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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

DIRECTIVE 97/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 December 1997

concerning the processing of personal data and the protection of privacy in the telecommunications sector

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission⁽¹⁾,

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 6 November 1997,

(1) Whereas Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁴⁾ requires Member States to ensure the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community;

(2) Whereas confidentiality of communications is guaranteed in accordance with the international instruments relating to human rights (in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms) and the constitutions of the Member States;

(3) Whereas currently in the Community new advanced digital technologies are introduced in public telecommunications networks, which give rise to specific requirements concerning the protection of personal data and privacy of the user; whereas the development of the information society is characterised by the introduction of new telecommunications services; whereas the successful cross-border development of these services, such as video-on-demand, interactive television, is partly dependent on the confidence of the users that their privacy will not be at risk;

(4) Whereas this is the case, in particular, with the introduction of the Integrated Services Digital Network (ISDN) and digital mobile networks;

(5) Whereas the Council, in its Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992⁽⁵⁾, called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council re-emphasised the importance of the protection of personal data and privacy in its Resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the Integrated Services Digital Network (ISDN) in the European Community up to 1992⁽⁶⁾;

(6) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in the telecommunications networks, in particular with regard to the introduction of the Integrated Services Digital Network (ISDN);

(7) Whereas, in the case of public telecommunications networks, specific legal, regulatory, and technical

⁽¹⁾ OJ C 200, 22.7.1994, p. 4.

⁽²⁾ OJ C 159, 17.6.1991, p. 38.

⁽³⁾ Opinion of the European Parliament of 11 March 1992 (OJ C 94, 13.4.1992, p. 198). Council Common Position of 12 September 1996 (OJ C 315, 24.10.1996, p. 30) and Decision of the European Parliament of 16 January 1997 (OJ C 33, 3.2.1997, p. 78). Decision of the European Parliament of 20 November 1997 (OJ C 371, 8.12.1997). Council Decision of 1 December 1997.

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31.

⁽⁵⁾ OJ C 257, 4.10.1988, p. 1.

⁽⁶⁾ OJ C 196, 1.8.1989, p. 4.

provisions must be made in order to protect fundamental rights and freedoms of natural persons and legitimate interests of legal persons, in particular with regard to the increasing risk connected with automated storage and processing of data relating to subscribers and users;

- (8) Whereas legal, regulatory, and technical provisions adopted by the Member States concerning the protection of personal data, privacy and the legitimate interest of legal persons, in the telecommunications sector, must be harmonised in order to avoid obstacles to the internal market for telecommunications in conformity with the objective set out in Article 7a of the Treaty; whereas the harmonisation is limited to requirements that are necessary to guarantee that the promotion and development of new telecommunications services and networks between Member States will not be hindered;
- (9) Whereas the Member States, providers and users concerned, together with the competent Community bodies, should cooperate in introducing and developing the relevant technologies where this is necessary to apply the guarantees provided for by the provisions of this Directive.
- (10) Whereas these new services include interactive television and video on demand;
- (11) Whereas, in the telecommunications sector, in particular for all matters concerning protection of fundamental rights and freedoms, which are not specifically covered by the provisions of this Directive, including the obligations on the controller and the rights of individuals, Directive 95/46/EC applies; whereas Directive 95/46/EC applies to non-publicly available telecommunications services;
- (12) Whereas this Directive, similarly to what is provided for by Article 3 of Directive 95/46/EC, does not address issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law; whereas it is for Member States to take such measures as they consider necessary for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the enforcement of criminal law; whereas this Directive shall not affect the ability of Member States to carry out lawful interception of telecommunications, for any of these purposes;
- (13) Whereas subscribers of a publicly available telecommunications service may be natural or legal persons; whereas the provisions of this Directive are aimed to protect, by supplementing Directive 95/46/EC, the fundamental rights of natural persons and particularly their right to privacy, as well as the legitimate interests of legal persons; whereas these provisions may in no case entail an obligation for Member States to extend the application of Directive 95/46/EC to the protection of the legitimate interests of legal persons; whereas this protection is ensured within the framework of the applicable Community and national legislation;
- (14) Whereas the application of certain requirements relating to presentation and restriction of calling and connected line identification and to automatic call forwarding to subscriber lines connected to analogue exchanges must not be made mandatory in specific cases where such application would prove to be technically impossible or would require a disproportionate economic effort; whereas it is important for interested parties to be informed of such cases and the Member States should therefore notify them to the Commission;
- (15) Whereas service providers must take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network; whereas security is appraised in the light of the provision of Article 17 of Directive 95/46/EC;
- (16) Whereas measures must be taken to prevent the unauthorised access to communications in order to protect the confidentiality of communications by means of public telecommunications networks and publicly available telecommunications services; whereas national legislation in some Member States only prohibits intentional unauthorized access to communications;
- (17) Whereas the data relating to subscribers processed to establish calls contain information on the private life of natural persons and concern the right to respect for their correspondence or concern the legitimate interests of legal persons; whereas such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time; whereas any further processing which the provider of the publicly available telecommunications services may want to perform for the marketing of its own telecommunications services may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available telecommunications services about the types of further processing he intends to perform;

- (18) Whereas the introduction of itemized bills has improved the possibilities for the subscriber to verify the correctness of the fees charged by the service provider; whereas, at the same time, it may jeopardise the privacy of the users of publicly available telecommunications services; whereas therefore, in order to preserve the privacy of the user, Member States must encourage the development of telecommunications service options such as alternative payment facilities which allow anonymous or strictly private access to publicly available telecommunications services, for example calling cards and facilities for payment by credit card; whereas, alternatively, Member States may, for the same purpose, require the deletion of a certain number of digits from the called numbers mentioned in itemized bills;
- (19) Whereas it is necessary, as regards calling line identification, to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines; whereas it is justified to override the elimination of calling line identification presentation in specific cases; whereas certain subscribers, in particular helplines and similar organizations, have an interest in guaranteeing the anonymity of their callers; whereas it is necessary, as regards connected line identification, to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually connected, in particular in the case of forwarded calls; whereas the providers of publicly available telecommunications services must inform their subscribers of the existence of calling and connected line identification in the network and of all services which are offered on the basis of calling and connected line identification and about the privacy options which are available; whereas this will allow the subscribers to make an informed choice about the privacy facilities they may want to use; whereas the privacy options which are offered on a per-line basis do not necessarily have to be available as an automatic network service but may be obtainable through a simple request to the provider of the publicly available telecommunications service;
- (20) Whereas safeguards must be provided for subscribers against the nuisance which may be caused by automatic call forwarding by others; whereas, in such cases, it must be possible for subscribers to stop the forwarded calls being passed on to their terminals by simple request to the provider of the publicly available telecommunications service;
- (21) Whereas directories are widely distributed and publicly available; whereas the right to privacy of natural persons and the legitimate interest of legal persons require that subscribers are able to determine the extent to which their personal data are published in a directory; whereas Member States may limit this possibility to subscribers who are natural persons;
- (22) Whereas safeguards must be provided for subscribers against intrusion into their privacy by means of unsolicited calls and telefaxes; whereas Member States may limit such safeguards to subscribers who are natural persons;
- (23) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data protection purposes is harmonised in order to be compatible with the implementation of the internal market;
- (24) Whereas in particular, similarly to what is provided for by Article 13 of Directive 95/46/EC, Member States can restrict the scope of subscribers' obligations and rights in certain circumstances, for example by ensuring that the provider of a publicly available telecommunications service may override the elimination of the presentation of calling line identification in conformity with national legislation for the purpose of prevention or detection of criminal offences or State security;
- (25) Whereas where the rights of the users and subscribers are not respected, national legislation must provide for judicial remedy; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;
- (26) Whereas it is useful in the field of application of this Directive to draw on the experience of the Working Party on the protection of individuals with regard to the processing of personal data composed of representatives of the supervisory authorities of the Member States, set up by Article 29 of Directive 95/46/EC;
- (27) Whereas, given the technological developments and the attendant evolution of the services on offer, it will be necessary technically to specify the categories of data listed in the Annex to this Directive for the application of Article 6 of this Directive with the assistance of the Committee composed of representatives of the Member States set up in Article 31 of Directive 95/46/EC in order to ensure a coherent application of the requirements set out in this Directive regardless of changes in technology; whereas this procedure applies solely to specifications necessary to adapt

the Annex to new technological developments, taking into consideration changes in market and consumer demand; whereas the Commission must duly inform the European Parliament of its intention to apply this procedure and whereas, otherwise, the procedure laid down in Article 100a of the Treaty shall apply;

- (28) Whereas, to facilitate compliance with the provisions of this Directive, certain specific arrangements are needed for processing of data already under way on the date that national implementing legislation pursuant to this Directive enters into force,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object and scope

1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the telecommunications sector and to ensure the free movement of such data and of telecommunications equipment and services in the Community.

2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of legitimate interests of subscribers who are legal persons.

3. This Directive shall not apply to the activities which fall outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.

Article 2

Definitions

In addition to the definitions given in Directive 95/46/EC, for the purposes of this Directive:

- (a) 'subscriber' shall mean any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;

(b) 'user' shall mean any natural person using a publicly available telecommunications service, for private or business purposes, without necessarily having subscribed to this service;

(c) 'public telecommunications network' shall mean transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, which are used, in whole or in part, for the provision of publicly available telecommunications services;

(d) 'telecommunications service' shall mean services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio- and television broadcasting.

Article 3

Services concerned

1. This Directive shall apply to the processing of personal data in connection with the provision of publicly available telecommunications services in public telecommunications networks in the Community, in particular via the Integrated Services Digital Network (ISDN) and public digital mobile networks.

2. Articles 8, 9 and 10 shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

3. Cases where it would be technically impossible or require a disproportionate investment to fulfil the requirements of Articles 8, 9 and 10 shall be notified to the Commission by the Member States.

Article 4

Security

1. The provider of a publicly available telecommunications service must take appropriate technical and organisational measures to safeguard security of its services, if necessary in conjunction with the provider of the public telecommunications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available telecommunications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

*Article 5***Confidentiality of the communications**

1. Member States shall ensure via national regulations the confidentiality of communications by means of a public telecommunications network and publicly available telecommunications services. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications, by others than users, without the consent of the users concerned, except when legally authorised, in accordance with Article 14 (1).

