

9335/98

LIMITE

PUBLIC 6

LEGISLATIVE TRANSPARENCY

STATEMENTS WHICH MAY BE RELEASED TO THE PUBLIC MAY 1998

This document contains a summary of definitive legislative acts adopted by the Council in May 1998, together with statements in the minutes which the Council has decided may be released to the public.

It should be noted that only the minutes concerning the definitive adoption of legislative acts are authentic. Extracts from the minutes in question may be released to the public in the same way as the statements in the minutes under the conditions laid down in the Code of Conduct of 2 October 1995.

STATEMENTS IN THE MINUTES WHICH MAY BE RELEASED TO THE PUBLIC – MAY 1998 –			
DEFINITIVE LEGISLATIVE ACTS	TEXTS ADOPTED	STATEMENTS	VOTES
2089th Council meeting (Economic and Financial Questions) on 2 May 1998			
Council Regulation on the introduction of the euro	7392/1/98 REV 1		(¹)
Council Regulation on denominations and technical specifications of euro coins intended for circulation	7410/1/98 REV 1	70/98	(¹)
2091st Council meeting (Industry) on 7 May 1998			
Council Regulation on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid	7532/98 + COR 1 (fin)	71/98, 72/98, 73/98, 74/98, 75/98, 76/98, 77/98, 78/98	
2092nd Council meeting (Energy) on 11 May 1998			
Directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas	PE-CONS 3605/98	79/98, 80/98, 81/98, 82/98, 83/98, 84/98, 85/98, 86/98, 87/98, 88/98, 89/98, 90/98, 91/98, 92/98, 93/98, 94/98, 95/98, 96/98	

(¹) The voting rights of the representatives of Denmark, Greece, Sweden and the United Kingdom being suspended.

STATEMENTS IN THE MINUTES WHICH MAY BE RELEASED TO THE PUBLIC
– MAY 1998 –

DEFINITIVE LEGISLATIVE ACTS	TEXTS ADOPTED	STATEMENTS	VOTES
2094th Council meeting (Internal Market) on 18 May 1998 Decision of the European Parliament and of the Council establishing an action programme to improve awareness of Community law within the legal professions (Robert Schuman Project) Council Regulation amending Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff and autonomously according a temporary partial suspension from customs duties for certain gas turbines Council Decision concerning a multiannual programme for the promotion of renewable energy sources in the Community (ALTENER II) 2095th Council meeting (Economic and Financial Questions) on 19 May 1998 Directive of the European Parliament and of the Council amending: = Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions; = Articles 2, 5, 6, 7 and 8 and Annexes II and III of Council Directive 89/647/EEC on a solvency ratio for credit institutions; = Article 2 and Annex II of Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions	PE-CONS 3611/98 7901/98 + COR 1 (fin) 8352/98 + COR 1 (f,d,i,nl,dk,gr,es) PE-CONS 3607/98	97/98 98/98, 99/98 100/98	Against D, NL, S Against I, UK

STATEMENTS IN THE MINUTES WHICH MAY BE RELEASED TO THE PUBLIC
– MAY 1998 –

DEFINITIVE LEGISLATIVE ACTS	TEXTS ADOPTED	STATEMENTS	VOTES
Directive of the European Parliament and of the Council amending Council Directive 89/647/EEC on a solvency ratio for credit institutions	PE-CONS 3606/98		Against IRL
Directive of the European Parliament and of the Council amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions	PE-CONS 3608/98		
Council Regulation concerning short-term statistics	7831/98 + COR 1 + COR 2 (p) + COR 3 (i) + COR 4 (dk)	101/98, 102/98	Against D, A
Council Decision on measures of financial assistance for innovative and job-creating small and medium-sized enterprises (SMEs)	8418/98 + COR 1 (p)	103/98, 104/98	
2097th Council meeting (General Affairs) on 25 May 1998			
Directive of the European Parliament and of the Council on the approximation of the laws of the Member States relating to machinery	PE-CONS 3610/98		

