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[1] Text with EEA relevance.

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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.

[1] Text with EEA relevance.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2017/2394 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council [3] provides for harmonised rules and procedures to facilitate cooperation between the national authorities that are responsible for the enforcement of cross-border consumer protection laws. Article 21a of Regulation (EC) No 2006/2004 provides for a review of the effectiveness of that Regulation and its operational mechanisms. Following such review, the Commission concluded that Regulation (EC) No 2006/2004 is not sufficient to effectively address the enforcement challenges of the Single Market, including the challenges of the Digital Single Market.

(2) The communication of the Commission of 6 May 2015, 'A Digital Single Market Strategy for Europe', identified as one of the priorities of that strategy, the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules. The communication of the Commission of 28 October 2015 'Upgrading the Single Market Strategy: more opportunities for people and business' reiterated that the enforcement of Union consumer protection legislation should be further strengthened by the reform of Regulation (EC) No 2006/2004.

(3) The ineffective enforcement in cases of cross-border infringements, including infringements in the digital environment, enables traders to evade enforcement by relocating within the Union. It also gives rise to a distortion of competition for law-abiding traders operating either domestically or cross-border, online or offline, and thus directly harms consumers and undermines consumer confidence in cross-border transactions and the internal market. An increased level of harmonisation that includes effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, to investigate and to order the cessation or prohibition of infringements covered by this Regulation.

[1] OJ C 34, 2.2.2017, p. 100.
[2] Position of the European Parliament of 14 November 2017 (not yet published in the Official Journal) and decision of the Council of 30 November 2017.
[3] Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1).

(4) Regulation (EC) No 2006/2004 established a network of competent public enforcement authorities throughout the Union. Effective coordination among different competent authorities participating in that network is necessary, as well as effective coordination among other public authorities at the Member State level. The coordination role of the single liaison office should be entrusted to a public authority in each Member State. That authority should have sufficient powers and necessary resources to undertake that key role. Each Member State is encouraged to designate one of the competent authorities as the single liaison office pursuant to this Regulation.

(5) Consumers should also be protected against infringements covered by this Regulation that have already ceased, but the harmful effects of which may continue. Competent authorities should have the necessary minimum powers to investigate and to order the cessation of such infringements or their prohibition in the future, in order to prevent them from being repeated, and in so doing, to ensure a high level of consumer protection.

(6) Competent authorities should have a minimum set of investigation and enforcement powers in order to apply this Regulation, to cooperate with each other more quickly and more efficiently and to deter traders from committing infringements covered by this Regulation. Those powers should be sufficient to tackle the enforcement challenges of e-commerce and the digital environment effectively and to prevent non-compliant traders from exploiting gaps in the enforcement system by relocating to Member States whose competent authorities are not equipped to tackle unlawful practices. Those powers should enable Member States to ensure that necessary information and evidence can be validly exchanged among competent authorities to achieve an equal level of effective enforcement in all Member States.

(7) Each Member State should ensure that all competent authorities within its jurisdiction have all the minimum powers that are necessary to ensure the proper application of this Regulation. However, Member States should be able to decide not to confer all the powers on every competent authority, provided that each of those powers can be exercised effectively and as necessary in relation to any infringement covered by this Regulation. Member States should also be able to decide, in accordance with this Regulation, to ascribe certain tasks to designated bodies or to confer on competent authorities the power to consult consumer organisations, trader associations, designated bodies, or other persons concerned, regarding the effectiveness of the commitments proposed by a trader to cease the infringement covered by this Regulation. However, Member States should not be under any obligation to involve designated bodies in the application of this Regulation or to provide for consultations with consumer organisations, trader associations, designated bodies, or other persons concerned, regarding the effectiveness of the proposed commitments to cease the infringement covered by this Regulation.

(8) Competent authorities should be in a position to open investigations or proceedings on their own initiative if they become aware of infringements covered by this Regulation by means other than consumer complaints.

(9) Competent authorities should have access to any relevant documents, data and information that relate to the subject matter of an investigation or concerted investigations of a consumer market ('sweeps') in order to determine whether an infringement of Union laws that protect consumers' interests has occurred or is occurring, and in particular to identify the trader responsible, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the place where they are stored. Competent authorities should be able to directly request that third parties in the digital value chain provide any relevant evidence, data and information in accordance with Directive 2000/31/EC of the European Parliament and of the Council [1] and in accordance with the legislation on personal data protection.

(10) Competent authorities should be able to request any relevant information from any public authority, body or agency within their Member State, or from any natural person or legal person, including, for example, payment service providers, internet service providers, telecommunication operators, domain registries and registrars, and hosting service providers, for the purpose of establishing whether an infringement covered by this Regulation has occurred or is occurring.

(11) Competent authorities should be able to carry out necessary on-site inspections, and should have the power to enter any premises, land or means of transport, that the trader concerned by the inspection uses for purposes related to his trade, business, craft or profession.

[1] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

(12) Competent authorities should be able to request any representative or member of the staff of the trader concerned by the inspection to give explanations of facts, information, data or documents relating to the subject matter of the inspection, and should be able to record the answers given by that representative or staff member.

(13) Competent authorities should be able to verify compliance with Union laws that protect consumers' interests and to obtain evidence of infringements covered by this Regulation, including infringements that take place during or after the purchase of goods or services. Competent authorities should therefore have the power to purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements covered by this Regulation, such as refusals to implement the consumer right of withdrawal in the case of distance contracts, and to obtain evidence. That power should also include the power to inspect, observe, study, disassemble or test a product or service that has been purchased by the competent authority for those purposes. The power to purchase goods or services as test purchases might include the power on the part of competent authorities to ensure the return of any payment made where such return would not be disproportionate and would otherwise comply with Union and national law.

(14) In the digital environment in particular, the competent authorities should be able to stop infringements covered by this Regulation quickly and effectively, and in particular where the trader selling goods or services conceals his identity or relocates within the Union or to a third country in order to avoid enforcement. In cases where there is a risk of serious harm to the collective interests of consumers, the competent authorities should be able to adopt interim measures in accordance with national law, including the removal of content from an online interface or ordering the explicit display of a warning to consumers when they access an online interface. Interim measures should not go beyond what is necessary to achieve their objective. Furthermore, the competent authorities should have the power to order the explicit display of a warning to consumers when they access an online interface, or to order the removal or modification of digital content if there are no other effective means to stop an illegal practice. Such measures should not go beyond what is necessary to achieve the objective of bringing to an end or prohibiting the infringement covered by this Regulation.

(15) Pursuing the objective of this Regulation while stressing the importance of the traders' willingness to act in accordance with Union laws that protect consumers' interests and to remedy the consequences of their infringements covered by this Regulation, competent authorities should have the possibility to agree with traders on commitments containing steps and measures that a trader has to take regarding an infringement, and in particular the ceasing of an infringement.

(16) Because they have a direct impact on the degree to which public enforcement acts as a deterrent, penalties for infringements of consumer law represent an important part of the enforcement system. Since national penalties regimes do not always allow the cross-border dimension of an infringement to be taken into account, competent authorities should, as part of their minimum powers, have the right to impose penalties for infringements covered by this Regulation. Member States should not be required to establish a new penalty regime for infringements covered by this Regulation. Instead, they should require competent authorities to apply the applicable regime for the same domestic infringement, where possible taking into account the actual scale and scope of the infringement concerned. In view of the findings of the Commission's Report of the Fitness Check of consumer and marketing law, it might be considered to be necessary to strengthen the level of penalties for breaches of Union consumer law.

(17) Consumers should be entitled to redress for harm caused by infringements covered by this Regulation. Depending on the case, the power of the competent authorities to receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement covered by this Regulation, or where appropriate to seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement should contribute to removing the adverse impact on consumers caused by a cross-border infringement. Those remedies might include, inter alia, repair, replacement, price reductions, the termination of contract or the reimbursement of the price paid for the goods or services, as appropriate, to mitigate the negative consequences of the infringement covered by this Regulation on the affected consumer in accordance with the requirements of Union law. This should be without prejudice to a consumer's right to seek redress through appropriate means. Where applicable, competent authorities should inform, by appropriate means, consumers that claim that they have suffered harm as a consequence of an infringement covered by this Regulation about how to seek compensation under national law.

(18) The implementation and exercise of powers in application of this Regulation should be proportionate and adequate in view of the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests. Competent authorities should take all facts and circumstances of the case into account and should choose the most appropriate measures which are essential to address the infringement covered by this Regulation. Those measures should be proportionate, effective and dissuasive.

(19) The implementation and exercise of powers in the application of this Regulation should also comply with other Union and national law, including with applicable procedural safeguards and principles of the fundamental rights. Member States should remain free to set out conditions and limits for the exercise of the powers in national law, in accordance with Union law. Where, for example, in accordance with national law, prior authorisation to enter the premises of natural persons and legal persons is required from the judicial authority of the Member State concerned, the power to enter such premises should be used only after such prior authorisation has been obtained.

(20) Member States should be able to choose whether the competent authorities exercise those powers directly, under their own authority, by recourse to other competent authorities or other public authorities, by instructing designated bodies or by application to the competent courts. Member States should ensure that those powers are exercised effectively and in a timely manner.

(21) When responding to requests submitted through the mutual assistance mechanism, competent authorities should, where appropriate, also make use of other powers or measures granted to them at the national level, including the power to initiate or refer matters for criminal prosecution. It is of the utmost importance that courts and other authorities, in particular those involved in criminal prosecution, have the necessary means and powers to cooperate with competent authorities effectively and in a timely manner.

(22) The effectiveness and efficiency of the mutual assistance mechanism should be improved. Requested information should be provided within the time limits set out in this Regulation, and necessary investigation and enforcement measures should be adopted in a timely manner. Competent authorities should reply to information and enforcement requests within set periods, unless otherwise agreed. The obligations of the competent authority within the mutual assistance mechanism should remain intact, unless it is likely that enforcement actions and administrative decisions taken at national level outside the mutual assistance mechanism would ensure the swift and effective cessation or prohibition of the intra-Union infringement. Administrative decisions in that regard should be understood as decisions giving effect to the measures taken to bring about the cessation or the prohibition of the intra-Union infringement. In those exceptional cases, competent authorities should be entitled to refuse to comply with a request for enforcement measures submitted under the mutual assistance mechanism.

(23) The Commission should be better able to coordinate and monitor the functioning of the mutual assistance mechanism, issue guidance, make recommendations and issue opinions to the Member States when problems arise. The Commission should also be better able to assist competent authorities effectively and quickly to resolve disputes over the interpretation of their obligations stemming from the mutual assistance mechanism.

(24) This Regulation should provide for harmonised rules setting out the procedures for the coordination of investigation and enforcement measures relating to widespread infringements and widespread infringements with a Union dimension. Coordinated actions against widespread infringements and widespread infringements with a Union dimension should ensure that competent authorities are able to choose the most appropriate and efficient tools to stop those infringements and, where appropriate, to receive or seek to obtain from the traders responsible remedial commitments for the benefit of consumers.

(25) As part of a coordinated action, the competent authorities concerned should coordinate their investigation and enforcement measures in order to tackle effectively the widespread infringement or widespread infringement with a Union dimension and to bring about its cessation or prohibition. To that end, all necessary evidence and information should be exchanged between the competent authorities and necessary assistance should be provided. Competent authorities concerned by the widespread infringement or widespread infringement with a Union dimension should take the necessary enforcement measures in a coordinated way in order to bring about the cessation or prohibition of that infringement.

(26) The participation of each competent authority in a coordinated action, and in particular the investigation and enforcement measures that a competent authority is required to take should be sufficient in order to address the widespread infringement or widespread infringement with a Union dimension effectively. Competent authorities concerned by that infringement should be required to take only those investigation and enforcement measures which are needed to obtain all necessary evidence and information regarding the widespread infringement or widespread infringement with a Union dimension and to bring about the cessation or prohibition of the infringement. However, a lack of available resources on the part of the competent authority concerned by that infringement should not be considered to justify not taking part in a coordinated action.

(27) Competent authorities concerned by the widespread infringement or widespread infringement with a Union dimension which participate in a coordinated action should be able to conduct national investigation and enforcement activities in relation to the same infringement and against the same trader. However, at the same time, the obligation of the competent authority to coordinate its investigation and enforcement activities in the framework of the coordinated action with other competent authorities concerned by that infringement should remain intact, unless it is likely that enforcement actions and administrative decisions taken at national level outside the framework of the coordinated action would ensure the swift and effective cessation or prohibition of the widespread infringement or widespread infringement with a Union dimension. Administrative decisions in that regard should be understood as decisions giving effect to the measures taken to bring about the cessation or the prohibition of the infringement. In those exceptional cases, competent authorities should be entitled to decline to participate in the coordinated action.

(28) Where there is a reasonable suspicion of a widespread infringement, the competent authorities concerned by that infringement should, by agreement, launch a coordinated action. In order to establish which competent authorities are concerned by a widespread infringement, all relevant aspects of that infringement should be considered, and in particular the place where the trader is established or resides, the location of the trader's assets, the location of the consumers who were harmed by the alleged infringement, and the place of the points of sale of the trader, namely, shops and websites.

(29) The Commission should cooperate more closely with Member States to prevent large-scale infringements from occurring. The Commission should therefore notify competent authorities if it suspects any infringements covered by this Regulation. If, for example by monitoring the alerts issued by competent authorities, the Commission has a reasonable suspicion that a widespread infringement with a Union dimension has occurred, it should notify Member States, through the competent authorities and single liaison offices concerned by that alleged infringement, stating the grounds which justify a possible coordinated action in the notification. Competent authorities concerned should conduct appropriate investigations on the basis of information that is available or easily accessible to them. They should notify the results of their investigations to the other competent authorities, to the single liaison offices concerned by that infringement and to the Commission. Where the competent authorities concerned conclude that such investigations reveal that an infringement might be taking place, they should start the coordinated action by taking the measures set out in this Regulation. A coordinated action tackling a widespread infringement with a Union dimension should always be coordinated by the Commission. If it is apparent that the Member State is concerned by that infringement, it should take part in a coordinated action in order to help to collect all necessary evidence and information related to the infringement and to bring about its cessation or prohibition. As regards the enforcement measures, criminal and judicial proceedings in Member States should not be affected by the application of this Regulation. The principle of ne bis in idem should be respected. However, if the same trader repeats the same act or omission that constituted an infringement covered by this Regulation which had already been addressed by enforcement proceedings that resulted in the cessation or prohibition of that infringement, it should be considered to be a new infringement and the competent authorities should address it.

(30) Competent authorities concerned should take the necessary investigation measures to establish the details of the widespread infringement or widespread infringement with a Union dimension, and in particular the identity of the trader, acts or omissions committed by the trader, and the effects of the infringement. The competent authorities should take enforcement measures based on the outcome of the investigation. Where appropriate, the outcome of the investigation and the assessment of the widespread infringement or the widespread infringement with a Union dimension should be set out in a common position agreed among the competent authorities of the Member States concerned by the coordinated action, and should be addressed to the trader responsible for that infringement. The common position should not constitute a binding decision of the competent authorities. It should, however, give the addressee the opportunity to be heard on the matters which are part of the common position.

(31) In the context of widespread infringements or widespread infringements with a Union dimension, the rights of defence of the traders should be respected. This requires, in particular, giving the trader the rights to be heard and to use, during the proceedings, the official language or one of the official languages used for official purposes in the Member State in which the trader is established or resides. It is also essential to ensure compliance with Union law on the protection of undisclosed know-how and business information.

(32) Competent authorities concerned should take within their jurisdiction the necessary investigation and enforcement measures. However, the effects of widespread infringements or widespread infringements with a Union dimension are not limited to a single Member State. Therefore cooperation between competent authorities is required to address those infringements and to bring about their cessation or prohibition.

(33) The effective detection of infringements covered by this Regulation should be supported by exchanging information between competent authorities and the Commission by the means of issuing alerts if there is a reasonable suspicion of such infringements. The Commission should coordinate the functioning of the exchange of information.

(34) Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests, including the settlement of disputes. Consumers should be encouraged to cooperate with the competent authorities to strengthen the application of this Regulation.

(35) Consumer organisations, and where appropriate trader associations, should be allowed to notify competent authorities of suspected infringements covered by this Regulation and to share with them the information needed to detect, investigate and stop infringements, to give their opinion about investigations or infringements and to notify competent authorities of abuses of Union laws that protect consumers' interests.

(36) In order to ensure the correct implementation of this Regulation, Member States should confer on designated bodies, European Consumer Centres, consumer organisations and associations, and, where appropriate, trader associations, that have the necessary expertise, the power to issue external alerts to the competent authorities of the relevant Member States and the Commission of suspected infringements covered by this Regulation and to provide the necessary information available to them. Member States might have appropriate reasons for not conferring on such entities the power to undertake those actions. In this context, where a Member State decides not to allow one of those entities to issue external alerts, it should provide an explanation justifying its reasons for doing so.

(37) Sweeps are another form of enforcement coordination that has proven to be an effective tool against infringements of Union laws that protect consumers' interests, and should be retained and strengthened in the future, for both online and offline sectors. In particular, sweeps should be conducted where market trends, consumer complaints or other indications suggest that infringements of Union laws that protect consumers' interests have occurred or are occurring.

(38) Data related to consumer complaints might help policymakers at Union and national level to assess the functioning of consumer markets and to detect infringements. The exchange of such data at Union level should be promoted.

(39) It is essential that, to the extent necessary to contribute to achieving the objective of this Regulation, Member States inform each other and the Commission about their activities in protecting consumers' interests, including about their support for the activities of consumer representatives, their support for the activities of bodies responsible for the extra-judicial settlement of consumer disputes and their support for consumers' access to justice. In cooperation with the Commission, Member States should be able to carry out joint activities with respect to the exchange of consumer policy information in the aforementioned areas.

(40) The enforcement challenges that exist go beyond the frontiers of the Union, and the interests of Union consumers need to be protected from rogue traders based in third countries. Hence, international agreements with third countries regarding mutual assistance in the enforcement of Union laws that protect consumers' interests should be negotiated. Those international agreements should include the subject matter laid down in this Regulation and should be negotiated at Union level in order to ensure the optimum protection of Union consumers and smooth cooperation with third countries.

(41) Information exchanged between competent authorities should be subject to strict rules on confidentiality and on professional and commercial secrecy, in order to ensure investigations are not compromised or that the reputations of traders are not unfairly harmed. Competent authorities should decide to disclose such information only when appropriate and necessary, in accordance with the principle of proportionality, taking into account the public interest, such as public safety, consumer protection, public health, environmental protection or proper conduct of criminal investigations, and on a case-by-case basis.

(42) In order to enhance the transparency of the cooperation network, and to raise awareness amongst consumers and the public in general, every 2 years the Commission should produce an overview of the information, statistics and developments in the area of consumer law enforcement, collected within the enforcement framework of the cooperation provided for by this Regulation, and make it publicly available.

(43) Widespread infringements should be resolved effectively and efficiently. A system of biennial exchange of enforcement priorities should be put in place to achieve this.

(44) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission, to lay down the practical and operational arrangements for the functioning of the electronic database. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(45) This Regulation is without prejudice to sectoral Union rules providing for cooperation among sectoral regulators or to applicable sectoral Union rules on the compensation of consumers for harm resulting from infringements of those rules. This Regulation is also without prejudice to other cooperation systems and networks set out in sectoral Union legislation. This Regulation promotes cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation. This Regulation is without prejudice to the application in the Member States of measures relating to judicial cooperation in civil and criminal matters.

(46) This Regulation is without prejudice to the right to claim individual or collective compensation, which is subject to the national law, and does not provide for the enforcement of those claims.

(47) Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]), Regulation (EU) 2016/679 of the European Parliament and of the Council ([3]) and Directive (EU) 2016/680 of the European Parliament and of the Council ([4]) should apply in the context of this Regulation.

(48) This Regulation is without prejudice to the applicable Union rules concerning the powers of national regulatory bodies established by Union sectoral legislation. Where appropriate and possible, those bodies should use the powers available to them under Union law and national law to bring about the cessation or prohibition of infringements covered by this Regulation, and to assist the competent authorities in doing so.

(49) This Regulation is without prejudice to the role and the powers of the competent authorities and of the European Banking Authority in relation to the protection of the collective economic interests of consumers in matters concerning payment accounts services and credit agreements relating to residential immovable property under Directive 2014/17/EU of the European Parliament and of the Council ([5]) and Directive 2014/92/EU of the European Parliament and of the Council ([6]).

(50) In view of the existing cooperation mechanisms under Directive 2014/17/EU and Directive 2014/92/EU, the mutual assistance mechanism should not apply to intra-Union infringements of those Directives.

([1]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

([2]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([3]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([4]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

([5]) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

([6]) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

(51) This Regulation is without prejudice to Council Regulation No 1 ([1]).

(52) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and present in the constitutional traditions of the Member States. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, including those related to the freedom of expression and the freedom and pluralism of the media. When exercising the minimum powers set out in this Regulation, the competent authorities should strike an appropriate balance between the interests protected by fundamental rights such as a high level of consumer protection, the freedom to conduct a business and the freedom of information.