2. Paragraph 1 shall not affect any legally authorised recording of communications in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

*Article 6***Traffic and billing data**

1. Traffic data relating to subscribers and users processed to establish calls and stored by the provider of a public telecommunications network and/or publicly available telecommunications service must be erased or made anonymous upon termination of the call without prejudice to the provisions of paragraphs 2, 3 and 4.

2. For the purpose of subscriber billing and interconnection payments, data indicated in the Annex may be processed. Such processing is permissible only up to the end of the period during which the bill may lawfully be challenged or payment may be pursued.

3. For the purpose of marketing its own telecommunications services, the provider of a publicly available telecommunications service may process the data referred to in paragraph 2, if the subscriber has given his consent.

4. Processing of traffic and billing data must be restricted to persons acting under the authority of providers of the public telecommunications networks and/or publicly available telecommunications services handling billing or traffic management, customer enquiries, fraud detection and marketing the provider's own telecommunications services and it must be restricted to what is necessary for the purposes of such activities.

5. Paragraphs 1, 2, 3 and 4 shall apply without prejudice to the possibility for competent authorities to be informed of billing or traffic data in conformity with

applicable legislation in view of settling disputes, in particular interconnection or billing disputes.

*Article 7***Itemized billing**

1. Subscribers shall have the right to receive non-itemized bills.

2. Member States shall apply national provisions in order to reconcile the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers, for example by ensuring that sufficient alternative modalities for communications or payments are available to such users and subscribers.

*Article 8***Presentation and restriction of calling and connected line identification**

1. Where presentation of calling-line identification is offered, the calling user must have the possibility via a simple means, free of charge, to eliminate the presentation of the calling-line identification on a per-call basis. The calling subscriber must have this possibility on a per-line basis.

2. Where presentation of calling-line identification is offered, the called subscriber must have the possibility via a simple means, free of charge for reasonable use of this function, to prevent the presentation of the calling line identification of incoming calls.

3. Where presentation of calling line identification is offered and where the calling line identification is presented prior to the call being established, the called subscriber must have the possibility via a simple means to reject incoming calls where the presentation of the calling line identification has been eliminated by the calling user or subscriber.

4. Where presentation of connected line identification is offered, the called subscriber must have the possibility via a simple means, free of charge, to eliminate the presentation of the connected line identification to the calling user.

5. The provisions set out in paragraph 1 shall also apply with regard to calls to third countries originating in the Community; the provisions set out in paragraphs 2, 3 and 4 shall also apply to incoming calls originating in third countries.

6. Member States shall ensure that where presentation of calling and/or connected line identification is offered, the providers of publicly available telecommunications services inform the public thereof and of the possibilities set out in paragraphs 1, 2, 3 and 4.

*Article 9***Exceptions**

Member States shall ensure that there are transparent procedures governing the way in which a provider of a public telecommunications network and/or a publicly available telecommunications service may override the elimination of the presentation of calling line identification:

- (a) on a temporary basis, upon application of a subscriber requesting the tracing of malicious or nuisance calls; in this case, in accordance with national law, the data containing the identification of the calling subscriber will be stored and be made available by the provider of a public telecommunications network and/or publicly available telecommunications service;
- (b) on a per-line basis for organisations dealing with emergency calls and recognized as such by a Member State, including law enforcement agencies, ambulance services and fire brigades, for the purpose of answering such calls.

*Article 10***Automatic call forwarding**

Member States shall ensure that any subscriber is provided, free of charge and via a simple means, with the possibility to stop automatic call forwarding by a third party to the subscriber's terminal.

*Article 11***Directories of subscribers**

1. Personal data contained in printed or electronic directories of subscribers available to the public or obtainable through directory enquiry services should be limited to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data. The subscriber shall be entitled, free of charge, to be omitted from a printed or electronic directory at his or her request, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex, where this is applicable linguistically.

2. Notwithstanding paragraph 1, Member States may allow operators to require a payment from subscribers wishing to ensure that their particulars are not entered in a directory, provided that the sum involved does not act as a disincentive to the exercise of this right, and that, taking account of the quality requirements of the public

directory in the light of the universal service, it is limited to the actual costs incurred by the operator for the adaptation and updating of the list of subscribers not to be included in the public directory.

3. The rights conferred by paragraph 1 shall apply to subscribers who are natural persons. Member States shall also guarantee, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to their entry in public directories are sufficiently protected.

*Article 12***Unsolicited calls**

1. The use of automated calling systems without human intervention (automatic calling machine) or facsimile machines (fax) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited calls for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these calls, the choice between these options to be determined by national legislation.

3. The rights conferred by paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also guarantee, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited calls are sufficiently protected.

*Article 13***Technical features and standardisation**

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

2. Where provisions of this Directive can be implemented only by requiring specific technical features, Member States shall inform the Commission according to

the procedures provided for by Directive 83/189/EEC⁽¹⁾ which lays down a procedure for the provision of information in the field of technical standards and regulations.

3. Where required, the Commission will ensure the drawing up of common European standards for the implementation of specific technical features, in accordance with Community legislation on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity, and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and telecommunications⁽²⁾.

Article 14

Extension of the scope of application of certain provisions of Directive 95/46/EC

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 5, 6 and Article 8(1), (2), (3) and (4), when such restriction constitutes a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the telecommunications system, as referred to in Article 13(1) of Directive 95/46/EC.

2. The provisions of Chapter III on judicial remedies, liability and sanctions of Directive 95/46/EC shall apply with regard to national provisions adopted pursuant to this Directive and with regard to the individual rights derived from this Directive.

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data established according to Article 29 of Directive 95/46/EC shall carry out the tasks laid down in Article 30 of the abovementioned Directive also with regard to the protection of fundamental rights and freedoms and of legitimate interests in the telecommunications sector, which is the subject of this Directive.

4. The Commission, assisted by the Committee established by Article 31 of Directive 95/46/EC, shall technically specify the Annex according to the procedure mentioned in this Article. The aforesaid Committee shall be convened specifically for the subjects covered by this Directive.

Article 15

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive not later than 24 October 1998.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with Article 5 of this Directive not later than 24 October 2000.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. By way of derogation from Article 6(3), consent is not required with respect to processing already under way on the date the national provisions adopted pursuant to this Directive enter into force. In those cases the subscribers shall be informed of this processing and if they do not express their dissent within a period to be determined by the Member State, they shall be deemed to have given their consent.

3. Article 11 shall not apply to editions of directories which have been published before the national provisions adopted pursuant to this Directive enter into force.

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

Article 16

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 15 December 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J.-C. JUNCKER

⁽¹⁾ OJ L 109, 26.4.1983, p. 8. Directive as last amended by Directive 94/10/EC (OJ L 100, 19.4.1994, p. 30).

⁽²⁾ OJ L 36, 7.2.1987, p. 31. Decision as last amended by the 1994 Act of Accession.

*ANNEX***List of data**

For the purpose referred to in Article 6(2) the following data may be processed:

Data containing the:

- number or identification of the subscriber station,
 - address of the subscriber and the type of station,
 - total number of units to be charged for the accounting period,
 - called subscriber number,
 - type, starting time and duration of the calls made and/or the data volume transmitted,
 - date of the call/service,
 - other information concerning payments such as advance payment, payments by instalments, disconnection and reminders.
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COUNCIL DIRECTIVE 97/78/EC

of 18 December 1997

laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

(1) Whereas the animal products or products of animal origin and plant products subject to checks intended to prevent the spread of contagious or infectious animal diseases are listed in Annex II to the Treaty;

(2) Whereas laying down principles at Community level on the organisation of veterinary checks on products coming from third countries helps to safeguard supplies and ensure market stability while also harmonising the measures necessary to ensure the protection of animal and public health;

(3) Whereas the establishment of the internal market has accentuated the need to lay down common principles for veterinary checks, given that internal border checks have been abolished;

(4) Whereas, since Council Directive 90/675/EEC of the 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽⁴⁾ was adopted, developments have taken place in the application of the Directive and fresh experience has been gained; whereas in the interests of transparency, the Directive should be amended;

(5) Whereas harmonised conditions for all products of animal origin imported from third countries into the Community should be established; whereas for that reason a single checking scheme for these products should be applied and the requisite adjustments made;

(6) Whereas rules must be laid down whereby consignments which have been introduced into the Community without being presented at a border inspection post will undergo the veterinary checks at such a post;

(7) Whereas Member States may, in certain cases, impose additional requirements for products to be imported; whereas the Member State making the checks has to take account of these extra national requirements when doing so;

(8) Whereas, with regard to the transshipment by sea or air of products with a final destination in the Community, clear rules should be laid down on where to carry out the checks;

(9) Whereas Community legislation requires certain products to be monitored from the place of arrival in the Community to the place of destination to safeguard public and animal health; whereas for that reason strict rules must be laid down;

(10) Whereas strict rules should be established to ensure that products arriving at the Community border without having the Community as final destination will leave the Community;

(11) Whereas those products which comply with Community requirements for importation should be separated from those which do not; whereas to take account of these differences, separate checking systems should be laid down;

(12) Whereas the supply of products of animal origin for the crew and passengers of sea and air transport is of considerable commercial importance in the Community; whereas those products often do not comply with Community requirements; whereas for that reason strict rules should be laid down to safeguard public and animal health;

(13) Whereas a Community product which is refused by a third country and which is returned to the Community should be regarded as no longer fulfilling Community requirements; whereas for that reason strict rules in that regard should be laid down to safeguard public and animal health;

(14) Whereas extra safeguards should be laid down with a view to the prevention of fraud and provision should be made for harmonised measures to stamp out fraudulent operations and irregularities;

⁽¹⁾ OJ C 285, 23.8.1997, p. 7.

⁽²⁾ OJ C 85, 17.3.1997, p. 76.

⁽³⁾ OJ C 66, 3.3.1997, p. 43.

⁽⁴⁾ OJ L 373, 31.12.1990, p. 1. Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

(15) Whereas Directive 90/675/EEC has been substantially amended on several occasions; whereas, now that further amendments are necessary, that Directive should for the sake of clarity and rationality be repealed and replaced,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Veterinary checks on products from third countries introduced into one of the territories listed in Annex I shall be carried out by the Member States in accordance with this Directive.

Article 2

1. For the purposes of this Directive, the definitions contained in Article 2 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market⁽¹⁾ and Article 2 of Council Directive 90/425/EEC concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market⁽²⁾ shall apply as necessary.