STATEMENTS IN THE MINUTES WHICH MAY BE RELEASED TO THE PUBLIC
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DEFINITIVE LEGISLATIVE ACTS	TEXTS ADOPTED	STATEMENTS	VOTES
2098th Council meeting (Agriculture) – 25 May 1998			
Council Regulation amending Regulation (EEC) No 1906/90 on certain marketing standards for poultrymeat	8265/98		
Council Regulation amending Council Regulation (EEC) No 1615/89 establishing a European Forestry Information and Communication System (Efics)	7385/98		
Council Regulation introducing special temporary measures for hops	8234/98 + COR 1 (s)		
Council Regulation amending Regulation (EC) No 3448/93 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products	8295/98	105/98, 106/98	
Council Regulation on statistical returns in respect of the carriage of goods by road	7021/98 + COR 1 (fin) + COR 2 (fin) + REV 1 (s)	107/98, 108/98, 109/98, 110/98, 111/98	Abstention D
Council Directive amending Directive 94/58/EC on the minimum level of training of seafarers	7841/98 + COR 1 (fin)	112/98, 113/98, 114/98, 115/98, 116/98	

STATEMENTS IN THE MINUTES WHICH MAY BE RELEASED TO THE PUBLIC
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DEFINITIVE LEGISLATIVE ACTS	TEXTS ADOPTED	STATEMENTS	VOTES
2098th Council meeting (Agriculture) – 26 May 1998 Council Regulation concerning the compulsory indication on the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC	7814/98 + COR 1 (s)	117/98, 118/98, 119/98	Against DK, I, S
2099th Council meeting (Justice and Home Affairs) on 29 May 1998 Decision of the Council and of the Commission concerning the conclusion of the Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws	8638/98 + COR 1 (fin) + COR 2 (i)	120/98, 121/98	
2100th Council meeting (Culture/Audiovisual) on 28 May 1998 Directive of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations	PE-CONS 3609/98 + COR 1 (fin)		

STATEMENT 70/98

COMMISSION STATEMENT

"The Commission will take the necessary steps in order to ensure the best possible implementation of this Regulation."

STATEMENT 71/98

General Commission statement

"The Commission's proposal forms part of a thoroughgoing reform of its State aid policy aimed at making control more effective so as to ensure that aid levels are compatible with the proper functioning of the single market. The reform involves tightening the compatibility rules, simplifying administrative procedures and concentrating resources on the most important cases that cause the heaviest distortions of competition. There is to be no relaxation of the Commission's surveillance; on the contrary, it intends to step up the stringency of its checks.

The Commission will continue to lay down strict conditions for deeming aid compatible with the common market. It will, in particular, remain unfavourably disposed towards operating aid, which reduces firms' current expenditure and distorts competition without contributing to any objective in the Community interest.

The Commission will also continue to examine promptly in the light of Articles 92 and 93 any information brought to its attention concerning possible breaches of the State-aid rules."

STATEMENT 72/98

Council and Commission statement

"The Council and the Commission agree that, when it adopts Regulations on the basis of Article 1, and imposes detailed rules with regard to transparency and monitoring, the Commission should specify that the information from the Member States which will be published in the Official Journal in accordance with Article 4(2) will also include the name and address of the authority competent for aid."

STATEMENT 73/98

Commission statement

"The Commission undertakes to re-examine the framework for employment aid so as to take into account the approach of the guidelines on employment which were discussed at the Luxembourg European Council on 21 November 1997. It states that the future rules for employment aid exemption will take account of that approach."

STATEMENT 74/98

Commission statement

Re Article 1 (sectors excluded)

"The present Regulation does not affect existing Regulations which have been adopted pursuant to Article 94 and which are applicable to particular sectors. The sectors excluded from group exemption are to be specified in the exemption Regulations because they may vary not only according to the aid category but also over time. The assessment is made under powers conferred on the Commission by the Treaty itself. In determining which sectors are excluded, the Commission will take account, among other things, of the State aid provisions of Council Regulations relating to specific sectors."

STATEMENT 75/98

Commission statement

Re Article 1(2)(e) and Article 4 (transparency and monitoring)

"The monitoring system proposed by the Commission does not involve any transfer of administrative tasks from the Commission to the Member States. It should, on the contrary, reduce the administrative burden both for the Commission and for the Member States.

The Commission will ensure that there is no duplication of monitoring obligations in cases where an exempted aid scheme might fall within the scope of several exemption Regulations.

The Commission will on request provide Member States with technical assistance in setting up the system for recording and storing information and transmitting reports to the Commission in order to help them overcome any technical difficulties and establish a system that is compatible throughout the Union."

STATEMENT 76/98

Commission statement

Re Article 6 (evaluation reports)

"In its evaluation report, the Commission will review the application of the enabling Regulation in the light of the contribution it makes towards improving the effectiveness of State aid control and with due regard to the findings of its surveys on State aid in the manufacturing and certain other sectors of the European Union."