(53) Since the objective of this Regulation, namely, cooperation between national authorities responsible for the enforcement of consumer protection laws, cannot be sufficiently achieved by the Member States because they cannot ensure cooperation and coordination by acting alone, but can rather, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(54) Regulation (EC) No 2006/2004 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject matter

This Regulation lays down the conditions under which competent authorities, having been designated by their Member States as responsible for the enforcement of Union laws that protect consumers' interests, cooperate and coordinate actions with each other and with the Commission, in order to enforce compliance with those laws and to ensure the smooth functioning of the internal market, and in order to enhance the protection of consumers' economic interests.

Article 2

Scope

1. This Regulation applies to intra-Union infringements, widespread infringements and widespread infringements with a Union dimension, even if those infringements have ceased before enforcement starts or is completed.

2. This Regulation is without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable laws.

3. This Regulation is without prejudice to the application in the Member States of measures relating to judicial cooperation in civil and criminal matters, in particular the operation of the European Judicial Network.

4. This Regulation is without prejudice to the fulfilment by the Member States of any additional obligations in relation to mutual assistance for the protection of the collective economic interests of consumers, including in criminal matters, stemming from other legal acts, including bilateral or multilateral agreements.

5. This Regulation is without prejudice to Directive 2009/22/EC of the European Parliament and of the Council ([2]).

6. This Regulation is without prejudice to the possibility of bringing further public or private enforcement actions under national law.

7. This Regulation is without prejudice to relevant Union law applicable to the protection of individuals with regard to the processing of personal data.

8. This Regulation is without prejudice to national law applicable to compensation of consumers for harm caused by infringements of Union laws that protect consumers' interests.

9. This Regulation is without prejudice to the right of the competent authorities to conduct investigation and enforcement actions against more than one trader for similar infringements covered by this Regulation.

([1]) Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).
([2]) Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

10. Chapter III of this Regulation does not apply to intra-Union infringements of Directives 2014/17/EU and 2014/92/EU.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'Union laws that protect consumers' interests' means the Regulations and the Directives, as transposed into the internal legal order of the Member States, that are listed in the Annex hereto;

(2) 'intra-Union infringement' means any act or omission contrary to Union laws that protect consumers' interests that has done, does or is likely to do harm to the collective interests of consumers residing in a Member State other than the Member State in which:

(a) the act or omission originated or took place;

(b) the trader responsible for the act or omission is established; or

(c) evidence or assets of the trader pertaining to the act or omission are to be found;

(3) 'widespread infringement' means:

(a) any act or omission contrary to Union laws that protect consumers' interests that has done, does or is likely to do harm to the collective interests of consumers residing in at least two Member States other than the Member State in which:

(i) the act or omission originated or took place;

(ii) the trader responsible for the act or omission is established; or

(iii) evidence or assets of the trader pertaining to the act or omission are to be found; or

(b) any acts or omissions contrary to Union laws that protect consumers interests that have done, do or are likely to do harm to the collective interests of consumers and that have common features, including the same unlawful practice, the same interest being infringed and that are occurring concurrently, committed by the same trader, in at least three Member States;

(4) 'widespread infringement with a Union dimension' means a widespread infringement that has done, does or is likely to do harm to the collective interests of consumers in at least two-thirds of the Member States, accounting, together, for at least two-thirds of the population of the Union;

(5) 'infringements covered by this Regulation' means intra-Union infringements, widespread infringements and widespread infringements with a Union dimension;

(6) 'competent authority' means any public authority established either at national, regional or local level and designated by a Member State as responsible for enforcing the Union laws that protect consumers' interests;

(7) 'single liaison office' means the public authority designated by a Member State as responsible for coordinating the application of this Regulation within that Member State;

(8) 'designated body' means a body having a legitimate interest in the cessation or prohibition of infringements of the Union laws that protect consumers' interests which is designated by a Member State and instructed by a competent authority for the purpose of gathering the necessary information and to take the necessary enforcement measures available to that body under national law in order to bring about the cessation or prohibition of the infringement, and which is acting on behalf of that competent authority;

(9) 'applicant authority' means the competent authority that makes a request for mutual assistance;

(10) 'requested authority' means the competent authority that receives a request for mutual assistance;

(11) 'trader' means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

(12) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

(13) 'consumer complaint' means a statement, supported by reasonable evidence, that a trader has committed, is committing, or is likely to commit, an infringement of the Union laws that protect consumers' interests;

(14) 'harm to collective interests of consumers' means actual or potential harm to the interests of a number of consumers that are affected by intra-Union infringements, by widespread infringements or by widespread infringements with a Union dimension;

(15) 'online interface' means any software, including a website, part of a website or an application, that is operated by or on behalf of a trader, and which serves to give consumers access to the trader's goods or services;

(16) 'sweeps' means concerted investigations of consumer markets through simultaneous coordinated control actions to check compliance with, or to detect infringements of, Union laws that protect consumers' interests.

Article 4

Notification of limitation periods

Each single liaison office shall notify the Commission of the limitation periods that are in place in its own Member State and that apply to enforcement measures referred to in Article 9(4). The Commission shall summarise the notified limitation periods and shall make that summary available to the competent authorities.

CHAPTER II

COMPETENT AUTHORITIES AND THEIR POWERS

Article 5

Competent authorities and single liaison offices

1. Each Member State shall designate one or more competent authorities and the single liaison office that are responsible for the application of this Regulation.

2. Competent authorities shall fulfil their obligations under this Regulation as though acting on behalf of consumers in their own Member State and on their own account.

3. Within each Member State, the single liaison office shall be responsible for coordinating the investigation and enforcement activities of the competent authorities, other public authorities referred to in Article 6 and, if applicable, designated bodies, in relation to infringements covered by this Regulation.

4. Member States shall ensure that competent authorities and single liaison offices have the necessary resources for the application of this Regulation, including sufficient budgetary and other resources, expertise, procedures and other arrangements.

5. Where there is more than one competent authority in their territory, Member States shall ensure that the respective duties of those competent authorities are clearly defined and that they collaborate closely in order to discharge those duties effectively.

Article 6

Cooperation for the application of this Regulation within Member States

1. For the purpose of the proper application of this Regulation each Member State shall ensure that its competent authorities, other public authorities and, if applicable, designated bodies cooperate effectively with one another.

2. Other public authorities referred to in paragraph 1 shall, at the request of a competent authority, take all necessary measures available to them under national law in order to bring about the cessation or prohibition of infringements covered by this Regulation.

3. The Member States shall ensure that the other public authorities referred to in paragraph 1 have the means and powers necessary to cooperate effectively with the competent authorities in the application of this Regulation. Those other public authorities shall regularly inform the competent authorities about the measures taken in the application of this Regulation.

Article 7

Role of designated bodies

1. Where applicable, a competent authority ('instructing authority') may, in accordance with its national law, instruct a designated body to gather the necessary information regarding an infringement covered by this Regulation or to take the necessary enforcement measures available to it under national law, in order to bring about the cessation or prohibition of that infringement. The instructing authority shall only instruct a designated body if, after consulting the applicant authority or the other competent authorities concerned by the infringement covered by this Regulation, both the applicant authority and requested authority, or all competent authorities concerned, agree that the designated body is likely to obtain the necessary information or to bring about the cessation or the prohibition of the infringement in a manner that is at least as efficient and effective as the instructing authority would have done.

2. If the applicant authority or the other competent authorities concerned by an infringement covered by this Regulation are of the view that the conditions set out in paragraph 1 have not been fulfilled, they shall inform the instructing authority in writing without delay, setting out the reasons justifying that view. If the instructing authority does not share that view, it may refer the matter to the Commission, which shall issue an opinion on the matter without delay.

3. The instructing authority shall continue to be obliged to gather the necessary information or to take the necessary enforcement measures if:

(a) the designated body fails to obtain the necessary information or to bring about the cessation or prohibition of the infringement covered by this Regulation without delay; or

(b) the competent authorities concerned by an infringement covered by this Regulation do not agree that the designated body may be instructed pursuant to paragraph 1.

4. The instructing authority shall take all necessary measures to prevent the disclosure of information which is subject to the rules on confidentiality and on professional and commercial secrecy laid down in Article 33.

Article 8

Information and lists

1. Each Member State shall, without delay, communicate to the Commission the following information and any changes thereto:

(a) the identities and contact details of the competent authorities, of the single liaison office, of the designated bodies and of the entities issuing external alerts pursuant to Article 27(1); and

(b) information about the organisation, powers and responsibilities of the competent authorities.

2. The Commission shall maintain and update on its website a publicly available list of competent authorities, single liaison offices, designated bodies and entities issuing external alerts pursuant to Article 27(1) or (2).

Article 9

Minimum powers of competent authorities

1. Each competent authority shall have the minimum investigation and enforcement powers set out in paragraphs 3, 4, 6 and 7 of this Article that are necessary for the application of this Regulation and shall exercise those powers in accordance with Article 10.

2. Notwithstanding paragraph 1, Member States may decide not to confer all the powers on every competent authority, provided that each of those powers can be exercised effectively and as necessary in relation to any infringement covered by this Regulation in accordance with Article 10.

3. Competent authorities shall have at least the following investigation powers:

(a) the power of access to any relevant documents, data or information related to an infringement covered by this Regulation, in any form or format and irrespective of their storage medium, or the place where, they are stored;

(b) the power to require any public authority, body or agency within their Member State or any natural person or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium, or the place where they are stored, for the purposes of establishing whether an infringement covered by this Regulation has occurred or is occurring, and for the purposes of establishing the details of such infringement, including tracing financial and data flows, ascertaining the identity of persons involved in financial and data flows, and ascertaining bank account information and ownership of websites;

(c) the power to carry out necessary on-site inspections, including the power to enter any premises, land or means of transport that the trader concerned by the inspection uses for purposes related to his trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seise, take or obtain copies of information, data or documents, irrespective of their storage medium; the power to seise any information, data or documents for a necessary period and to the extent necessary for the inspection; the power to request any representative or member of the staff of the trader concerned by the inspection to give explanations of facts, information, data or documents relating to the subject matter of the inspection and to record the answers;

(d) the power to purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements covered by this Regulation and to obtain evidence, including the power to inspect, observe, study, disassemble or test goods or services.

4. Competent authorities shall have at least the following enforcement powers:

(a) the power to adopt interim measures to avoid the risk of serious harm to the collective interests of consumers;

(b) the power to seek to obtain or to accept commitments from the trader responsible for the infringement covered by this Regulation to cease that infringement;

(c) the power to receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement covered by this Regulation, or, where appropriate, to seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement;

(d) where applicable, the power to inform, by appropriate means, consumers that claim that they have suffered harm as a consequence of an infringement covered by this Regulation about how to seek compensation under national law;

(e) the power to order in writing the cessation of infringements covered by this Regulation by the trader;

(f) the power to bring about the cessation or the prohibition of infringements covered by this Regulation;

(g) where no other effective means are available to bring about the cessation or the prohibition of the infringement covered by this Regulation and in order to avoid the risk of serious harm to the collective interests of consumers:

(i) the power to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface;

(ii) the power to order a hosting service provider to remove, disable or restrict access to an online interface; or

(iii) where appropriate, the power to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;

including by requesting a third party or other public authority to implement such measures;

(h) the power to impose penalties, such as fines or periodic penalty payments, for infringements covered by this Regulation and for the failure to comply with any decision, order, interim measure, trader's commitment or other measure adopted pursuant to this Regulation.

The penalties referred to in point (h) shall be effective, proportionate and dissuasive, in accordance with the requirements of Union laws that protect consumers' interests. In particular, due regard shall be given, as appropriate, to the nature, gravity and duration of the infringement in question.

5. The power to impose penalties, such as fines or periodic penalty payments, for infringements covered by this Regulation applies to any infringement of Union laws that protect consumers' interests, where the relevant Union legal act listed in the Annex provides for penalties. This is without prejudice to the power of national authorities under national law to impose penalties, such as administrative or other fines, or periodic penalty payments, in cases where the Union legal acts listed in the Annex do not provide for penalties.

6. Competent authorities shall have the power to start investigations or proceedings on their own initiative to bring about the cessation or prohibition of infringements covered by this Regulation.

7. Competent authorities may publish any final decision, trader's commitments or orders adopted pursuant to this Regulation, including the publication of the identity of the trader responsible for an infringement covered by this Regulation.

8. Where applicable, competent authorities may consult consumer organisations, trader associations, designated bodies or other persons concerned, regarding the effectiveness of the proposed commitments in bringing the infringement covered by this Regulation to an end.

Article 10

Exercise of minimum powers

1. The powers set out in Article 9 shall be exercised either:

(a) directly by competent authorities under their own authority;

(b) where appropriate, by recourse to other competent authorities or other public authorities;

(c) by instructing designated bodies, if applicable; or

(d) by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

2. The implementation and the exercise of powers set out in Article 9 in application of this Regulation shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests.

CHAPTER III

MUTUAL ASSISTANCE MECHANISM

Article 11

Requests for information

1. At the request of an applicant authority, a requested authority shall, without delay, and in any event within 30 days unless otherwise agreed, provide to the applicant authority any relevant information necessary to establish whether an intra-Union infringement has occurred or is occurring, and to bring about the cessation of that infringement.

2. The requested authority shall undertake the appropriate and necessary investigations or take any other necessary or appropriate measures in order to gather the required information. If necessary, those investigations shall be carried out with the assistance of other public authorities or designated bodies.

3. On request from the applicant authority, the requested authority may allow officials of the applicant authority to accompany the officials of the requested authority in the course of their investigations.

Article 12

Requests for enforcement measures

1. At the request of an applicant authority, a requested authority shall take all necessary and proportionate enforcement measures to bring about the cessation or prohibition of the intra-Union infringement by exercising the powers set out in Article 9 and any additional powers granted to it under national law. The requested authority shall determine the appropriate enforcement measures needed to bring about the cessation or prohibition of the intra-Union infringement and shall take them without delay and not later than 6 months after receiving the request, unless it provides specific reasons for extending that period. Where appropriate, the requested authority shall impose penalties, such as fines or periodic penalty payments, on the trader responsible for the intra-Union infringement. The requested authority may receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged intra-Union infringement, or, where appropriate, may seek to obtain commitments from the trader to offer adequate remedies to consumers that have been affected by that infringement.

2. The requested authority shall regularly inform the applicant authority about the steps and measures taken and the steps and measures that it intends to take. The requested authority shall use the electronic database provided for in Article 35 to notify without delay the applicant authority, the competent authorities of other Member States and the Commission of the measures taken and the effect of those measures on the intra-Union infringement, including the following:

(a) whether interim measures have been imposed;

(b) whether the infringement has ceased;

(c) which measures have been adopted, and whether those measures have been implemented;

(d) the extent to which consumers affected by the alleged infringement have been offered remedial commitments.

Article 13

Procedure for requests for mutual assistance

1. When making a request for mutual assistance, the applicant authority shall provide the information necessary to enable the requested authority to fulfil that request, including any necessary evidence which can only be obtained in the Member State of the applicant authority.

2. The applicant authority shall send such requests for mutual assistance to the single liaison office of the Member State of the requested authority and to the single liaison office of the Member State of the applicant authority for information. The single liaison office of the Member State of the requested authority shall pass the requests on to the appropriate competent authority without delay.

3. Requests for mutual assistance and all communications linked to them shall be made in writing using standard forms and shall be communicated electronically via the electronic database provided for in Article 35.

4. The competent authorities concerned shall agree on the languages to be used for requests for mutual assistance and for all communications linked to them.

5. If no agreement about languages can be reached, requests for mutual assistance shall be sent in the official language, or one of the official languages, of the Member State of the applicant authority and replies in the official language, or one of the official languages, of the Member State of the requested authority. In that case, each competent authority shall be responsible for the necessary translations of the requests, replies and other documents that it receives from another competent authority.

6. The requested authority shall reply directly both to the applicant authority and to the single liaison offices of the Member States of the applicant authority and of the requested authority.

Article 14

Refusal to comply with a request for mutual assistance

1. A requested authority may refuse to comply with a request for information under Article 11 if one or more of the following applies:

(a) following a consultation with the applicant authority, it appears that the information requested is not needed by the applicant authority to establish whether an intra-Union infringement has occurred or is occurring, or to establish whether there is a reasonable suspicion that it may occur;

(b) the applicant authority does not agree that the information is subject to the rules on confidentiality and on professional and commercial secrecy laid down in Article 33;

(c) criminal investigations or judicial proceedings have already been initiated against the same trader in respect of the same intra-Union infringement before the judicial authorities in the Member State of the requested authority or of the applicant authority.

2. A requested authority may refuse to comply with a request for enforcement measures under Article 12 if, having consulted with the applicant authority, one or more of the following applies:

(a) criminal investigations or judicial proceedings have already been initiated, or there is a judgment, a court settlement or a judicial order in respect of the same intra-Union infringement and against the same trader before the judicial authorities in the Member State of the requested authority;

(b) the exercise of the necessary enforcement powers has already been initiated, or an administrative decision has already been adopted in respect of the same intra-Union infringement and against the same trader in the Member State of the requested authority in order to bring about the swift and effective cessation or prohibition of the intra-Union infringement;

(c) following an appropriate investigation, the requested authority concludes that no intra-Union infringement has occurred;

(d) the requested authority concludes that the applicant authority has not provided the information that is necessary in accordance with Article 13(1);

(e) the requested authority has accepted commitments proposed by the trader to cease the intra-Union infringement within a set time limit and that time limit has not yet passed.

However, the requested authority shall comply with the request for enforcement measures under Article 12 if the trader fails to implement accepted commitments within the time limit referred to in point (e) of the first subparagraph.

3. The requested authority shall inform the applicant authority and the Commission of any refusal to comply with a request for mutual assistance, together with the reasons for that refusal.

4. In the event of a disagreement between the applicant authority and the requested authority, either the applicant authority or the requested authority may refer the matter to the Commission, which shall issue an opinion on the matter without delay. Where the matter has not been referred to the Commission, the Commission may nevertheless issue an opinion on its own initiative. For the purpose of issuing that opinion, the Commission may ask for relevant information and documents that have been exchanged between the applicant authority and the requested authority.

5. The Commission shall monitor the functioning of the mutual assistance mechanism and the compliance of competent authorities with the procedures and the time limits for handling requests for mutual assistance. The Commission shall have access to the requests for mutual assistance and to the information and documents that have been exchanged between the applicant authority and requested authority.

6. Where appropriate, the Commission may issue guidance and provide advice to the Member States to ensure the effective and efficient functioning of the mutual assistance mechanism.

CHAPTER IV

COORDINATED INVESTIGATION AND ENFORCEMENT MECHANISMS FOR WIDESPREAD INFRINGEMENTS AND FOR WIDESPREAD INFRINGEMENTS WITH A UNION DIMENSION

Article 15

Procedure for decisions amongst Member States

For matters covered by this Chapter, the competent authorities concerned shall act by consensus.

Article 16

General principles of cooperation

1. Where there is a reasonable suspicion that a widespread infringement or widespread infringement with a Union dimension is taking place, competent authorities concerned by that infringement and the Commission shall inform each other and the single liaison offices concerned by that infringement without delay, by issuing alerts pursuant to Article 26.

2. The competent authorities concerned by the widespread infringement or widespread infringement with a Union dimension shall coordinate the investigation and enforcement measures that they take to address those infringements. They shall exchange all necessary evidence and information and provide each other and the Commission with any necessary assistance without delay.

3. The competent authorities concerned by the widespread infringement or widespread infringement with a Union dimension shall ensure that all necessary evidence and information are gathered, and that all necessary enforcement measures are taken to bring about the cessation or prohibition of that infringement.

4. Without prejudice to paragraph 2, this Regulation shall not affect national investigation and enforcement activities carried out by competent authorities in respect of the same infringement by the same trader.

5. Where appropriate, the competent authorities may invite Commission officials and other accompanying persons, who have been authorised by the Commission, to participate in the coordinated investigations, enforcement actions and other measures covered by this Chapter.

Article 17

Launch of coordinated action and designation of the coordinator

1. Where there is a reasonable suspicion of a widespread infringement, the competent authorities concerned by that infringement shall launch a coordinated action which shall be based on an agreement between them. The launch of the coordinated action shall be notified to the single liaison offices concerned by that infringement and to the Commission, without delay.

2. The competent authorities concerned by the suspected widespread infringement shall designate one competent authority concerned by the suspected widespread infringement to be the coordinator. If those competent authorities are unable to reach agreement on that designation, the Commission shall take the role of coordinator.

3. If the Commission has a reasonable suspicion of a widespread infringement with a Union dimension, it shall without delay notify the competent authorities and the single liaison offices concerned by that alleged infringement pursuant to Article 26. The Commission shall state in the notification the grounds which justify a possible coordinated action. The competent authorities concerned by the alleged widespread infringement with a Union dimension shall conduct appropriate investigations on the basis of information that is available or easily accessible to them. The competent authorities concerned by the alleged widespread infringement with a Union dimension shall notify the results of such investigations to the other competent authorities, the single liaison offices concerned by that infringement and the Commission pursuant to Article 26, within 1 month from the date of the Commission's notification. Where such investigations reveal that a widespread infringement with a Union dimension might be taking place, the competent authorities concerned by that infringement shall start with the coordinated action and shall take the measures set out in Article 19 as well as, where appropriate, the measures set out in Articles 20 and 21.