2. In addition:

- (a) 'products' means the products of animal origin referred to in Directives 89/662/EEC and 90/425/EEC, including by-products of animal origin not covered by Annex II to the Treaty, and the plant products referred to in Article 19;
- (b) 'documentary check' means the examination of the veterinary certificate(s) or veterinary document(s), or other document(s) accompanying a consignment;
- (c) 'identity check' means a check by visual inspection to ensure that the veterinary certificate(s) or veterinary document(s) or other document(s) provided for by veterinary legislation tally with the product itself;
- (d) 'physical check' means a check on the product itself, which may include checks on packaging and temperature and also sampling and laboratory testing;
- (e) 'person responsible for the load' means any natural or legal person who, in accordance with the

provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾ has responsibility for the development of the various situations covered by the said Regulation in which the consignment may be, and also the representative referred to in Article 5 of the said Regulation who assumes such responsibility for following up the checks laid down in this Directive;

- (f) 'consignment' means a quantity of products of the same type, covered by the same veterinary certificate(s) or veterinary document(s), or other document(s) provided for by veterinary legislation, conveyed by the same means of transport and coming from the same third country or part of such country;
- (g) 'border inspection post' means any inspection post, designated and approved in accordance with Article 6, for the carrying out of veterinary checks on products arriving from third countries at the border of one of the territories listed in Annex I;
- (h) 'import' means the free circulation of products and the intention to release products for free circulation within the meaning of Article 79 of Regulation (EEC) No 2913/92;
- (i) 'customs-approved treatment for use' means the customs-approved treatment or use referred to in point 15 of Article 4 of Regulation (EEC) No 2913/92;
- (j) 'import conditions' means veterinary requirements for products to be imported, as laid down in Community legislation;
- (k) 'competent authority' means the central authority of a Member State empowered to carry out veterinary checks, or any authority to which it has delegated such powers.

CHAPTER I

ORGANISATION AND EFFECTS OF CHECKS

Article 3

1. Member States shall ensure that no consignment from a third country is introduced into one of the territories listed in Annex I without having been subjected to the veterinary checks required by this Directive.

2. Member States shall ensure that consignments are introduced into one of the territories listed in Annex I via a border inspection post.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 92/118/EEC (OJ L 62, 15.3.1993, p. 49).

⁽²⁾ OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 92/118/EEC.

⁽³⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 82/97 of the European Parliament and of the Council (OJ L 17, 21.1.1997, p. 1).

3. Member States shall ensure that persons responsible for the load are obliged to forward information in advance by duly completing where applicable the certificate referred to in Article 5(1), or provide a detailed description in writing or in computerised form of the consignment referred to in paragraph 1, including the products referred to in Article 9 and Article 19(1), to the veterinary staff of the border inspection post to which the products are to be submitted.

Member States may inspect the manifests of vessels and aircraft and check that they tally with the abovementioned statements and documents.

4. The customs authorities on whom the border inspection post is geographically dependent shall allow the intended customs-approved treatment or use of the consignments only in accordance with the conditions set out in the certificate referred to in Article 5 (1).

5. Detailed rules for the application of this Article, in particular the list of products to be subjected to a veterinary check, shall be adopted in accordance with the procedure laid down in Article 29.

Article 4

1. Each consignment shall be subject to veterinary checks in the border inspection post referred to in Article 3(2) by the competent authority under the responsibility of the official veterinarian in accordance with Article 6(1)(b).

2. For each consignment the official veterinarian shall, on the basis of the information referred to in Article 3 (3), consult the database referred to in Annex I to Council Decision 92/438/EEC of 13 July 1993 on computerisation of veterinary import procedures (Shift project)⁽¹⁾. Furthermore, for each consignment intended for import into one of the territories listed in Annex I, he shall, if necessary, consult the database referred to in Annex II to Decision 92/438/EEC.

The official veterinarian shall ensure that all the operations required to maintain the database provided for in Decision 92/438/EEC are carried out.

3. Each consignment shall be subject to a documentary check irrespective of the customs-approved treatment or use in order to establish:

(a) that the information in the certificates or documents referred to in Article 7(1) corresponds to the information forwarded in advance in accordance with Article 3(3);

(b) in the case of imports, that the particulars contained in the certificates or documents referred to in Article 1 or other documents afford the guarantees required.

4. Apart from the specific cases stipulated in Articles 9 to 15, the official veterinarian shall carry out the following checks:

(a) an identity check on each consignment to ascertain that the products correspond to the information given in the accompanying certificates or documents. Apart from bulk consignments as provided for in Council Directive 92/118/EEC of 17 December 1992 laying down animal health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC⁽²⁾, this procedure shall comprise:

(i) where products of animal origin arrive in containers, verification that the seals fixed by the official veterinarian (or the competent authority), where required by Community legislation, are intact and that the information appearing thereon corresponds to that given in the accompanying document or certificate;

(ii) in other cases

— for all types of product, a check that the stamps, official marks and health marks identifying the country and establishment of origin are present and conform to those on the certificate or document,

— in addition, for wrapped or packaged products, a check on the specific labelling provided for in veterinary legislation,

(b) a physical check on each consignment:

(i) in order to ascertain that the products satisfy the requirements of Community legislation and are in a fit state to be used for the purpose specified in the accompanying certificate or document.

These checks must be carried out in accordance with the criteria laid down in Annex III;

⁽¹⁾ OJ L 243, 25.8.1992, p. 27. Decision amended by the Act of Accession of 1994.

⁽²⁾ OJ L 62, 15.3.1993, p. 49. Directive as last amended by Directive 96/90/EC (OJ L 13, 16.1.1997, p. 24).

(ii) prior to carrying out, in accordance with the frequencies to be established before 1 July 1999, using the procedure laid down in Article 29:

- any laboratory tests on the spot,
- any official sampling required for earliest possible analysis.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

Article 5

1. After completion of the required veterinary checks the official veterinarian shall issue a certificate for the consignment of products concerned certifying the results of the checks in accordance with the model provided in Annex B to Commission Decision 93/13/EEC laying down the procedures for veterinary checks at Community border inspection posts on products from third countries⁽¹⁾, adapted where appropriate in accordance with paragraph 4.

2. The certificate referred to in paragraph 1 shall accompany the consignment:

- as long as the consignment remains under customs supervision, in which case the said document shall refer to the customs document,
- in the case of importation, as far as the first establishment as referred to in Directive 89/662/EEC, or as far as the first centre or organisation of destination as referred to in Directive 90/425/EEC.

3. If the consignment is split, the provisions of paragraphs 1 and 2 shall apply to each part.

4. Detailed rules for the application of this Article, including the adaptations of Annex B to Decision 93/13/EEC, shall be adopted in accordance with the procedure laid down in Article 29.

Article 6

1. Border inspection posts must:

- (a) be located in the immediate vicinity of the point of entry into one of the territories listed in Annex I, and in an area which is designated by the customs authorities in accordance with the first subparagraph, points (a) and (b) of Article 38(1) of Regulation (EEC) No 2913/92.

However, where necessitated by geographical constraints (such as an unloading wharf or a pass), a

border inspection post at a certain distance from the point of introduction may be tolerated in accordance with the procedure laid down in paragraph 2 and, in the case of rail transport, at the first station stop designated by the competent authority;

- (b) be placed under the authority of an official veterinarian, who shall be effectively responsible for the checks. The official veterinarian may be assisted by specially trained auxiliary staff.

He shall ensure that all updating of the databases referred to in the third indent of Article 1(1) of Decision 92/438/EEC is carried out.

2. In accordance with the procedure laid down in Article 29, the list of border inspection posts in force on the date of publication of this Directive may subsequently be amended or supplemented:

- (a) by the addition of any new border inspection posts:

- proposed by the Member State, once the competent authority has checked that it complies with the requirements of Annex II to this Directive and of Commission Decision 92/525/EEC of 3 November 1992 laying down requirements for the approval of Community border inspection posts responsible for veterinary checks on products introduced from third countries⁽²⁾,
- inspected by the Commission in collaboration with the competent authority of the Member State;

- (b) by withdrawal of a border inspection post, where it is found not to be complying with the conditions laid down in Annex II, either during a check carried out by the competent authority or if, following the inspections provided for in Article 23, the Member State does not take account of the conclusions of this inspection within a reasonable time especially in cases where the inspections have resulted in a serious public or animal health risk.

3. A Member State must, in serious cases, particularly on public or animal health grounds, suspend approval of a border inspection post situated in its territory. It shall inform the Commission and the other Member States of such suspension and of its reasons. The border inspection post may be restored to the list only in accordance with paragraph 2(a).

4. The Commission shall draw up and publish a list of approved border inspection posts, including cases where approval has been temporarily suspended.

⁽¹⁾ OJ L 9, 15.1.1993, p. 33. Decision as last amended by Decision 96/32/EC (OJ L 9, 12.1.1996, p. 9).

⁽²⁾ OJ L 331, 17.11.1992, p. 16.

5. Pending the adoption of decisions under paragraph 2(a), the list drawn up pursuant to the Basic Directive 90/675/EEC shall remain applicable, without prejudice to the circumstances provided for in paragraph 3.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

Article 7

1. Each consignment intended for import into one of the territories listed in Annex I shall be accompanied by the original veterinary certificates or original veterinary documents or other original documents as required by veterinary legislation. The original certificates or documents shall remain at the border inspection post.

2. Without prejudice to Article 10, each consignment of products from a third country intended for import into one of the territories referred to in Annex I shall be subject to an identity check and a physical check as provided for in Article 4(4).

3. The customs authorities shall not allow the importation of consignments of products unless — without prejudice to the customs regulations and to the special provisions to be adopted in accordance with Article 10(2) and (3) and Article 18 — proof has been supplied that the relevant veterinary checks have been carried out with satisfactory results, that the relevant certificate has been issued in accordance with Article 5(1) and that the competent authority has a guarantee that the inspection fees referred to in Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (amended and consolidated)⁽¹⁾ have been or will be paid, in accordance with the provisions of that Directive.

4. If the consignment complies with the import conditions, the official veterinarian shall provide the person concerned with an authenticated copy of the original certificates or documents and shall, in accordance with Article 5(1), issue a certificate declaring that the consignment complies with those conditions on the basis of the veterinary checks carried out at the border inspection post.