STATEMENT 77/98

Commission statement

Re Article 9 (consultation of the Advisory Committee)

"The Commission will ensure that the documents to be discussed by the Committee are distributed in good time to enable Member States' representatives to form a valid opinion.

Member States will be able to vary the representatives they send to meetings of the Advisory Committee according to the topics discussed."

STATEMENT 78/98

Unilateral statement by the German delegation, supported by the Netherlands delegation

"The German Government points out that the reimbursement of State aids after a certain period of time might lead to special problems for the recipients of such aid, because the Commission will receive information concerning the incorrect application of Regulations pursuant to Article 94 as a rule on the basis of the annual reports submitted by Member States. The German Government asks the Commission to apply a flexible procedure to these cases."

STATEMENT 79/98

Re Article 2(7)

"The Council and the Commission consider that supply as defined in Article 2(7) also includes arranging with a transmission or distribution undertaking for natural gas to be transported by the system to customers."

STATEMENT 80/98

Re Article 2(13)

"The Council and the Commission consider that the concept of ancillary services as referred to in Article 2(13) shall include all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities, including storage, load balancing and blending."

STATEMENT 81/98

Re Article 2(13)

"The Council and the Commission consider that the provisions on access to the system in relation to storage facilities or activities do not cover access to such facilities/activities independent of system use. Access to such facilities should only be possible when such access is technically necessary for providing efficient access to transmission and/or distribution networks."

STATEMENT 82/98

Re Article 2(21)

"The United Kingdom and the Commission consider that a person who resupplies natural gas which is delivered to his premises for the purpose of consumption is included in the definition of final customer."

STATEMENT 83/98

Re Article 3(2)

"The Council and the Commission consider that the concept of regularity as referred to in Article 3(2) also includes the continuity of gas supplies."

STATEMENT 84/98

Re Article 4(2) and (3)

"The Council and the Commission consider that the objective and non-discriminatory criteria referred to in Article 4(2) can be interpreted as allowing for Member States to introduce quantitative criteria with regard to the size of transmission and distribution pipelines and LNG facilities, for which an authorisation is being applied for, for construction and/or operation."

STATEMENT 85/98

Re Articles 5 and 27

"During the preparation of the report on harmonisation as referred to in Article 27(1), the Commission will analyse the harmonisation requirements and, if appropriate, submit proposals aiming at a more efficient interoperability of natural gas networks."

STATEMENT 86/98

Re Articles 8(2) and 11(2)

"The Council and the Commission state that the provisions of Articles 8(2) and 11(2) shall not imply any duty on undertakings to change their legal structure or create new companies."

STATEMENT 87/98

Re Article 13(3)

"The German delegation states that the aims of the first sentence of paragraph 3 shall also be met where the contents of the balance sheet and profit and loss accounts are broken down in a pragmatic and verifiable manner."

STATEMENT 88/98

Re Article 17

"The Council and the Commission consider that in case of refusal of access due to lack of capacity as referred to in Article 17 account may be taken of contractually committed capacity. Furthermore, consideration should be given, if appropriate, to whether capacity can reasonably be made available."

STATEMENT 89/98

Re Article 18

"The Council and the Commission consider that, since Member States are allowed to decide on a more extensive opening of the market, the concept of site may also apply, if a Member State so chooses, where firms belonging to the same industrial group or consumers forming a consortium or coming from the same industrial zone conclude natural gas supply contracts which in aggregate exceed the eligibility thresholds laid down in Article 18(2) and (6)."

STATEMENT 90/98

Re Article 18

"The Council and the Commission consider that other final customers consuming less than 25 million cubic metres of gas per year on a consumption site basis but having a gas fired power production unit and/or a combined heat and power installation are only to be eligible for the volume of gas required for this power and/or heat and power production."

STATEMENT 91/98

Re Article 25(1)

"In the view of the Council and the Commission, the procedures in Article 25(1) can be implemented through the procedures of government supervision provided in the Member States to stop the misuse of a dominant position."

STATEMENT 92/98

Re Article 25(2)

"The German delegation states that for the Federal Republic of Germany, decisions will be notified by the *Bundeskartellamt*."

STATEMENT 93/98

Re Article 25(3)

"The Council and the Commission declare that the criterion as mentioned in (c) of Article 25(3) will be applied equally to all natural gas undertakings."