4. The coordinated actions referred to in paragraph 3 shall be coordinated by the Commission.

5. A competent authority shall join the coordinated action, if it becomes apparent during that coordinated action that the competent authority is concerned by the widespread infringement or the widespread infringement with a Union dimension.

Article 18

Reasons for declining to take part in the coordinated action

1. A competent authority may decline to take part in a coordinated action for any of the following reasons:

(a) in respect of the same trader, a criminal investigation or judicial proceedings have already been initiated, a judgement has been given, or a court settlement has been reached, concerning the same infringement in that competent authority's Member State;

(b) the exercise of the necessary enforcement powers has already been initiated before the issuing of an alert referred to in Article 17(3), or an administrative decision has been adopted against the same trader in respect of the same infringement in that competent authority's Member State in order to bring about the swift and effective cessation or prohibition of the widespread infringement or widespread infringement with a Union dimension;

(c) following an appropriate investigation, it is apparent that the actual or potential impact of the alleged widespread infringement or widespread infringement with a Union dimension in that competent authority's Member State is negligible and therefore no enforcement measures need to be adopted by that competent authority;

(d) the relevant widespread infringement or the widespread infringement with a Union dimension has not occurred in that competent authority's Member State and therefore no enforcement measures need to be adopted by that competent authority;

(e) the competent authority has accepted commitments proposed by the trader responsible for the widespread infringement or widespread infringement with a Union dimension to cease that infringement in that competent authority's Member State and those commitments have been implemented, and therefore no enforcement measures need to be adopted by that competent authority.

2. Where a competent authority declines to take part in the coordinated action, it shall inform the Commission and the other competent authorities and single liaison offices concerned by the widespread infringement or widespread infringement with a Union dimension about its decision without delay, stating the reasons for its decision and providing any necessary supporting documents.

Article 19

Investigation measures in coordinated actions

1. The competent authorities concerned by the coordinated action shall ensure that investigations and inspections are conducted in an effective, efficient and coordinated manner. They shall seek, simultaneously with one another, to conduct investigations and inspections and, to the extent that national procedural law so allows, to apply interim measures.

2. The mutual assistance mechanism pursuant to Chapter III may be used if it is needed, in particular to gather necessary evidence and other information from Member States other than the Member States concerned by the coordinated action or to ensure that the trader concerned does not circumvent enforcement measures.

3. Where appropriate, the competent authorities concerned by the coordinated action shall set out the outcome of the investigation and the assessment of the widespread infringement or, where applicable, the widespread infringement with a Union dimension in a common position agreed upon among themselves.

4. Unless otherwise agreed between the competent authorities concerned by the coordinated action, the coordinator shall communicate the common position to the trader responsible for the widespread infringement or the widespread infringement with a Union dimension. The trader responsible for the widespread infringement or the widespread infringement with a Union dimension shall be given the opportunity to be heard on the matters forming part of the common position.

5. Where appropriate, and without prejudice to Article 15 or to the rules on confidentiality and on professional and commercial secrecy laid down in Article 33, the competent authorities concerned by the coordinated action shall decide to publish the common position or parts thereof on their websites, and may seek the views of consumer organisations, trader associations and other parties concerned. The Commission shall publish the common position or parts thereof on its website with the agreement of the competent authorities concerned.

Article 20

Commitments in coordinated actions

1. On the basis of a common position adopted pursuant to Article 19(3), the competent authorities concerned by the coordinated action may invite the trader responsible for the widespread infringement or the widespread infringement with a Union dimension to propose within a set time limit commitments to cease that infringement. The trader may also, on his own initiative, propose commitments to cease that infringement or offer remedial commitments to consumers that have been affected by that infringement.

2. Where appropriate and without prejudice to the rules on confidentiality and on professional and commercial secrecy laid down in Article 33, the competent authorities concerned by the coordinated action, may publish the commitments proposed by the trader responsible for the widespread infringement or the widespread infringement with a Union dimension on their websites or, if appropriate, the Commission may publish the commitments proposed by that trader on its website if so requested by the competent authorities concerned. Competent authorities and the Commission may seek the views of consumer organisations, trader associations and other parties concerned.

3. The competent authorities concerned by the coordinated action shall assess the proposed commitments and communicate the outcome of the assessment to the trader responsible for the widespread infringement or the widespread infringement with a Union dimension, and, where applicable, if remedial commitments have been offered by the trader, they shall inform consumers that claim that they have suffered harm as a consequence of that infringement. Where commitments are proportionate and are sufficient to bring about the cessation of the widespread infringement or the widespread infringement with a Union dimension, the competent authorities shall accept those commitments and set a time limit within which the commitments have to be implemented.

4. The competent authorities concerned by the coordinated action shall monitor the implementation of the commitments. They shall in particular ensure that the trader responsible for the widespread infringement or the widespread infringement with a Union dimension regularly reports to the coordinator about the progress of the implementation of the commitments. The competent authorities concerned by the coordinated action may, where appropriate, seek the views of consumer organisations and experts to verify whether the steps taken by the trader comply with the commitments.

Article 21

Enforcement measures in coordinated actions

1. The competent authorities concerned by the coordinated action shall take within their jurisdiction all necessary enforcement measures against the trader responsible for the widespread infringement or the widespread infringement with a Union dimension to bring about the cessation or prohibition of that infringement.

Where appropriate, they shall impose penalties, such as fines or periodic penalty payments, on the trader responsible for the widespread infringement or the widespread infringement with a Union dimension. The competent authorities may receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged widespread infringement or the alleged widespread infringement with a Union dimension, or, where appropriate, may seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement.

Enforcement measures are in particular appropriate where:

(a) an immediate enforcement action is necessary to bring about the swift and effective cessation or prohibition of the infringement;

(b) it is unlikely that the infringement will cease as a result of the commitments proposed by the trader responsible for the infringement;

(c) the trader responsible for the infringement has not proposed commitments before the expiry of a time limit set by the competent authorities concerned;

(d) the commitments that the trader responsible for the infringement proposed are insufficient to ensure the cessation of the infringement or, where appropriate, to provide a remedy to consumers harmed by the infringement; or

(e) the trader responsible for the infringement has failed to implement the commitments to cease the infringement or, where appropriate, to provide a remedy to consumers harmed by the infringement, within the time limit referred to in Article 20(3).

2. Enforcement measures pursuant to paragraph 1 shall be taken in an effective, efficient and coordinated manner to bring about the cessation or prohibition of the widespread infringement or the widespread infringement with a Union dimension. The competent authorities concerned by the coordinated action shall seek to take enforcement measures simultaneously in the Member States concerned by that infringement.

Article 22

Closure of the coordinated actions

1. The coordinated action shall be closed if the competent authorities concerned by the coordinated action conclude that the widespread infringement or widespread infringement with a Union dimension has ceased or has been prohibited in all Member States concerned, or that no such infringement was committed.

2. The coordinator shall notify the Commission and, where applicable, the competent authorities and the single liaison offices of the Member States concerned by the coordinated action of the closure of the coordinated action without delay.

Article 23

Role of the coordinator

1. The coordinator appointed in accordance with Article 17 or 29 shall in particular:

(a) ensure that all the competent authorities concerned and the Commission are duly informed, in a timely manner, of the progress of the investigation or of the enforcement action, as applicable, and informed of any anticipated next steps and the measures to be adopted;

(b) coordinate and monitor the investigation measures taken by the competent authorities concerned in accordance with this Regulation;

(c) coordinate the preparation and sharing of all necessary documents among the competent authorities concerned and the Commission;

(d) maintain contact with the trader and other parties concerned by the investigation or enforcement measures, as applicable, unless otherwise agreed by the competent authorities concerned and the coordinator;

(e) where applicable, coordinate the assessment, the consultations and the monitoring by the competent authorities concerned as well as other steps necessary to process and implement commitments proposed by the traders concerned;

(f) where applicable, coordinate enforcement measures adopted by the competent authorities concerned;

(g) coordinate requests for mutual assistance submitted by the competent authorities concerned pursuant to Chapter III.

2. The coordinator shall not be held responsible for the actions or the omissions of the competent authorities concerned when they make use of the powers set out in Article 9.

3. Where the coordinated actions concern widespread infringements or widespread infringements with a Union dimension of the legal acts of the Union referred to in Article 2(10), the coordinator shall invite the European Banking Authority to act as an observer.

Article 24

Language arrangements

1. The languages used by the competent authorities for notifications, as well as for all other communications covered by this Chapter which are linked to the coordinated actions and sweeps shall be agreed upon by the competent authorities concerned.

2. If no agreement can be reached between the competent authorities concerned, notifications and other communications shall be sent in the official language or one of the official languages of the Member State making the notification or other communication. In that case, if necessary, each competent authority concerned shall be responsible for translating the notifications, communications and other documents that it receives from other competent authorities.

Article 25

Language arrangements for communication with traders

For the purposes of the procedures set out in this Chapter, the trader shall be entitled to communicate in the official language or one of the official languages used for official purposes of the Member State in which the trader is established or resides.

CHAPTER V

UNION-WIDE ACTIVITIES

Article 26

Alerts

1. A competent authority shall without delay notify the Commission, other competent authorities and single liaison offices of any reasonable suspicion that an infringement covered by this Regulation that may affect consumers' interests in other Member States is taking place on its territory.

2. The Commission shall without delay notify the competent authorities and single liaison offices concerned of any reasonable suspicion that an infringement covered by this Regulation has occurred.

3. When notifying, that is to say issuing an alert, under paragraphs 1 and 2 the competent authority or the Commission shall provide information about the suspected infringement covered by this Regulation, and in particular, and, where available, the following:

(a) a description of the act or omission that constitutes the infringement;

(b) details of the product or service concerned by the infringement;

(c) the names of the Member States concerned or possibly concerned by the infringement;

(d) the identity of the trader or traders responsible or suspected of being responsible for the infringement;

(e) the legal basis for possible actions by reference to national law and the corresponding provisions of the Union legal acts listed in the Annex;

(f) a description of any legal proceedings, enforcement measures or other measures taken concerning the infringement and their dates and duration, as well as the status thereof;

(g) the identities of the competent authorities bringing the legal proceedings and taking other measures.

4. When issuing an alert, the competent authority may ask competent authorities and the relevant single liaison offices in other Member States and the Commission, or the Commission may ask competent authorities and the relevant single liaison offices in other Member States, to verify whether, based on information that is available or easily accessible to the relevant competent authorities or to the Commission, respectively, similar suspected infringements are taking place in the territory of those other Member States or whether any enforcement measures have already been taken against such infringements in those Member States. Those competent authorities of other Member States and the Commission shall reply to the request without delay.

Article 27

External alerts

1. Each Member State shall, unless to do so would not be justified, confer on designated bodies, European Consumer Centres, consumer organisations and associations, and, where appropriate, trader associations, that have the necessary expertise, the power to issue an alert to the competent authorities of the relevant Member States and the Commission of suspected infringements covered by this Regulation and to provide information available to them set out in Article 26(3) ('external alert'). Each Member State shall without delay notify the Commission of the list of those entities and of any changes to it.

2. The Commission, after consulting the Member States, shall confer on associations representing consumer, and, where appropriate, trader, interests at a Union level the power to issue an external alert.

3. The competent authorities shall not be bound to initiate a procedure or take any other action in response to an external alert. Entities issuing external alerts shall ensure that the information provided is correct, up to date and accurate, and shall correct the notified information without delay, or withdraw it as appropriate.

Article 28

Exchange of other information relevant for the detection of infringements

To the extent necessary to achieve the objective of this Regulation, competent authorities shall, via the electronic database referred to in Article 35, notify the Commission and competent authorities of Member States concerned without delay of any measure that they have taken to address an infringement covered by this Regulation within their jurisdiction if they suspect that the infringement in question may affect consumers' interests in other Member States.

Article 29

Sweeps

1. The competent authorities may decide to conduct sweeps to check compliance with, or to detect infringements of Union laws that protect consumers' interests. Unless otherwise agreed upon by the competent authorities involved, sweeps shall be coordinated by the Commission.

2. When conducting sweeps, the competent authorities involved may use the investigation powers set out in Article 9(3) and any other powers conferred upon them by national law.

3. The competent authorities may invite designated bodies, Commission officials, and other accompanying persons authorised by the Commission, to participate in sweeps.

Article 30

Coordination of other activities contributing to investigation and enforcement

1. To the extent necessary to achieve the objective of this Regulation, Member States shall inform each other and the Commission of their activities in the following areas:

(a) the training of their officials involved in the application of this Regulation;

(b) the collection, classification and exchange of data on consumer complaints;

(c) the development of sector-specific networks of officials;

(d) the development of information and communication tools; and

(e) where applicable, the development of standards, methodologies and guidelines concerning the application of this Regulation.

2. To the extent necessary to achieve the objective of this Regulation, Member States may coordinate and jointly organise activities in the areas referred to in paragraph 1.

Article 31

Exchange of officials between competent authorities

1. The competent authorities may participate in exchange schemes for officials from other Member States in order to improve cooperation. The competent authorities shall take the necessary measures to enable officials from other Member States to play an effective role in the activities of the competent authority. To that end, those officials shall be authorised to carry out the duties entrusted to them by the host competent authority in accordance with the laws of its Member State.

2. During the exchange, the civil and criminal liability of the official shall be treated in the same way as that of the officials of the host competent authority. The officials from other Member States shall comply with professional standards and the appropriate internal rules of conduct of the host competent authority. Those rules of conduct shall ensure in particular the protection of individuals with regard to the processing of personal data, procedural fairness and the proper observance of the rules on confidentiality and on professional and commercial secrecy laid down in Article 33.

Article 32

International cooperation

1. To the extent necessary to achieve the objective of this Regulation, the Union shall cooperate with third countries and with the competent international organisations in the areas covered by this Regulation in order to protect consumers' interests. The Union and the third countries concerned may conclude agreements setting out arrangements for cooperation, including the establishment of mutual assistance arrangements, the exchange of confidential information and exchange of staff programmes.

2. Agreements concluded between the Union and third countries concerning cooperation and mutual assistance to protect and enhance consumers' interests shall respect the relevant data protection rules applicable to the transfer of personal data to third countries.

3. When a competent authority receives information that is potentially of relevance for the competent authorities of other Member States from an authority of a third country, it shall communicate the information to those competent authorities insofar as it is permitted to do so under any applicable bilateral assistance agreements with that third country and insofar as that information is in accordance with Union law regarding the protection of individuals with regard to the processing of personal data.

4. Information communicated under this Regulation may also be communicated to an authority of a third country by a competent authority under a bilateral assistance agreement with that third country, provided that the approval of the competent authority that originally communicated the information has been obtained, and provided that it is in accordance with Union law regarding the protection of individuals with regard to the processing of personal data.

CHAPTER VI

COMMON ARRANGEMENTS

Article 33

Use and disclosure of information and professional and commercial secrecy

1. Information collected by or communicated to the competent authorities and the Commission in the course of applying this Regulation shall only be used for the purposes of ensuring compliance with Union laws that protect consumers' interests.

2. The information referred to in paragraph 1 shall be treated as confidential and shall only be used and disclosed with due regard to the commercial interests of a natural person or legal person, including trade secrets and intellectual property.

3. Nevertheless, the competent authorities may, after consulting the competent authority which provided the information, disclose such information that is necessary:

(a) to prove infringements covered by this Regulation; or

(b) to bring about the cessation or prohibition of infringements covered by this Regulation.

Article 34

Use of evidence and investigation findings

Competent authorities may use as evidence any information, documents, findings, statements, certified true copies or intelligence communicated, on the same basis as similar documents obtained in their own Member State, irrespective of their storage medium.

Article 35

Electronic database

1. The Commission shall establish and maintain an electronic database for all communications between competent authorities, single liaison offices and the Commission under this Regulation. All information sent by the means of the electronic database shall be stored and processed in that electronic database. That database shall be directly accessible to the competent authorities, single liaison offices and the Commission.

2. Information provided by entities issuing an external alert pursuant to Article 27(1) or (2) shall be stored and processed in the electronic database. However, those entities shall not have access to that database.

3. Where a competent authority, a designated body or an entity issuing an external alert pursuant to Article 27(1) or (2) establishes that an alert concerning an infringement that it issued pursuant to Article 26 or 27 has subsequently been shown to be unfounded, it shall withdraw that alert. The Commission shall remove the relevant information from the database without delay, and shall inform the parties of the reasons for that removal.

The data relating to an infringement shall be stored in the electronic database for no longer than is necessary for the purposes for which they were collected and processed, but shall not be stored for longer than 5 years following the day on which:

(a) a requested authority notifies the Commission pursuant to Article 12(2) that an intra- Union infringement has ceased;

(b) the coordinator notifies the closure of the coordinated action pursuant to Article 22(1); or

(c) the information has been entered in the database in all other cases.

4. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the electronic database. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

Article 36

Waiver of reimbursement of expenses

1. Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation.

2. Notwithstanding paragraph 1, as regards requests for enforcement measures under Article 12, the Member State of the applicant authority shall remain liable to the Member State of the requested authority for any costs and any losses incurred as a result of measures that have been dismissed and held to be unfounded by a court, as far as the substance of the infringement in question is concerned.

Article 37

Enforcement priorities

1. By 17 January 2020 and every 2 years thereafter, Member States shall exchange information on their enforcement priorities for the application of this Regulation with one another and with the Commission.

Such information shall include:

(a) information concerning market trends that might affect consumers' interests in the Member State concerned and in other Member States;

(b) an overview of actions carried out under this Regulation in the last 2 years, and in particular, investigation and enforcement measures related to the widespread infringements;

(c) statistics exchanged by means of alerts referred to in Article 26;

(d) the tentative priority areas, for the next 2 years, for the enforcement of the Union laws that protect consumers' interests in the Member State concerned; and

(e) the proposed priority areas, for the next 2 years, for the enforcement of the Union laws that protect consumers' interests at the Union level.

2. Without prejudice to Article 33, every 2 years, the Commission shall produce an overview of the information referred to in points (a), (b) and (c) of paragraph 1 and shall make it publicly available. The Commission shall inform the European Parliament thereof.

3. In cases involving a substantial change of circumstances or of market conditions during the 2 years after the last submission of information on their enforcement priorities, Member States shall update their enforcement priorities and shall inform other Member States and the Commission accordingly.

4. The Commission shall summarise the enforcement priorities submitted by the Member States under paragraph 1 of this Article and shall report annually to the committee referred to in Article 38(1) in order to facilitate the prioritisation of actions under this Regulation. The Commission shall exchange best practices and benchmarking with the Member States, in particular with a view of developing capacity building activities.

CHAPTER VII

FINAL PROVISIONS

Article 38

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 39

Notifications

Member States shall without delay communicate to the Commission the text of any provisions of national law on matters covered by this Regulation that they adopt, as well as the text of agreements, on matters covered by this Regulation, other than agreements dealing with individual cases that they conclude.

Article 40

Reporting

1. By 17 January 2023, the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation.

2. That report shall contain an evaluation of the application of this Regulation, including an assessment of the effectiveness of enforcement of Union laws that protect consumers' interests under this Regulation, in particular with regard to the powers of competent authorities set out in Article 9, along with, in particular, an examination of how compliance by traders with Union laws that protect consumers' interests has evolved in key consumer markets concerned by cross-border trade.

That report shall be accompanied, where necessary, by a legislative proposal.

Article 41

Repeal

Regulation (EC) No 2006/2004 is repealed with effect from 17 January 2020.

Article 42

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 17 January 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

ANNEX

Directives and Regulations referred to in point (1) of Article 3

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

2. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).

3. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).

4. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).

5. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67): Articles 86 to 100.

6. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37): Article 13.

7. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).

8. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

9. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

10. Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).

11. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21): Article 1, point (c) of Article 2 and Articles 4 to 8.

12. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36): Article 20.

13. Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

14. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

15. Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3): Articles 22, 23 and 24.

16. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).

17. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9, 10, 11 and Articles 19 to 26.

18. Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

19. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

20. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

21. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63): Article 13.

22. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.

23. Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34): Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II.

24. Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214): Articles 3 to 18 and Article 20(2).

25. Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

26. Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).

REGULATION (EU) 2017/2395 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ([1]),

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

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) On 24 July 2014, the International Accounting Standards Board published International Financial Reporting Standard (IFRS) 9 Financial Instruments (IFRS 9). IFRS 9 aims to improve the financial reporting of financial instruments by addressing concerns that arose in that area during the financial crisis. In particular, IFRS 9 responds to the G20's call to move to a more forward-looking model for the recognition of expected credit losses on financial assets. In relation to the recognition of expected credit losses on financial assets it replaces International Accounting Standard (IAS) 39.