5. Trade in the products referred to in Directives 89/662/EEC and 90/425/EEC and allowed into one of the territories listed in Annex I to this Directive under paragraph 3 of this Article shall be conducted in accordance with the rules laid down in the said Directives, in particular in Chapter II thereof.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

⁽¹⁾ OJ L 32, 5.2.1985, p. 14. Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

Article 8

1. Where:

- products are intended for a Member State or an area having obtained specific requirements in the framework of Community legislation,
- samples have been taken but the results are not known when the means of transport leaves the border inspection post,
- imports authorized for specific purposes are involved, in the cases provided for by Community legislation,

additional information must be communicated to the competent authority of the place of destination by means of the ANIMO network referred to in Directive 90/425/EEC.

2. Each consignment of products referred to in the first and third indents of paragraph 1 and destined for another Member State shall undergo the documentary, identity and physical checks laid down in Article 4(3) and (4) at the border inspection post situated in the territory of the Member State where the products are introduced, to verify in particular whether the products concerned comply with the Community rules applicable to the Member State or area of destination. However, furred wild game imported unskinned shall undergo an identity or physical check, apart from the health check and residue search provided for in Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products⁽²⁾, which should be carried out in accordance with Council Directive 92/45/EEC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild game meat⁽³⁾ in the establishment of destination where the meat must be delivered under customs supervision in accordance with the first indent of paragraph 4 of this Article and in conjunction with the certificate referred to in Article 5(1).

The results of the checks should be forwarded to the veterinary authority responsible for the border inspection post at which the products entered. Depending on the outcome, the measures laid down in Article 24 shall if necessary be implemented.

3. Member States shall ensure that, in the case of products referred to in the first and third indents of paragraph 1 and introduced into a Member State other than the Member State of destination, all measures shall be taken to ensure that the consignment involved reaches the intended Member State of destination.

⁽²⁾ OJ L 125, 23.5.1996, p. 10.

⁽³⁾ OJ L 268, 14.9.1992, p. 35. Directive as last amended by Directive 96/23/EC (OJ L 125, 23.5.1996, p. 10).

4. Products which are to be monitored pursuant to Community legislation from the border inspection post of arrival to the establishment at the place of destination shall be forwarded under the following conditions:

- the consignments in question shall be dispatched from the border inspection post of arrival to the establishment at the place of destination under the supervision of the competent authority in leak-proof vehicles or containers sealed by the competent authorities. The products referred to in the third indent of paragraph 1 shall remain under customs supervision until they reach the place of destination in accordance with procedure T5 as laid down in Commission Regulation No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽¹⁾, in conjunction with the certificate provided for in Article 5(1) stipulating the authorised destination and if appropriate citing the type of processing intended,
- the official veterinarian at the border inspection post concerned shall inform the veterinary authority in charge of the establishment at the place of destination of the consignment of the place of origin and the place of destination of the product via the ANIMO network,
- the products shall undergo, in the establishment at the place of destination, the treatment defined in the relevant Community legislation,
- the official veterinarian at the place of destination or, in the cases provided for in Chapter 10 of Annex I to Directive 92/118/EEC, the official veterinarian responsible for an intermediate warehouse, shall be informed by the management of the establishment of destination or of the intermediate warehouse of the arrival of the product at its destination, and shall within 15 days notify the official veterinarian at the border inspection post who notified him of the shipment. He shall carry out regular checks to ensure that the products have arrived at the establishment of destination, in particular by checking the entry records.

5. If proof is given to the competent authority of the border inspection post of entry, without prejudice to the provisions of Article 20, that the products declared as being intended for an approved establishment never arrived at their destination, the authority shall take appropriate measures vis-à-vis the person responsible for the load.

6. Member States shall submit to the Commission the list of approved establishments as referred to in paragraph 4 for the products concerned in accordance with the relevant Community legislation.

Where an establishment fails to comply with the notification requirements, the Member State may withdraw its approval and shall impose the necessary penalties in keeping with the nature of the risk incurred.

The Commission shall publish the list of approved establishments and shall arrange for its updating and communication to the Member States.

7. Detailed rules for the application of this Article, drawn up after consultation with the customs authorities, shall be adopted in accordance with the procedure laid down in Article 29.

Article 9

1. Consignments intended for import into one of the territories listed in Annex I which arrive at one border inspection post but are intended for import via another border inspection post situated in the same territory, or situated in the territory of another Member State, shall be subject to an identity check and a physical check at the border inspection post of destination, provided that the transport takes place by sea or air. The following procedures shall be carried out in the border inspection post of introduction:

(a) if the consignment is transhipped from one aircraft to another or from one vessel to another within the customs area of the same port or airport either directly or after being unloaded on the quayside or the tarmac for a period shorter than the minimum period referred to in (b), the competent authority shall be informed by the person responsible for the load. It may, exceptionally if there is a risk to animal or public health, carry out a documentary check of the products on the basis of the certificate or veterinary document of origin or any other original document accompanying the consignment concerned or an authenticated copy thereof;

(b) if the consignment is otherwise unloaded, it must:

(i) be stored for a maximum and minimum period and under conditions to be determined according to the procedure laid down in paragraph 2, under the supervision of the competent authority, in the customs area of the port or airport pending forwarding to another border inspection post by sea or air;

(ii) be subjected to a documentary check of the products in relation to the documents referred to in (a);

(iii) without prejudice to Article 20, be subjected exceptionally to an identity check and a physical check if there is any possibility of danger to public or animal health.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1427/97 (OJ L 196, 24.7.1997, p. 31).

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

3. The Council, acting by qualified majority on a proposal from the Commission, may extend the provisions of this Article to rail transshipment.

Article 10

1. At the request of a Member State, accompanied by the requisite supporting information, or acting on its own initiative, the Commission may, in accordance with the procedure laid down in Article 29, determine that physical checks are to be less frequent, under certain conditions and in particular in the light of the results of previous checks, on products for which import conditions are harmonised, i.e. products which meet the following three conditions:

- (a) they originate in third countries or regions of third countries offering satisfactory health guarantees as regards checks at the point of origin on products intended for import into one of the Community territories listed in Annex I;
- (b) insofar as is required under Community legislation they come from establishments on a list drawn up in accordance with Community rules or, in the case of establishments approved in accordance with Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third-country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs⁽¹⁾, from an establishment which has undergone either a Community or a national inspection;
- (c) import certificates have been issued for the products concerned.

2. Before submitting a proposal for granting such derogations in respect of products from a given third country, the Commission shall submit a report to the Standing Veterinary Committee on that third country taking account of the following:

- (a) the guarantees offered by the third country in question for all or part of its territory with respect to compliance with Community requirements, including those for residue checks;
- (b) the health situation of animals in the third country concerned;
- (c) information on the general health situation in the country;

⁽¹⁾ OJ L 243, 11.10.1995, p. 17. Decisions as last amended by Decision 97/34/EC (OJ L 13, 16.1.1997, p. 33).

(d) nature of the measures applied by the third country for monitoring and combating disease;

(e) structures, skills, independence and qualifications of the veterinary service or other competent services;

(f) compliance with the minimum standards laid down by Community law with regard to production hygiene;

(g) type of product or products and its/their potential health risk;

(h) rules on the authorisation of certain substances and compliance with the requirements set out in Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists⁽²⁾ and in Directive 96/23/EC;

(i) outcome of the Community inspection or national inspection visits;

(j) outcome of the import checks carried out;

(k) an analysis of the risk involved owing to the nature of the products to be imported, their presentation or mode of transport used.

3. Without prejudice to paragraph 1 reductions in the frequency of checks may also be negotiated under a veterinary equivalence agreement concluded between the Community and a third country on a reciprocal basis.

Such reductions must be adopted according to the procedure laid down in Article 29.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

Article 11

1. A Member State shall, on behalf of all Member States through which transit is due to take place, only authorise the transit of consignments from one third country to another third country if:

- (a) such consignments come from a third country whose products are not prohibited entry on to the territories listed in Annex I and are intended for another third country. The competent authority may waive this requirement for transshipments carried out in accordance with Article 9(1)(a) of consignments from one aircraft to another or from one vessel to another within the customs area of the same port or airport for the purpose of redispach without further stop on the territories listed in Annex I following

⁽²⁾ OJ L 125, 23.5.1996, p. 3.

general criteria to be fixed in accordance with paragraph 4;

- (b) such transit has been previously authorised by the official veterinarian of the border inspection post of the Member State where the consignment first arrives in one of the territories listed in Annex I;
 - (c) the person responsible for the load undertakes beforehand to repossess the consignment if the products concerned are rejected and to dispose of it in accordance with Article 17.
2. The authorisation referred to in paragraph 1 shall be subject to compliance with the following conditions:

- (a) consignments presented for transit at the border inspection post shall be accompanied by the documents referred to in Article 7(1) together, if necessary, with authenticated translations of such documents;
- (b) the consignment of products must be presented at the said border inspection post in order to undergo the documentary check and identity check.

Derogation from the documentary and identity checks may be granted by the competent veterinary authority for sea and air transport where the consignment:

- is not unloaded. In this case, and without prejudice to Article 20, documentary checks will be confined to examination of the on-board manifest,
- is transhipped as described in Article 9(1)(a) from one aircraft to another or from one vessel to another within the customs area of the same port or airport.

In exceptional cases which may present a public health or animal health risk or when irregularities are suspected, additional physical checks must be carried out;

- (c) in the case of passage by road, rail or by waterway through the territories listed in Annex I, such a consignment shall:
 - be sent under customs supervision, in accordance with the T1 procedure laid down in Regulation (EEC) No 2913/92 to the point of exit from the Community, together with the document required under 2(a) and the certificate referred to in Article 5(1) certifying the border inspection post where the consignment will leave the Community,
 - be transported, without the products being unloaded or split after leaving the border inspection post of arrival, in vehicles or containers sealed by the authorities. No handling shall be authorised during transport,
 - leave the Community via a border inspection post within a maximum of 30 days following

departure from the border inspection post of entry, except where a general exemption is granted in accordance with the procedure laid down in paragraph 4 to take account of duly substantiated cases of geographical remoteness;

- (d) the official veterinarian who authorises the transport shall inform the official veterinarian of the border inspection post of exit via the ANIMO network;
- (e) the official veterinarian of the border inspection post of exit shall declare on the certificate referred to in Article 5(1) that the consignments concerned have left the Community and shall send a copy of the document to the border inspection post of entry by fax or any other means.

Should the official veterinarian of the border inspection post of entry not have been informed of the exit of the products from the Community within the period specified in the third indent of 2(c), he shall refer the matter to the competent custom authority, which shall investigate as necessary to determine the actual destination of the products.