STATEMENT 94/98

Re Article 26(1)

"The Council and the Commission consider that LNG to be imported in the island of Crete for power generation will not be taken into account for the application of this paragraph, as long as Crete is not connected to the Greek mainland gas system."

STATEMENT 95/98

Re Article 26(4)

"The Commission intends to apply the criteria for derogations referred to in Article 26(4) in a restrictive manner excluding an unacceptable proliferation of such derogations and the Commission considers that, in principle, there will be no need to grant derogations under Article 26(4) in order to facilitate investment in distribution systems, in view of the provisions in Article 4(4)."

STATEMENT 96/98

Re Article 28

"The Commission, recognising the uncertainties of the development of emergent markets and of their capability to ensure long-term security of supply, declares that the effective situation of those markets will be taken into account in the evaluation foreseen in Article 28 of the Directive."

STATEMENT 97/98

Unilateral statement by the United Kingdom delegation

"The United Kingdom delegation has voted for this proposal in the interests of promoting the better application of Community law. The United Kingdom, however, regards its vote as without prejudice to the question of whether Article 100a is an appropriate legal base for provisions which while aimed at promoting the effective functioning of the Single Market do not do so by the approximation of provisions laid down by law, regulation or administrative action in Member States".

STATEMENT 98/98

Commission statement

Re Article 1(3)

"The Commission points out that under the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, legislative acts concerning multiannual programmes not subject to the codecision procedure do not contain an "amount deemed necessary".

Since the Commission's ALTENER II proposal did not provide for the inclusion of a financial reference, this is the sole responsibility of the Council and does not affect the powers of the budgetary authority.

In any event, the Commission considers that the planned budget of ECU 22 million for two years is insufficient in view of the high priority attached to actions to promote renewable energy sources."

STATEMENT 99/98

Commission statement

Re Article 2(1)(b), first indent

"The Commission states that in order to avoid any overlapping and accumulation of aid, actions to help local and regional planning will be governed by the following rules: the aim of the pilot actions to help local and regional planning referred to in Article 2(1)(b) will be to draw up plans for renewable energy sources at local and regional level and implement them. Such plans may be general for all renewable energy sources and the whole of the area concerned or specific for one type of energy (wind, biomass, solar, etc.) or one particular sector (tourist sector, mountain areas, regions with plentiful wind or biomass resources, etc.). The authorities responsible for implementing such plans must be among the proposers. The level of Community funding will be 50% and will not include investments.

The local and regional actions covered by the SAVE programme concern the setting up of local or regional agencies. The setting up of an agency presupposes the establishment of a permanent structure with qualified staff and the support of the local authorities. Such activities concern the controlling of energy and the promotion of renewable energy sources. The local authorities chair the Steering Committee, contribute financially and are answerable for the agency to the Commission. The level of Community funding is limited to 40% of the total budget for the work programme for three years and amounts to ECU 175 000.

If, in the context of the ALTENER II programme, the local agency submits an eligible project within the first three years in which it has received aid under SAVE, the level of Community aid under ALTENER will be 35% instead of 50%."

STATEMENT 100/98

Council statement

"The Council invites the Commission to consider, in the light of Article 1, submitting proposals to amend the corresponding provisions in the directives concerning the other financial sectors (investment services, life assurance, non life insurance and UCITS) and to undertake all appropriate consultations in this respect."

STATEMENT 101/98

German statement

"The German delegation fundamentally welcomes the Council's intentions of issuing a Regulation to provide comparable data on short-term economic development in each Member State. In line with the SLIM initiative to simplify legal provisions in the Internal Market, however, information needs must be limited to data that are absolutely necessary for Community short-term analysis and monitoring.

The German delegation therefore regrets that, contrary to the Commission's original proposal, "other services" have been included in Annex D of the Regulation, although thus far no evidence of their significance for short-term economic development has been provided. It is the delegation's view that, prior to a decision on the quarterly collection of data in these areas, a scientific study of the relevance for short-term economic development of the economic branches listed in this Annex should have been undertaken.

The German delegation also points to the fact that for a large part of these services there has previously been no collection of statistics for time periods of less than a year. Official short-term statistics must therefore be considerably expanded. This imposes greater burdens on companies, in particular small and midsize enterprises, and means additional costs for administrations, without the costs being offset by corresponding benefits for short-term economic analysis and policies. In this connection, we also call attention to the German Government's 1996 Memorandum to the Council and the Commission on limiting statistics at the European level.