(2) The Commission adopted IFRS 9 through Commission Regulation (EU) 2016/2067 ([4]). In accordance with that Regulation, credit institutions and investment firms ('institutions') that use IFRS to prepare their financial statements are required to apply IFRS 9 as of the starting date of their first financial year starting on or after 1 January 2018.

(3) The application of IFRS 9 may lead to a sudden significant increase in expected credit loss provisions and consequently to a sudden decrease in institutions' Common Equity Tier 1 capital. While the Basel Committee on Banking Supervision is currently considering the longer-term regulatory treatment of expected credit loss provisions, transitional arrangements should be introduced in Regulation (EU) No 575/2013 of the European Parliament and of the Council ([5]) to mitigate that potentially significant negative impact on Common Equity Tier 1 capital arising from expected credit loss accounting.

(4) In its resolution of 6 October 2016 on International Financial Reporting Standards: IFRS 9 ([6]), the European Parliament called for a progressive phase-in regime that would mitigate the impact of the new impairment model of IFRS 9.

([1]) Opinion of 8 November 2017 (not yet published in the Official Journal).
([2]) OJ C 209, 30.6.2017, p. 36.
([3]) Position of the European Parliament of 30 November 2017 (not yet published in the Official Journal) and decision of the Council of 7 December 2017.
([4]) Commission Regulation (EU) 2016/2067 of 22 November 2016 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 9 (OJ L 323, 29.11.2016, p. 1).
([5]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([6]) Not yet published in the Official Journal.

(5) Where an institution's opening balance sheet on the day that it first applies IFRS 9 reflects a decrease in Common Equity Tier 1 capital as a result of increased expected credit loss provisions, including the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to IFRS 9 as set out in the Annex to Commission Regulation (EC) No 1126/2008 ([1]) ('Annex relating to IFRS 9'), compared to the closing balance sheet on the previous day, the institution should be allowed to include in its Common Equity Tier 1 capital a portion of the increased expected credit loss provisions for a transitional period. That transitional period should have a maximum duration of 5 years and should start in 2018. The portion of expected credit loss provisions that can be included in Common Equity Tier 1 capital should decrease over time down to zero to ensure the full implementation of IFRS 9 on the day immediately after the end of the transitional period. The impact of the expected credit loss provisions on Common Equity Tier 1 capital should not be fully neutralised during the transitional period.

(6) Institutions should decide whether to apply those transitional arrangements and inform the competent authority accordingly. During the transitional period, an institution should have the possibility to reverse once its initial decision, subject to the prior permission of the competent authority which should ensure that such decision is not motivated by considerations of regulatory arbitrage.

(7) As expected credit loss provisions incurred after the day that an institution first applies IFRS 9 could rise unexpectedly due to a worsening macroeconomic outlook, institutions should be granted additional relief in such cases.

(8) Institutions that decide to apply transitional arrangements should be required to adjust the calculation of regulatory items which are directly affected by expected credit loss provisions to ensure that they do not receive inappropriate capital relief. For example, the specific credit risk adjustments by which the exposure value is reduced under the Standardised Approach for credit risk should be reduced by a factor which has the effect of increasing the exposure value. This would ensure that an institution would not benefit from both an increase in its Common Equity Tier 1 capital due to transitional arrangements as well as a reduced exposure value.

(9) Institutions that decide to apply the IFRS 9 transitional arrangements specified in this Regulation should publicly disclose their own funds, capital ratios and leverage ratios both with and without the application of those arrangements in order to enable the public to determine the impact of those arrangements.

(10) It is also appropriate to provide for transitional arrangements for the exemption from the large exposure limit available for exposures to certain public sector debt of Member States denominated in the domestic currency of any Member State. The transitional period should have a duration of 3 years starting from 1 January 2018 for exposures of this type incurred on or after 12 December 2017, whilst exposures of this type incurred before that date should be grandfathered and should continue to benefit from the large exposures exemption.

(11) In order to enable the transitional arrangements provided for in this Regulation to be applied from 1 January 2018, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(12) Regulation (EU) No 575/2013 should therefore be amended accordingly,

([1]) Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 575/2013 is amended as follows:

(1) the following Article is inserted:

'*Article 473a*

Introduction of IFRS 9

1. By way of derogation from Article 50 and until the end of the transitional period set out in paragraph 6 of this Article, the following may include in their Common Equity Tier 1 capital the amount calculated in accordance with this paragraph:

(a) institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002;

(b) institutions that, pursuant to Article 24(2) of this Regulation, effect the valuation of assets and off-balance sheet items and the determination of own funds in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002;

(c) institutions that effect the valuation of assets and off-balance sheet items in conformity with accounting standards under Directive 86/635/EEC and that use an expected credit loss model that is the same as the one used in international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002.

The amount referred to in the first subparagraph shall be calculated as the sum of the following:

(a) for exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three, the amount (AB_{SA}) calculated in accordance with the following formula:

$$AB_{SA} = (A_{2,SA} + A_{4,SA} - t) \cdot f$$

where:

$A_{2,SA}$ = the amount calculated in accordance with paragraph 2;

$A_{4,SA}$ = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3;

f = the applicable factor laid down in paragraph 6;

t = increase of Common Equity Tier 1 capital that is due to tax deductibility of the amounts $A_{2,SA}$ and $A_{4,SA}$;

(b) for exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, the amount (AB_{IRB}) calculated in accordance with the following formula:

$$AB_{IRB} = (A_{2,IRB} + A_{4,IRB} - t) \cdot f$$

where:

$A_{2,IRB}$ = the amount calculated in accordance with paragraph 2 adjusted in accordance with point (a) of paragraph 5;

$A_{4,IRB}$ = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3 which are adjusted in accordance with points (b) and (c) of paragraph 5;

f = the applicable factor laid down in paragraph 6;

t = increase of Common Equity Tier 1 capital that is due to tax deductibility of the amounts $A_{2,IRB}$ and $A_{4,IRB}$.

2. Institutions shall calculate the amounts $A_{2,SA}$ and $A_{2,IRB}$ referred to, respectively, in points (a) and (b) of the second subparagraph of paragraph 1 as the greater of the amounts referred to in points (a) and (b) of this paragraph separately for their exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three and for their exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three:

(a) zero;

(b) the amount calculated in accordance with point (i) reduced by the amount calculated in accordance with point (ii):

(i) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of IFRS 9 as set out in the Annex to Commission Regulation (EC) No 1126/2008 ("Annex relating to IFRS 9") and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 as of 1 January 2018 or on the date of initial application of IFRS 9;

(ii) the total amount of impairment losses on financial assets classified as loans and receivables, held-to-maturity investments and available-for-sale financial assets, as defined in paragraph 9 of IAS 39, other than equity instruments and units or shares in collective investment undertakings, determined in accordance with paragraphs 63, 64, 65, 67, 68 and 70 of IAS 39 as set out in the Annex to Regulation (EC) No 1126/2008 as of 31 December 2017 or the day before the date of initial application of IFRS 9.

3. Institutions shall calculate the amount by which the amount referred to in point (a) exceeds the amount referred to in point (b) separately for their exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three and for their exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three:

(a) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9 as of the reporting date;

(b) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9 as of 1 January 2018 or on the date of initial application of IFRS 9.

4. For exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three, where the amount specified in accordance with point (a) of paragraph 3 exceeds the amount specified in point (b) of paragraph 3, institutions shall set $A_{4,SA}$ as equal to the difference between those amounts, otherwise they shall set $A_{4,SA}$ as equal to zero.

For exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, where the amount specified in accordance with point (a) of paragraph 3, after applying point (b) of paragraph 5, exceeds the amount for these exposures as specified in point (b) of paragraph 3, after applying point (c) of paragraph 5, institutions shall set $A_{4,IRB}$ as equal to the difference between those amounts, otherwise they shall set $A_{4,IRB}$ as equal to zero.

5. For exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, institutions shall apply paragraphs 2 to 4 as follows:

(a) for the calculation of $A_{2,IRB}$ institutions shall reduce each of the amounts calculated in accordance with points (b)(i) and (ii) of paragraph 2 of this Article by the sum of expected loss amounts calculated in accordance with Article 158(5), (6) and (10) as of 31 December 2017 or the day before the date of initial application of

IFRS 9. Where for the amount referred to in point (b)(i) of paragraph 2 of this Article the calculation results in a negative number, the institution shall set the value of that amount as equal to zero. Where for the amount referred to in point (b)(ii) of paragraph 2 of this Article the calculation results in a negative number, the institution shall set the value of that amount as equal to zero;

(b) institutions shall replace the amount calculated in accordance with point (a) of paragraph 3 of this Article by the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) as of the reporting date. Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (a) of paragraph 3 of this Article as equal to zero;

(c) institutions shall replace the amount calculated in accordance with point (b) of paragraph 3 of this Article by the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9 excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, as of 1 January 2018 or on the date of initial application of IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10). Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (b) of paragraph 3 of this Article as equal to zero.

6. Institutions shall apply the following factors to calculate the amounts AB_{SA} and AB_{IRB} referred to in points (a) and (b) of the second subparagraph of paragraph 1 respectively:

(a) 0,95 during the period from 1 January 2018 to 31 December 2018;

(b) 0,85 during the period from 1 January 2019 to 31 December 2019;

(c) 0,7 during the period from 1 January 2020 to 31 December 2020;

(d) 0,5 during the period from 1 January 2021 to 31 December 2021;

(e) 0,25 during the period from 1 January 2022 to 31 December 2022.

Institutions whose financial year commences after 1 January 2018 but before 1 January 2019 shall adjust the dates in points (a) to (e) of the first subparagraph so that they correspond to their financial year, shall report the adjusted dates to their competent authority and shall publicly disclose them.

Institutions which start to apply accounting standards as referred to in paragraph 1 on or after 1 January 2019 shall apply the relevant factors in accordance with points (b) to (e) of the first subparagraph starting with the factor corresponding to the year of the first application of those accounting standards.

7. Where an institution includes in its Common Equity Tier 1 capital an amount in accordance with paragraph 1 of this Article, it shall recalculate all requirements laid down in this Regulation and in Directive 2013/36/EU that use any of the following items by not taking into account the effects that the expected credit loss provisions that it included in its Common Equity Tier 1 capital have on those items:

(a) the amount of deferred tax assets that is deducted from Common Equity Tier 1 capital in accordance with point (c) of Article 36(1) or risk weighted in accordance with Article 48(4);

(b) the exposure value as determined in accordance with Article 111(1) whereby the specific credit risk adjustments by which the exposure value shall be reduced shall be multiplied by the following scaling factor (sf):

$sf = 1 - (AB_{SA}/RA_{SA})$

where:

AB_{SA} = the amount calculated in accordance with point (a) of the second subparagraph of paragraph 1;

RA_{SA} = the total amount of specific credit risk adjustments;

(c) the amount of Tier 2 items calculated in accordance with point (d) of Article 62.

8. During the period set out in paragraph 6 of this Article, in addition to disclosing the information required in Part Eight, institutions that have decided to apply the transitional arrangements set out in this Article shall disclose the amounts of own funds, Common Equity Tier 1 capital and Tier 1 capital, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, the total capital ratio and the leverage ratio they would have in case they were not to apply this Article.

9. An institution shall decide whether to apply the arrangements set out in this Article during the transitional period and shall inform the competent authority of its decision by 1 February 2018. Where an institution has received the prior permission of the competent authority, it may reverse once, during the transitional period, its initial decision. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.

An institution that has decided to apply the transitional arrangements set out in this Article may decide not to apply paragraph 4 in which case it shall inform the competent authority of its decision by 1 February 2018. In such a case, the institution shall set the amount A_4 referred to in paragraph 1 as equal to zero. Where an institution has received the prior permission of the competent authority, it may reverse once, during the transitional period, its initial decision. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.

10. In accordance with Article 16 of Regulation (EU) No 1093/2010, the EBA shall issue guidelines by 30 June 2018 on the disclosure requirements laid down in this Article.';

(2) in Article 493, the following paragraphs are added:

'4. By way of derogation from Article 395(1), competent authorities may allow institutions to incur any of the exposures provided for in paragraph 5 of this Article meeting the conditions set out in paragraph 6 of this Article, up to the following limits:

(a) 100 % of the institution's Tier 1 capital until 31 December 2018;

(b) 75 % of the institution's Tier 1 capital until 31 December 2019;

(c) 50 % of the institution's Tier 1 capital until 31 December 2020.

The limits referred to in points (a), (b) and (c) of the first subparagraph shall apply to exposure values after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403.

5. The transitional arrangements set out in paragraph 4 shall apply to the following exposures:

(a) asset items constituting claims on central governments, central banks, or public sector entities of Member States;

(b) asset items constituting claims expressly guaranteed by central governments, central banks, or public sector entities of Member States;

(c) other exposures to, or guaranteed by, central governments, central banks, or public sector entities of Member States;

(d) asset items constituting claims on regional governments or local authorities of Member States treated as exposures to a central government in accordance with Article 115(2);

(e) other exposures to, or guaranteed by, regional governments or local authorities of Member States treated as exposures to a central government in accordance with Article 115(2).

For the purposes of points (a), (b) and (c) of the first subparagraph, the transitional arrangements set out in paragraph 4 of this Article shall apply only to asset items and other exposures to, or guaranteed by, public sector entities which are treated as exposures to a central government, a regional government or a local authority in accordance with Article 116(4). Where asset items and other exposures to, or guaranteed by, public sector entities are treated as exposures to a regional government or a local authority in accordance with Article 116(4), the transitional arrangements set out in paragraph 4 of this Article shall apply only where exposures to that regional government or local authority are treated as exposures to a central government in accordance with Article 115(2).

6. The transitional arrangements set out in paragraph 4 of this Article shall apply only where an exposure referred to in paragraph 5 of this Article meets all of the following conditions:

(a) the exposure would be assigned a risk weight of 0 % in accordance with the version of Article 495(2) in force on 31 December 2017;

(b) the exposure was incurred on or after 12 December 2017.

7. An exposure as referred to in paragraph 5 of this Article incurred before 12 December 2017 to which a risk weight of 0 % was assigned on 31 December 2017 in accordance with Article 495(2) shall be exempted from the application of Article 395(1).'.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2018.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

REGULATION (EU) 2017/2396 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2017

amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 172 and 173, the third paragraph of Article 175 and Article 182(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Since the Commission communication 'An Investment Plan for Europe' (the 'Investment Plan') was presented on 26 November 2014, the conditions for an uptake in investment have improved and confidence is returning in Europe's economy and growth. The Union is now in its fourth year of moderate recovery, with Gross Domestic Product growing at 2 % in 2015, but unemployment rates remain above their pre-crisis levels. The comprehensive efforts initiated with the Investment Plan are already delivering concrete results, despite the fact that it is not yet possible to estimate the full impact that the European Fund for Strategic Investments (EFSI) has had on growth as the macroeconomic effects of larger investment projects cannot be immediate. Investment has been picking up gradually throughout 2017 but the pace is still rather slow and remains below historical levels.

(2) That positive investment momentum should be maintained and efforts should be continued to bring investment back to a long-term sustainable trend in such a way that it reaches the real economy. The mechanisms of the Investment Plan work, and should be reinforced to continue the mobilisation of private investments in such a way as to generate a substantive macroeconomic impact and to contribute to the creation of jobs in sectors that are important to the Union's future and where market failures or sub-optimal investment situations remain.

(3) On 1 June 2016, the Commission issued a Communication entitled 'Europe investing again — Taking stock of the Investment Plan for Europe and next steps' outlining the achievements of the Investment Plan and the envisaged next steps, including the extension of the EFSI beyond its initial three-year period, the scaling-up of the small and medium-sized enterprises (SME) window within the existing framework and the enhancement of the European Investment Advisory Hub (EIAH).

(4) On 11 November 2016, the European Court of Auditors adopted an opinion concerning the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 and the accompanying Commission evaluation, in accordance with Article 18(2) of Regulation (EU) 2015/1017, entitled 'EFSI: an early proposal to extend and expand'.

([1]) OJ C 75, 10.3.2017, p. 57.
([2]) OJ C 185, 9.6.2017, p. 62.
([3]) Position of the European Parliament of 12 December 2017 (not yet published in the Official Journal) and decision of the Council of 12 December 2017.

(5) The EFSI, implemented and co-sponsored by the European Investment Bank (EIB) Group, is on track, from a quantitative perspective, to deliver the objective of mobilising at least EUR 315 000 000 000 in additional investments in the real economy by mid-2018. The market response and absorption have been particularly quick under the SME window where the EFSI is delivering well beyond expectations and building on the initial use of the existing European Investment Fund (EIF) facilities and mandates (InnovFin SME Guarantee Facility, COSME Loan Guarantee Facility (LGF) and the EIB Risk Capital Resources (RCR) mandate) to have an accelerated kick-start. In July 2016, the SME window was therefore scaled-up by EUR 500 000 000 within the existing parameters of Regulation (EU) 2015/1017 of the European Parliament and of the Council ([1]). Given the exceptional market demand for SME financing under the EFSI, a larger share of financing is to be targeted at SMEs. In this regard, 40 % of the increased risk-bearing capacity of the EFSI should be targeted at increasing access to financing for SMEs.

(6) On 28 June 2016, the European Council concluded that the Investment Plan, in particular the EFSI, had already delivered concrete results and had been a major step in helping mobilise private investment while making smart use of scarce budgetary resources. The European Council noted that the Commission intended to put forward proposals soon on the future of the EFSI, which would need to be examined as a matter of urgency by the European Parliament and the Council.

(7) The EFSI was established for an initial period of three years and with the aim of mobilising at least EUR 315 000 000 000 in investments, thereby supporting the objective of fostering growth and jobs. However, the drive to meet the headline target should not prevail over the additionality of the projects selected. The Union is therefore committed not only to extending the investment period and financial capacity of the EFSI, but also to increasing the focus on additionality. The extension covers the period of the current multiannual financial framework and should provide at least EUR 500 000 000 000 of investments by 2020. In order to enhance the firepower of the EFSI even further and to achieve the aim of doubling the investment target, Member States should also contribute as a matter of priority.

(8) The EFSI and its implementation cannot fully realise their potential without the implementation of activities aimed at strengthening the single market, creating a favourable business environment and the implementation of socially balanced and sustainable structural reforms. In addition, well-structured projects, as part of investment and development plans at Member States level, are of key importance for the success of the EFSI.

(9) For the period after 2020, the Commission intends to put forward the necessary proposals to ensure that strategic investment will continue at a sustainable level. Any legislative proposal should be based on the conclusions of a Commission report and an independent evaluation including a macroeconomic assessment of the usefulness of maintaining a scheme to support investment. That report and independent evaluation should also examine, to the extent applicable, the application of Regulation (EU) 2015/1017 as amended by this Regulation, over the extended period of the implementation of the EFSI.

(10) The EFSI, as extended by this Regulation, should address remaining market failures and sub-optimal investment situations and continue to mobilise with strengthened additionality private sector financing in investments crucial for Europe's future job creation, including for youth, growth and competitiveness. Such investments include investments in the areas of energy, environment and climate action, social and human capital and related infrastructure, healthcare, research and innovation, cross-border and sustainable transport, as well as the digital transformation. In particular, the contribution of operations supported by the EFSI to achieving the ambitious Union targets set at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21) and the Union commitment to reduce greenhouse gas emissions by 80 to 95 % should be reinforced. In order to reinforce the climate action element under the EFSI, the EIB should build on its experience as one of the

([1]) Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

largest providers of climate finance worldwide and use its state-of-the-art internationally agreed methodology to credibly identify climate action project components or cost shares. Projects should not be artificially structured with a view to falling under the definitions of SMEs and small mid-cap companies. Energy interconnection priority projects and energy efficiency projects should also be increasingly targeted.

In addition, EFSI support for motorways should be limited to supporting private and/or public investment in transport in cohesion countries, in less developed regions or in cross-border transport projects or if it is necessary to upgrade, maintain or improve road safety, develop intelligent transportation system (ITS) devices, guarantee the integrity and standards of existing motorways on the trans-European transport network, in particular safe parking areas, alternative clean fuels stations and electric charging systems, or contribute to the completion of the trans-European transport network by 2030 in accordance with Regulations (EU) No 1316/2013 ([1]) and (EU) No 1315/2013 ([2]) of the European Parliament and of the Council. In the digital sector, and within the scope of the ambitious Union policy on the Digital Economy, new digital infrastructure targets should be set in order to ensure that the digital divide will be bridged and that the Union will be a global pioneer in the new age of the so-called internet of things, blockchain technology, cybersecurity and network security. For reasons of clarity, although they are already eligible, it should be explicitly laid down that projects in the fields of agriculture, forestry, fishery and aquaculture and other elements of a wider bioeconomy fall within the general objectives eligible for EFSI support.

(11) Cultural and creative industries play a key role in re-industrialising Europe, are a driver for growth and are in a strategic position to trigger innovative spill-overs in other industrial sectors, such as tourism, retail, and digital technologies. In addition to the Creative Europe Programme established by Regulation (EU) No 1295/2013 of the European Parliament and of the Council ([3]) and the Cultural and Creative Sectors Guarantee Facility established pursuant to that Regulation, the EFSI should help to overcome capital shortages in those sectors by providing additional support which should be complementary to the support provided under the Creative Europe Programme and the Cultural and Creative Sectors Guarantee Facility, so that a higher volume of these high-risk projects could be financed.