3. All expenditure incurred pursuant to this Article shall be chargeable to the person responsible for the load or his representative, without indemnification by the Member State, in accordance with the principles deriving from Article 1 of Directive 85/73/EEC.

4. Detailed rules for the application of this Article, in particular the exchange of information between the border inspection posts of entry and of exit, shall be adopted in accordance with the procedure laid down in Article 29.

Article 12

1. Consignments coming from a third country and intended for a free zone, a free warehouse or a customs warehouse may, in accordance with Regulation (EEC) No 2913/92, be admitted by the competent authority only if the person responsible for the load has declared beforehand that the products concerned are destined ultimately for release into free circulation on one of the territories listed in Annex I or if there is some other end-use to be specified, and whether or not the products comply with the import conditions.

In the absence of a clear indication of their end-use, products must be considered as intended for release into free circulation on one of the territories listed in Annex I.

2. Such consignments shall undergo, at the border inspection post of introduction, a documentary, identity and physical check in order to determine whether or not the products comply with the said import conditions.

A physical check shall however not be required — except on suspicion of an animal health or public health risk — should it appear from the documentary check that the products do not meet Community requirements.

Such consignments shall be accompanied by the documents referred to in Article 7(1). If necessary, authenticated translations of such documents shall be attached.

3. If, following the checks referred to in paragraph 2, it is found that Community requirements have been met, the official veterinarian of the border inspection post shall issue the certificate referred to in Article 5(1) in conjunction with the customs documents. The competent veterinary and customs authorities of the border inspection post shall authorise entry to a warehouse in a free zone, to a free warehouse or to a customs warehouse. Such products shall from a veterinary point of view be declared fit for subsequent release into free circulation.

4. If, following the checks referred to in paragraph 2, it is found that the products concerned do not meet Community requirements the official veterinarian of the border inspection post shall issue the certificate referred to in Article 5(1) in conjunction with the official customs documents. The customs and veterinary authorities of the border inspection post may in such cases only authorise entry to a warehouse in a free zone, to a free warehouse or to a customs warehouse if, without prejudice to Article 16, the following requirements are met:

- (a) products must not come from a third country subject to a prohibition as laid down in Article 11(1)(a), first sentence;
- (b) warehouses in free zones and free warehouses or customs warehouses must be approved by the competent authority for the storage of the products. In order to be approved, they must meet the following requirements:
 - they must consist of a closed space with entry and exit points subject to permanent control by the management of the warehouse. If a warehouse is located in a free zone, the entire zone must be closed and placed under permanent customs control,
 - they must meet the conditions of approval laid down in Community legislation as regards warehouses storing the product(s) concerned, or, should there be no such Community legislation, in national legislation,
 - they must have arrangements for the daily logging of all consignments entering or leaving the warehouse, with details of the nature and quantity of the products per consignment and the name and address of the recipient. Such records must be kept for at least three years,
 - they must possess storage and/or refrigeration rooms allowing for separate storage of products which do not comply with veterinary legislation.

The competent authority may, however, in the case of existing warehouses, authorise separate storage of such products on the same premises when products not complying with Community standards are stored in lockable enclosures,

- they must have available premises reserved for the staff carrying out the veterinary checks.

If the checks referred to in paragraph 2 show that the person responsible for the load has made a false declaration pursuant to paragraph 1, he shall be obliged to dispose of the goods in accordance with Article 17.

5. The competent authorities shall take all necessary steps:

- to ensure that the conditions for approval of warehouses are maintained,
- to prevent products which do not comply with Community veterinary requirements from being stored in the same rooms or enclosures as those which do so comply,
- to ensure an effective check on entries and exits from the warehouse and, during the hours of access, to ensure supervision by the veterinary authority. They must in particular ensure that products not meeting Community requirements cannot leave the rooms or units where they are stored without the agreement of the competent authority,
- to carry out all checks necessary to avoid any alteration, substitution of products stored in the warehouse or any change of packaging, market preparation or processing.

6. A Member State may, on grounds of animal or public health, refuse entry to a customs warehouse, free warehouse or free zone to products if they do not meet the conditions laid down in Community legislation.

7. Consignments must not enter a free zone, free warehouse or customs warehouse unless protected by customs seals.

8. The consignments referred to in paragraph 4 may only leave a free zone, a free warehouse or a customs warehouse, in order to be dispatched to a third country or to a warehouse as referred to in Article 13, or to be destroyed, provided that:

- despatch to a third country is in accordance with the requirements of Articles 11(1)(c) and 11(2)(a), (c), (d) and (e),
- transfer to a warehouse as referred to in Article 13 is carried out under cover of a T1 customs control form, with the name and location of the warehouse mentioned in the accompanying certificate provided for in that Article,

— transport to a place of destruction takes place after the products concerned have been denatured.

The consignments in question shall subsequently be forwarded under such conditions as to ensure that transport is carried out, without the goods being unloaded, under the supervision of the competent authorities in leak-proof vehicles or containers sealed by the competent authorities.

Such consignments may not be transferred between the warehouses referred to in this Article.

9. All expenditure incurred pursuant to this Article, including the costs of inspection and checks required thereby, shall be chargeable to the person responsible for the load or his representative, without indemnification by the Member State, in accordance with the principles deriving from Article 1 of Directive 85/73/EEC.

10. Member States shall submit to the Commission the list of:

- (a) free zones, free warehouses and customs warehouses as referred to in paragraph 4;
- (b) operators as referred to in Article 13.

The Commission shall arrange for the publication of the list in (a) in the *Official Journal of the European Communities* and forward the list of operators in (b) to the other Member States.

11. In the event of failure to comply with the conditions set out in paragraphs 1 to 10 and insofar as those conditions apply to the warehouse, the competent authority shall suspend or withdraw its approval as referred to in paragraph 4(b). It shall inform the Commission and the other Member States of any such withdrawal.

Where irregularities, either deliberate or due to serious negligence, are found, the penalties laid down by the national law of the Member State concerned shall be applied to the person responsible for the transport of the consignment after it has left the warehouse.

12. Detailed rules for the application of this Article, in particular the checking procedures to be carried out on the arrival and on the departure of consignments to and from such zones or warehouses, the transport of consignments between such zones or such warehouses, the form of storage of the products and the handling allowed, shall be adopted in accordance with the procedure laid down in Article 29.

Article 13

1. Operators who directly supply cross-border means of sea transport with products referred to Article 12(4) for the purposes of consumption by staff and passengers must, in addition to meeting the requirements of Article 12(1), (2), (4)(a) and the second, third and fourth indents of (4)(b), (5), (6), (7) and (9):

- (a) be authorised beforehand by the competent authority as operators;
- (b) acquire supplies of products which cannot be processed unless the raw material complies with Community requirements;
- (c) possess closed premises whose entry and exit points are under permanent control of the person responsible. Where a warehouse is located in a free zone, the requirements of Article 12(4)(b), first indent, second sentence, shall apply;
- (d) undertake not to release the products referred to in Article 12(4) for consumption on one of the territories listed in Annex I;
- (e) notify the competent authority as soon as possible of the arrival of the products at a warehouse as referred to in (c).

2. The operators referred to in paragraph 1 must:

- (a) carry out deliveries directly on board the means of sea transport or to a specially approved warehouse in the port of destination, provided that measures are taken to ensure that the products concerned under no circumstances leave the port zone for another destination. The transport of products from the warehouse of origin to the port of destination must be carried out under customs supervision in accordance with procedure T1 as laid down in Regulation (EEC) No 2913/92 and be accompanied by a veterinary certificate formulated in accordance with the procedure in paragraph 6;
- (b) notify in advance the competent authority of the port zone of the Member State from which the products are delivered and the competent authorities of the port of the Member State of destination of the date of dispatch of the products together with details of their place of destination;
- (c) provide official proof that the products have reached their final destination;
- (d) keep a register of entries and dispatches for at least three years. The register must enable a check to be made on portions of consignments remaining in the warehouse.

3. Operators should ensure that they do not supply vessels with products not complying with Community requirements except to supply passengers and crew outside the coastal areas of the territories listed in Annex I, as defined by national regulations.

4. The competent authority of the port zone of the Member State from which the products are supplied shall notify the competent authority of the port zone of the Member State of destination not later than the time of

dispatch of the products and shall inform it of the place of destination of the products via the ANIMO network.

5. In the event of failure to comply with the conditions of this Article, the competent authority must withdraw the authorization referred to in 1(a). It shall inform the Commission and the other Member States of any such withdrawal.

6. Detailed rules for the application of this Article, in particular the checking procedures to be carried out on the departure and during the transport and delivery of the products due to be delivered directly on board means of sea transport, including proof that such products have reached their legal destination, shall be adopted in accordance with the procedure laid down in Article 29.

Article 14

1. Products for which the customs-approved treatment or use within the meaning of Regulation (EEC) No 2913/92 is other than as provided for in Articles 7 and 12(3) of this Directive, shall, unless they are destroyed or returned, undergo an identity check and a physical check in order to determine whether or not they comply with the import conditions.

2. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 29.

Article 15

1. A Member State shall authorise the re-importation of a consignment of products of Community origin which was refused by a third country, if:

- (a) the products are accompanied:
 - (i) either by the original certificate or a copy authenticated by the competent authority which issued the certificate accompanying the products, together with details of the reasons for refusal and a guarantee that the conditions governing the storage and transport of products have been observed, stating that the products concerned have not undergone any handling;
 - (ii) in the case of sealed containers, by a certificate from the carrier stating that the content has not been handled or unloaded;
- (b) the products in question undergo a documentary and identity check and, in the cases provided for in Article 20, a physical check;

(c) the consignment is directly returned, under the conditions provided for in Article 8(4) to the establishment of origin in the Member State where the certificate was issued and that, if transit across another Member State is involved, it has been previously authorised by the official veterinarian of the border inspection point of the Member State where the consignment first arrives in one of the territories of the Community listed in Annex I, on behalf of all Member States through which the consignment will transit.

2. A Member State cannot oppose the reintroduction of a consignment of products of Community origin refused by a third country if the competent authority which issued the original certificate has agreed to take back the consignment and the conditions laid down in paragraph 2 have been met.

3. In the circumstances envisaged in paragraphs 1 and 2, the products in question shall be forwarded under such conditions as to ensure that transport is carried out as far as the establishment of origin in accordance with the procedure laid down in Article 8(4) in leak-proof means of transport, identified and sealed by the competent authority so that the seals will be broken whenever the container is opened.

