointly a single activity, there is no appropriate and administratively straightforward corporate form for doing so. Numerous potential joint projects have failed to get off the ground because of such problems.

The existence of differences in patent, trademark and copyright laws also have a direct, negative effect on intra-Community trade and on the ability of businesses to treat the Community as a single market. Multiple applications for patents and trademarks, and the correspondigly multiplied fees, create an administrative and financial burden which also psychologically perpetuates the traditional perception of separate national markets.

Still in the intellectual property field, advances in technology, particularly in the areas of computer software, microcircuits and biotechnology create the risk that separate intellectual property systems will adapt in different ways. This would create uncertainty about the level of protection of innovation, uncertainty which would act as a disincentive to both investment and cooperation between businesses in different Member States.

The measures and proposals in the fields of company law, taxation and intellectual property which are summarized in this brochure are intended to tackle these problems head-on and create an environment in which businesses can cooperate across frontiers in the way they can presently do so within their national frontiers.

1. COMPANY LAW

CURRENT PROBLEMS AND 1992 OBJECTIVES

- The absence of a Community legal framework for cross-frontier operations and cooperation between enterprises of different Member States has often resulted in multinational projects being unable to get off the ground.
- In order to satisfy the needs of a genuine internal market, enterprises must be able to set up subsidiaries, merge and generally restructure across internal frontiers without unnecessary formalities of a purely technical legal nature.
- There are at present no appropriate forms for cross-frontier cooperation. To this end, the Community is setting the stage for a new type of association known as the European Economic Interest Grouping (summary 1.1). This is a grouping which will make it easier for separate businesses from different Member States to undertake a specified range of joint activities, without actually merging or setting up a jointly owned subsidiary. It will be covered by uniform legislation throughout the Community. Summary 1.2 covers the proposal to create a legal framework for a European (as opposed to national) company. This will allow existing companies to restructure across borders without suffering from differing national laws. The Commission published a memorandum in 1988 that aims to relaunch the idea of a European Company concentrating on three key issues: the principal of an optional Statute, the independence of the Statute from national laws and the inclusion of three specific themes for worker participation. On the basis of the debate opened by this memorandum, the Commission will produce an updated regulation on the European Company.
- To remove the purely technical legal obstacles to industrial cooperation through the harmonisation of company law across the Member States, the Commission has proposed a number of measures. There is a proposal (summary 1.4) to harmonize laws so as to provide for cross-border mergers. The proposal for the Fifth Directive on Company Law (summary 1.3) will ensure the separation of the functions of management and supervision of management in the interests of shareholders. It will also ensure employee participation and bring Member State laws closer together in such matters as the role of the AGM.
- Three further measures have currently been proposed: the first sets down the disclosure requirements for foreign branches of companies (summary 1.5). The second relates to the publication of accounts by partnerships, since these structures can be used to avoid disclosure by major businesses (summary 1.6). In connection with disclosure requirements, the Commission introduced in 1988 a proposal increasing the thresholds below which small and medium-sized companies are permitted to publish less detailed accounts.
- The third proposal lays down minimum rules for the regulation of takeover bids so as to provide for a level of shareholder protection and public information when a bid takes place. In view of the likely significant increase in mergers and takeovers in the Community as 1992 approaches, these rules are important.
- There are serious gaps in most Member States' legislation regarding the balance to be struck between the interests of groups of companies as a whole and their members. Often company law is too closely modelled on the idea of company autonomy. This no longer reflects economic reality in many cases, for example many companies are wholly owned subsidiaries of centrally managed multinational companies situated in other countries. In 1989, the Commission envisages publishing a proposal to address these relationships between businesses in a group.
- The Commission will also produce during 1989 a proposal on the liquidation of companies.

1. COMPANY LAW

1.1 European Economic Interest Grouping

1) Objective

To create a new legal entity based on Community Law to facilitate and encourage cross-border cooperation. This will benefit businesses which do not wish to merge or form joint subsidiaries, but wish to carry out certain activities in common.

2) Community measure

Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).

3) Contents

1. A European Economic Interest Grouping can only be formed in accordance with the rules of the Regulation set out below.
2. The purpose of the grouping shall be to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills. This will provide better results than those of the members acting in isolation. Its purpose is not to make profits for itself. If the grouping makes profits these will be apportioned between the members and taxed accordingly. Its activities shall be related to the economic activities of its members, but cannot replace them. An EEIG cannot employ more than 500 persons.
3. An EEIG can be formed by companies, firms and other legal bodies in accordance with the national law of a Member State. It can be formed by individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services in the Community.
4. An EEIG must have at least two members. The two members necessary to form an EEIG shall be linked to different Member States.
5. The contract for the formation of an EEIG shall include its name, its official address, its objectives, the name, number and place of registration, if any, of each member of the grouping and the duration of the grouping. This contract and various other specified documents shall be filed at the registry designated by each Member State. Registration confers full legal capacity on the EEIG throughout the Community.
6. If a grouping has been formed, or liquidated, details must be published in the Official Journal of the European Communities.
7. A grouping's official address must be situated within the Community. It may be transferred from one Member State to another subject to certain conditions.
8. Each member of an EEIG shall have one vote although the contract for its formation may give certain members more than one vote provided that no one member holds a majority of the votes. The Regulation lays down voting procedure.
9. The EEIG must have at least two *organs*; the members acting collectively and the manager or managers. Each EEIG shall be managed by one or more individuals according to certain defined criteria. These managers represent and bind the EEIG towards third parties even where their acts do not fall within the objectives of the grouping.
10. No EEIG may invite investment by the public.
11. An EEIG does not necessarily have to be formed with capital. Members are free to use alternative methods of financing the grouping.

	12. The profits of an EEIG shall be the profits of its members divided either according to the relevant provision in the contract or, if such does not exist, in equal shares. The profits or losses of an EEIG shall be taxable only in the hands of its members. As counterpart to the contractual freedom, which is the basis of the EEIG, and to the fact that members are not required to provide a mandatory capital, each member of the EEIG is jointly and severally liable for the debts of the EEIG. 13. The profits or losses of an EEIG shall be taxable only in the hands of its Members.	
4) Deadline for implementing Member State legislation		
5) Application date (if different from 4)	1.7.89	
6) Date for further coordinating proposal (if specified)		
7) References	Council Adoption	Official Journal L 199, 31.7.85

1. COMPANY LAW

1.2 European Company Statute

1) Objective

To create a European Company with its own legislative framework. This will allow companies incorporated in different Member States: to merge, to form a holding company or a joint subsidiary without suffering from conflicting national laws.

2) Proposal

Proposal for a Regulation for a Statute for a European Company.

3) Contents

1. Only companies limited by shares incorporated under the law of a Member State may form a European Company.
2. The European Company shall have fully paid up minimum capital of not less than: 250,000 ECU in the case of creation by merger or formation as a holding company, 100,000 ECU in the case of formation as a joint subsidiary, 100,000 ECU in the case of formation of a subsidiary by a European Company.
3. Every European Company shall be registered in the European Commercial Register to be created at the Court of Justice of the European Communities.
4. The Company shall be managed by a Board of Management exercising its functions under the supervision of a Supervisory Board. The Management Board shall be appointed by the Supervisory Board.
5. The authorization of the Supervisory Board shall be necessary for the Management Board to act on:
   - the closure or transfer of establishments of the Company
   - substantial curtailment, extension or modification of the activities of the Company
   - substantial organizational changes
   - establishment or termination of long term cooperation agreements with other businesses.
6. The Supervisory Board shall be composed of one third representatives of shareholders, one third representatives of employees and one third co-opted by these two groups. Only persons representing general interests, possessing the necessary knowledge and experience and not directly dependent on the shareholders, the employees or their respective organizations may be nominated for co-option.
7. A European Works Council shall be formed in every European Company having at least two establishments in different Member States, each having at least fifty employees. The number of representatives from each establishment shall depend on its size. There are detailed provisions for the decisions of the Management Board which can be taken only with the agreement of the Works Council. The Works Council shall have the right to be consulted on other stated matters as well.
8. An arbitration board shall be established to settle disputes between the Works Council and the Management Board.
9. Detailed provisions on the preparation of annual accounts.
10. Detailed provisions defining the scope and powers of groups of companies which include a European Company.
11. Detailed provisions pertaining to the alteration of the Company statute, dissolution, liquidation and bankruptcy.