(12) Operations involving entities located in the Union and extending outside it should also be supported by the EFSI, when they promote investment in the Union, in particular when they include cross-border elements. The EIAH should provide proactive support to promote and encourage such operations.

(13) Additionality, which is a key feature of the EFSI, should be strengthened in the selection of projects. In particular, operations should only be eligible for EFSI support if they address clearly identified market failures or sub-optimal investment situations. Operations in physical infrastructure under the infrastructure and innovation window linking two or more Member States, including e-infrastructure and in particular broadband infrastructure, as well as services necessary for the construction, implementation, maintenance or functioning of such infrastructure, should be considered to be strong indications of additionality given their inherent difficulty and their high added value for the Union.

(14) The EFSI should typically target projects with a higher risk profile than projects supported by EIB normal operations and the EFSI Investment Committee (the 'Investment Committee') should, when assessing additionality, have regard to risks which hinder investment, such as country-, sector- or region-specific risks and the risks associated with innovation, in particular in growth-, sustainability- and productivity-enhancing unproven technologies.

([1]) Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

([2]) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

([3]) Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC (OJ L 347, 20.12.2013, p. 221).

(15) With a view to ensuring a wider geographical coverage of the EFSI and to increasing the efficiency of the EFSI intervention, combination and/or blending operations combining non-reimbursable forms of support and/or financial instruments from the general budget of the Union, such as European Structural and Investment Funds or those available under the Connecting Europe Facility (CEF) established by Regulation (EU) No 1316/2013 and Horizon 2020 — the Framework Programme for Research and Innovation established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council ([1]), and financing from the EIB Group, including EIB financing under the EFSI, as well as other investors should be encouraged. Combination and/or blending aim to enhance the added value of Union spending by attracting additional resources from private investors and to ensure that the supported actions become economically and financially viable. To that end, EUR 1 000 000 000 of appropriations were transferred in parallel with the presentation of the Commission proposal for this Regulation from the CEF financial instruments to the grant part of the CEF with a view to facilitating blending with the EFSI. A blending call to that effect was successfully launched in February 2017. Another EUR 145 000 000 is being transferred to other relevant instruments, in particular those dedicated to energy efficiency. Further action is necessary to ensure that Union funds and EFSI support can be easily combined.

Although the Commission has already published concrete guidance on this matter, the approach on the issue of combining Union funds and the EFSI should be further developed aiming to increase the investments benefiting from the leverage provided by combining Union funds and the EFSI, taking into account possible legislative developments. In order to ensure economic efficiency and adequate leverage such combination of finances should, in principle, not exceed 90 % of total project costs for the less developed regions and 80 % for all other regions.

(16) In order to reinforce the take-up of the EFSI in less developed regions and transition regions, the scope of the general objectives eligible for EFSI support should be enlarged. Projects would remain subject to examination by the Investment Committee and need to adhere to the same eligibility criteria for the use of the guarantee established pursuant to Regulation (EU) 2015/1017 (the 'EU guarantee') including the principle of additionality. Given the fact that there should be no restriction on the size of the projects eligible for EFSI support, small-scale projects should not be deterred from applying for EFSI financing. Moreover, further action to strengthen technical assistance and the promotion of the EFSI in less developed regions and transition regions is necessary.

(17) Investment platforms are an essential tool to deal with market failures, especially in the financing of multiple, regional, or sectorial projects, including energy efficiency projects and cross-border projects. It is also important to encourage partnerships with national promotional banks or institutions, including with a view to setting up investment platforms. Cooperation with financial intermediaries can also play an important role in this respect. In that context, the EIB should, where appropriate, delegate the appraisal, selection and monitoring of small-scale sub-projects to financial intermediaries or approved eligible vehicles.

(18) In the case of delegation of the appraisal, selection and monitoring of small-scale projects to financial intermediaries or approved eligible vehicles, the Investment Committee should not retain the right to approve the use of the EU guarantee for sub-projects under such EIB financing and investment operations where the EFSI contribution to such small-scale sub-projects is below a defined threshold. The EFSI Steering Board (the 'Steering Board') should, where appropriate, provide guidance on the procedure to be used by the Investment Committee for evaluating sub-projects above that threshold.

(19) For the full investment period, the Union should provide the EU guarantee which should not, at any time, exceed EUR 26 000 000 000 in order to enable the EFSI to support investments, of which a maximum of EUR 16 000 000 000 should be available before 6 July 2018.

(20) It is expected that when the EU guarantee is combined with the amount of EUR 7 500 000 000 to be provided by the EIB, the EFSI support should generate EUR 100 000 000 000 in additional investment by the EIB and the EIF. The amount of EUR 100 000 000 000 supported by the EFSI is expected to generate at least EUR 500 000 000 000 in additional investment in the real economy by the end of 2020.

([1]) Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

(21) In order to partly finance the contribution from the general budget of the Union to the EU guarantee fund for the additional investments to be made, a transfer should be made from the available envelope of the CEF, provided for in Regulation (EU) No 1316/2013, as well as from the revenues and repayments from the CEF Debt Instrument and from the 2020 European Fund for Energy, Climate Change & Infrastructure ('Marguerite Fund'). The transfers from revenues and repayments require a derogation from the second and third subparagraphs of Article 140(6) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council [1] in order to authorise their use by another instrument.

(22) On the basis of the experience acquired from the investments supported by the EFSI, the target amount of the guarantee fund should be brought to 35 % of the total EU guarantee obligations, thus ensuring an adequate level of protection.

(23) In line with the exceptional market demand for SME financing under the EFSI which is expected to continue, the EFSI SME window should be enhanced. Particular attention should be paid to social enterprises and social services, including through the development and deployment of new instruments that are adequate for the needs and specificities of the social enterprises and social services sector.

(24) The EIB and the EIF should ensure that the final beneficiaries, including SMEs, are aware of the existence of EFSI support, so as to enhance the visibility of the EU guarantee. A clear reference to the EFSI should be made visible in agreements which provide EFSI support.

(25) With a view to enhancing the transparency of EFSI operations, the Investment Committee should explain in its decisions, which are made public and accessible, the reasons why it deems that an operation should be granted the EU guarantee, with particular focus on compliance with the additionality criterion. The scoreboard of indicators should be made public once an operation under the EU guarantee is signed. The publication should not contain commercially sensitive information.

(26) The scoreboard should be used in strict conformity with this Regulation, and with Commission Delegated Regulation (EU) 2015/1558 [2] and the Annex thereto, as an independent and transparent assessment tool for the Investment Committee to prioritise the use of the EU guarantee for operations that display higher scores and added value. The EIB should calculate the scores and indicators *ex ante* and monitor the results upon project completion.

(27) With a view to enhancing the assessment of projects, the Steering Board should, in the strategic orientation of the EFSI, establish a minimum score for each pillar in the scoreboard.

(28) The relevant Union policy on non-cooperative jurisdictions for tax purposes is laid down in the legal acts of the Union and in Council Conclusions, in particular in the Annex to those of 8 November 2016, and any subsequent updates.

(29) Due diligence on EIB investment and financing operations under this Regulation should include a thorough check of compliance with applicable Union legislation and agreed international and Union standards on anti-money laundering, the fight against terrorism financing, tax fraud and tax avoidance. Moreover, in the context of EFSI reporting, the EIB should provide information, country-by-country, on the compliance of the EFSI operations with EIB and EIF policy on non-cooperative jurisdictions, as well as the list of intermediaries with which the EIB and the EIF cooperate.

(30) It is appropriate to make certain technical clarifications in relation to the content of the agreement on the management of the EFSI, on the granting of the EU guarantee and on the instruments covered by the agreement, including coverage for currency exchange rate risk in certain situations. The agreement with the EIB on the management of the EFSI and on the granting of the EU guarantee should be adapted in line with this Regulation.

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

[2] Commission Delegated Regulation (EU) 2015/1558 of 22 July 2015 supplementing Regulation (EU) 2015/1017 of the European Parliament and of the Council by the establishment of a scoreboard of indicators for the application of the EU guarantee (OJ L 244, 19.9.2015, p. 20).

(31) Notwithstanding the EIAH's objective of building upon existing advisory services of the EIB and the Commission, and in order for it to act as a single technical advisory hub for project financing within the Union, the EIAH should be enhanced and its activities should also focus on contributing actively to the sectorial and geographical diversification of the EFSI, supporting the EIB and national promotional banks or institutions in originating and developing operations, in particular in less developed regions and transition regions, and, where necessary, helping to structure demand for EFSI support. The EIAH should endeavour to conclude at least one cooperation agreement with a national promotional bank or institution per Member State. In Member States where national promotional banks or institutions do not exist, the EIAH should provide, where appropriate, and at the request of the Member State concerned, proactive advisory support on the establishment of such bank or institution. The EIAH should pay particular attention to supporting the preparation of projects involving two or more Member States and projects that contribute to achieving the objectives of COP21. It should also actively contribute to the establishment of investment platforms and provide advice on the combination of other sources of Union funding with the EFSI. A local presence of the EIAH should be ensured where necessary, taking into account existing support schemes, with a view to providing tangible, proactive, tailor-made assistance on the ground.

(32) The European Semester for economic policy coordination is based on a detailed analysis of Member States' plans for budgetary, macroeconomic and structural reforms and provides them with country-specific recommendations. Against that background, the EIB should inform the Commission of its findings on barriers and bottlenecks to investment in Member States, identified when carrying out investment operations covered by this Regulation. The Commission is invited to factor those findings, among others, into the work it undertakes in the context of the third pillar of the Investment Plan.

(33) In order to address market failures and gaps, to stimulate adequate additional investments and to promote the geographic and regional balance of EFSI-backed operations, an integrated and streamlined approach with the aim of promoting growth, jobs and investments is necessary. The cost of EFSI financing should contribute to the achievement of those goals.

(34) To promote the investment goals set out in Regulation (EU) 2015/1017, blending with existing funds should be encouraged, where appropriate, in order to provide adequate concessionalities in the financing terms and conditions, including cost, of EFSI operations.

(35) In cases where stressed financial market conditions would prevent the realisation of a viable project or where necessary to facilitate the establishment of investment platforms or the funding of projects in sectors or areas experiencing a significant market failure or sub-optimal investment situation, the EIB and the Commission should implement changes, in particular to the remuneration of the EU guarantee, to contribute to a reduction in the financing cost of the operation borne by the beneficiary of the EIB financing under EFSI so as to facilitate its implementation. Similar efforts should be undertaken where necessary to ensure that EFSI supports small-scale projects. Where the use of local or regional intermediaries permits a reduction in the cost of EFSI financing to the small-scale projects, such a form of deployment should also be considered.

(36) In keeping with the need for financial sustainability of EFSI, the efforts to reduce the financing cost of EFSI operations in periods of stressed financial market conditions or to facilitate the establishment of investment platforms or the funding of projects in sectors or areas experiencing a significant market failure or suboptimal investment situation, should be coordinated with other available Union financial resources and instruments deployed by the EIB Group.

(37) Regulations (EU) No 1316/2013 and (EU) 2015/1017 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2015/1017 is amended as follows:

(1) In Article 2(4), point (b) is replaced by the following:

'(b) cross-border, multi-country, regional or macro-regional platforms that group together partners from several Member States, regions or third countries interested in projects in a given geographic area;';

(2) Article 4(2) is amended as follows:

(a) point (a) is amended as follows:

(i) point (ii) is replaced by the following:

'(ii) the amount, of no less than EUR 7 500 000 000 in guarantees or cash, and the terms of the financial contribution which is to be provided by the EIB through the EFSI;';

(ii) point (iv) is replaced by the following:

'(iv) the pricing of operations under the EU guarantee which is to be in line with the EIB's pricing policy;';

(iii) the following point is added:

'(v) the procedures to contribute, without prejudice to Protocol No 5 on the Statute of the European Investment Bank annexed to the TEU and to the TFEU and the EIB prerogatives set out therein, to a reduction of the financing cost of the operation borne by the beneficiary of the EIB financing under EFSI, in particular by modulating the remuneration of the EU guarantee, where necessary in particular in situations where stressed financial market conditions would prevent the realisation of a viable project or where necessary to facilitate the establishment of investment platforms or the funding of projects in sectors or areas experiencing a significant market failure or suboptimal investment situation, to the extent it does not significantly impact the necessary financing of the provisioning of the Guarantee Fund;';

(b) in point (b), point (iii) is replaced by the following:

'(iii) a provision that the Steering Board is to take decisions in accordance with the procedure laid down in Article 7(3);';

(c) in point (c), point (i) is replaced by the following:

'(i) in accordance with Article 11, detailed rules on the provision of the EU guarantee, including its arrangements on coverage, its defined coverage of portfolios of specific types of instruments and the respective events triggering possible calls on the EU guarantee;';

(3) Article 5(1) is replaced by the following:

'1. For the purposes of this Regulation, 'additionality' means support by the EFSI for operations which address market failures or sub-optimal investment situations and which could not have been carried out during the period in which the EU guarantee can be used, or not to the same extent, by the EIB, the EIF or under existing Union financial instruments, without EFSI support. Projects supported by the EFSI shall support the general objectives laid down in Article 9(2), shall strive to create employment and sustainable growth and shall typically have a higher risk profile than projects supported by normal EIB operations. Overall, the EFSI portfolio shall have a higher risk profile than the portfolio of investments supported by the EIB under its normal investment policies before the entry into force of this Regulation.

To better address market failures or sub-optimal investment situations, and to facilitate, in particular, the use of investment platforms for small-scale projects, thereby ensuring complementarity and thus avoiding crowding out participants in the same market, EIB special activities supported by the EFSI shall, as a preferred way and if duly justified:

(a) have features of subordination, including the taking of junior positions vis-à-vis other investors;

(b) participate in risk-sharing instruments;

(c) demonstrate cross-border characteristics;

(d) be exposed to specific risks; or

(e) have other aspects as further described in point (d) of Section 3 of Annex II.

Without prejudice to the requirement to meet the definition of additionality as set out in the first subparagraph, the following elements are strong indications of additionality:

— projects that carry a risk corresponding to EIB special activities, as defined in Article 16 of the EIB Statute, especially if such projects present country-, sector- or region-specific risks, in particular those experienced in less developed regions and transition regions and/or if such projects present risks associated with innovation, in particular in growth-, sustainability- and productivity-enhancing unproven technologies,

— projects that consist of physical infrastructure, including e-infrastructure, linking two or more Member States or of the extension of such infrastructure or services linked to such infrastructure from one Member State to one or more Member States.';

(4) Article 6 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'The EFSI Agreement shall provide that the EFSI is to support projects which address market failures or sub-optimal investment situations and which:';

(b) paragraph 2 is replaced by the following:

'2. There shall be no restriction on the size of projects eligible for EFSI support for the operations conducted by the EIB or the EIF via financial intermediaries. In order to ensure that EFSI support also covers small-scale projects, the EIB and the EIF shall, where necessary and to the extent possible, extend cooperation with national promotional banks or institutions and support the possibilities provided, including through facilitating the creation of investment platforms.';

(5) Article 7 is amended as follows:

(a) the following paragraph is inserted:

'1a. All institutions and bodies involved in EFSI governing structures shall endeavour to ensure gender balance in relevant EFSI governing bodies.';

(b) in paragraph 3, the first and second subparagraphs are replaced by the following:

'3. The Steering Board shall comprise five members: three appointed by the Commission, one by the EIB and one expert appointed as a non-voting member by the European Parliament. That expert shall not seek or take instructions from Union institutions, bodies, offices or agencies, from any Member State government or from any other public or private body, and shall act in full independence. The expert shall perform his or her duties impartially and in the interest of the EFSI.

The Steering Board shall elect a Chairperson from among its voting members for a fixed term of three years, renewable once. The Steering Board shall discuss and take the utmost possible account of the positions of all members. If the members cannot converge in their position, the Steering Board shall take its decisions by unanimous vote among its voting members. The minutes of Steering Board meetings shall provide a substantive account of the positions of all members.

The detailed minutes of Steering Board meetings shall be published as soon as they have been approved by the Steering Board. The European Parliament shall be immediately notified of their publication.';

(c) in paragraph 5, the second subparagraph is replaced by the following:

'The Managing Director shall be assisted by a deputy managing director. The Managing Director and the Deputy Managing Director shall participate in the meetings of the Steering Board as observers. The Managing Director shall report every quarter on the activities of the EFSI to the Steering Board.';

(d) in paragraph 8, the third subparagraph is amended as follows:

(i) point (e) is replaced by the following:

'(e) climate action, environmental protection and management;';

(ii) the following point is added:

'(l) sustainable agriculture, forestry, fishery, aquaculture and other elements of the wider bioeconomy.';

(e) in paragraph 10, the second sentence is replaced by the following:

'Each member of the Investment Committee shall communicate without delay to the Steering Board, the Managing Director and the Deputy Managing Director all information needed to check, on an ongoing basis, the absence of any conflict of interest.';

(f) in paragraph 11, the following sentence is added:

'The Managing Director shall be responsible for informing the Steering Board of any such breach that comes to his or her knowledge and be responsible for proposing and following up on appropriate action. The Managing Director shall exercise his or her duty of care regarding potential conflicts of interest of any member of the Investment Committee.';

(g) paragraph 12 is amended as follows:

(i) in the second subparagraph, the second sentence is replaced by the following:

'Decisions approving the use of the EU guarantee shall be public and accessible, and shall include the rationale for the decision, with particular focus on compliance with the additionality criterion. They shall also refer to the global assessment stemming from the scoreboard of indicators referred to in paragraph 14. The publication shall not contain commercially sensitive information. In reaching its decision, the Investment Committee shall be supported by the documentation provided by the EIB.

The scoreboard, which is a tool for the Investment Committee to prioritise the use of the EU guarantee for operations that display higher scores and added value, shall be publicly available after the signature of a project. The publication shall not contain commercially sensitive information.

Commercially sensitive parts of the decisions of the Investment Committee shall be forwarded by the EIB to the European Parliament upon request subject to strict confidentiality requirements.';

(ii) the third subparagraph is replaced by the following:

'Twice a year, the EIB shall submit to the European Parliament, to the Council and to the Commission a list of all decisions of the Investment Committee as well as the scoreboards relating to all those decisions. That submission shall be subject to strict confidentiality requirements.';

(h) paragraph 14 is replaced by the following:

'14. The Commission shall be empowered to adopt delegated acts in accordance with Article 23(1) to (3) and (5) to supplement this Regulation by establishing a scoreboard of indicators to be used by the Investment Committee to ensure an independent and transparent assessment of the potential and actual use of the EU guarantee. Such delegated acts shall be prepared in close dialogue with the EIB.

The Steering Board shall, as part of the strategic orientation of the EFSI, establish a minimum score for each pillar in the scoreboard with a view to enhancing the assessment of projects.

The Steering Board may, upon request from the EIB, allow the Investment Committee to examine a project whose score in any of the pillars is below the minimum score when the global assessment contained in the scoreboard concludes that the operation related to that project would either address a significant market failure or present a high level of additionality.';

(6) Article 9 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory part is replaced by the following:

'2. The EU guarantee shall be granted for EIB financing and investment operations approved by the Investment Committee or for funding or guarantees to the EIF in order to conduct EIB financing and investment operations in accordance with Article 11(3).

The EIB shall, where appropriate, delegate the appraisal, selection and monitoring of small-scale sub-projects to financial intermediaries or approved eligible vehicles, in particular investment platforms and national promotional banks or institutions as a means to increase and facilitate the access to finance for small-scale projects. Notwithstanding the third subparagraph of paragraph 5 of this Article, the Investment Committee shall not retain the right to approve the use of the EU guarantee for sub-projects delegated to financial intermediaries or approved eligible vehicles where the EFSI contribution to such sub-projects is below EUR 3 000 000. Where necessary, the Steering Board shall provide guidance on the procedure by which the Investment Committee is to decide on the use of the EU guarantee for sub-projects for which the EFSI contribution is equal to or above EUR 3 000 000.

The operations concerned shall be consistent with Union policies and support any of the following general objectives:';

(ii) in point (c), the following point is added:

'(iv) railway infrastructure, other rail projects, and maritime ports;';

(iii) in point (e), the following points are inserted:

'(ia) blockchain technology;

(ib) internet of things;

(ic) cybersecurity and network protection infrastructures;';

(iv) point (g) is amended as follows:

— point (ii) is replaced by the following:

'(ii) cultural and creative industries, for which sector-specific financial mechanisms are to be authorised in interaction with the Creative Europe Programme established by Regulation (EU) No 1295/2013 of the European Parliament and of the Council (*) and the Cultural and Creative Sectors Guarantee Facility established pursuant to that Regulation, in order to provide fit-for-purpose loans for those industries;

(*) Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC (OJ L 347, 20.12.2013, p. 221).',

— point (v) is replaced by the following:

'(v) social infrastructures, social services, social and solidarity economy;';

(v) the following points are added:

'(h) sustainable agriculture, forestry, fishery, aquaculture and other elements of the wider bioeconomy;

(i) within the requirements of this Regulation for less developed regions and transition regions as listed respectively in Annexes I and II to Commission Implementing Decision 2014/99/EU (*), other industry and services eligible for EIB support.