4. The official veterinarian who authorizes the transport shall inform the competent authority of the place of destination via the ANIMO network.

5. All expenditure incurred pursuant to this Article, including the costs of inspection and checks required thereby, shall be chargeable to the person responsible for the load or his representative, without indemnification by the Member State, in accordance with the principles deriving from Article 1 of Directive 85/73/EEC.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

Article 16

1. This Chapter shall not apply to products which:
- (a) form part of travellers' personal luggage and are intended for their personal consumption, insofar as the quantity does not exceed a quantity to be defined in accordance with paragraph 3 and provided that the products come from a Member State or a third country or part of a third country appearing on the list adopted in accordance with Community rules, and from which imports are not prohibited;
 - (b) are sent as small consignments to private persons, provided that the products are not being imported by way of trade, insofar as the quantity sent does not exceed a quantity to be defined in accordance with paragraph 3 and provided that the products

come from a third country or part of a third country appearing on a list drawn up in accordance with Community rules, and from which imports are not prohibited;

- (c) are on board means of transport operating internationally and are intended for consumption by the crew and passengers, provided that they are not introduced into one of the territories referred to in Annex I.

Where such products or their kitchen waste are unloaded, they must be destroyed. It is not, however, necessary to destroy products when they are transferred directly from one means of transport operating internationally to another at the same port and under customs supervision;

- (d) have, where quantities not exceeding a figure to be fixed in accordance with paragraph 3 are involved, undergone heat treatment in a hermetically sealed container to an F_0 value of 3,00 or more and:
- (i) form part of travellers' personal luggage and are intended for their personal consumption;
 - (ii) are sent as small consignments to private persons, provided that the products are not being imported by way of trade;
- (e) are sent as trade samples or are intended for exhibitions provided that they are not intended to be marketed and have been authorised in advance for that purpose by the competent authority;
- (f) are intended for particular studies or analyses insofar as it is possible to determine from the official inspection that such products are not supplied for human consumption and that, when the exhibition is finished or when the particular studies or analyses have been carried out, these products, with the exception of the quantities used for the analyses, are destroyed or redispached under certain conditions to be laid down by the competent authority.

In the case referred to under (e) and in this case the Member State of destination shall ensure that the products concerned cannot be used for purposes other than those for which they were imported into its territory.

2. Paragraph 1 shall not affect the rules applicable to fresh meat and meat products in accordance with Article 1(2) of Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems on importation of animals of the bovine, ovine, caprine and porcine species, fresh meat and meat-based products from third countries⁽¹⁾.

⁽¹⁾ OJ L 302, 31.12.1972, p. 28. Directive as last amended by Directive 96/91/EC (OJ L 13, 16.1.1997, p. 27).

3. The Commission shall determine the implementing rules and in particular the weight limits for the different products liable to be covered by the derogations referred to in paragraph 1, in accordance with the procedure laid down in Article 29.

Article 17

1. Consignments which have been introduced into one of the territories of the Community without being presented for veterinary checks in accordance with the requirements of Articles 3 and 4 shall be seized and the competent authority shall decide either to destroy them in accordance with paragraph 2(b) or to redispach them in accordance with paragraph 2(a).

2. Where the checks referred to in this Directive show the competent authority that the product does not satisfy the import conditions, or where such checks reveal an irregularity, the competent authority, in consultation with the person responsible for the load or his representative, shall decide:

- (a) either to redispach the product outside the territories listed in Annex I from the same border inspection post to a destination agreed with the person responsible for the load, using the same means of transport, within a maximum time limit of 60 days, where this is not precluded by the results of the veterinary inspection and health requirements.

In this case, the official veterinarian of the border inspection post must:

- activate the information procedure provided for in the first indent of Article 1(1) of Decision 92/438/EEC,
- under arrangements to be defined by the Commission in accordance with the procedure referred to in paragraph 7, invalidate the veterinary certificates or documents accompanying the rejected products so that it is not possible to reintroduce the rejected products via another border inspection post;

- (b) or, if redispach is impossible or the 60-day time limit referred to in (a) has elapsed or the person responsible for the load gives his immediate agreement, destroy the products in the facilities provided for that purpose nearest to the border inspection post in accordance with Council Directive 90/667/EEC of 27 November 1990 laying down the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin⁽²⁾.

⁽²⁾ OJ L 363, 27.12.1990, p. 51. Directive as last amended by the 1994 Act of Accession.

Pending redispach of the products referred to in this point or confirmation of the reasons for rejection, the competent authorities shall store the products in question under the supervision of the competent authority at the expense of the person responsible for the load.

3. The provisions of Articles 23 and 24 shall apply where the checks referred to in paragraphs 1 and 2 reveal that a serious infringement or repeated infringements of Community veterinary legislation has or have been committed.

4. Paragraph 2 shall not apply where an authorisation has been given by the competent authority in order to permit the use of products in accordance with Directive 90/667/EEC, provided that there is no risk to public or animal health.

5. The person responsible for the load or his representative shall be liable for the costs incurred in the process of redispaching or destroying the consignment or using the product for other purposes.

Furthermore, where an irregularity has been found to be the result of serious negligence or a deliberate infringement, the Member State must impose the penalties provided for in its national legislation on the person responsible for the load.

6. The provisions of Decision 92/438/EEC shall apply.

7. Detailed rules for the application of paragraphs 1 to 3, particularly the standardisation of the assessment criteria for deciding on refusal, seizure or destruction, shall be adopted in accordance with the procedure laid down in Article 29.

Article 18

The Commission, in accordance with the procedure laid down in Article 29, shall, on the basis of the plans referred to in the second paragraph, adopt the rules applicable to imports into certain parts of the territories listed in Annex I, to take account of the natural constraints specific to these territories, in particular their remoteness from a mainland part of the Community territory.

To that end the French Republic and the Hellenic Republic shall submit a plan to the Commission setting out, in the particular case of the French overseas departments and of certain islands and groups of islands, the nature of the checks to be carried out on imports into those regions of products originating in third countries, taking into account the natural geographical constraints specific to these territories.

Those plans shall specify the checks carried out to prevent products introduced into those territories being redispached under any circumstances to other parts of Community territory, unless such territories comply with the requirements of Community veterinary legislation.

Article 19

1. The Commission, in accordance with the procedure laid down in Article 29, shall draw up a list of plant products which, in particular on account of their subsequent destination, may give rise to the risk of spreading infectious or contagious animal diseases and on that account are to be subjected to the veterinary checks laid down by this Directive, and in particular those provided for in Article 4, in order to verify the origin and planned destination of such plant products.

The following shall be adopted in accordance with the same procedure:

- the animal health conditions which third countries must comply with and the guarantees which must be offered, in particular the nature of any processing to be required in the light of their animal health situation,
- a list of the third countries which, in the light of the guarantees, may be authorised to export to the Community the plant products referred to in the first paragraph,
- any specific inspection procedures, in particular with reference to sampling, which may be applied to these products, especially in the case of imports in bulk.

2. Fresh fishery products immediately landed from a fishing vessel flying a third-country flag shall, in accordance with Council Regulation (EEC) No 1093/94 of 6 May 1994 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports⁽¹⁾, and before they can be imported into any of the territories listed in Annex I, undergo the veterinary checks laid down in respect of fish immediately landed by fishing vessels flying the flag of a Member State.

However, by way of derogation from Article 3(2) a Member State may, under the procedure provided for in Article 29, be authorised to carry out the checks laid down by this Directive in the case of frozen and deep-frozen tuna that has been landed directly without having been beheaded or gutted from a vessel belonging to joint enterprises registered in accordance with the relevant Community provisions, provided that:

- such checks are carried out by the competent authority of the nearest border inspection post in the industry of destination approved for the processing of those products,

⁽¹⁾ OJ L 121, 12.5.1994, p. 3.

- the processing industry is located not more than 75 km from a border inspection post,
- the products are transferred under customs control, in accordance with the procedure laid down in the first indent of Article 8(4), from the point of landing to the industry of destination.

3. In accordance with the procedure laid down in Article 29, derogations may be granted from the provisions of Article 6(1)(b) and, as regards the staff responsible for carrying out the checks and for issuing certificates, from those of Article 4(1) and Article 5(1) for border inspection posts where fish are presented in accordance with Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products⁽¹⁾.

Article 20

1. Without prejudice to the provisions of this Chapter, the official veterinarian or the competent authority shall, where it is suspected that veterinary legislation has not been complied with or there is doubt as to:

- (a) the identity or actual destination of a product;
- (b) whether the product corresponds to the guarantees laid down in the legislation for that kind of product;
- (c) compliance with the animal or public health guarantees laid down in Community legislation;

carry out any veterinary checks the veterinarian or authority deems appropriate in order to confirm or rule out suspicion.

The products checked must remain under the supervision of the competent authority until the results of the checks are obtained.

If the suspicions are confirmed, checks on products of the same origin must be intensified in accordance with Article 17(3).

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

⁽¹⁾ OJ L 268, 24.9.1991, p. 15. Directive as last amended by Directive 96/23/EC (OJ L 125, 23.5.1996, p. 10).

Article 21

1. The Republic of Austria shall have a period of three years from the date of entry into force of the Accession Treaty to introduce the checking system provided for in this Chapter. During that transitional period Austria shall apply the measures which will be determined before the date of entry into force of the Accession Treaty, in accordance with the procedure laid down in Article 29. Those measures shall ensure that all the necessary checks are carried out as close as possible to the Community's external frontier.

2. The Republic of Finland shall have a period of two years from the date of entry into force of the Accession Treaty to introduce the checking system provided for in this Chapter. During that transitional period Finland shall apply the measures which will be determined before the date of entry into force of the Accession Treaty, in accordance with the procedure laid down in Article 29. Those measures shall ensure that all the necessary checks are carried out as close as possible to the Community's external frontier.

3. At the request of a Member State, the requirements of the eighth indent of Annex II may, in accordance with the procedure laid down in Article 29, be waived for border posts located at the border of applicant countries for a period of two years following 1 July 1999.

CHAPTER II

SAFEGUARD PROVISIONS

Article 22

1. If, in the territory of a third country, a disease referred to in Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community⁽²⁾, a zoonosis or other disease or any other phenomenon or circumstance liable to present a serious threat to animal or public health manifests itself or spreads, or if any other serious animal health or public health reason so warrants, in particular in the light of the findings of its veterinary experts or in the checks carried out in a border inspection post, the Commission shall, acting on its own initiative or at the request of a Member State, adopt one of the following measures without delay, depending on the gravity of the situation:

- suspend imports from all or part of the third country concerned, and where appropriate from the third country of transit,

⁽²⁾ OJ L 378, 31.12.1982, p. 58. Directive as last amended by the 1994 Act of Accession.