The German delegation therefore rejects the Regulation in its present form."

STATEMENT 102/98

Austrian statement

"In principle Austria welcomes the intention of using a Regulation to lay the basis for a system of comparable short-term statistics at Community level.

However, in Austria's view the Regulation fails to take adequate account of subject matter which has already been covered in other statistical Regulations.

Annex A, for instance, concerns deadlines for the transmission to the European Commission of data based on information regarding external trade. Such information is required under other Regulations, but under those Regulations different deadlines are laid down for the transmission of the information.

Austria is of the opinion that differing rules for interdependent data should have been avoided, since in any event they can scarcely be implemented.

As a result, Austria rejects the Regulation as it now stands."

STATEMENT 103/98

STATEMENT ON EQUITABLE DISTRIBUTION

"The Commission states that in the implementation of the programme, in cooperation with the EIF, it will endeavour to achieve an equitable distribution of funds between the Member States, bearing in mind the objectives of the programme."

STATEMENT 104/98

STATEMENT ON ARTICLE 3

"The Commission and the EIF declare that in the implementation of the ETF start-up facility there shall be close cooperation with national mechanisms – where existing – providing risk capital finance to SMEs.

Without prejudice to the provisions of Annex I and to the decision-making procedures applied by the EIF in the implementation of this facility, this cooperation shall include where appropriate:

- exchange of information on market developments,
- financing and risk sharing, in the form of co-investments or joint investments in venture capital funds that meet the objectives of the scheme."

STATEMENT 105/98

Re the Regulation as a whole

Commission statement

"The Commission will propose, pursuant to Article 13(1) of Council Regulation (EC) No 1766/92 on the common organisation of the market in cereals and the equivalent provisions of the other Regulations on the common organisation of markets providing for the granting of refunds for certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and under the procedure provided for in Article 16 of Regulation (EC) No 3448/93, appropriate measures ensuring that the payment of the refunds in question is within the limits resulting from the agreements concluded pursuant to Article 228 of the Treaty."

STATEMENT 106/98

Re the Regulation as a whole

Council statement

"In the light of the above Commission statement, the Council considers that any measures which the Commission might take should have regard to:

- the reality of the international constraint and the need to avoid any unnecessarily cumbersome administrative procedures;
- the specific constraints attaching to the export of such products, particularly as regards the number of firms and of export transactions concerned and the unit value of those transactions.

The Council reiterates its opposition to the introduction of refund certificates."

STATEMENT 107/98

Re Article 1

"The Council invites the Commission to quantify the transport operations carried out within Community territory by vehicles registered in third countries."

STATEMENT 108/98

Re Article 2, second indent, subparagraph (b)

"France considers that if goods road transport flows are to be adequately monitored, operations carried out by vehicles with a maximum permissible weight of between 3,5 and 6 tonnes will have to be taken into account as is the case in other Community road transport regulations."

STATEMENT 109/98

Re Article 4

"The Commission states that Member States may supply the statistical data provided for in this Regulation from different sources, provided the statistical results meet minimum standards of precision in accordance with Article 4."

STATEMENT 110/98

Re Article 5(5)

"The Commission undertakes to complete as soon as possible its current work on establishing the technical conditions for an effective system of regional coding."

STATEMENT 111/98

Re Article 5(3) and Article 11

"Pursuant to Article 12 of Regulation (EEC) No 3118/93 ⁽²⁾, the Community authorisation and quota system for cabotage operations provided for in Article 2 of that Regulation shall cease to apply on 1 July 1998. However, from that date and until the relevant provisions of this Regulation enter into force, Member States undertake to transmit to Eurostat, under the cabotage arrangements finally adopted, the data in their possession concerning cabotage operations carried out by resident carriers."

⁽²⁾ Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ L 279, 12.11.1993, p. 1).

STATEMENT 112/98

Re Directive in general

"The Commission undertakes to propose, following the adoption by the Council of this amending directive and in accordance with the interinstitutional agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts ⁽³⁾, an official codification of the texts of Directive 94/58/EC and of the present amending directive."

STATEMENT 113/98

Re Article 1, paragraph 4, new Article 5h

"The Council and the Commission state that Article 5h will be reviewed within the framework of the establishment of a possible separate instrument on working time."