12. On a proposal of the Management Board approved by the Supervisory Board, a European Company may be transformed into a limited liability company under the laws of one of the Member States. A European Company may also merge with other European Companies or other limited companies incorporated under the law of a Member State.
13. Detailed provisions on dissolution, liquidation, bankruptcy and mergers.
14. Where a European holding company is formed by companies limited by shares incorporated under the law of a Member State or by European Companies, allotment to the shareholders of these companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any tax liability.
15. For purposes of taxation, the European Company shall be considered resident in the Member State in which its centre of effective management is located. A European Company which holds not less than 50% of the capital of another company which is liable to tax on profits and which suffers a loss may deduct an amount (proportional to its holding) from the taxable profits of the European Company.
16. If a European Company has a permanent establishment in another Member State whose overall result of the operations in that state shows a loss, that loss shall be deductible from the taxable profits of the European company.

4) Opinion of the European Parliament

The Commission's first amended proposal incorporated the Parliament's views on various points in particular the provisions on minimum capital, the threshold for establishment of the Works Council and the division of the Supervisory Board into thirds, representing shareholders, employers and general interests.

5) Current status

The proposal is before the Council which stopped its examination in 1982 but returned to the proposal this year on the basis of a Commission Memorandum released in July 1988. This aims to relaunch the idea of the European Company concentrating on three key issues; the principle of an optional Statute, the independence of the Statute from national laws and the inclusion of three specific alternative schemes for worker participation.

6) References

Commission Proposal	Official Journal C 124, 10.10.70
Commission Memorandum	COM (88) 320 15.7.88
European Parliament Opinion	Official Journal C 93, 7.8.74
Economic and Social Committee Opinion	Official Journal C 131, 13.12.72

1. COMPANY LAW

1.3 Structure of public limited companies

1) Objective

To ensure that managers of public limited liability companies are effectively supervised on behalf of the shareholders. To ensure employee participation in the management of such companies.

2) Proposal

Proposal for a Fifth Directive founded on Article 54 (3) (g) of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs.

3) Contents

1. The Directive will apply to types of company such as:

UK	a public limited company
France	la société anonyme
Germany	die Aktiengesellschaft

and equivalents in the other Member States. Member States have the option to exclude cooperatives.

2. Member States must ensure that such companies are organized according to either a two-tier board structure (management body and supervisory body) or a one-tier system (administrative body in which the actions of the executive members are supervised by the non-executive members).

3. The authorization of the supervisory body or non-executive members shall be required by the management body or executive members for decisions relating to;

- the closure or transfer of the whole or part of the undertaking
- substantial extension or reduction in the activities of the undertaking
- important organizational changes and
- the establishment or ending of long term cooperation with other firms.

4. In companies with less than one thousand employees, the members of the supervisory body shall be appointed by the general meeting. If a company has more than one thousand employees, Member States must provide for employee participation in the appointment of:

- members of supervisory bodies in the two-tier system
- non-executive members of boards in the one-tier system.

A maximum of two thirds of the supervisory body or non-executive members shall be appointed by the general meeting. A minimum of one third (maximum of one half) shall be appointed by the employees. Alternatively members of the Supervisory Board may be appointed by co-option by the Board itself. However, the general meeting of the shareholders or the employees' representatives may object to such an appointment on various stated grounds. Another alternative is for Member States to provide for employee participation through a works council or through a collective agreement system rather than by employee participation on the Supervisory Board. No person may be a member of the management body and the supervisory body at the same time.

5. There must be an Annual General Meeting and other general meetings can be convened by either the management body, the executive members of the supervisory body or shareholders (providing the latter represent a certain minimum equity). The annual accounts, annual report and the auditors report shall be made available to every shareholder. Resolutions at the AGM can only be passed by absolute majority except in special circumstances. Minutes

	have to be prepared for every AGM. 6. The annual accounts are subject to several requirements. For example, 5% of any profit for the year has to be put in a legal reserve until it reaches a certain minimum value. The audit has to be undertaken by persons truly independent of the company, appointed by the general meeting. The auditors have to produce a detailed report of their work. 7. After a specified time period the Commission will have to submit a report to the Council and the Parliament as to how the Directive is working. 8. Certain derogations from the Directive are allowed eg for companies with political, religious, charitable or educational objectives.	
4) Opinion of the European Parliament	The Parliament approved the original proposal subject to a large number of amendments. It proposed adding the choice of a one-tier board structure to the two-tier system proposed, raising from five hundred to one thousand the threshold for obligatory employee participation and increasing the choice of forms of participation. The Commission accepted these proposals in its amended proposal.	
5) Current status	The proposal is currently before the Council of Ministers for establishment of a common position.	
6) References	Commission Proposal Amended Proposal	Official Journal C 131, 13.12.72 Official Journal C 240, 9.9.83
	European Parliament Opinion	Official Journal C 149, 14.6.82
	Economic and Social Committee Opinion	Official Journal C 109, 19.9.74

1. COMPANY LAW

1.4 Cross-border mergers

1) Objective

Currently it is difficult for companies in different Member States to merge. This Directive will harmonize the laws on cross-border mergers of public limited companies so as to facilitate this process. It will introduce additional requirements to the previous Directive on national mergers for those aspects of cross-border mergers which differ from national mergers (due to different legal systems applying).

To protect shareholders, creditors and employees when all the assets and liabilities in a company are transferred to another company in another Member State.

2) Proposal

Proposal for a Tenth Council Directive based on Article 54 (3) (g) of the Treaty concerning cross-border mergers of public limited companies.

3) Contents

1. Definition of cross-border merger and the type of company to which the Directive is to apply in each of the Member States, for example

Belgium	société anonyme
United Kingdom	public companies limited by shares or by guarantee.

2. Obligation on the managers of the merging companies to draw up draft terms for the merger as required by the Member States involved and this Directive. Additional information to that already required by the Directive on national mergers will have to be included because of the transnational element; for example the location of the public registers which contain information on the companies involved. Member States cannot oblige merging companies to include other information.
3. A merger must have the approval of not less than two-thirds of the votes of the general meeting of each of the merging companies.
4. The merging companies must engage at least one independent expert to examine the draft terms of the merger and draw up a report for the shareholders. The expert must either be appointed or approved by a judicial or administrative body of the Member State of one or other of the merging companies.
5. Obligation on the Member States to provide adequate safeguards for the creditors and debenture holders of the merging companies.
6. Obligation on the management of each company to produce a report explaining the effect of the merger on employees.

4) Opinion of the European Parliament

Not yet given.

5) Current status

The proposal is currently being considered by the European Parliament.

6) References

Commission Proposal	Official Journal C 23, 25.1.85
European Parliament Opinion	
Economic and Social Committee Opinion	Official Journal C 303, 25.11.85

1. COMPANY LAW

1.5 Disclosure requirements in respect of branches

1) Objective

To provide rules concerning the disclosure requirements required in a Member State for branches of companies who are governed by laws of another State, in order to provide an equivalent level of protection for shareholders and third parties and to facilitate the freedom of establishment.

2) Proposal

Proposal for a Council Directive based on Article 54 (3) (g) of the Treaty concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State.

3) Contents

1. The Directive applies to branches of public and private companies situated in a Member State other than that in which the company is established. For branches of companies from another Member State, the branch shall publish documents which cover:
- the address of the branch
- the object of the activities of the branch
- where the company is registered and its registration number
- the existence of other branches in the same Member State
- information on the company directors.

The branch no longer needs to produce branch accounts if it publishes the annual accounts and annual report of the company. Where the company is a subsidiary of an EC company, it may, under certain specific circumstances, publish only the consolidated accounts and the consolidated annual report of its parent company.

2. EC branches of public and private companies which are established in a non-EC State but have a legal form comparable to that of Community companies shall publish documents which cover, inter alia, the information required for branches of EC companies, together with the following:
- the law of the State by which the company is governed
- the company's constitution, memorandum and articles
- the legal form of the company.

The branch must disclose the annual accounts and annual report of the company or, where provided under the law of the country in question, the consolidated annual accounts and consolidated annual report of its parent company. The accounting documents must have been drawn up either under Community legislation, or so as to be at least equivalent to those so drawn up; they must also have been audited in accordance with the law which governs the company.

3. Member States shall provide appropriate penalties for failure to disclose the information required.

4. The provisions of the Directive dealing with the disclosure of accounting documents need not be applied to branches of banks, other financial institutions and insurance companies (see 1.6).

4) Opinion of the European Parliament

The Parliament approved the proposal subject to a number of minor amendments which have since been incorporated into the amended proposal.