(*) Commission Implementing Decision 2014/99/EU of 18 February 2014 setting out the list of regions eligible for funding from the European Regional Development Fund and the European Social Fund and of Member States eligible for funding from the Cohesion Fund for the period 2014-2020 (OJ L 50, 20.2.2014, p. 22).';

(vi) the following subparagraph is added:

'While recognising the demand-driven nature of the EFSI, the EIB shall target that at least 40 % of EFSI financing under the infrastructure and innovation window support project components that contribute to climate action, in line with the commitments made at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21). EFSI financing for SMEs and small mid-cap companies shall not be included in that computation. The EIB shall use its internationally agreed methodology to identify those climate action project components or cost shares. The Steering Board shall, where necessary, provide detailed guidance to that end.';

(b) paragraph 3 is replaced by the following:

'3. The investment period during which the EU guarantee may be granted for supporting financing and investment operations covered by this Regulation shall last until:

(a) 31 December 2020, for EIB operations for which a contract between the EIB and the beneficiary or financial intermediary has been signed by 31 December 2022;

(b) 31 December 2020, for EIF operations for which a contract between the EIF and the financial intermediary has been signed by 31 December 2022.';

(c) paragraph 4 is replaced by the following:

'4. The EIB shall, where necessary and to the extent possible, cooperate with national promotional banks or institutions and investment platforms.';

(d) in paragraph 5, the third subparagraph is replaced by the following:

'The Investment Committee may decide to retain the right to approve new projects put forward by financial intermediaries or within approved eligible vehicles.';

(7) In Article 10(2), point (a) is replaced by the following:

'(a) EIB loans, guarantees, counter-guarantees, capital market instruments, any other form of funding or credit enhancement instrument, including subordinated debt, equity or quasi-equity participations, including in favour of national promotional banks or institutions, investment platforms or funds;';

(8) Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The EU guarantee shall not, at any time, exceed EUR 26 000 000 000, of which a part may be allocated for EIB funding or guarantees to the EIF in accordance with paragraph 3. Aggregate net payments from the general budget of the Union under the EU guarantee shall not exceed EUR 26 000 000 000 and not exceed EUR 16 000 000 000 before 6 July 2018.';

(b) paragraph 3 is replaced by the following:

'3. Where the EIB provides funding or guarantees to the EIF in order to conduct EIB financing and investment operations, the EU guarantee shall provide for a full guarantee on such funding or guarantees up to an initial limit of EUR 6 500 000 000, provided that an amount of at least EUR 4 000 000 000 of funding or guarantees is gradually provided by the EIB without coverage by the EU guarantee. Without prejudice to paragraph 1, the limit of EUR 6 500 000 000 may, where appropriate, be adjusted by the Steering Board up to a maximum of EUR 9 000 000 000, without an obligation on the EIB to match the amounts above EUR 4 000 000 000.';

(c) in paragraph 6, points (a) and (b) are replaced by the following:

'(a) for debt instruments referred to in Article 10(2)(a):

(i) the principal and all interest and amounts due to the EIB but not received by it in accordance with the terms of the financing operations until the event of default; for subordinated debt a deferral, reduction or required exit shall be considered to be an event of default;

(ii) losses arising from fluctuations of currencies other than the euro in markets where possibilities for long-term hedging are limited;

(b) for equity or quasi-equity investments referred to in Article 10(2)(a), the amounts invested and their associated funding cost and losses arising from fluctuations of currencies other than the euro;';

(9) Article 12 is amended as follows:

(a) paragraph 5 is replaced by the following:

'5. Endowments to the guarantee fund referred to in paragraph 2 shall be used to reach an appropriate level (target amount) to reflect the total EU guarantee obligations. The target amount shall be set at 35 % of the total EU guarantee obligations.';

(b) paragraphs 7 to 10 are replaced by the following:

'7. From 1 July 2018, if as a result of calls on the EU guarantee, the level of the guarantee fund falls below 50 % of the target amount, or it could fall below that level within a year according to a risk assessment by the Commission, the Commission shall submit a report on any exceptional measures that could be required.

8. After a call on the EU guarantee, endowments to the guarantee fund provided for in points (b) and (d) of paragraph 2 of this Article above the target amount shall be used within the limits of the investment period provided for in Article 9 to restore the EU guarantee to its full amount.

9. Endowments to the guarantee fund provided for in point (c) of paragraph 2 shall be used to restore the EU guarantee to its full amount.

10. In the event that the EU guarantee is fully restored to an amount of EUR 26 000 000 000, any amount in the guarantee fund in excess of the target amount shall be paid to the general budget of the Union as internal assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012 for any budget lines which could have been used as a source of redeployment to the guarantee fund.';

(10) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, the second sentence is replaced by the following:

'Such support shall include the provision of targeted support on the use of technical assistance for project structuring, on the use of innovative financial instruments, on the use of public-private partnerships and on the provision of information, as appropriate, on relevant issues relating to Union law, taking into account the specificities and needs of Member States with less developed financial markets, as well as the situation in different sectors.';

(ii) in the second subparagraph, the following sentence is added:

'It shall also support the preparation of climate action and circular economy projects or components thereof, in particular in the context of COP21, the preparation of projects in the digital sector, as well as the preparation of projects referred to in the second indent of the third subparagraph of Article 5(1).';

(b) paragraph 2 is amended as follows:

(i) point (c) is replaced by the following:

'(c) leveraging local knowledge to facilitate EFSI support across the Union and contributing actively where possible to the objective of sectorial and geographical diversification of the EFSI referred to in Section 8 of Annex II by supporting the EIB and national promotional banks or institutions to originate and develop operations, in particular in less developed regions and transition regions, and, where necessary, by helping to structure demand for EFSI support;';

(ii) point (e) is replaced by the following:

'(e) providing proactive, advisory support, where necessary by means of local presence, on the establishment of investment platforms, in particular cross-border and macroregional investment platforms involving several Member States and/or regions;';

(iii) the following points are added:

'(f) using the potential of attracting and financing small-scale projects, including through investment platforms;

(g) providing advice on the combination of other sources of Union funding, such as the European Structural and Investment Funds, Horizon 2020 and the Connecting Europe Facility established by Regulation (EU) No 1316/2013, with the EFSI with a view to resolving practical problems linked to the use of such combined sources of funding;

(h) providing proactive support to promote and encourage the operations referred to in point (b) of the first paragraph of Article 8.';

(c) paragraph 5 is replaced by the following:

'5. In order to achieve the objective referred to in paragraph 1 and to facilitate the provision of advisory support at local level, the EIAH shall seek to use the expertise of the EIB, the Commission, national promotional banks or institutions, and the managing authorities of the European Structural and Investment Funds.';

(d) the following paragraph is inserted:

'5a. The EIB shall propose to project promoters applying for EIB financing, including in particular small-scale projects, to refer their projects to the EIAH in order to enhance, where appropriate, the preparation of their projects and/or to allow for the assessment of the possibility of bundling projects through investment platforms. It shall also inform promoters of projects for which EIB financing has been denied, or which are experiencing a financing gap in spite of possible EIB financing, of the possibility of listing their projects on the European Investment Project Portal.';

(e) in paragraph 6, the second sentence is replaced by the following:

'Cooperation between, on the one hand, the EIAH and, on the other hand, a national promotional bank or institution, an international financial institution or an institution or a managing authority, including those acting as a national advisor, having expertise relevant for the purposes of the EIAH, may take the form of a contractual partnership. The EIAH shall endeavour to conclude at least one cooperation agreement with a national promotional bank or institution per Member State. In Member States where national promotional banks or institutions do not exist, the EIAH shall provide, where appropriate, and at the request of the Member State concerned, proactive advisory support on the establishment of such bank or institution.';

(f) the following paragraph is inserted:

'6a. In order to develop a wide geographic outreach of the advisory services across the Union and to successfully leverage local knowledge about the EFSI, a local presence of the EIAH shall be ensured where necessary, taking into account existing support schemes, with a view to providing tangible, proactive, tailor-made assistance on the ground. It shall be established in particular in Member States or regions that face difficulties in developing projects under the EFSI. The EIAH shall assist in the transfer of knowledge to the regional and local level with a view to building up regional and local capacity and expertise.';

(g) paragraph 7 is replaced by following:

'7. An annual reference amount of EUR 20 000 000 shall be made available from the general budget of the Union to contribute towards covering the costs of EIAH operations until 31 December 2020 for the services referred to in paragraph 2, insofar as those costs are not covered by the remaining amount from fees referred to in paragraph 4.';

(11) Article 16(1) is replaced by the following:

'1. The EIB, in cooperation with the EIF where appropriate, shall submit every six months a report to the Commission on EIB financing and investment operations covered by this Regulation. The report shall include an assessment of compliance with the requirements on the use of the EU guarantee and with the key performance indicators referred to in Article 4(2)(f)(iv). The report shall also include statistical, financial and accounting data on each EIB financing and investment operation and on an aggregated basis. Once a year, the report shall also include information on barriers to investment encountered by the EIB when carrying out investment operations covered by this Regulation.';

(12) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. At the request of the European Parliament or of the Council, the Chairperson of the Steering Board and the Managing Director shall report on the performance of the EFSI to the requesting institution, including, where the European Parliament makes such a request, by participating in a hearing before the European Parliament. In addition, at the request of the European Parliament or of the Council, the Managing Director shall report on the work of the Investment Committee to the requesting institution.';

(b) paragraph 2 is replaced by the following:

'2. The Chairperson of the Steering Board and the Managing Director shall reply orally or in writing to questions addressed to the EFSI by the European Parliament or by the Council, in any event within five weeks of the date of receipt of a question. In addition, the Managing Director shall reply orally or in writing to the European Parliament or to the Council to questions regarding the work of the Investment Committee.';

(13) Article 18 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Both before the tabling of any new proposal in the framework of the multiannual financial framework starting in 2021 and at the end of the investment period, the Commission shall submit to the European Parliament and to the Council a report containing an independent evaluation of the application of this Regulation, which shall include:

(a) an assessment of the functioning of the EFSI, the use of the EU guarantee and the functioning of the EIAH;

(b) an assessment of whether the EFSI consists of a good use of resources of the general budget of the Union, mobilises a sufficient level of private capital, and crowds-in private investment;

(c) an assessment of whether maintaining a scheme for supporting investment is useful from a macroeconomic point of view;

(d) at the end of the investment period, an assessment of the application of the procedure referred to in Article 4(2)(a)(v).';

(b) paragraph 7 is replaced by the following:

'7. Taking due account of the first report containing an independent evaluation as referred to in paragraph 6, the Commission shall, if appropriate, put forward a legislative proposal together with an appropriate financing under the multiannual financial framework starting in 2021.';

(c) paragraph 8 is replaced by the following:

'8. The reports referred to in paragraph 6 of this Article shall include an evaluation concerning the use of the scoreboard referred to in Article 7(14) and Annex II, in particular with regard to the consideration of the appropriateness of each pillar and their respective roles in the assessment. The report shall, if appropriate and duly justified by its findings, be accompanied by a proposal for a revision of the delegated act referred to in Article 7(14).';

(14) In Article 19, the following paragraph is added:

'The EIB and the EIF shall inform, or shall oblige financial intermediaries to inform, the final beneficiaries, including SMEs, of the existence of EFSI support by making that information visible, particularly in the case of SMEs, in the relevant agreement providing EFSI support, thereby increasing public awareness and improving visibility.';

(15) Article 20(2) is replaced by the following:

'2. For the purpose of paragraph 1 of this Article, the Court of Auditors shall, at its request and in accordance with Article 287(3) TFEU, be granted full access to any document or information necessary to carry out its task.';

(16) Article 22(1) is replaced by the following:

'1. In their financing and investment operations covered by this Regulation, the EIB and the EIF shall comply with applicable Union legislation and agreed international and Union standards and, therefore, shall not support projects under this Regulation that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

In addition, the EIB and the EIF shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions, or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council (*), or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.

When concluding agreements with financial intermediaries, the EIB and the EIF shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.

The EIB and the EIF shall review their policy on non-cooperative jurisdictions at the latest following the adoption of the Union list of non-cooperative jurisdictions for tax purposes.

Every year thereafter, the EIB and the EIF shall submit a report to the European Parliament and to the Council on the implementation of their policy on non-cooperative jurisdictions in relation to EFSI financing and investment operations including country-by-country information and a list of intermediaries with which they cooperate.

(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).';

(17) In Article 23(2), the first and second sentences of the first subparagraph are replaced by the following:

'The power to adopt delegated acts referred to in Article 7(13) and (14) shall be conferred on the Commission for a period of five years from 4 July 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of that five-year period.';

(18) Annex II is amended as set out in the Annex to this Regulation.

Article 2

Regulation (EU) No 1316/2013 is amended as follows:

(1) Article 5(1) is replaced by the following:

'1. The financial envelope for the implementation of the CEF for the period 2014 to 2020 is set at EUR 30 192 259 000 in current prices. That amount shall be distributed as follows:

(a) transport sector: EUR 24 050 582 000, of which EUR 11 305 500 000 shall be transferred from the Cohesion Fund to be spent in line with this Regulation exclusively in Member States eligible for funding from the Cohesion Fund;

(b) telecommunications sector: EUR 1 066 602 000;

(c) energy sector: EUR 5 075 075 000.

Those amounts are without prejudice to the application of the flexibility mechanism provided for under Council Regulation (EU, Euratom) No 1311/2013 (*).

(*) Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-20 (OJ L 347, 20.12.2013, p. 884).';

(2) In Article 14, the following paragraphs are added:

'5. By way of derogation from the second and third subparagraphs of Article 140(6) of Regulation (EU, Euratom) No 966/2012, revenues and repayments from the financial instruments established under this Regulation and from the financial instruments established under Regulation (EC) No 680/2007 which have been merged with financial instruments established under this Regulation in accordance with paragraph 3 of this Article shall, up to a maximum of EUR 125 000 000, constitute internal assigned revenue within the meaning of Article 21(4) of Regulation (EU, Euratom) No 966/2012 for the European Fund for Strategic Investments established by Regulation (EU) 2015/1017 of the European Parliament and of the Council (*).

6. By way of derogation from the second and third subparagraphs of Article 140(6) of Regulation (EU, Euratom) No 966/2012, revenues and repayments from the 2020 European Fund for Energy, Climate Change & Infrastructure ('Marguerite Fund'), established in accordance with Regulation (EC) No 680/2007, shall, up to a maximum of EUR 25 000 000, constitute internal assigned revenue within the meaning of Article 21(4) of Regulation (EU, Euratom)
No 966/2012 for the European Fund for Strategic Investments established by Regulation (EU) 2015/1017.

(*) Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).'.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 13 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

ANNEX

Annex II to Regulation (EU) 2015/1017 is amended as follows:

(1) Section 2 is amended as follows:

(a) in point (b), the following paragraphs are added:

'EFSI support to motorways shall be limited to private and/or public investment as concerns:

— transport in cohesion countries, in less developed regions or in cross-border transport projects,

— upgrading, maintaining or improving road safety, development of intelligent transport systems' (ITS) devices or guaranteeing the integrity and standards of existing motorways on the trans-European transport network, in particular safe parking areas, alternative clean fuels stations and electric charging systems,

— contributing to the completion of the trans-European transport network by 2030.

EFSI support shall also be explicitly possible for maintaining and upgrading existing transport infrastructure.';

(b) in point (c), the second sentence is replaced by the following:

'In this context, it is expected that the EIB will provide financing under the EFSI with a view to reach an overall target of at least EUR 500 000 000 000 of public or private investment, including financing mobilised through the EIF under EFSI operations relating to the instruments referred to in Article 10(2)(b), national promotional banks or institutions and through increased access to financing for entities having up to 3 000 employees.';

(2) In Section 3, the following point is added:

'(d) the presence of one or more of the following features would typically lead to the classification of operations as EIB special activities:

— subordination in relation to other lenders, including national promotional banks or institutions and private lenders,

— participation in risk-sharing instruments where the position taken exposes the EIB to high-risk levels,

— exposure to specific risks, such as country-, sector- or region-specific risks, particularly those experienced in less developed regions and transition regions, and/or risks associated with innovation, in particular in growth-, sustainability- and productivity-enhancing unproven technologies,

— equity type characteristics, such as performance-linked payments, or

— other identifiable aspects leading to higher risk exposure as per the credit risk guidelines of the EIB such as counterparty risk, limited security and recourse only to project assets for repayment.';

(3) In Section 5, the following sentence is added:

'The scoreboard shall be made public as soon as an operation under the EU guarantee is signed, with the exclusion of commercially sensitive information.';

(4) Section 6 is amended as follows:

(a) point (b) is amended as follows:

(i) in the first indent, the first and second sentences are replaced by the following:

'For debt-type operations, the EIB or the EIF shall carry out its standard risk assessment, involving the computation of the probability of default and the recovery rate. Based on these parameters, the EIB or the EIF shall quantify the risk for each operation.';

(ii) in the second indent, the first sentence is replaced by the following:

'Each debt-type operation shall receive a risk classification (the "Transaction Loan Grading") as per the EIB's or the EIF's system of loan gradings.';

(iii) in the third indent, the first sentence is replaced by the following:

'Projects shall be economically and technically viable and the EIB's financing shall be structured in line with sound banking principles and comply with the high-level risk management principles set by the EIB or the EIF in its internal guidelines.';

(iv) the fourth indent is replaced by the following:

'Debt-type products shall be priced in line with Article 4(2)(a)(iv).';

(b) point (c) is amended as follows:

(i) in the first indent, the second sentence is replaced by the following:

'The determination whether an operation bears equity-type risks or not, irrespective of its legal form and nomenclature, shall be based on the EIB's or the EIF's standard assessment.';

(ii) in the second indent, the first sentence is replaced by the following:

'The EIB's equity-type operations shall be carried out in accordance with the EIB's or the EIF's internal rules and procedures.';

(iii) the third indent is replaced by the following:

'Equity-type investments shall be priced in line with Article 4(2)(a)(iv).';

(5) In point (c) of Section 7, the word 'initial' is deleted;

(6) Section 8 is amended as follows:

(a) in the second sentence of the first subparagraph, the word 'initial' is deleted;

(b) in the first sentence of the first subparagraph of point (a), the word 'initial' is deleted;

(c) in the first sentence of point (b), the word 'initial' is deleted.

Statement by the Commission on the EUR 225 million increase of the Connecting Europe Facility programme

As a result of the political agreement between the European Parliament and the Council on the financing of EFSI 2.0 an amount of EUR 275 million will be redeployed from CEF financial instruments, which represents a reduction of EUR 225 million in comparison with the Commission proposal.

The Commission confirms that the financial programming will be revised to reflect the corresponding EUR 225 million increase of the CEF programme.

In the framework of the annual budgetary procedures for the years 2019-2020 the Commission will make the appropriate proposals to ensure an optimal allocation of this amount within the CEF programme.

DIRECTIVES

DIRECTIVE (EU) 2017/2397 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Council Directives 91/672/EEC ([3]) and 96/50/EC ([4]) are the first steps taken towards the harmonisation and recognition of professional qualifications for crew members in inland navigation.

(2) The requirements for crew members navigating on the Rhine river fall outside the scope of Directives 91/672/EEC and 96/50/EC and are established by the Central Commission for the Navigation of the Rhine (CCNR), pursuant to the Regulations for Rhine Navigation Personnel.

(3) Directive 2005/36/EC of the European Parliament and of the Council ([5]) applies to inland waterway occupations other than boatmasters. The mutual recognition of diplomas and certificates under Directive 2005/36/EC is not, however, fully adapted to regular and frequent cross-border activities of inland waterway occupations that notably exist on inland waterways linked to inland waterways of another Member State.

(4) An evaluation study carried out by the Commission in 2014 highlighted the fact that the limitation of the scope of Directives 91/672/EEC and 96/50/EC to boatmasters, and the lack of automatic recognition of boatmasters' certificates issued in accordance with those Directives on the Rhine, hinder the mobility of crew members in inland navigation.

(5) To facilitate mobility, to ensure the safety of navigation and to ensure the protection of human life and the environment, it is essential for deck crew members, and especially for persons in charge of emergency situations on board passenger vessels and for persons involved in the bunkering of liquefied natural gas-fuelled vessels, to hold certificates proving their qualifications. For efficient enforcement, they should carry such certificates while exercising their occupation. Those considerations also apply to young persons, for whom it is important that their safety and health at work is protected in accordance with Council Directive 94/33/EC ([6]).

([1]) OJ C 389, 21.10.2016, p. 93.
([2]) Position of the European Parliament of 14 November 2017 (not yet published in the Official Journal) and decision of the Council of 4 December 2017.
([3]) Council Directive 91/672/EEC of 16 December 1991 on the reciprocal recognition of national boatmasters' certificates for the carriage of goods and passengers by inland waterway (OJ L 373, 31.12.1991, p. 29).
([4]) Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community (OJ L 235, 17.9.1996, p. 31).
([5]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).
([6]) Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12).

