

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## EXISTING PRACTICES IN THE EUROPEAN ECONOMIC COMMUNITY RELATING TO LEASING AND SIMILAR TRANSACTIONS

### Communication from the Commission of the European Communities

The Commission of the European Communities has submitted the following communication to the Committee at its meeting in December 1982.

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#### BELGIUM

Royal Order No. 55 of 1967 defines leasing as being rental-financing and requires that the contract must mention specifically that the lessee has the possibility of acquiring the product leased at a price corresponding to its presumed residual value.

At the end of the initial leasing period, the lessee has the choice between four possibilities:

- (a) he can return the equipment leased to the lessor;
- (b) he can re-lease the equipment for a further period mutually agreed on, if the lessor consents. As a general rule, this period is one year (renewable from year to year at the lessee's request), and the annual rental corresponds to the earlier monthly rental;
- (c) he can exercise his option; in general, the price at which the option can be exercised represents 5 to 7 per cent of the initial cost of the products leased;
- (d) during the second period, the lessee remains free to exercise his option at the price stipulated in the relevant clause, less the rental amounts paid for the second period.

The Royal Order of 18 May 1981 on the general conditions for the award of public works and supply promotion contracts introduced specific provisions in the context of government procurement. Under that Order, a promotion contract is one by which the administration entrusts to a natural or legal person in private law the financing and execution of works or supply, whether or not accompanied by a research and study assignment.

Apart from the case of simple rental, Article 2 of the same Royal Order envisages the possibility of either rental accompanied by a purchase option at the end of the leasing period, or of rental followed at the end of the period by transfer of ownership, or lastly of acquisition of works or supplies from the time when they are made available, through the payment of annual instalments.

For supply contracts, Article 13:2 provides that in the event of transfer of ownership, such transfer takes place either when the purchase option is exercised or at the end of the period stipulated in the contractual specifications.

#### DENMARK

There is no special legislation on leasing transactions; the latter are subject to the general provisions of commercial law.

Under a leasing contract, the lessor who owns the equipment transfers the right to use it to the lessee against payment. The lessee may not sell, pledge or dispose legally of that equipment in any way.

Leasing contracts are irrevocable and may not contain a purchase option in respect of the equipment; on the other hand, they may contain an option to renew the contract. In practice, a differentiation is made between operational leasing and financial leasing.

In operational leasing, the lessor makes the equipment available to the lessee in return for a monthly payment over a period shorter than the economic life of the equipment. In many cases the contract also covers repairs and maintenance.

In financial leasing, the lessor finances acquisition of the equipment and the contractual period will be established on the basis of technical-economic calculations of the life of the equipment. Over the contractual period, the lessee reimburses in monthly payments the initial cost of the equipment plus additional charges. Repairs and maintenance are paid for by the lessee. Financial leasing is frequently used in private industry.

Purchasing entities of the central administration must have special permission to conclude contracts covering periods exceeding the current fiscal year.

#### GERMANY

There is no special legislation covering leasing operations; these are subject to the customary rules of commercial law. The only specific text in this regard is an order issued by the Federal Minister for Financial Affairs on 19 April 1971 establishing a differentiation between rental of immovable property and financing under leasing arrangements.

In the case of such financing operations, a purchase option can be included in the contract if the lessor and the lessee both agree.

Under the above-mentioned order, at the end of the initial period the lessee can opt for renewal of the contract or for purchase of the product leased.

#### FRANCE

In France, as regards organization of the profession, leasing transactions are essentially considered as being financing arrangements. Accordingly, the French authorities require leasing firms to comply with the legislation applicable to banks and credit institutions.

The fundamental legislation determining the legal status of leasing undertakings is Law No. 66/455 of 2 July 1966 concerning undertakings engaged in leasing, published in the Official Gazette (laws and decrees) of 3 July 1966, page 5652. That law is supplemented by Ordinance No. 67/837 of 28 September 1967 concerning leasing transactions and real-estate companies for commerce and industry, published in the Official Gazette on 29 September 1967, page 9595, which determines the field of application of leasing and the status of firms specialized in the rental of business premises.

Leasing transactions are defined by these laws as being "transactions for the rental of capital goods or of tooling specially purchased with a view to such rental by undertakings which remain the owners thereof, when such transactions, however designated, give the lessee the possibility of acquiring all or part of the products rented for an agreed price taking account, at least in part, of the amounts paid by way of rent".

Other leasing arrangements are assimilated to rentals and subject to the normal provisions of commercial law.

From the aspect of the public-sector user, leasing is a substitute for the various forms of rental (conventional rental or "rental plans" of specified duration). At the moment of choosing, the user opts for the arrangement most advantageous in economic terms (leasing or rental). But his choice may also be determined by the manufacturers' policy. The latter, which gave preference to rental until 1975 in regard to major data-processing systems, has tended since then to develop sales to a greater extent, and this has encouraged expansion of leasing firms. Furthermore, leasing is mainly used for major components of large and medium-sized systems, for which the user does not generally consider it in his interest to exercise the purchase option at the end of the specified period, because of changes in his own needs and in technology.

From the economic aspect, technological progress will rapidly develop the relative weighting of small systems - which are generally purchased outright - in overall supply of data-processing equipment in the public sector. For this reason, the share of leasing will tend to diminish in the data-processing sector.

#### IRELAND

In Ireland there is no specific legislation regarding leasing. The only type of option available to an Irish lessee is the possibility of renewing the contract against payment of a symbolic rent.

#### ITALY

In Italy, leasing contracts are not subject to detailed regulations and are in no way inconsistent with the provisions of Italian legislation or tax regulations. All types of leasing are possible, but the purchase option is current practice.

#### LUXEMBOURG

Leasing is not subject to any special regulations under Luxembourg's legislation. This absence of regulations means that in Luxembourg leasing can be seen either as a financing operation, or as equipment rental. In the latter case, the lessor remains responsible for maintenance of the product.

The lessor and the lessee are free to agree on the form of the contract on expiry of the initial period. A purchase option is allowed, as is renewal of the contract.

Leasing is rare in Luxembourg. In the data-processing sector, certain contracts initially for rental have been transformed into sales contracts after a certain period had elapsed and on the initiative of the supplier, who at a given moment made an offer to the lessee.

#### NETHERLANDS

There is no special legislation governing leasing transactions, and the general provisions of commercial law are applicable.

There is no general rule stipulating that the contract must include a purchase option. According to the type of contract, the lessee has the choice between two possibilities on expiry of the initial period:

- (a) he can renew the contract for a second period, against payment of a symbolic rent;
- (b) if the contract includes a purchase option, he can purchase the leased product at a price corresponding to its probable market value.

#### UNITED KINGDOM

The United Kingdom has no legislation more specifically applicable to lessors or to leasing. Conclusion of leasing contracts is not subject to any registration or licensing requirement and the terms of contracts can be

fixed by the lessor and the lessee provided only that they are consistent with the provisions of the general legislation governing contracts of all kinds.

The lessee shall normally have the possibility of renewing the contract against payment of a symbolic rent, and purchase options are not unusual.