5) Current status	The proposal is currently before the Council for its consideration. The cooperation procedure will apply giving the Parliament the opportunity of a second reading once it has received the view of the Council at the end of its first examination.	
6) References	Commission Proposal Amended Proposal	Official Journal C 203, 12.8.86 Official Journal C 105, 21.4.88
	European Parliament Opinion	Official Journal C 345, 21.12.87
	Economic and Social Committee Opinion	Official Journal C 319, 30.11.87

1. COMPANY LAW

1.6 Annual and consolidated accounts: amendments

1) Objective

To extend Community legislation relating to annual company accounts and consolidated accounts to partnerships. This will ensure that certain types of partnerships, all of whose unlimited members are constituted as limited liability companies, do not avoid corporate disclosure (for example German firms organized as GmbH & Co. KG).

2) Proposal

Proposal for a Directive amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives.

3) Contents

1. Extension of Community legislation on the form, content and publication of annual accounts of companies to partnerships: for example

UK	the partnership
	the unlimited partnership
	the unlimited company
France	la société en nom collectif
	la société en commandite simple
Germany	die offene Handelsgesellschaft
	die Kommanditgesellschaft

2. Extension of Community legislation on the form, content and publication of *consolidated* accounts of companies to those partnerships as in (1). It applies when either the parent or subsidiary is organized in this way.

4) Opinion of the European Parliament

The Parliament approved the proposal but called for concessions to be made for small and medium-sized enterprises.

5) Current status

The proposal is currently being examined by the Council.

6) References

Commission Proposal	Official Journal C 144, 11.6.86
European Parliament Opinion	Official Journal C 125, 11.5.87
Economic and Social Committee Opinion	Official Journal C 328, 22.12.86

1. COMPANY LAW

1.7 Takeover bids

1) Objective

The Directive introduces a series of basic rules to guarantee equality of treatment of shareholders, publicity and clarity of information required and the defensive measures that may be adopted once the bid is announced.

2) Proposal

Proposal for a Thirteenth Council Directive based on Article 54 (3) (g) of the Treaty concerning harmonisation of Member States' laws on takeover bids.

3) Contents

1. Definitions of *offeree company, securities, parties to the bid , persons acting in concert and general bids.* Definition of type of company to which the Directive is to apply in each of the Member States eg. AG and KgA in Germany, PLC in the United Kingdom.
2. The Directive lays down the fundamental rule that shareholders who are in the same position are to be treated equally.
3. The Directive requires that where shares are acquired which give a percentage of voting rights over a specified level, a general bid must be made for the company by the purchaser. The Directive does not permit partial bids. Member States must fix this level at not more than one third. In calculating the percentage, voting rights held by connected parties and existing holdings must be taken into account and the Directive lays down those who are to be considered connected parties. The Directive sets out the circumstances where the supervisory authority may grant exemptions from the obligation to make a bid.
4. The Directive provides for an exemption from obligations to make a bid where the target company is Small or Medium sized.
5. Member States are required to designate a supervisory authority to monitor compliance with the rules by all bid parties. The national authority responsible for supervising the publication of the offer document shall be that of the Member State in which the offeree company has its registered office.
6. As soon as the offeror decides to make a bid, he must announce his intention of doing so and notify the relevant supervisory authority. He must then immediately draw up an offer document, which must be communicated to the responsible supervisory authority and the board of the offeree company before being sent to the addressees of the bid and published. The Directive specifies the means of publication of the intention to bid and the offer document.
7. Between the date of receiving notification of the decision to bid and the expiry of the period for accepting the bid, the board of the offeree company shall not, without the approval of the shareholders in general meeting:
   - issue securities carrying voting rights or which may be converted into such securities; or
   - engage in transactions outside the normal operations of the business unless authorisation is given by the supervisory authority.
8. The offeror must be represented by either a qualified person who is licensed to deal on the Community financial markets or a licensed credit institution within the Community.

9. The Directive lists the minimum contents of the offer document that must be drawn up by the offeror. For example, the offer document must contain the following:

- general information concerning the offeror company
- details of the securities for which the bid is made
- number or percentage holdings of the securities already held by the offeror, directly or indirectly
- the consideration offered for each security
- the latest date for acceptance of the bid
- the intentions of the offeror regarding the continuation of the business of the offeree company, the future composition of its board and the continued employment of its employees
- any special advantages which the offeror intends to grant to the board of the offeree company.

The Directive does not prevent national authorities from requiring additional items of information to be included in the offer document.

10. The period for accepting the bid may not be less than four weeks nor more than ten weeks from the date of publication of the offer document.

11. Circumstances where bids may be withdrawn are specified.

12. The board of the offeree company must draw up a detailed report giving its views on the bid and setting out the arguments for and against acceptance. The report shall state whether the board is in agreement with the bid and specify any agreements on the exercise of voting rights within the offeree company. Where the consideration offered comprises unquoted shares, the board's report shall be accompanied by an independent expert's report on the basis of valuation of the consideration and whether the consideration offered is fair and reasonable. The report must be filed with the responsible supervisory authority and notified to the addressees of the bid in good time before the deadline for acceptance.

13. The offeror may revise his bid at any time before the last week of the period of acceptance announced in the offer document. The Member States shall ensure that the persons who have already accepted the previous bid may accept the revised bid instead.

14. The acquisition by the offeror, or by persons acting on his behalf or in concert, during the acceptance period of shares in respect of which the bid is made at a price higher than that in the offer document or one of its revisions, will be considered as a full scale revision of the bid and will increase the consideration offered to those who have already accepted.

15. From the time of the public announcement of a bid, the offeror or the holder of 1% or more of the offeree company or the offeror company or any company whose securities are offered in exchange, must declare to the supervisory authority all further acquisitions of securities of the said companies and the purchase price paid.

16. Where the number of acceptances received exceeds that specified in the offer document and the offeror does not wish to acquire all the shares, equal treatment of those who accepted must be ensured.

17. The Directive shall apply to each bid where there are competing bids. Where there are competing bids and the initial bid is not withdrawn, the period of acceptance for the initial bid is automatically extended to the date of expiry of the competing bid.

	18. A *Contact Committee* shall be set up by the Commission to facilitate the application of the Directive and to advise the Commission, if necessary, on additions and amendments to the Directive. The Committee shall be comprised of representatives of the Member States and the Commission.
4) Opinion of the European Parliament	Not yet given.
5) Current status	The proposal is before the Parliament and the Economic and Social Committee for their opinions.
6) References	Commission Proposal — Not yet published. European Parliament Opinion Economic and Social Committee Opinion

2. INTELLECTUAL PROPERTY

CURRENT PROBLEMS AND 1992 OBJECTIVES

- Differences between Member States' intellectual property laws have an adverse impact on intra-Community trade and on the ability of firms to treat the common market as a single environment for their activities. To a certain extent, the EEC Treaty mitigates these problems. For example, Articles 30 to 36 of the Treaty relating to the free movement of goods have been dynamically treated in the European Court of Justice in such a manner as to prevent intellectual property rights being used to partition off Member States' markets from each other by preventing the free movement of goods. Similarly Articles 85 and 86 of the Treaty relating to competition have been applied by the Commission, as an enforcement agency under the Competition Law, and interpreted by the European Court of Justice so as to prevent intellectual property rights being exercised in a manner which prevents, restricts or distorts competition in trade between Member States. Furthermore, to facilitate cross-frontier patent licensing, the Commission adopted in 1984 a Regulation on the application of Article 85(3) of the Treaty to certain categories of patent licensing agreements which automatically authorizes certain restrictive provisions in licences without the parties having to make notification for a specific authorization decision by the Commission, and in 1988 adopted a similar Regulation on know-how licensing.
- In the field of trademarks, the existence of the distinct national systems (and the combined Benelux system) creates obstacles to Community-wide marketing, in addition to cumbersome and costly administrative and legal burdens. A single European market needs a single Community trademark system for companies trading throughout the Community. The Commission has tabled a proposal for a Council Regulation in this area which, once adopted, will make it possible for businesses to obtain a single trademark valid in all twelve Member States on the basis of one application to a Community Trade Mark Office (summary 2.1). The Community also needs more uniformity in national trademark systems for companies who, although not trading throughout the Community, do have commercial activities in more than one Member State, and the Council recently adopted a directive which aims to harmonize Member States' legislation in this area (summary 2.2).
- The intellectual property situation is currently complicated by the need to provide protection to inventions in new technologies such as computer software, microcircuits and biotechnology. These technologies were not in existence when the present intellectual property laws were drafted, and so methods for legal protection are obscure. The Community has already taken an important step to improve the situation by adopting a Directive (summary 2.4) concerning the legal protection of semiconductors. The Commission has also tabled proposals for the legal protection of innovations in biotechnology (summary 2.5) and computer programs (summary 2.6).
- Patents are in a somewhat different situation since a European Patent Convention was signed in 1973 by a number of Member States and non-EC European countries. This provides for patents for a number of countries to be obtained through a single application to the European Patent Office. However, this convention effectively just simplifies the procedure for obtaining a number of national patents. The operation of a single market requires a single Community Patent valid in all Member States. Therefore the then nine Member States negotiated, in 1975, the "Convention for the European Patent for the common market (Community Patent Convention)". Unfortunately, this convention has never come into effect. Negotiations are currently being carried out to amend this Convention so that it can enter into force in those Member States who are in a position to ratify it. It is important to note that work is proceeding to ensure that the single market will have an appropriate patent system.