— set special conditions in respect of products coming from all or part of the third country concerned,

— draw up, on the basis of actual findings, requirements for appropriate checks, which may include specifically looking for risks to public or animal health and, depending on the result of those checks, increase the frequency of the physical checks.

2. If any one of the checks provided for in this Directive indicates that a consignment of products is likely to constitute a danger to animal or human health, the competent veterinary authority shall immediately take the following measures:

— it shall seize and destroy the consignment in question,

— it shall immediately inform the other border inspection posts and the Commission of the findings and of the origin of the products, in accordance with Decision 92/438/EEC.

3. In the case provided for in paragraph 1, the Commission may take provisional safeguard measures in respect of products covered by Articles 11, 12 and 13.

4. Representatives of the Commission may make an immediate visit to the third country concerned.

5. Where a Member State officially informs the Commission of the need to take safeguard measures and the latter has not applied the provisions of paragraphs 1 to 3 or has not informed the Standing Veterinary Committee in accordance with paragraph 6, the Member State may take interim safeguard measures in respect of the products in question.

When a Member State takes interim safeguard measures in respect of a third country or an establishment in a third country under this paragraph, it shall inform the other Member States and the Commission thereof in the Standing Veterinary Committee.

Within 10 working days the Standing Veterinary Committee shall have the matter referred to it, pursuant to the terms of Article 28, with a view to the extension, amendment or repeal of the measures provided for in paragraphs 1 and 3. The procedure provided for in Article 28 may also be used for adopting the necessary decisions, including those relating to intra-Community movement of products and to transit.

6. Decisions to amend, repeal or extend measures decided on under paragraphs 1, 2, 3 and 5 shall be taken in accordance with the procedure laid down in Article 28.

7. Detailed rules for the application of this Chapter shall be adopted, where necessary, in accordance with the procedure laid down in Article 29.

CHAPTER III

INSPECTION AND CHECKS

Article 23

1. Whenever uniform application of the requirements of this Directive renders it necessary, veterinary experts from the Commission may, in conjunction with the competent authorities:

(a) verify that the Member States are complying with the said requirements;

(b) make on-the-spot checks to ensure that the checks are carried out in accordance with this Directive.

2. A Member State in whose territory an inspection is made shall provide the veterinary experts from the Commission with any assistance they may require in the performance of their tasks.

The outcome of the checks made must be discussed with the competent authority of the Member State concerned before a final report is drawn up and circulated.

3. Where the Commission deems that the outcome of checks so justifies, it shall review the situation within the Standing Veterinary Committee. It may adopt the necessary decisions in accordance with the procedure laid down in Article 28.

4. The Commission shall monitor developments; in the light of such developments and in accordance with the procedure laid down in Article 28, it may amend or repeal the decisions referred to in paragraph 5.

5. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 29.

Article 24

1. Where the checks provided by this Directive give grounds for believing that Community veterinary legislation has been seriously or repeatedly infringed the competent authority shall take the following measures in respect of products involved in such use or in the origin of such products:

— it shall inform the Commission of the nature of the products used and the consignment concerned; the Commission shall forthwith inform all border inspection posts,

— Member States shall carry out more stringent checks on all consignments of products from the same origin.

In particular, the next 10 consignments from the same origin must be impounded, and a deposit lodged against inspection costs, at the border inspection post for a physical check, including the taking of samples and the laboratory tests provided for in Annex III.

Where such additional checks confirm non-compliance with Community legislation, the offending consignment or part thereof must be disposed of in accordance with Article 17(2)(a) and (b),

- the Commission shall be informed of the outcome of the more stringent checks and on the basis of this information shall make all necessary investigations, to identify the reasons for and origins of the infringements found.

2. Where the checks reveal that the maximum residue limits have been exceeded, use shall be made of the checks referred to in the second indent of paragraph 1.

3. If, in cases involving third countries which have concluded equivalence agreements with the Community or third countries whose consignments are checked less frequently, the Commission, after making enquiries of the competent authorities of the third country concerned, concludes that it has failed to fulfil its obligations and the guarantees given by the plans referred to in Article 29(1) of Directive 96/23/EC, it shall cease to allow that country, under the procedure laid down in Article 29 of this Directive, to benefit from less frequent checks for the products in question until the third country in question has made good its shortcomings. The same procedure shall be used for withdrawing the suspension.

If necessary, in order to re-establish the benefit afforded by the said agreements, a Community deputation including experts from the Member States shall visit the country concerned, at that country's expense, in order to verify that such measures have been taken.

Article 25

1. Where, on the basis of the checks carried out at the point where the products are marketed, a competent authority of a Member State considers that this Directive is not being complied with at a border inspection post, or in a customs warehouse, free zone or free warehouse referred to in Article 12, of another Member State, it shall contact the competent central authority of that Member State without delay.

The latter shall take all the necessary measures and inform the competent authority of the first Member State of the nature of the checks made, the decisions taken and the reasons for such decisions.

If the competent authority of the first Member State believes the measures are insufficient, it shall examine, with the competent authority of the Member State in question, the possible ways and means of remedying the situation, where necessary by visiting the Member State in question.

Where the checks referred to in the first subparagraph show repeated non-compliance with this Directive, the competent authority of the Member State of destination shall so inform the Commission and the competent authorities of the other Member States.

The Commission may, at the request of the competent authority of the Member State of destination or on its own initiative, and taking account of the type of infringements complained of:

- send an inspection team to the Member State in question in conjunction with the competent national authorities,
- request the competent authority to step up the checks carried out at the border inspection post, customs warehouse, free zone or free warehouse in question.

Pending the Commission's findings, the Member State implicated must, at the request of the Member State of destination, step up checks at the border inspection post, customs warehouse, free zone or free warehouse concerned.

The Member State of destination may, for its part, intensify checks on products coming from these sources.

At the request of one of the two Member States concerned — where the irregularities are confirmed by the inspection referred to in the first indent of the fifth subparagraph — the Commission must, in accordance with the procedure laid down in Article 28, take the appropriate measures. Those measures must be confirmed or reviewed as soon as possible in accordance with the same procedure.

2. Rights of appeal available under the laws in force in the Member States against decisions by the competent authorities shall not be affected by this Directive.

Decisions taken by the competent authority and the reasons for such decisions shall be notified to the person responsible for the load concerned by such decisions, or to his representative.

If the person concerned responsible for the load or his representative so requests, the said decisions and reasons shall be forwarded to him in writing, together with details of the rights of appeal available to him under the law in force in the Member State performing the checks, and also the procedure and time-limits applicable.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 29.

Article 26

1. Each Member State shall draw up a programme for the exchange of officials empowered to carry out checks on products coming from third countries.

2. The Commission and the Member States shall coordinate the programmes referred to in paragraph 1 within the Standing Veterinary Committee.

3. Member States shall take all the measures necessary to allow implementation of the programmes resulting from the coordination referred to in paragraph 2.

4. Each year, in the Standing Veterinary Committee, the implementation of programmes shall be reviewed on the basis of reports drawn up by the Member States.

5. Member States shall take into account the experience gained in order to improve and develop the exchange programmes.

6. A financial contribution from the Community must be granted in order to promote the efficient development of exchange programmes. Detailed rules for the Community's financial contribution and the estimated amount to be charged to the Community budget are laid down in Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field⁽¹⁾.

7. Detailed rules for the application of paragraphs 1, 4 and 5 shall be adopted where necessary, in accordance with the procedure laid down in Article 29.

Article 27

Member States shall ensure that the official veterinarians assigned to border inspection posts must participate in the special training programmes referred to in this Article.

The Commission, in accordance with the procedure laid down in Article 29, shall draw up guidelines for such programmes.

The Commission shall, at least once a year, organise seminars for those running the programmes to ensure that they are coordinated.

The measures provided for in this Article shall be financed in accordance with Title III of Decision 90/424/EEC.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 94/370/EC (OJ L 168, 2.7.1994, p. 31).

CHAPTER IV

GENERAL PROVISIONS

Article 28

Where reference is made to the procedure provided for in this Article, the Standing Veterinary Committee set up by Council Decision 68/361/EEC⁽²⁾ shall take decisions in accordance with the rules laid down in Article 17 of Directive 89/662/EEC.

Article 29

Where reference is made to the procedure defined in this Article, the Standing Veterinary Committee shall take decisions in accordance with the rules laid down in Article 18 of Directive 89/662/EEC.

Article 30

Annexes II and III may be supplemented in accordance with the procedure laid down in Article 29.

Article 31

This Directive shall be without prejudice to obligations arising from customs rules.

Article 32

Member States may make use of the Community financial assistance provided for in Article 38 of Decision 90/424/EEC for the implementation of this Directive.

Article 33

Directive 90/675/EEC shall be repealed with effect from 30 June 1999.

Acts adopted on the basis of Directive 90/675/EEC must remain in force until provisions intended to replace them are adopted on the basis of this Directive.

Each act adopted on the basis of this Directive must, if appropriate, specify the date from which its provisions will replace the corresponding provisions in the act adopted on the basis of Directive 90/675/EEC.

References to the Directive repealed shall be construed as references to this Directive and shall be correlated in accordance with the table set out in Annex IV.

⁽²⁾ OJ L 255, 18.10.1968, p. 23.

Article 34

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1999. They shall forthwith inform the Commission thereof.

They shall apply those provisions as from 1 July 1999.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for making such reference shall be adopted by Member States.

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

Article 35

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 36

This Directive is addressed to the Member States.

Done at Brussels, 18 December 1997.