(6) Navigation for sport or pleasure, the operation of ferries that do not move independently, and navigation by armed forces or by emergency services, are activities that do not require qualifications similar to those qualifications required for professional navigation for the transport of goods and people. Therefore, persons carrying out those activities should not be covered by this Directive.

(7) Boatmasters who sail in circumstances that present a particular safety hazard should hold specific authorisations, in particular for sailing large convoys, sailing liquefied natural gas-fuelled craft, sailing in conditions of reduced visibility, sailing on inland waterways with a maritime character or sailing on waterways that present specific risks for navigation. In order to obtain such authorisations, boatmasters should be required to demonstrate specific additional competences.

(8) For ensuring safety of navigation, Member States should identify inland waterways with a maritime character in accordance with harmonised criteria. The competence requirements for navigating on these waterways should be defined at Union level. Without unnecessarily limiting the mobility of boatmasters, when it is necessary for ensuring the safety of navigation, and where appropriate in cooperation with the relevant European River Commission, Member States should also have the possibility to identify the waterways that present specific risks for navigation in accordance with harmonised criteria and procedures pursuant to this Directive. In such cases, the related competence requirements should be set at national level.

(9) With a view to contributing to the mobility of persons involved in the operation of craft across the Union, and considering that all certificates of qualification, service record books and logbooks issued in accordance with this Directive should comply with required minimum standards in accordance with harmonised criteria, Member States should recognise the professional qualifications certified in accordance with this Directive. Consequently the holders of such qualifications should be able to exercise their profession on all Union inland waterways.

(10) In view of the lack of cross-border activities on certain national inland waterways and in order to reduce costs, Member States should have the possibility of not making Union certificates of qualification compulsory on national inland waterways that are not linked to a navigable inland waterway of another Member State. However, Union certificates should allow access to navigation activities on those non-linked waterways.

(11) Directive 2005/36/EC remains applicable for deck crew members who are exempt from the obligation of holding a Union certificate of qualification issued in accordance with this Directive, and also remains applicable for inland waterways qualifications not covered by this Directive.

(12) Where Member States grant exemptions from the obligation to carry a Union certificate of qualification, they should recognise Union certificates of qualification for persons who operate on their national inland waterways that are not linked to the navigable network of another Member State where the exemption is applied. Those Member States should also ensure that, regarding those inland waterways, the data regarding navigation time and journeys carried out are validated in the service record books of persons who hold a Union certificate of qualification, if the crew member so requests. Furthermore, those Member States should take and enforce appropriate measures and penalties to prevent fraud and other unlawful practises that involve Union certificates of qualification and service record books on those non-linked inland waterways.

(13) Member States that apply exemptions to the obligation of carrying a Union certificate of qualification should have the possibility to suspend Union certificates of qualification for persons who operate on their national inland waterways that are not linked to the navigable network of another Member State where the exemption is applied.

(14) A Member State, none of the inland waterways of which are linked to the navigable network of another Member State, that decides not to issue Union certificates of qualification in accordance with this Directive, would be under a disproportionate and unnecessary obligation if it had to transpose and implement all the provisions of this Directive. Such a Member State should therefore be exempt from the obligation to transpose and implement the provisions related to the certification of qualifications for as long as it decides not to issue Union certificates of qualification. Such a Member State should nevertheless be required to recognise the Union certificate of qualifications on its territory in order to promote the mobility of workers within the Union, to decrease the administrative burden associated with labour mobility and to increase the attractiveness of the profession.

(15) In a number of Member States, inland navigation is an infrequent activity, serving only local or seasonal interests in waterways with no connections to other Member States. While the principle of the recognition of professional certificates under this Directive should also be respected in those Member States, the administrative burden should be proportional. Implementing tools such as databases and registers would create a significant administrative burden without presenting a real benefit, as the flow of information between Member States can also be achieved through other means of cooperation. It is therefore justified to allow the Member States concerned to transpose only the minimum provisions needed for the recognition of professional certificates issued in accordance with this Directive.

(16) In certain Member States, inland waterway navigation is not technically possible. Requiring those Member States to transpose this Directive would therefore be a disproportionate administrative burden on them.

(17) It is important that the inland waterway sector is able to provide programmes focused both on retaining people over the age of 50 and on improving the skills and employability of young people.

(18) The Commission should ensure a level playing field for all crew members practising their trade on an exclusive and regular basis in the Union, and should stop any downward spiral in salaries, as well as any discrimination on grounds of nationality, place of residence or flag of registration.

(19) In view of the established cooperation between the Union and the CCNR since 2003 which has led to the establishment of the European Committee for drawing up Standards in Inland Navigation (CESNI) under the auspices of the CCNR, and in order to streamline the legal frameworks governing the professional qualifications in Europe, certificates of qualification, service record books and logbooks, issued in accordance with the Regulations for Rhine Navigation Personnel which lay down requirements that are identical to those of this Directive, should be valid on all Union inland waterways. Such certificates of qualification, service record books and logbooks issued by third countries should be recognised in the Union, conditional upon reciprocity.

(20) It is important that employers apply the social and labour laws of the Member State in which the activity is carried out when employing in the Union deck crew members who hold certificates of qualification, record books and logbooks which have been issued by third countries and which have been recognised by the responsible authorities in the Union.

(21) To further remove barriers to labour mobility and to further streamline the legal frameworks governing the professional qualifications in Europe, any certificate of qualification, service record book or logbook issued by a third country on the basis of requirements which are identical to those laid down in this Directive may also be recognised on all Union waterways, subject to an assessment by the Commission, and subject to recognition by that third-country of documents issued in accordance with the this Directive.

(22) Member States should issue certificates of qualification only to persons who have the minimum levels of competence, the minimum age, the medical fitness and the navigation time required for obtaining a specific qualification.

(23) It is important that the Commission and the Member States encourage young people to seek professional qualifications in inland navigation and that the Commission and the Member States set up specific measures to support social partners' activities in this regard.

(24) To safeguard the mutual recognition of qualifications, certificates of qualification should be based on the competences necessary for the operation of craft. Member States should ensure that persons receiving certificates of qualification have the corresponding minimum levels of competence, verified following an appropriate assessment. Such assessments could take the form of an administrative examination, or could form part of approved training programmes carried out in accordance with common standards in order to ensure a comparable minimum level of competence in all Member States for various qualifications.

(25) When navigating on the Union inland waterways, boatmasters should be able to apply knowledge about the rules on traffic on inland waterways, such as the European Code for Navigation on Inland Waterways (CEVNI) or other relevant traffic regulations, and about the applicable rules on manning of craft, including on resting time, as laid down in Union or national legislation or in specific regulations agreed at a regional level, such as the Regulations for Rhine Navigation Personnel.

(26) Due to the responsibility with respect to safety when exercising the profession of boatmaster, sailing with the aid of radar and bunkering liquefied natural gas-fuelled craft or sailing liquefied natural gas-fuelled craft, verification through practical examinations on whether the required level of competence has effectively been reached is required. Such practical examinations might be carried out using approved simulators, with a view to further facilitating the evaluation of competence.

(27) Skills to operate the on-board radio are crucial to ensure the safety of inland navigation. It is important that Member States encourage any deck crew member who might need to navigate the craft to have training and certification regarding the operation of such radios. For boatmasters and helmsmen, such training and certification should be compulsory.

(28) Approval of training programmes is necessary to verify that the programmes comply with common minimum requirements regarding content and organisation. Such compliance allows for the elimination of unnecessary barriers to entering the profession, by preventing unnecessary additional examinations from being imposed on persons who have already acquired the necessary skills during their vocational training. The existence of approved training programmes could also facilitate the entry of workers with prior experience from other sectors into the profession of inland navigation, as they could benefit from dedicated training programmes that take account of their already acquired competences.

(29) To further facilitate mobility for boatmasters, Member States should, subject to the consent of the Member State in which a stretch of inland waterway with specific risks is located, be allowed to assess the competences necessary for navigating on that specific stretch of inland waterway.

(30) The navigation time should be verified by means of validated entries in service record books. To allow for such verification, Member States should issue service record books and logbooks and ensure that the latter provide a record of the journeys of craft. The medical fitness of a candidate should be certified by an approved medical practitioner.

(31) Where loading and unloading activities require active navigational operations, such as dredging or manoeuvres between loading or unloading points, Member States should regard the time used for such activities as navigation time and record it accordingly.

(32) Whenever the measures provided for in this Directive entail the processing of personal data, it should be carried out in accordance with Union law on the protection of personal data, in particular Regulations (EC) No 45/2001 ([1]) and (EU) 2016/679 ([2]) of the European Parliament and of the Council.

(33) To contribute to the efficient administration of certificates of qualification, Member States should designate the competent authorities that are to implement this Directive and should set up registers for recording data on certificates of qualification, service record books and logbooks. In order to facilitate the exchange of information between Member States and with the Commission for the purpose of the implementation, enforcement and evaluation of this Directive, as well as for statistical purposes, for maintaining safety and for ease of navigation, Member States should report such information, including data on the certificates of qualifications, service record books and logbooks, by including it in a database kept by the Commission. In keeping that database, the Commission should duly respect the principles of personal data protection.

(34) Authorities, including authorities in third countries, that issue certificates of qualification, service record books and logbooks in accordance with rules that are identical to those of this Directive, are processing personal data. The authorities involved in the implementation and enforcement of this Directive, and, where necessary, international organisations that established those identical rules, should also have access to the database kept by the Commission for the purpose of evaluating this Directive, for statistical purposes, for maintaining safety, for ensuring ease of navigation and in order to facilitate the exchange of information between those authorities. This access should however be subject to adequate level of data protection, specifically in the case of personal data, and, in the case of third countries and international organisations, should also be subject to the principle of reciprocity.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([2]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(35) With a view to further modernising the inland waterway sector and to reducing the administrative burden while rendering the documents less prone to being tampered with, the Commission should, taking into account the principle of better regulation, consider examining the possibility of replacing the paper version of Union certificates of qualification, service record books and logbooks by electronic tools, such as electronic professional cards and electronic vessel units.

(36) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission with regard to opposing, where appropriate, the intended adoption by a Member State of competence requirements relating to specific risks on certain stretches of inland waterways. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(37) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission with regard to the adoption of models for the issuing of Union certificates of qualification, practical examination certificates, service record books and logbooks and the adoption of decisions on recognition in accordance with Article 10. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(38) In order to provide minimum harmonised standards for the certification of qualifications, to facilitate the exchange of information between Member States and to facilitate the implementation, monitoring and evaluation of this Directive by the Commission, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the setting of standards of competence, standards for medical fitness, standards for practical examinations, standards for the approval of simulators and standards defining the characteristics and conditions of use for the database, to be maintained by the Commission, that is to host a copy of key data related to Union certificates of qualification, service record books, logbooks and recognised documents. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([2]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(39) Transitional measures should address not only the problem of certificates issued to boatmasters in accordance with Directive 96/50/EC, with Regulations for Rhine Navigation Personnel or with certain national legislation, but also the problem of certificates issued to other categories of deck crew members falling within the scope of this Directive. As far as possible, those measures should safeguard entitlements previously granted and should aim to give skilled crew members reasonable time in which to apply for a Union certificate of qualification. Those measures should therefore provide for an adequate period during which those certificates can continue to be used on the Union inland waterways for which they were valid before the end of the transposition period. Those measures should also ensure a system of transition to the new rules for all these certificates, in particular where journeys of local interest are concerned.

(40) The harmonisation of legislation in the field of professional qualifications in inland navigation in Europe is facilitated by close cooperation between the Union and the CCNR, and by the development of CESNI standards. The CESNI, which is open to experts from all Member States, draws up standards in the field of inland navigation, including standards for professional qualifications. European River Commissions, relevant international organisations, social partners and professional associations should be fully involved in the design and drawing up of CESNI standards. Where the conditions laid down in this Directive are met, the Commission should refer to CESNI standards when adopting implementing and delegated acts in accordance with this Directive.

([1]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

([2]) OJ L 123, 12.5.2016, p. 1.

(41) Since the objective of this Directive, namely the establishment of a common framework on the recognition of minimum professional qualifications for inland navigation, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(42) In order to improve the gender balance in the inland waterway sector, it is important that access by women to qualifications and to the profession be promoted.

(43) According to the case law of the Court of Justice of the European Union, the information which Member States are obliged to supply to the Commission in the context of transposing a directive must be clear and precise. This is also the case for this Directive, which provides for a specifically targeted approach for transposition.

(44) Directives 91/672/EEC and 96/50/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down the conditions and procedures for the certification of the qualifications of persons involved in the operation of a craft navigating on Union inland waterways, as well as for the recognition of such qualifications in the Member States.

Article 2

Scope

1. This Directive applies to deck crew members, liquefied natural gas experts and passenger navigation experts on the following types of craft on any Union inland waterway:

(a) vessels having a length of 20 metres or more;

(b) vessels for which the product of length, breadth and draught is a volume of 100 cubic metres or more;

(c) tugs and pushers intended for:

(i) towing or pushing vessels referred to in points (a) and (b);

(ii) towing or pushing floating equipment;

(iii) moving vessels referred to in points (a) and (b) or floating equipment alongside;

(d) passenger vessels;

(e) vessels required to have a certificate of approval pursuant to Directive 2008/68/EC of the European Parliament and of the Council [1];

(f) floating equipment.

2. This Directive does not apply to persons:

(a) navigating for sport or pleasure;

(b) involved in the operation of ferries not moving independently;

(c) involved in the operation of craft used by armed forces, forces maintaining public order, civil defence services, waterway administrations, fire services and other emergency services.

[1] Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

3. Without prejudice to Article 39(3), this Directive also does not apply to persons navigating in Member States with no inland waterways linked to the navigable network of another Member State and who are exclusively:

(a) navigating limited journeys of local interest, where the distance from the departure point is at no time more than ten kilometres; or

(b) navigating seasonally.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'inland waterway' means a waterway other than the sea, open to navigation by craft referred to in Article 2;

(2) 'craft' means a vessel or item of floating equipment;

(3) 'vessel' means an inland waterway vessel or seagoing ship;

(4) 'tug' means a vessel specially built to perform towing operations;

(5) 'pusher' means a vessel specially built to propel a pushed convoy;

(6) 'passenger vessel' means a vessel constructed and equipped to carry more than 12 passengers;

(7) 'Union certificate of qualification' means a certificate, issued by a competent authority, attesting that a person fulfils the requirements of this Directive;

(8) 'STCW Convention' means 'STCW Convention' as defined in Article 1(21) of Directive 2008/106/EC of the European Parliament and of the Council [1];

(9) 'deck crew members' means persons who are involved in the general operation of a craft navigating on Union inland waterways and who carry out various tasks, such as tasks related to navigation, controlling the operation of the craft, cargo handling, stowage, passenger transport, marine engineering, maintenance and repair, communication, health and safety, and environmental protection, other than persons who are solely assigned to the operation of the engines, cranes, or electrical and electronic equipment;

(10) 'radio operator's certificate' means a national certificate, issued by a Member State in accordance with the Radio Regulations annexed to the International Telecommunication Convention, authorising the operation of a radio-communication station on an inland waterway craft;

(11) 'passenger navigation expert' means a person serving on board the vessel who is qualified to take measures in emergency situations on board passenger vessels;

(12) 'liquefied natural gas expert' means a person who is qualified to be involved in the bunkering procedure of a craft using liquefied natural gas as fuel or to be the boatmaster sailing such a craft;

(13) 'boatmaster' means a deck crew member who is qualified to sail a craft on the Member States' inland waterways and is qualified to have overall responsibility on board, including for the crew, for the passengers and for the cargo;

(14) 'specific risk' means a safety hazard that is due to particular navigation conditions which require boatmasters to have competences beyond what is expected under the general standards of competence for the management level;

(15) 'competence' means the proven ability to use the knowledge and skills required by the established standards for the proper performance of the tasks necessary for the operation of inland waterway craft;

(16) 'management level' means the level of responsibility associated with serving as boatmaster and with ensuring that other deck crew members properly perform all tasks in the operation of a craft;

[1] Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33).

(17) 'operational level' means the level of responsibility associated with serving as boatman, as able boatman or as helmsman and with maintaining control over the performance of all tasks within that person's designated area of responsibility in accordance with proper procedures and under the direction of a person serving at management level;

(18) 'large convoy' means a pushed convoy for which the product of the total length and the total width of the pushed craft is 7 000 square metres or more;

(19) 'service record book' means a personal register that records details of a crew member's work history, in particular navigation time and journeys carried out;

(20) 'logbook' means an official record of the journeys made by a craft and its crew;

(21) 'active service record book' or 'active logbook' means a service record book or logbook which is open for recording data;

(22) 'navigation time' means the time, measured in days, that deck crew members have spent aboard during a journey on a craft on inland waterways, including loading and unloading activities that require active navigational operations, which has been validated by the competent authority;

(23) 'floating equipment' means a floating installation carrying working gear such as cranes, dredging equipment, pile drivers or elevators;

(24) 'length' means the maximum length of the hull in metres, excluding rudder and bowsprit;

(25) 'breadth' means the maximum breadth of the hull in metres, measured to the outer edge of the shell plating (excluding paddle wheels, rub rail, and similar);

(26) 'draught' means the vertical distance in metres between the lowest point of the hull without taking into account the keel or other fixed attachments and the maximum draught line;

(27) 'seasonal navigation' means a navigating activity which is exercised for not more than six months each year.

CHAPTER 2

UNION CERTIFICATES OF QUALIFICATION

Article 4

Obligation to carry a Union certificate of qualification as a deck crew member

1. Member States shall ensure that deck crew members who navigate on Union inland waterways carry either a Union certificate of qualification as a deck crew member issued in accordance with Article 11 or a certificate recognised in accordance with Article 10(2) or (3).

2. For deck crew members other than boatmasters, the Union certificate of qualification and the service record book as referred to in Article 22 shall be presented in a single document.

3. By way of derogation from paragraph 1 of this Article, certificates held by persons involved in the operation of a craft, other than boatmasters, issued or recognised in accordance with Directive 2008/106/EC, and therefore in accordance with the STCW Convention, shall be valid on sea-going ships operating on inland waterways.

Article 5

Obligation to carry a Union certificate of qualification for specific operations

1. Member States shall ensure that passenger navigation experts and liquefied natural gas experts carry either a Union certificate of qualification issued in accordance with Article 11 or a certificate recognised in accordance with Article 10(2) or (3).

2. By way of derogation from paragraph 1 of this Article, certificates held by persons involved in the operation of a craft, issued or recognised in accordance with Directive 2008/106/EC, and therefore in accordance with the STCW Convention, shall be valid on sea-going ships operating on inland waterways.

Article 6

Obligation for boatmasters to hold specific authorisations

Member States shall ensure that boatmasters hold specific authorisations issued in accordance with Article 12 when:

(a) sailing on waterways that have been classified as inland waterways with a maritime character pursuant to Article 8;

(b) sailing on waterways that have been identified as stretches of inland waterways with specific risks pursuant to Article 9;

(c) sailing with the aid of radar;

(d) sailing craft using liquefied natural gas as fuel;

(e) sailing large convoys.

Article 7

Exemptions related to national inland waterways that are not linked to the navigable network of another Member State

1. A Member State may exempt persons referred to in Article 4(1), Article 5(1) and Article 6 who operate exclusively on national inland waterways that are not linked to the navigable network of another Member State, including those that have been classified as inland waterways with a maritime character, from the obligations set out in Article 4(1) and (2), Article 5(1), Article 6, the first subparagraph of Article 22(1), and Article 22(3) and (6).

2. A Member State that grants exemptions in accordance with paragraph 1 may issue certificates of qualification to persons referred to in paragraph 1 under conditions that differ from the general conditions set out in this Directive, provided that such certificates ensure an adequate level of safety. The recognition of those certificates in other Member States shall be governed by Directive 2005/36/EC or Directive 2005/45/EC of the European Parliament and of the Council [1], as applicable.

3. Member States shall inform the Commission of the exemptions granted in accordance with paragraph 1. The Commission shall make information on those granted exemptions publicly available.

Article 8

Classification of inland waterways with a maritime character

1. Member States shall classify a stretch of inland waterway in their territory as an inland waterway with a maritime character where one of the following criteria is met:

(a) the Convention on the International Regulations for Preventing Collisions at Sea is applicable;

(b) the buoys and signs are in accordance with the maritime system;

(c) terrestrial navigation is necessary on that inland waterway; or

(d) maritime equipment which requires special knowledge for its operation is necessary for navigation on that inland waterway.

2. Member States shall notify the Commission of the classification of any specific stretch of inland waterways on their territory as an inland waterway with a maritime character. The notification to the Commission shall be accompanied by a justification based on the criteria referred to in paragraph 1. The Commission shall make the list of notified inland waterways with a maritime character publicly available without undue delay.