2. INTELLECTUAL PROPERTY

2.1 Community trademark

1) Objective	To create a Community trademark applicable throughout the Community. This will remove the current requirement to make separate applications for trademarks in each Member State. To ensure that registered trademarks enjoy uniform protection under the legal system of all the Member States.
2) Proposal	**Proposal** for a Council Regulation on the Community trademarks.
3) Contents	1. The Regulation would create Community trademarks. A Community trademark would come into existence on registration by a Community Trademark Office. 2. Definition of what cannot be registered as a Community trademark, eg anything which consists solely of signs used to indicate the kind, value, or purpose of the goods. 3. Application for a Community trademark, grounds for refusal of registration, eg if the mark is likely to be confused with an existing trademark. Permitted proprietors of trademarks include nationals or residents of Member States and nationals of any State which provides Member States' nationals with the same trademark protection as it provides for its own nationals. 4. Procedure to be followed when applying for a Community trademark, including surrender, revocation and invalidity and appeals against these. 5. A Community trademark shall be registered for a period of ten years from the date of filing, renewable for a further ten years. 6. Effect of Community trademarks and rights conferred by such trademarks. Limitations of such rights and effects, eg if a proprietor allows its use by a third party he cannot subsequently withdraw this permission after a set time limit. 7. A Community trademark may only be granted for the whole of the Community. However the Regulation does not prevent the owner of an earlier national trademark from taking an action in respect of a Community trademark under the law of one of the Member States. 8. Alteration, transfer and licensing of Community trademarks. 9. Provision for collective marks to be registered as Community trademarks if the purpose is to distinguish the goods or services of the association which is the proprietor of the mark from those of other businesses. 10. Establishment of a Community Trademark Office. The revenue of the Trademark Office shall come from fees payable for registration of trademarks and, if necessary, financing from the Communities' budget.
4) Opinion of the European Parliament	The Parliament approved the proposal subject to several recommendations for amendment. These include the definition of the right conferred by the trademark. The Commission included these recommendations in its amended proposal.
5) Current status	The proposal is currently before the Council for the establishment of a common position. This shall then be sent to the European Parliament for a second reading.

6) References	Commission Proposal	Official Journal C 351, 31.12.80
	Amended Proposal	Official Journal C 230, 31.8.84
	European Parliament Opinion	Official Journal C 307, 14.11.83
	Economic and Social Committee Opinion	Official Journal C 310, 30.11.81

2. INTELLECTUAL PROPERTY

2.2 National trademark legislation approximation

1) Objective	To ensure that registered trademarks enjoy the same protection under the legal systems of all the Member States.	
2) Community Measure	**Council Directive 88/xxx/EEC of 21 December 1988** to approximate the laws of the Member States relating to trademarks.	
3) Contents	1. The Directive shall apply to every trademark which has been registered for goods or services in a Member State. 2. Registration will be refused or invalidated if the mark: - consists of a sign which cannot, under law,constitute a trademark - is devoid of distinctive character - is liable to mislead or is contrary to public policy - is identical or similar to a previous mark and the goods which it represents are the same as those represented by the earlier mark. 3. The registered trademark confers on the proprietor exclusive right of use. The proprietor shall be entitled to prohibit any third party from using it in the course of trade, except with his consent. This will also apply to any other sign which is identical or similar and is used in relation to goods which are identical or similar. 4. If the owner of a trademark consents to the use of a later trademark for five successive years, he shall forfeit the right to apply for a declaration that the later mark is invalid. He shall no longer be able to oppose the use of the later mark in respect of the goods or services for which the later mark has been used unless this was in bad faith. 5. Unless there is a legitimate reason for non-use, a trademark will be invalidated if: - the owner has not put it to genuine use in the Member State and in connection with the goods for which it is registered within five years of registration, or - it has not been used for any continuous period of five years. 6. A trademark shall also be invalidated if, due to the inactivity of its owner, it has become a common name in trade for an entire category of products or services.	
4) Deadline for implementing Member State legislation		
5) Application date (if different from 4)		
6) Date for further coordinating proposal (if specified)		
7) References	Council Adoption	Not yet published.

2. INTELLECTUAL PROPERTY

2.3 Community Trademark Office: fees

1) Objective	To specify the fees payable to the Community trademark office. Methods of payment are also defined.
2) Proposal	**Proposal** for a Council Regulation on fees payable to the Community trademark office.
3) Contents	1. Fees governed by the Regulation include application fee for a Community trademark, fee for opposition to a Community trademark, registration and renewal fees. 2. Detailed provisions covering the fees to be paid for different classes of goods and different actions taken by the Trademarks Office. 3. The amount of fees, costs and prices shall be specified in ECU. Payment may, however, be made in the currency of the Member State where the financial institution making the payment is established.
4) Opinion of the European Parliament	Not yet given.
5) Current status	The proposal has not yet been submitted to the European Parliament for its opinion.
6) References	Commission Proposal — Official Journal C 67, 14.3.87 European Parliament Opinion Economic and Social Committee Opinion

2. INTELLECTUAL PROPERTY

2.4 Legal protection of the topographies of semiconductor products

1) Objective	To harmonize Member State legislation regarding the protection of the topographies (design) of semiconductor products. The Directive not only provides protection for the creator of the design, it also allows for the free movement of semiconductors within the Community.
2) Community measure	**Council Directive 87/54 EEC of 16 December 1986** on the legal protection of topographies of semiconductor products.
3) Contents	1. Definition of semiconductor products, topography and commercial exploitation for the purposes of the Directive. 2. Obligation on Member States to adopt legislation to protect topographies, providing that they are the result of their creator's own intellectual effort and not commonplace in the semiconductor industry. This legislation shall confer exclusive rights. Member States shall specify in favour of whom the right to protection shall apply. 3. The Directive specifies which persons benefit from the right to protection and the procedure to be followed to extend protection in favour of persons not covered by the Directive. 4. Member States may refuse protection or remove protection under the Directive. They can do so if an application for registration of the topography has not been made to a public authority within two years of its first commercial exploitation. Member States may require that material identifying the topography is also provided, but shall ensure that this is not made public if it is a trade secret. 5. Member States shall grant exclusive rights. These include the right to authorize or prohibit reproduction of a protected topography and the right to commercial exploitation or import of a topography or a product manufactured by using the topography. The exclusive right shall not apply to reproduction for the following purposes; analyzing, evaluating or teaching the concepts, processes, systems or techniques embodied in the topography or the topography itself. 6. If exclusive rights are conditional on registration, they will come into existence on the date of filing or the date of first commercial exploitation anywhere in the world, whichever comes first. If registration is not a condition, the rights will come into existence on the date of first commercial exploitation anywhere in the world or when the topography was first fixed or encoded. 7. The exclusive right shall come to an end ten years from the end of the calendar year in which the topography was first commercially exploited anywhere in the world. If registration is required and an application is filed prior to the date of first commercial exploitation, the 10 year period is calcultated from the filing date.
4) Deadline for implementing Member State legislation	7.11.87
5) Application date (if different from 4)	

6) Date for further coordinating proposal (if specified)		
7) References	Council Adoption	Official Journal L 24, 27.1.87

2. INTELLECTUAL PROPERTY

2.5 Legal protection of biotechnological inventions

1) Objective

To improve the possibility for Community industry to treat the single market as one environment for its economic activities by reducing as far as possible the existing differences among Member States in the legal protection of biotechnological inventions and to prevent other differences from arising. This is important for the future of research in this field.

2) Proposal

Proposal for a Council Directive on the legal protection of biotechnological inventions.