For the Council

The President

F. BODEN

*ANNEX I***TERRITORIES LISTED IN ARTICLE 1**

1. The territory of the Kingdom of Belgium.
 2. The territory of the Kingdom of Denmark with the exception of the Faroe Islands and Greenland.
 3. The territory of the Federal Republic Germany.
 4. The territory of the Kingdom of Spain with the exception of Ceuta and Melilla.
 5. The territory of the Hellenic Republic.
 6. The territory of the French Republic.
 7. The territory of Ireland.
 8. The territory of the Italian Republic.
 9. The territory of the Grand Duchy of Luxembourg.
 10. The territory of the Kingdom of the Netherlands in Europe.
 11. The territory of the Portuguese Republic.
 12. The territory of the United Kingdom of Great Britain and Northern Ireland.
 13. The territory of the Republic of Austria.
 14. The territory of the Republic of Finland.
 15. The territory of the Kingdom of Sweden.
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ANNEX II

APPROVED REQUIREMENTS FOR BORDER INSPECTION POSTS

In order to obtain Community approval, border inspection posts must have:

- the staff necessary to check the documents (public health and animal health certificates or any other document laid down by Community legislation) accompanying the products,
 - sufficient numbers, in relation to the quantity of products dealt with by the border inspection post, of veterinary and auxiliary staff specially trained to carry out checks that products correspond to the accompanying documents and systematic physical checks of each product consignment,
 - sufficient staff to take and process random samples of product consignments presented at a given border inspection post,
 - sufficiently large premises available to the staff responsible for carrying out veterinary checks,
 - appropriate hygienic premises and facilities for carrying out routine analyses and taking samples in accordance with this Directive,
 - appropriate hygienic premises and facilities for taking and processing the samples for the routine checks laid down in Community rules (microbiological standards),
 - the services of a specialised laboratory able to carry out special analyses on the samples taken at that post,
 - premises and cold stores for the storage of part-consignments taken for analysis and products whose release for free circulation has not been authorised by the veterinary officer responsible for the border inspection post,
 - appropriate equipment for the rapid exchange of information, in particular with other border inspection posts (through the computerised system provided for in Article 20 of Directive 90/425/EEC or the Shift project),
 - the services of an establishment qualified to carry out the treatment provided for in Directive 90/667/EEC.
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ANNEX III

PHYSICAL CHECK OF THE PRODUCTS

The aim of the physical check of the animal products is to ensure that the products still meet the purpose mentioned on the veterinary certificate or document: the guarantees of origin certified by the third country must accordingly be verified while ensuring that the subsequent transport of the product has not altered the original guaranteed condition, by means of:

- (a) sensory examinations: smell, colour, consistency, taste;
- (b) simple physical or chemical tests: cutting, thawing, cooking;
- (c) laboratory tests to detect:
 - residues,
 - pathogens,
 - contaminants,
 - evidence of alteration.

Whatever the type of product, the following must be carried out:

- (a) a check on the conditions and means of transport to identify in particular any shortcomings or breaks in the cold chain;
- (b) the real weight of the consignment and that indicated on the veterinary certificate or document must be compared, and the whole consignment weighed where necessary;
- (c) the wrapping materials and all markings (stamps, labels) thereon must be checked to ensure their conformity with Community legislation;
- (d) the temperature required by Community legislation must be checked to ensure compliance during transport;
- (e) an entire set of packages, or samples in the case of bulk products must be examined before undergoing sensory examination and physical, chemical and laboratory tests.

The tests must be carried out on a whole range of samples drawn from the entire consignment, which may be partially unloaded where necessary to ensure that all parts of it are reached.

The examination must cover 1 % of the items or packages in a consignment, from a minimum of two items/packages to a maximum of ten.

However, depending on the products and the circumstances, the veterinary authorities may insist on more extensive checks.

In the case of bulk goods, at least five samples must be taken from various parts of the consignment;

- (f) where random laboratory tests are undertaken which cannot provide immediate results, and there is no immediate danger to public or animal health, the consignment may be released.

However, where the laboratory tests have been carried out because of a suspicion of irregularity or previous tests have given positive results, the consignments may not be released until the test results are negative;
- (g) the means of transport must be fully unloaded only in the following cases:
 - loading was done in such a way as to make access to the entire consignment impossible by partial unloading alone,
 - sample checks have revealed irregularities,
 - the previous consignment has shown irregularities,
 - the official veterinarian suspects irregularities;
- (h) once the physical check has been completed, the competent authority must certify the check by closing and officially stamping all the opened packages and by resealing all the containers, the number of the seal being then entered on the border transit document.

ANNEX IV

TABLE OF CORRESPONDENCE

| Directive 90/675/EEC | This Directive |
|----------------------|-----------------|
| Article 1 | Article 1 |
| Article 2(1) | Article 2(1) |
| Article 2(2)(a) | Article 2(2)(a) |
| Article 2(2)(b) | Article 2(2)(b) |
| Article 2(2)(c) | Article 2(2)(c) |
| Article 2(2)(d) | Article 2(2)(d) |
| Article 2(2)(e) | Article 2(2)(e) |
| Article 2(2)(f) | Article 2(2)(f) |
| Article 2(2)(g) | Article 2(2)(g) |
| Article 2(2)(h) | Article 2(2)(k) |
| Article 3 | — |
| Article 4 | — |
| Article 5 | Article 12 |
| Article 6 | Article 13 |
| Article 7 | — |
| Article 8(1) | — |
| Article 8(2) | Article 4(4)(b) |
| Article 8(3) | Article 10 |
| Article 8(4) | Article 9 |
| Article 9 | Article 6 |
| Article 10 | — |
| Article 11 | — |
| Article 12 | Article 11 |
| Article 13 | Article 14 |
| Article 14 | Article 16 |
| Article 15 | — |
| Article 16 | Article 17 |
| Article 17 | Article 18 |
| Article 18 | Article 19 |
| Article 18a | Article 21 |
| Article 19 | Article 22 |
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| Article 22 | Article 26 |
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COUNCIL DIRECTIVE 97/79/EC

of 18 December 1997

amending Directives 71/118/EEC, 72/462/EEC, 85/73/EEC, 91/67/EEC, 91/492/EEC, 91/493/EEC, 92/45/EEC and 92/118/EEC as regards the organisation of veterinary checks on products entering the Community from third countries

THE COUNCIL OF THE EUROPEAN UNION,

covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (amended and consolidated)⁽⁸⁾,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

— Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products⁽⁹⁾,

Having regard to the proposal from the Commission⁽¹⁾,

— Directive 91/492/EEC of 15 July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs⁽¹⁰⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

— Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products⁽¹¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

— Directive 92/45/EEC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild-game meat⁽¹²⁾,

Whereas for the sake of clarity and rationality, Council Directive 90/675/EEC, laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽⁴⁾, has been repealed and replaced by Directive 97/78/EC⁽⁵⁾;

— Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC⁽¹³⁾;

Whereas the replacement of Directive 90/675/EEC by Directive 97/78/EC has consequences for the existing texts of the following Council Directives:

— Directive 71/118/EEC of 15 February 1971 on health problems affecting the production and placing on the market of fresh poultrymeat⁽⁶⁾,

— Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine, caprine animals and swine, fresh meat or meat products from third countries⁽⁷⁾,

— Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls

Whereas for that reason, those Directives should be brought into line with the text of Directive 97/78/EC,

⁽¹⁾ OJ C 258, 23.8.1997, p. 7.

⁽²⁾ OJ C 85, 17.3.1997, p. 76.

⁽³⁾ OJ C 66, 3.3.1997, p. 43.

⁽⁴⁾ OJ L 373, 31.12.1990, p. 1. Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

⁽⁵⁾ See page 9 of this Official Journal.

⁽⁶⁾ OJ L 55, 8.3.1971, p. 23. Directive as last amended by Directive 96/23/EC (OJ L 125, 23.5.1996, p. 10).

⁽⁷⁾ OJ L 302, 31.12.1972, p. 28. Directive as last amended by Directive 96/91/EC (OJ L 13, 16.1.1997, p. 27).

⁽⁸⁾ OJ L 32, 5.2.1985, p. 14. Directive as last amended by Directive 96/43/EC (OJ L 162, 1.7.1996, p. 1).

⁽⁹⁾ OJ L 46, 19.2.1991, p. 1. Directive as last amended by Directive 95/22/EC (OJ L 243, 11.10.1995, p. 1).

⁽¹⁰⁾ OJ L 268, 24.9.1991, p. 1. Directive as last amended by Directive 97/61/EC (OJ L 295, 29.10.1997, p. 35).

⁽¹¹⁾ OJ L 268, 24.9.1991, p. 15. Directive as amended by Directive 96/23/EC (OJ L 125, 23.5.1996, p. 10).

⁽¹²⁾ OJ L 268, 14.9.1992, p. 35. Directive as amended by Directive 96/23/EC (OJ L 125, 23.5.1996, p. 10).

⁽¹³⁾ OJ L 62, 15.3.1993, p. 49. Directive as last amended by Decision 96/90/EC (OJ L 13, 16.1.1997, p. 24).

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Directive 71/118/EEC is hereby amended as follows:

- (a) in Article 14b(2)(a), the second sentence shall be deleted;
- (b) in Article 17, the second subparagraph shall be deleted.

2. Directive 72/462/EEC is hereby amended as follows:

- (a) in Article 31a, 'Article 17 of Directive 90/675/EEC' shall be replaced by 'Article 18 of Directive 97/78/EC';
- (b) Article 31 shall be deleted.

3. In Article 3(1) of Directive 85/73/EC, 'Article 20 of Directive 90/675/EEC' shall be replaced by 'Article 23 of Directive 98/78/EC'.

4. Directive 91/67/EEC is hereby amended as follows:

- (a) Article 23 shall be replaced by the following:

'Article 23

The principles and rules laid down in Directives 91/496/EEC and 97/78/EC shall apply, with particular reference to the organisation of and follow-up to the checks to be carried out by the Member States and the safeguard measures to be implemented.';

- (b) Article 24 shall be deleted.

5. The second subparagraph of Article 10(2) of Directive 91/492/EEC shall be deleted.

6. Directive 91/493/EEC is hereby amended as follows:

- (a) in the second subparagraph of Article 10, 'Article 18(3) of Directive 90/675/EEC' shall be replaced by 'Article 19(2) of Directive 97/78/EC';
- (b) Article 12(2) shall be deleted.

7. Directive 92/45/EEC is hereby amended as follows:

- (a) Article 17(2) shall be deleted;
- (b) the second paragraph of Article 19 shall be deleted.

8. Directive 92/118/EEC is hereby amended as follows:

- (a) in the second subparagraph of Article 12(1), 'Article 8(2) of Directive 90/675/EEC' shall be replaced by 'Article 4(4)(b) of Directive 97/78/EC';
- (b) Article 12(2) shall be deleted.

Article 2

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1999. They shall forthwith inform the Commission thereof.

They shall apply those provisions as from 1 July 1999.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for making such reference shall be adopted by Member States.

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

Article 3

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 18 December 1997.

For the Council
The President
 F. BODEN