STATEMENT 114/98

Re Article 1, paragraph 6, new Articles 8(6); Re Article 1, paragraph 8, new Articles 10, 10a and 11

"The Commission undertakes to submit to the Council, after the adoption of this Directive, a proposal with a view to consolidating, in Directive 95/21/EC, all the requirements with respect to port-State control."

⁽³⁾ OJ C 102, 4.4.1996, p. 2.

STATEMENT 115/98

Re Article 1(6), new Article 11

"The Council and the Commission state that deviations from the applicable safe manning requirements of the Flag State, which are caused by crew change, illness among the crew or other circumstances that might occur as a consequence of a ship's normal operation in port, may not constitute deficiencies requiring detention. It is, however, still an indispensable condition that any deficiency clearly hazardous to safety, health or the environment is considered a deficiency requiring detention and is corrected before the ship leaves port."

STATEMENT 116/98

Re Article 3

"The Council and the Commission underline that the acceptance of the implementation date in the Directive should not be used as a waiver towards the obligations of contracting parties under the STCW Convention."

STATEMENT 117/98

COUNCIL STATEMENT

"The Council invites the Commission to encourage the development of validated methods for the detection of protein or DNA resulting from genetic modification. This shall include, in particular, the assessment of parameters for detection thresholds."

STATEMENT 118/98

COUNCIL STATEMENT

"In order to take account of the problem of adventitious contamination the Council invites the Commission to study the practicality of setting de minimis thresholds for the presence of DNA or protein resulting from genetic modification, in the light of any relevant scientific advice, and to submit a report and proposals, as appropriate, as soon as possible."

STATEMENT 119/98

COUNCIL STATEMENT

Re Article 2(2), second subparagraph

"The Council invites the Commission, on the basis of information received from the Member States, the advice of the Scientific Committee on Food, and any other relevant scientific advice, to submit as soon as possible to the Standing Committee for Foodstuffs a proposal initiating the list referred to in Article 2(2) of the present Regulation.

To this end the Council invites the Member States to submit to the Commission any relevant data on products in which they consider neither protein nor DNA resulting from genetic modification is present. The first submissions should be made by 31 August 1998.

In the meantime, the Council invites the Commission to keep the Standing Committee informed of progress towards such a proposal."

STATEMENT 120/98

Commission statement on confidentiality of information

"The statement made by the Commission in April 1995 on the confidentiality of information and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to the 1991 Agreement apply in their entirety to this Agreement.

Article VII of this Agreement states that existing laws remain unchanged and that the Agreement must be interpreted consistently with those existing laws. This Agreement therefore cannot permit either of the Parties' competition authorities to do any act they do not already have the power to do. One consequence of this is that the Commission may only provide information to the US authorities where it is consistent with Community law to do so.

While this Agreement envisages that it may be appropriate to provide information to the other party in order to keep it informed of enforcement activities, confidential information may only be provided with the consent of the source of that information. Community law provides a high level of protection to confidential information provided to the Commission, and it will be necessary that any consent obtained is sufficient to discharge the Commission from its obligation of confidentiality pursuant to general principles of Community law, the case-law of the Court of Justice of the European Communities and Article 20(2) of Council Regulation No 17."

STATEMENT 121/98

Commission statement on transparency

"The principles on transparency which govern the relationship between the Commission and the Member States in the application of the competition rules as enshrined, in particular in Council Regulation No 17, the statement made by the Commission in April 1995 on transparency and the arrangements contained in the exchange of interpretative letters dated 31 May and 31 July 1995, in relation to the 1991 Agreement shall apply.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of all requests by the US authorities to investigate or remedy anti-competitive activities and of all proceedings opened by the Commission as a result of a request by the US authorities under Article III of this Agreement.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of requests to the US authorities under Article III of this Agreement to investigate anti-competitive activities.

The Member States whose interests are affected shall be informed as soon as is reasonably possible of US deferrals or suspensions of enforcement activities pursuant to Article IV(2) of the Agreement, or of Commission and US initiations or re-institutions of such activities pursuant to Article IV(4) of the Agreement.

When the Commission opens proceedings following a request by the US authorities under Article III of this Agreement, the undertakings concerned shall be informed of the existence of the request, at the latest when the statement of objections is issued, or when a publication pursuant to Article 19(3) of Council Regulation No 17 is made.

The annual report presented by the Commission to the European Parliament and the Council on the application of the 1991 Agreement shall also cover the application of this Agreement, including any cases where information has been exchanged under the Agreements."