3) Contents

1. Obligation on Member States to ensure that their national patent laws conform with the provisions of the Directive, which establishes clearly the patentability of living matter, sets out the scope of protection of patented biotechnological inventions, provides for dependency licences for plant varieties and regulates deposit, access and redeposit of micro-organisms and other self replicating material.
2. An invention shall not be unpatentable for the sole reason that it is composed of living matter or forms part of natural material.
3. Patents shall be available for the following:
- micro-organisms
- biological classifications other than plant or animal varieties which are protectable under plant variety protection law
- plant and animal material which is not a *variety*
- uses of plant or animal varieties and processes for their production
- micro-biological processes, including processes consisting of a series of steps provided the essence of the invention involves one or more micro-biological steps in the process.

4. For a process involving biological forces or phenomena to be patentable, human intervention must go beyond merely selecting an available material and letting it perform an inherent biological function under natural conditions.
5. Use of patented inventions in experiments shall not constitute patent infringement as would use for commercial purposes. The proposal establishes the point beyond which use ceases to be experimental.
6. Extension of patent rights to identical or derived products and processes. This includes patents for industrial use.
7. Conditions for licensing from patenters to holders of plant breeder rights and vice-versa.
8. Obligations in respect of the disclosure of inventions and their deposit with a recognised depositary institution. Time limits for the application for a patent, and other information related to depositary institutions are specified.
9. Where a sample of a deposited material has been released relative to a process patent and a patent infringement dispute arises, the *burden of proof* will be on the alleged infringer to show that he produced the product by another unpatented process.
10. Surgical and diagnostic methods will only be excluded from patentability or from the field of industrial applicability if they are practised for a therapeutic purpose.

	11. Definitions of *micro-organism* as including all micro-biological entities capable of replication, and of *self-replicable matter* as matter possessing the genetic material necessary to direct its own replication via a host organism.	
4) Opinion of the European Parliament	Not yet given.	
5) Current status	The proposal has been submitted to the Parliament and the Economic and Social Committee for their opinions.	
6) References	Commission Proposal	Not yet published.
	European Parliament Opinion	
	Economic and Social Committee Opinion	

2. INTELLECTUAL PROPERTY

2.6 Legal protection of computer programs

1) Objective

To harmonize Member State legislation regarding the protection of computer programs, in order to create a legal environment which will afford a degree of security against unauthorized reproduction to the computer program.

2) Proposal

Proposal for a Council Directive on the legal protection of computer programs.

3) Contents

1. Obligation on Member States to protect computer programs by conferring exclusive rights under the provisions of copyright laws. Protection is to be accorded to computer programs as literary works. No definition of program is given, but a program is taken, at present, to encompass the expression in any form, language, notation or code of set of instructions, the purpose of which is to cause a computer to execute a particular task or function.
2. As copyright is taken to be protection of the expression of ideas, and not the ideas themselves, the Directive will not apply to the ideas, principles, logic etc underlying the program. It will also not apply to the ideas and principles which underlie the expression of interfaces and access protocols.
3. A computer program will not be protected unless it satisfies the same conditions as regards originality as apply to other literary works.
4. In general, the *author* of a computer program is the natural person or group of persons who have created the program. A distinction is therefore made between *natural* and *legal* persons. With a group, the exclusive right shall be exercised in common unless provided otherwise by contract. However, the Directive lays down specific provisions as to who shall be entitled to exclusive rights in certain circumstances, unless provided otherwise by contract:
   - where the program is created under contract, the rights lie with the person who commissioned the contract
   - where the program is created in the course of employment, the rights lie with the employer
   - where the program is created by another computer program, the rights shall lie with the person who generated the subsequent programs.
5. Protection is to be afforded to all natural and legal persons who are eligible under national copyright legislation as applied to literary works. The protection therefore covers eligibility through residence, nationality and first publication as laid down by the relevant Member State law. In the case of groups, all members will benefit from protection as long as one member qualifies under the relevant Member State copyright law.
6. Definition of *restricted acts*, ie acts which can be controlled by the person enjoying protection. These are:
   a) reproduction or adaptation, in whole or in part, by any means;
   b) loading, running, transmission, storage;
   c) distribution by means of sale, licensing, lease, rental or importation for these purposes.

The right to control distribution shall not be available in respect of the sale or importation of a program following the first marketing of the program by the rightholder.

7. Certain exceptions to *restricted acts* are laid down. Where the program is sold or made public other than through a written licence agreement, the acts listed in 6(a) and 6(b) above are allowed without authorization, insofar as they are necessary for the use of the program. In addition the exclusive right to control rental given in 6(c) above may not be exercised by the rightholder in the case of non-profit making public libraries.
8. It shall be an infringement of the author's exclusive rights:
- to import, process or deal with an infringing copy of the program, if the person knows or has reason to believe that it is an infringing copy of the work; or
- to make, import, possess or deal with articles specifically intended to facilitate the removal or circumvention of any technical means which may have been applied to protect a program.

9. Copyright protection shall be granted for fifty years from the date of creation of the program.
10. The provisions of the Directive are without prejudice to any other legal remedies concerning protection of intellectual property such as trade marks, patents, unfair competition, trade secrets and contract law.
11. The provisions of the proposed Directive will also apply to programs created before the entry into force of the Directive.

4) Opinion of the European Parliament

Not yet given.

5) Current status

The proposal is currently before the Parliament and the Economic and Social Committee for their opinions.

6) References

Commission Proposal	Not yet published.
European Parliament Opinion	
Economic and Social Committee Opinion	

3. TAXATION

CURRENT PROBLEMS AND 1992 OBJECTIVES

- In a single market, business decisions should be taken on commercial grounds which have uniform tax considerations throughout the Community. The current differences in company tax between Member States can distort investment decisions and conditions of competition.
- There is a widespread feeling in private enterprises in Europe that the fiscal environment discourages risk capital and innovation. This compares badly with that of the Community's major competitors.
- A major problem in cross-border operations is the risk of double taxation, due to differences in national tax laws. Little progress has been made in this field, despite the fact that the Council has expressed the view that a number of basic decisions need to be taken quickly in relation to removal of these barriers.
- The proposals in the White Paper which aim to remove these tax obstacles to cross-frontier expansion and cooperation between businesses in different Member States are presently being considered by the Council. Summary 3.1 covers setting up a common taxation system for the members of a group of companies to eliminate double taxation, summary 3.2 aims to eliminate a particular type of double taxation which can arise due to non-market based transfer pricing between companies in a group and summary 3.3 concerns the tax treatment of a group restructuring across frontiers. There is a proposal (summary 3.4) to harmonize the tax treatment of the carry-over of losses from year-to-year. Summary 3.5 describes a proposal to abolish certain taxes on security transactions which distort movements of capital.
- In addition, the Commission has announced in its Third Progress Report that it will present a communication on enterprise taxation together with a proposal for a directive to harmonize the tax base of enterprises. These cover different types of taxation for businesses and other enterprises.

3. TAXATION

3.1 Common taxation of parent companies and their subsidiaries

1) Objective	To create a system whereby the profits of a subsidiary company in one Member State distributed to the parent company in another Member State are exempt from: - with-holding tax on dividends - corporation tax in the hands of the parent company.
2) Proposal	**Proposal** for a Council Directive on the common system of taxation applicable to parent companies and their subsidiaries in different Member States.
3) Contents	1. Member States' tax legislation can discourage companies from setting up subsidiaries across frontiers. The distributed profits of a subsidiary can be taxed several times. They can be taxed as profits of that subsidiary, then be subject to a deduction of tax by that company when it distributes a dividend, and then taxed again as dividend income of the parent in another Member State. The Directive is intended to create a situation whereby a subsidiary's profits are taxed only once. 2. Member State's tax legislation may distort decisions on the location of subsidiaries. The Directive is intended to make the effect of tax considerations neutral in these decisions. This is achieved by introducing a common system of taxation of parent and subsidiaries situated in different Member States.
4) Opinion of the European Parliament	The Parliament approved the proposal subject to certain recommendations for amendment.
5) Current status	The proposal is currently before the Council for adoption.
6) References	Commission Proposal — Official Journal C 39, 22.3.69 European Parliament Opinion — Official Journal C 51, 29.4.70 Economic and Social Committee Opinion — Official Journal C 100, 1.8.69

3. TAXATION

3.2 Elimination of double taxation (arbitration)

1) Objective	Some multinational companies currently suffer from double taxation because national tax authorities adjust transfer prices between subsidiaries in the group. This Directive will eliminate this source of double taxation within the Community.
2) Proposal	**Proposal** for a Council Directive on the elimination of double taxation in connection with the adjustment of transfers of profits between associated enterprises (arbitration procedure).
3) Contents	1. The Directive would apply where double taxation arises as a result of a) the tax authorities of one Member State increasing the taxable profits of an enterprise on the grounds of transactions with an associated enterprise in another Member State not being at arms length, and b) the tax authorities of the second Member State not making a corresponding reduction in the taxable profits of the associated enterprise. 2. At present there is no obligation on national tax authorities to eliminate double taxation of profits resulting in this way. The aim of the proposal is to allow an associated enterprise, whose profits have been subjected to such double taxation, to present its case to the tax authorities entrusted with the taxation of its profits, with a view to eliminating the double taxation. 3. If the tax authority did not arrive at a satisfactory solution of the problem, it and the authorities of the Member State where the other associated enterprise is taxed would try to reach mutual agreement with a view to eliminating the double taxation. 4. If the tax authorities concerned failed to reach an agreement that eliminates the double taxation, they would present the case to an arbitration commission whose decision they agreed from the outset to accept. 5. The commission would consist of - an equal number of representatives from the tax authorities concerned - an uneven number of independent persons appointed by mutual agreement.
4) Opinion of the European Parliament	The Parliament approved the proposal.
5) Current status	The proposal is currently before the Council for adoption. Whether the final format will be a Community Directive or an inter-State Convention has not yet been decided.
6) References	Commission Proposal — Official Journal C 301, 21.12.76 European Parliament Opinion — Oficial Journal C 163, 11.7.77 Economic and Social Committee Opinion — Official Journal C 18, 23.1.78

3. TAXATION

3.3 Common taxation: mergers, divisions and contributions of assets

1) Objective	To resolve the tax problems resulting from Member State tax treatment of cross-frontier restructuring of companies.
2) Proposal	**Proposal** for a Council Directive on the common system of taxation of mergers, divisions and contribution of assets taking place between companies from different Member States
3) Contents	1. The national fiscal legislation of Member States can restrict cross-border restructuring of companies and impede the completion of the Internal Market. 2. The tax cost of mergers, acquisitions and divisions is a major obstacle. It impedes the adaptation of the size of enterprises to the requirements of the Common Market: eg producing in economically efficient quantities; being large enough to compete in global markets. Taxation of these transactions can replace purely commercial factors as major grounds for decisions on restructuring. It can even prevent restructuring operations from being carried out. 3. The purpose of the Directive is to introduce throughout the Community a common tax treatment of these cross-frontier restructuring operations so as to eliminate these problems.
4) Opinion of the European Parliament	The Parliament approved the proposal.
5) Current status	The proposal is now before the Council for adoption.
6) References	Commission Proposal — Official Journal C 39, 22.3.69 European Parliament Opinion — Official Journal C 51, 29.4.70 Economic and Social Committee Opinion — Official Journal C 100, 1.8.69

3. TAXATION

3.4 Tax treatment of carryover of losses

1) Objective	To harmonize and liberalize Member States laws governing the carry-over of losses. This is of special importance because of its effect on the investment capability and competitiveness of businesses.
2) Proposal	**Proposal** for a Council Directive on the harmonization of the laws of the Member States relating to tax arrangements for the carry-over of losses of undertakings.
3) Contents	1. Taxes to which the Directive shall apply for example, France — Impôt sur le revenu Impôt sur les sociétés Italy — Imposta sul reddito delle persone fisiche Imposta sul reddito delle persone giuridiche Imposta locale sui redditi 2. Rules for calculating profit or loss for the purpose of this Directive. 3. The firm can choose from one of two alternative approaches to the carry-over of losses. The first is that losses from a given financial year may be offset against the profits of one or more of the three *preceding* financial years. If not completely offset in this way, the balance may be set against the profits of the *following* financial years in chronological order. The second alternative is that the loss may be offset against the profits of the *following* financial years in chronological order.
4) Opinion of the European Parliament	The Parliament approved the proposal subject to recommendations for amendment including a recommendation that the period of carry-over of profits from previous years be extended from two years to three. This was accepted by the Commission in its amended proposal.
5) Current status	The proposal is currently before the Council for adoption.
6) References	Commission Proposal — Official Journal C 253, 20.9.84 Amended Proposal — Official Journal C 170, 9.7.85 European Parliament Opinion — Official Journal C 46, 18.2.85 Economic and Social Committee Opinion — Official Journal C 160, 1.7.85

3. TAXATION

3.5 Securities transactions: abolition of taxes

1) Objective	To harmonize indirect taxation on transactions in securities. Movements of capital will no longer be distorted by differing national taxes which currently often result in double taxation and discrimination.	
2) Proposal	Amended **proposal** for a Council Directive concerning indirect taxes on transactions in securities.	
3) Contents	1. Member States which impose a tax on transactions in securities must abolish it. 2. Obligation on Member States not to levy any tax on transactions in securities, whether or not levied at a flat rate, which is based on the value of the security being traded. 3. Member States may still levy certain duties: capital duty, transfer duty on transfers of shares when the transaction in fact relates to land and buildings, value added tax on securities representing land and buildings.	
4) Opinion of the European Parliament	The Parliament approved the proposal.	
5) Current status	The proposal is currently before the Council for adoption.	
6) References	Commission Proposal	Official Journal C 115, 30.4.87
	European Parliament Opinion	Official Journal C 318, 30.11.87
	Economic and Social Committee Opinion	Official Journal C 319, 30.11.87

A SINGLE PUBLIC PROCUREMENT MARKET

1. PUBLIC PROCUREMENT

Current problems and 1992 objectives

1.1 Public supply contracts
1.2 Public works contracts
1.3 Compliance procedures
1.4 Water, energy and transport services
1.5 Telecommunications services

ADDENDA

Between 31 December 1988 and 24 March 1989, the following references appeared in the Official Journal of the European Communities.

1.3 Compliance procedures
Amended proposal — Official Journal C 15, 19.1.89

1.5 Telecommunications services
Commission Proposal — Official Journal C 40, 17.2.89

CORRIGENDUM

1.2 Public works contracts
In section 6 read *not published* for *not yet given*.

1. PUBLIC PROCUREMENT

CURRENT PROBLEMS AND 1992 OBJECTIVES

- The total value of government procurement including contracts awarded by firms in the public sector is estimated at about 400 billion ECU (about 15% of the Community's gross domestic product). However only two percent of public procurement contracts in the Community are awarded to firms from a Member State other than the Member State advertising the tender.
- This lack of open and effective competition is one of the most obvious and anachronistic obstacles to the completion of the internal market. As well as increasing costs for the procuring bodies, the lack of intra-Community competition in certain key industries (eg telecommunications) discourages the emergence of European firms which are competitive on world markets.
- Two Directives in force for a number of years aim to open up national tendering procedures to competition by firms from other Member States. One addresses public supply contracts, the other public works (eg building and road construction). That dealing with public supply contracts has now been amended by a Directive adopted by the Council in 1988 (summary 1.1). This new Directive will substantially strengthen and improve existing provisions by describing the field of application in a more precise way, introducing new tendering procedures, imposing the use of common technical standards and by extending time limits. A proposal to amend the existing public works Directive (summary 1.2) has also been put forward by the Commission and is expected to be adopted by Council in the near future. A proposal (summary 1.3) to ensure that there are effective remedies should national or other discrimination occur in the award of contracts is expected to be adopted in the coming year.
- Two further proposals have also been put forward to bring the water, energy, transport and telecommunications sectors (summaries 1.4 and 1.5), which were previously excluded, within the scope of the public procurement rules
- All the recent measures and proposals include the requirement that contracting entities use the same format for publishing tender notices in the Official Journal of the European Communities. As with the previous Directives they also require that summaries of intended procurement be published in the Official Journal of the European Communities on a regular basis.
- Given the recent decision of the Council of Ministers to double the resources allocated to the Structural Funds by 1993, the Commission is determined to ensure compliance with Community tendering rules where government projects are part financed by these Funds. When a public procurement contract is awarded in connection with the implementation of projects and programmes part financed by the Structural Funds, the Commission plans to create a new "public contract" questionnaire. The aim of the questionnaire, which would be completed by the tendering authority, is to provide the Commission with a simple method of checking that the tendering operations are being properly conducted. The Commission has also published a "vade mecum on public contracts in the Community" to increase awareness of the rights and obligations of those operating in procurement markets by explaining the principles of the EEC Treaty as they apply to public procurement and the main features of the EC Directives.
- The Commission intends to table a further proposal in 1989 to cover public procurement in the services sector.

1. PUBLIC PROCUREMENT

1.1 Public supply contracts

1) Objective

The objective of Directive 77/62/EEC was to increase openness of procedures and practices in awarding *public supply* contracts. To develop the conditions of effective competition in the public procurement markets, and to define and reduce the extent of industry sectors which were currently exempt from the Directive. The objective of Directive 88/295/EEC is to strengthen the existing Directives. To make the use of the *open procedure* the rule and to create a negotiating procedure in order to limit the use of the *single tender procedure*. To lay down all applicable thresholds in one provision. To incorporate the contents of the GATT Agreement on Public Procurement into Community rules.

2) Community Measure

Council Directive 88/295/EEC of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and deleting certain provisions of Directive 80/767/EEC.

3) Contents

1. Definition of *public supply contracts* including rental, lease and hire-purchase contracts. Definition of *open, restricted* and *negotiated procedures*. *Open procedures* allow any supplier to submit a bid and *restricted procedures* allow the purchasing authority to restrict the invitation to tender to a particular suppliers. *Negotiated procedures* are where the purchasing authority consults suppliers of its choice and negotiates the contract terms with one or more of them.
2. The Directive covers certain parts of the defence sector. Also not covered is procurement of transport carriers by land, sea and air. Contracts awarded by contracting authorities where such contracts concern the production, transport and distribution of drinking water and contracts awarded by contracting authorities whose principle activity lies in the production and distribution of energy or telecommunication services are also excluded. Exemptions also apply to supplies which are declared secret or whose delivery must be accompanied by special security measures under national legislation, to cases where exclusion is required for protection of the security of the state and to procurement covered by special award procedures outlined in certain international agreements.
3. Thresholds above which the EC rules shall apply and rules for calculating certain estimated contract values (130,000 ECU or 200,000 ECU depending on the status of the authority). The threshold in national currencies and the ECU equivalent of the threshold of the GATT Agreement on government procurement shall be revised every two years from 1.1.88.
4. Basis for calculating contract value for the lease, rental or hire-purchase of products; fixed duration contracts, indefinite contracts, renewable contracts, split contracts.
5. Obligation on contracting authorities to use the *open procedure* for public supply contracts. There are certain exceptions covering situations where it would be impossible to maintain a balance between the value of the contract and procedural costs, or because of the special nature of the goods to be supplied. In such cases a *restricted procedure* may be used. Contracting authorities may also award their supply contracts by *negotiated procedure* which normally also requires prior publication of a tender notice. There are a number

	of exceptions to the publication rule for certain specified cases. 6. Obligation on contracting authorities to draw up a written report with specifically detailed contents on every contract awarded on the basis of *restricted, negotiated* and *single tender procedures.* 7. Obligation on contracting authorities to use the technical standards defined in the Directive for establishing contractual or general documents. Technical specifications shall be defined by the contracting authorities by reference to national standards which implement European standards or to common technical specifications. Rules governing any departure from this obligation in the absence of European Standards or common technical specifications may refer to: - national standards which implement international standards accepted in the country of the contracting authority - national standards of the country of the contracting authority - other standards. 8. Requirement for contracting authorities to publish, at the beginning of each fiscal year, notices by product area of intended procurement during the coming 12 months which has an estimated value of at least 750,000 ECU. Obligation for the results of the tender to be published, except in certain cases where this would be contrary to public interest, or prejudice fair competition among suppliers. 9. Time limits for receipt of requests for participation in restricted and negotiated procedures with prior call for competition to be not less than 37 days from the day the invitation to tender was sent out. In restricted procedures, the time limit for receipt of tenders shall be not less than forty days from the date a written invitation to tender was sent out and in open procedure it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender. 10. Exemption until 31 December 1992 for certain existing national provisions which aim to reduce regional disparities and to promote job creation in areas where development is lagging behind. 11. Obligation on Member States to communicate to the Commission no later than 31 October each year, a detailed statistical report relating to contracts awarded in the previous year.
4) Deadline for implementing Member State legislation	1.1.89 Derogations for Greece, Spain and Portugal until 1.3.92. as regards the modification covered by Directive 88/295/EEC. However, these countries are under the obligation to apply Directive 77/62/EEC and 80/767/EEC.
5) Application date (if different from 4)	
6) Date for further coordinating proposal (if specified)	The Commission will propose a consolidation of the various Directives in this field in the near future.
7) References	Council Adoption — Official Journal L 127, 22.3.88

1. PUBLIC PROCUREMENT

1.2 Public works contracts

1) Objective

The objective of Directive 71/305/EEC is to ensure that decisions for procurement of *public works* are taken on the best commercial grounds. Consequently, to increase the openness of award procedures and improve information, offering better opportunities for participation to interested firms and establishing a better base for pursuing infringement.
The objectives of the proposed amending Directive include the consolidation of the contents of the existing Community measures into one legal instrument; extention of the application of existing Directives to private entities responsible for certain infrastructure projects more than half of which are financed by government; cover of new contractual forms such as promotion and management contracts; adaptation of the threshold which the value of a contract has to exceed to be covered by the contract to inflation and market conditions; making the operational rules more stringent including longer time limits for the various phases of procurement procedures; obligatory use of European standards etc; more transparency in single tender procedures through introduction of publicity requirements for so-called negotiating procedures; mandatory provisions on the award of public works concessions and for contracts to be let by concessionaires; publication of intended procurement throughout the budgetary year of the contracting authority; publication of the results after the award of contracts.

2) Proposal

Proposal for a Council Directive amending Directive 71/305/EEC concerning the coordination of procedures for the award of public works contracts.

3) Contents

1. Extension of the field of application of Directive 71/305/EEC to cover some new contractual forms, eg promotion contracts and management contracts.
2. Definitions include *public works concession, open procedures, restricted procedures* and *negotiated procedures.*
3. Obligation on Member States to ensure that contracting authorities financing more than 50% of works contracts which they have not awarded themselves nevertheless comply with the provisions of the Directive.
4. Provisions concerning concession contracts awarded to third parties and the minimum percentage of work assigned by them to sub-contractors.
5. Obligation on contracting authorities to inform any tenderer who so requests of the reasons for the rejection of his tender within fifteen days. Obligation on contracting authorities to draw up a written report identifying the contracting authority, the successful participants and the reason for their selection, the unsuccessful participants and the reason for their rejection and the successful tenderer and reasons for his selection. This report shall be communicated to the Commission within seven days if it should so request.
6. The provisions of the Directive shall apply to public works contracts whose estimated net value is not less than 5,000,000 ECU.

7. Reduction of the use of *single tender* by introducing a *negotiating procedure* with a prior call for competition and at least three candidates. Limited cases in which a contracting authority may use the *negotiating procedure* without a prior call for competition. This procedure may also be used for projects classified as secret.
8. Obligation on the contracting authorities to define technical specifications by reference to European standards or European harmonization documents.
9. Obligation on the contracting authorities to publish the main elements of the contract after it has been awarded.
10. Time limits for receipt of requests for participation in restricted and negotiated procedures with prior call for competition to be not less than 37 days from the day the invitation to tender was sent out. In restricted procedures, the time limit for receipt of tenders shall be not less than forty days from the date a written invitation to tender was sent out and in open procedures it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender.
11. Exemption until 31 December 1992 for certain existing national provisions which aim to reduce regional disparities and to promote job creation in areas where development is lagging behind.
12. More specific requirements for establishing reports and statistics.

4) Opinion of the European Parliament

The Parliament approved the proposal subject to a number of amendments. The amended proposal includes some of the suggested amendments.

5) Current status

The Council adopted a common position on 4.11.88 which substantially amended the Commission's original proposal. The Council's common position is now before the parliament for a second reading within the framework of the cooperation procedure.

6) References

Commission Proposal	Not yet given.
Amended Proposal	Not yet given.
European Parliament Opinion	Official Journal C 167, 27.6.88
Economic and Social Committee Opinion	Official Journal C 319, 30.11.87

1. PUBLIC PROCUREMENT

1.3 Compliance procedures

1) Objective	To increase substantially the guarantees of openness and non-discrimination in public procurement. To ensure that any offences committed during the tender award procedures are effectively and rapidly censured.
2) Proposal	**Proposal** for a Council Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on procedures for the award of public supply and public works contracts.
3) Contents	1. Obligation on Member States to take measures necessary to ensure effective administrative and/or judicial remedies: - for overturning decisions taken by contracting authorities in breach of non-discrimination rules - to suspend the award of the contract concerned - to indemnify the injured contractor or supplier. 2. Power of the competent administrative body or court to order the removal of technical, economic or financial specifications which discriminate against non-domestic tenderers. Similar powers to overturn decisions taken unlawfully to impose penalty payments, and to award damages to the injured undertaking. 3. Obligation on Member States to guarantee the right of the Commission to intervene in the administrative or judicial procedure to ensure precedence of Community public interest. 4. Right of the Commission to suspend the contract award procedure for a period of not more than three months where it has been established that a clear and manifest infringement has been committed.
4) Opinion of the European Parliament	The Parliament approved the proposal subject to certain amendments intended to reinforce the proposed procedures against infringement.
5) Current status	The proposal is currently before the Council for the adoption of a common position.
6) References	Commission Proposal — Official Journal C 230, 28.8.87 Amended Proposal — Not yet published. European Parliament Opinion — Official Journal C 167, 27.6.88 Economic and Social Committee Opinion — Official Journal C 347, 22.12.87

1. PUBLIC PROCUREMENT

1.4 Water, energy and transport services

1) Objective

To bring the water, energy and transport sectors, which were previously excluded from Community rules governing public procurement, within their scope thereby ensuring that decisions taken in these areas are taken on the best commercial grounds. Consequently, to increase the openness of award procedures and improve information, offering better opportunities for participation to interested firms and establishing a better base for pursuing infringements.

2) Proposal

Proposal for a Council Directive on the procurement procedures of entities providing water, energy, and transport services.

3) Contents

1. Definitions of *undertakings*, *types of contract*, *open, restricted* and *negotiated procedures, standards* and *technical specifications* for the purposes of the Directive.
2. Obligations outlined in this Directive to be applied by public authorities involved in: the supply or management of networks providing a service to the public in connection with the production, transport or distribution of drinking water, electricity, gas or heating; the use of land to extract oil, gas, coal or other solid fuels or to provide airport, sea or inland port or other terminal facilities; management of rail, tram, trolley or most bus services. Obligations also to be applied by private entities where it is established according to defined criteria that they are protected from competition, eg through the existence of special or exclusive right or authorization by the national authorities of a Member State to operate in this area and where the objective conditions for government influence on their procurement are fulfilled. Entities currently affected by the Directive are identified in the annexes to the proposal.
3. Situations in which the Directive will not apply, eg contracts whose execution must be accompanied by special national security measures.
4. The Directive shall apply to supply contracts which have a value before value added tax of at least 200,000 ECU and works contracts with a value before value added tax of at least 5,000,000 ECU.
5. Obligation on contracting entities to define technical specifications by reference to national standards implementing European standards or to common technical specifications. Certain exceptions to this obligation are outlined. If no European standards or common technical specifications exist, the technical specifications may be defined by reference to other documents such as; national standards implementing international standards; national standards of the country of the contracting authority or any other standards.
6. Possibility for contracting entities to use either the *open, restricted,* or *negotiated procedures* to award tenders provided that a call for competition has been published in the manner provided for in the Directive. There are three ways of doing so: publication of either a tender notice per contract, publication of a notice stating the existence of a list of qualified suppliers, or inclusion of the intended contract in a survey of intended procurement. Contracting entities may use the *negotiated procedure* without prior call for competition in certain defined cases, eg for supply contracts for the sole purpose of research and development.

	7. Obligation on a contracting entity which expects to award tenders of at least 750,000 ECU value in each product area in the supply sector or expects to award works contracts worth at least 5,000,000 ECU in one year, to publish a notice indicating this at least once a year in the Official Journal of the European Communities. 8. Obligation on a contracting entity which has awarded a contract to publish in the Official Journal the results of the procedure. In specified circumstances, however, the contents of the notice may be limited. 9. Time limits for receipt of requests for participation in *restricted* and *negotiated procedures* with prior call for competition to be not less than 37 days from the day the invitation to tender was sent out. In *restricted procedures*, the time limit for receipt of tenders shall be not less than forty days from the date a written invitation to tender was sent out and in *open procedures* it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender. 10. Obligation on contracting entities not to impose obligations on some suppliers not imposed on others and not to require tests or proof that duplicate objective evidence is already available. Contracting entities shall lay down and make available to interested suppliers the criteria and rules according to which they will make their decision. 11. Obligation on contracting entities to award a contract either on the basis of the most economically advantageous tender or on the lowest price offered.
4) Opinion of the European Parliament	Not yet given.
5) Current status	The proposal is currently before the Parliament and the Economic and Social Committee for their opinions.
6) References	Commission Proposal — Not yet published. European Parliament Opinion Economic and Social Committee Opinion

1. PUBLIC PROCUREMENT

1.5 Telecommunications services

1) Objective

To bring the telecommunications sector, which was previously excluded from Community rules governing public procurement, within their scope thereby ensuring that decisions taken in this area are taken on the best commercial grounds. Consequently, to increase the openness of award procedures and improve information, offering better opportunities for participation to interested firms and establishing a better base for pursuing infringement.

2) Proposal

Proposal for a Council Directive on the procurement procedures of entities operating in the telecommunications sector.

3) Contents

1. The Directive applies to supply, work and software service contracts awarded by public contracting entities which operate public telecommunications networks or offer one or more telecommunications services to the public. The Directive also applies to private entities where it is established according to defined criteria that theyare protected from competition, eg through the existence of special or exclusive rights granted by a Member State to operate in this area and where the objective conditions for government influence on their procurement are fulfilled. Entities currently affected by the proposed Directive are identified in annex I to the proposal.
2. Situations in which the Directive shall not apply, eg contracts awarded solely in connection with one or more telecommunications services if other entities are free to offer the same services, under the same conditions, in the same place.
3. Definitions of *undertakings, types of contract, open, restricted* and *negotiated procedure, standards, technical specifications, software service contracts* and the types of standards to be used for contract specifications.
4. Directive to apply to supply contracts and software service contracts which have a value before value added tax of at least 200,000 ECU and to works contracts with a value before value added tax of at least 5,000,000 ECU.
5. Obligation on contracting authorities to define technical specifications by reference to national standards implementing European standards or to common technical specifications. Certain exceptions to this obligation are outlined, particularly if its application would prejudice the application of Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment.
6. Possibility for a Member State to use either the *open, restricted* or *negotiated procedures* to award tenders provided that a call for competition has been published in the manner provided for in the Directive. There are three ways to do so: publication of either a tender notice per contract, publication of a notice stating the existence of a list of qualified suppliers, or inclusion of the intended contract in a survey on intended procurement. Contracting entities may use the *negotiated procedure* without prior call for competition in certain defined cases, eg for supply contracts for the sole purpose of research and development.

	7. Obligation on a contracting entity which expects to award tenders of at least 750,000 ECU value in each product area in the supply sector in the coming twelve months or expects to award works contracts worth at least 5,000,000 ECU to publish a notice indicating this at least once a year in the Official Journal of the European Communities. 8. Obligation on a contracting entity which has awarded a contract to publish in the Official Journal the results of the procedure. In specific circumstances, however, the contents of the notice may be limited. 9. Time limits for receipt of requests for participation in *restricted* and *negotiated procedures* with prior call for competition shall not be less than 37 days from the day of invitation to tender was sent out. In *restricted procedures*, the time limit for receipt of tenders shall be not less than 40 days from the date a written invitation to tender was sent out and in *open procedures* it shall be not less than 52 days from the date of dispatch of notice. In cases of urgency, the time limit for requests to participate shall be not less than 15 days from the date the letter of invitation was sent and that for receipt of tenders shall be not less than 10 days from the date of invitation to tender. 10. Obligation on contracting entities not to impose obligations on some suppliers which have not been imposed on others and not to require tests or proof that duplicate objective evidence is already available. Contracting entities shall lay down and make available to interested suppliers the criteria and rules according to which they will make their decision. 11. Obligation on contracting entities to award a contract either on the basis of the most economically advantageous tender or on the lowest price offered. 12. A committee called the Advisory Committee on Telecommunications Procurement shall be set up. It shall be consulted by the Commission on: amendments to annex I to the Directive which specifies which entities shall fall within the Directive, revision of thresholds, procurement rules established under international agreements and the review of the operation of this Directive.
4) Opinion of the European Parliament	Not yet given.
5) Current status	The proposal is currently before the Parliament and the Economic and Social Committee for their opinions.
6) References	Commission Proposal — Not yet published. European Parliament Opinion Economic and Social Committee Opinion

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