Article 9

Stretches of inland waterways with specific risks

1. Where necessary to ensure safety of navigation, Member States may identify stretches of inland waterways with specific risks which run through their own territories, in accordance with the procedure set out in paragraphs 2 to 4, where such risks are due to one or more of the following reasons:

(a) frequently changing stream patterns and speed;

(b) the hydro-morphological characteristics of the inland waterway and the absence of appropriate Fairway Information Services on the inland waterway or of suitable charts;

[1] Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States and amending Directive 2001/25/EC (OJ L 255, 30.9.2005, p. 160).

(c) the presence of a specific local traffic regulation justified by specific hydro-morphological characteristics of the inland waterway; or

(d) a high frequency of accidents at a specific stretch of the inland waterway that is attributed to the lack of a competence that is not covered by the standards referred to in Article 17.

Where Member States consider it to be necessary to ensure safety, they shall consult the relevant European River Commission during the process of identifying the stretches referred to in the first subparagraph.

2. Member States shall notify the Commission of the measures they intend to adopt pursuant to paragraph 1 of this Article and to Article 20, together with the reasoning on which the measure is based, at least six months before the envisaged date of adoption of those measures.

3. Where stretches of inland waterways referred to in paragraph 1 are situated along the border between two or more Member States, the Member States concerned shall consult one another and notify the Commission jointly.

4. Where a Member State intends to adopt a measure that is not justified in accordance with paragraphs 1 and 2 of this Article, the Commission may, within a period of six months from the notification, adopt implementing acts setting out its decision opposing the adoption of the measure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(3).

5. The Commission shall make the measures adopted by the Member States publicly available, together with the reasoning referred to in paragraph 2.

Article 10

Recognition

1. Any Union certificate of qualification referred to in Articles 4 and 5, as well as any service record books or logbooks referred to in Article 22 that have been issued by the competent authorities in accordance with this Directive, shall be valid on all Union inland waterways.

2. Any certificate of qualification, service record book or logbook issued in accordance with the Regulations for Rhine Navigation Personnel, which lay down requirements that are identical to those of this Directive, shall be valid on all Union inland waterways.

Such certificates, service record books and logbooks that have been issued by a third country shall be valid on all Union inland waterways, provided that that third country recognises, within its jurisdiction, Union documents issued pursuant to this Directive.

3. Without prejudice to paragraph 2, any certificate of qualification, service record book or logbook that has been issued in accordance with the national rules of a third country laying down requirements that are identical to those of this Directive shall be valid on all Union inland waterways, subject to the procedure and the conditions set out in paragraphs 4 and 5.

4. Any third country may submit to the Commission a request for recognition of certificates, service record books or logbooks that have been issued by its authorities. The request shall be accompanied by all information necessary to determine whether the issuing of such documents is subject to requirements that are identical to those laid down in this Directive.

5. Upon receiving a request for recognition pursuant to paragraph 4, the Commission shall carry out an assessment of the certification systems in the requesting third country in order to determine whether the issuing of the certificates, service record books or logbooks specified in its request is subject to requirements that are identical to those laid down in this Directive.

If those requirements are found to be identical, the Commission shall adopt implementing acts granting recognition in the Union to the certificates, record books or logbooks issued by that third country, subject to that third country recognising within its jurisdiction Union documents issued pursuant to this Directive.

When adopting the implementing act referred to in the second subparagraph of this paragraph, the Commission shall specify to which documents, referred to in paragraph 4 of this Article, the recognition applies. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 33(3).

6. When a Member State considers that a third country no longer complies with the requirements of this Article, it shall notify the Commission immediately, giving substantiated reasons for its contention.

7. Every eight years, the Commission shall assess the compliance of the certification system in the third country referred to in the second subparagraph of paragraph 5 with the requirements laid down in this Directive. If the Commission determines that the requirements laid down in this Directive are no longer met, paragraph 8 shall apply.

8. If the Commission determines that the issuing of documents referred to in paragraphs 2 or 3 of this Article is no longer subject to identical requirements to those laid down in this Directive, it shall adopt implementing acts suspending the validity on all Union inland waterways of the certificates of qualification, service record books and logbooks issued in accordance with these requirements. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(3).

The Commission may at any time rescind the suspension, if the identified shortcomings as regards the standards applied have been resolved.

9. The Commission shall make the list of third countries referred to in paragraphs 2 and 3 publicly available, together with the documents which are recognised as valid on all Union inland waterways.

CHAPTER 3

CERTIFICATION OF PROFESSIONAL QUALIFICATIONS

SECTION I

Procedure for issuing Union certificates of qualification and specific authorisations

Article 11

Issuing and validity of Union certificates of qualification

1. Member States shall ensure that applicants for Union certificates of qualification as a deck crew member and Union certificate of qualification for specific operations provide satisfactory documentary evidence:

(a) of their identity;

(b) that they meet the minimum requirements laid down in Annex I on age, competence, administrative compliance and navigation time for the qualification for which they have applied;

(c) that they meet the standards for medical fitness in accordance with Article 23, where applicable.

2. Member States shall issue Union certificates of qualification after having verified the authenticity and validity of the documents provided by the applicants and after having verified that the applicants have not already been issued a valid Union certificate of qualification.

3. The Commission shall adopt implementing acts establishing models for Union certificates of qualification and for single documents combining Union certificates of qualification and service record books. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33(2).

4. The validity of the Union certificate of qualification as a deck crew member shall be limited to the date of the next medical examination required pursuant to Article 23.

5. Without prejudice to the limitation referred to in paragraph 4, Union certificates of qualification as a boatmaster shall be valid for up to a maximum of 13 years.

6. Union certificates of qualification for specific operations shall be valid for up to a maximum of five years.

Article 12

Issuing and validity of specific authorisations for boatmasters

1. Member States shall ensure that applicants for specific authorisations referred to in Article 6 provide satisfactory documentary evidence:

(a) of their identity;

(b) that they meet the minimum requirements laid down in Annex I on age, competence, administrative compliance and navigation time for the specific authorisation for which they have applied;

(c) that they hold a Union certificate of qualification as a boatmaster or of a certificate recognised in accordance with Article 10(2) and (3), or that they meet the minimum requirements for Union certificates of qualification for boatmasters provided for by this Directive.

2. By way of derogation from paragraph 1 of this Article, for specific authorisations for sailing on stretches of inland waterways with specific risks required pursuant to point (b) of Article 6, applicants shall provide to the competent authorities of the Member States referred to in Article 20(3) satisfactory documentary evidence:

(a) of their identity;

(b) that they meet the requirements established in accordance with Article 20 for the competence for specific risks for the specific stretch of inland waterway for which the authorisation is required;

(c) that they hold a Union certificate of qualification as a boatmaster or of a certificate recognised in accordance with Article 10(2) and (3), or that they meet the minimum requirements for Union certificates of qualification for boatmasters provided for by this Directive.

3. Member States shall issue the specific authorisations referred to in paragraphs 1 and 2 after having verified the authenticity and validity of the documents provided by the applicant.

4. Member States shall ensure that the competent authority that issues Union certificates of qualification to boatmasters specifically indicates in the certificate any specific authorisation issued pursuant to Article 6 in accordance with the model referred to in Article 11(3). The validity of such specific authorisation shall end when the validity of the Union certificate of qualification ends.

5. By way of derogation from paragraph 4 of this Article, the specific authorisation referred to in point (d) of Article 6 shall be issued as a Union certificate of qualification as a liquefied natural gas expert in accordance with the model referred to in Article 11(3), the period of validity of which shall be set in accordance with Article 11(6).

Article 13

Renewal of Union certificates of qualification and of specific authorisations for boatmasters

Upon the expiry of a Union certificate of qualification, Member States shall, upon request, renew the certificate and, where relevant, the specific authorisations included therein, provided that:

(a) for Union certificates of qualification as a deck crew member and for specific authorisations other than the one referred to in point (d) of Article 6, satisfactory documentary evidence referred to in points (a) and (c) of Article 11(1) has been submitted;

(b) for Union certificates of qualification for specific operations, the satisfactory documentary evidence referred to in points (a) and (b) of Article 11(1) has been submitted.

Article 14

Suspension and withdrawal of Union certificates of qualification or specific authorisations for boatmasters

1. Where there are indications that the requirements for certificates of qualification or specific authorisations are no longer met, the Member State that issued the certificate or specific authorisation shall undertake all necessary assessments and, where appropriate, shall withdraw those certificates or specific authorisation.

2. Any Member State may temporarily suspend a Union certificate of qualification where it considers that such suspension is necessary for reasons of safety or public order.

3. Member States shall record without undue delay suspensions and withdrawals in the database referred to in Article 25(2).

SECTION II

Administrative Cooperation

Article 15

Cooperation

Where a Member State referred to in Article 39(3) determines that a certificate of qualification issued by a competent authority in another Member State does not satisfy conditions laid down by this Directive, or where there are reasons of safety or public order, the competent authority shall request the issuing authority to consider suspending that certificate

of qualification pursuant to Article 14. The requesting authority shall inform the Commission of its request. The authority that issued the certificate of qualification in question shall examine the request and shall notify the other authority of its decision. Any competent authority may prohibit persons from operating in its area of jurisdiction pending notification of the issuing authority's decision.

The Member States referred to in Article 39(3) shall also cooperate with competent authorities of other Member States in order to ensure that navigation time and journeys for holders of certificates of qualification and service record books recognised under this Directive are recorded, if a holder of a service record book requests the recording, and are validated for a period of up to 15 months before the request for validation. The Member States referred to in Article 39(3) shall inform the Commission, where relevant, of the inland waterways on their territory where competences for navigation of a maritime character are required.

SECTION III

Competences

Article 16

Requirements for competences

1. Member States shall ensure that the persons referred to in Articles 4, 5 and 6 have the necessary competences for the safe operation of a craft as laid down in Article 17.

2. By way of derogation from paragraph 1 of this Article, the assessment of the competence for specific risks referred to in point (b) of Article 6 shall be carried out in accordance with Article 20.

Article 17

Assessment of competences

1. The Commission shall adopt delegated acts in accordance with Article 31 to supplement this Directive by laying down the standards for competences and corresponding knowledge and skills in compliance with the essential requirements set out in Annex II.

2. Member States shall ensure that persons who apply for the documents referred to in Articles 4, 5 and 6 demonstrate, where applicable, that they meet the standards of competence referred to in paragraph 1 of this Article by passing an examination that was organised:

(a) under the responsibility of an administrative authority in accordance with Article 18 or;

(b) as part of a training programme approved in accordance with Article 19.

3. The demonstration of compliance with the standards of competence shall include a practical examination for obtaining:

(a) a Union certificate of qualification as a boatmaster;

(b) a specific authorisation for sailing with the aid of radar as referred to in point (c) of Article 6;

(c) a Union certificate of qualification as a liquefied natural gas expert;

(d) a Union certificate of qualification as a passenger navigation expert.

To obtain the documents referred to in points (a) and (b) of this paragraph, practical examinations may take place on board a craft or on a simulator that complies with Article 21. For points (c) and (d) of this paragraph, practical examinations may take place on board a craft or at an appropriate onshore installation.

4. The Commission is empowered to adopt delegated acts in accordance with Article 31 to supplement this Directive by laying down standards for the practical examinations referred to in paragraph 3 of this Article, specifying the specific competences and the conditions to be tested during the practical examinations, as well as the minimum requirements for the craft on which a practical examination may be taken.

Article 18

Examination under the responsibility of an administrative authority

1. Member States shall ensure that the examinations referred to in point (a) of Article 17(2) are organised under their responsibility. They shall ensure that those examinations are conducted by examiners who are qualified to assess the competences and the corresponding knowledge and skills referred to in Article 17(1).

2. Member States shall issue a practical examination certificate to applicants who have passed the practical examination referred to in Article 17(3) where that examination took place on a simulator compliant with Article 21, and where the applicant has requested such a certificate.

3. The Commission shall adopt implementing acts establishing models for the practical examination certificates referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33(2).

4. Member States shall recognise, without further requirements or assessments, practical examination certificates referred to in paragraph 2 that have been issued by competent authorities in other Member States.

5. In the case of written exams or computer-based exams, the examiners referred to in paragraph 1 may be replaced by qualified supervisors.

6. The Member States shall ensure that the examiners and qualified supervisors referred to in this chapter are free from conflicts of interest.

Article 19

Approval of training programmes

1. Member States may establish training programmes for the persons referred to in Articles 4, 5 and 6. Member States shall ensure that such training programmes leading to diplomas or certificates that demonstrate compliance with the standards of competence referred to in Article 17(1) are approved by the competent authorities of the Member States in whose territory the relevant education or training institute conducts its training programmes.

Member States shall ensure that the quality assessment and assurance of the training programmes is ensured by the application of a national or international quality standard in accordance with Article 27(1).

2. Member States may approve the training programmes referred to in paragraph 1 of this Article only if:

(a) the training objectives, learning content, methods, media of delivery, procedures, including the use of simulators, where applicable, and course materials are properly documented and allow applicants to achieve the standards of competence referred to in Article 17(1);

(b) the programmes for the assessment of the relevant competences are conducted by qualified persons who have in-depth knowledge of the training programme;

(c) an examination to verify compliance with the standards of competence referred to in Article 17(1) is carried out by qualified examiners who are free from conflicts of interest.

3. Member States shall recognise any diplomas or certificates awarded after the completion of training programmes approved by other Member States in accordance with paragraph 1.

4. Member States shall revoke or suspend their approval of training programmes that no longer comply with the criteria set out in paragraph 2.

5. Member States shall notify to the Commission the list of the approved training programmes, as well as any training programmes whose approval has been revoked or suspended. The Commission shall make this information publicly available. The list shall indicate the name of the training programme, the titles of diplomas or certificates awarded, the body awarding the diploma or certificates, the year of entry into force of the approval, as well as the relevant qualification and any specific authorisations to which the diploma or certificate gives access.

Article 20

Assessment of competences for specific risks

1. The Member States that identify stretches of inland waterways with specific risks in their territories, within the meaning of Article 9(1), shall specify the additional competence required from boatmasters navigating on those stretches of inland waterways, and shall specify the means necessary to prove that such requirements are met. Where Member States consider it to be necessary for the purpose of ensuring safety, they shall consult the relevant European River Commission during the process of identifying those competences.

Taking into account the competences required for navigating on the stretch of inland waterway with specific risks, the means necessary to prove that such requirements are met may consist of the following:

(a) a limited number of journeys to be carried out on the stretch concerned;

(b) a simulator examination;

(c) a multiple choice examination;

(d) an oral examination; or

(e) a combination of the means referred to in points (a) to (d).

When applying this paragraph, the Member States shall apply objective, transparent, non-discriminatory and proportionate criteria.

2. The Member States referred to in paragraph 1 shall ensure that procedures are put in place for assessing applicants' competence for specific risks, and that tools are made publicly available to facilitate the acquisition by boatmasters of the required competence for specific risks.

3. A Member State may carry out an assessment of applicants' competence for specific risks for stretches of inland waterways located in another Member State, on the basis of the requirements established for that stretch of inland waterway in accordance with paragraph 1, provided that the Member State where the stretch of inland waterway is located gives its consent. In such case, that Member State shall provide the Member State carrying out the assessment with the necessary means to carry it out. Member States shall justify any refusal to give consent on objective and proportional grounds.

Article 21

Use of simulators

1. Simulators used to assess competences shall be approved by Member States. That approval shall be issued upon request when it is demonstrated that the simulator complies with the standards for simulators established by delegated acts referred to in paragraph 2. The approval shall specify which particular assessment of competence is authorised as regards the simulator.

2. The Commission is empowered to adopt delegated acts in accordance with Article 31 to supplement this Directive by laying down standards for the approval of simulators, specifying the minimum functional and technical requirements and the administrative procedures in this regard, with the objective of ensuring that the simulators used for an assessment of competences are designed in such a way as to allow for the verification of the competences as prescribed under the standards for practical examinations referred to in Article 17(3).

3. Member States shall recognise simulators approved by competent authorities in other Member States in accordance with paragraph 1 without further technical requirements or evaluation.

4. Member States shall revoke or suspend their approval of simulators that no longer comply with the standards referred to in paragraph 2.

5. Member States shall notify the list of the approved simulators to the Commission. The Commission shall make this information publicly available.

6. Member States shall ensure that access to simulators for the purposes of assessment is non-discriminatory.

SECTION IV

Navigation time and medical fitness

Article 22

Service record book and logbook

1. The Member States shall ensure that boatmasters record navigation time, referred to in point (b) of Article 11(1), and journeys carried out, referred to in Article 20(1), in a service record book as referred to in paragraph 6 of this Article or in a service record book recognised pursuant to Article 10(2) or (3).

By way of derogation from the first subparagraph, when Member States apply Article 7(1) or Article 39(2), the obligation laid down in the first subparagraph of this paragraph shall apply only if a holder of a service record book requests the recording.

2. The Member States shall ensure that, if a crew member so requests, their competent authorities, after having verified the authenticity and validity of any necessary documentary evidence, validate in the service record book the data regarding navigation time and journeys carried out up to 15 months before the request. Where electronic tools are put in place, including electronic service record books and electronic logbooks, including appropriate procedures for safeguarding the authenticity of the documents, the corresponding data may be validated without additional procedures.

Navigation time that has been acquired on any of the Member States' inland waterways shall be taken into consideration. In the case of inland waterways whose courses are not fully within Union territory, the navigation time acquired on sections located outside the Union territory shall also be taken into consideration.

3. Member States shall ensure that the journeys of craft referred to in Article 2(1) are recorded in the logbook referred to in paragraph 6 of this Article or in a logbook recognised pursuant to Articles 10(2) or (3).

4. The Commission shall adopt implementing acts establishing models for service record books and logbooks, taking into account the information required for the implementation of this Directive as regards the identification of the person, their navigation time and the journeys carried out. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33(2).

When adopting those implementing acts, the Commission shall take into account the fact that the logbook is also used in the implementation of Council Directive 2014/112/EU ([1]), for verifying manning requirements and recording journeys of the craft.

5. The Commission shall submit to the European Parliament and to the Council an assessment of tamper-proof electronic service record books, logbooks and professional cards that incorporate Union certificates of qualification in inland navigation, by 17 January 2026.

6. Member States shall ensure that crew members hold a single active service record book and that there is a single active logbook on the craft.

Article 23

Medical fitness

1. Member States shall ensure that deck crew members who apply for a Union certificate of qualification demonstrate their medical fitness by presenting to the competent authority a valid medical certificate issued by a medical practitioner who is recognised by the competent authority, based on the successful completion of a medical fitness examination.

([1]) Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF) (OJ L 367, 23.12.2014, p. 86).

2. The applicants shall present a medical certificate to the competent authority when applying for

(a) their first Union certificate of qualification as a deck crew member;

(b) their Union certificate of qualification as a boatmaster;

(c) the renewal of their Union certificate of qualification as a deck crew member in case the conditions specified in paragraph 3 of this Article are met.

Medical certificates issued for the purpose of obtaining a Union certificate of qualification shall be dated no earlier than three months before the date of the application for a Union certificate of qualification.

3. From the age of 60, the holder of a Union certificate of qualification as a deck crew member shall demonstrate medical fitness in accordance with paragraph 1 at least every five years. From the age of 70, the holder shall demonstrate medical fitness in accordance with paragraph 1 every two years.

4. Member States shall ensure that employers, boatmasters and Member States authorities are able to require a deck crew member to demonstrate medical fitness in accordance with paragraph 1 whenever there are objective indications that that deck crew member no longer fulfils the medical fitness requirements referred to in paragraph 6.

5. Where medical fitness cannot be fully demonstrated by the applicant, Member States may impose mitigation measures or restrictions that provide equivalent navigation safety. In that case, those mitigation measures and restrictions related to medical fitness shall be mentioned in the Union certificate of qualification in accordance with the model referred to in Article 11(3).

6. The Commission is empowered to adopt delegated acts in accordance with Article 31 on the basis of the essential requirements for medical fitness referred to in Annex III to supplement this Directive by laying down the standards for medical fitness that specify the requirements with regards to medical fitness, in particular with regard to the tests that medical practitioners must carry out, the criteria they must apply to determine fitness for work, and the list of restrictions and mitigation measures.

CHAPTER 4

ADMINISTRATIVE PROVISIONS

Article 24

Protection of personal data

1. Member States shall carry out all processing of personal data provided for in this Directive in accordance with Union law on the protection of personal data, in particular Regulation (EU) 2016/679.

2. The Commission shall carry out all processing of personal data provided for in this Directive in accordance with Regulation (EC) No 45/2001.

3. Member States shall ensure that personal data are processed only for the purposes of:

(a) implementing, enforcing and evaluating this Directive;

(b) exchanging information between the authorities that have access to the database referred to in Article 25 and the Commission;

(c) producing statistics.

Anonymised information derived from such data may be used to support policies that promote inland waterway transport.

4. Member States shall ensure that the persons referred to in Articles 4 and 5 whose personal data, and in particular health data, are processed in the registers referred to in Article 25(1), and in the database referred to in Article 25(2), are informed *ex ante*. Member States shall grant such persons access to their personal data, and shall provide such persons with a copy of that data on request at any time.

Article 25

Registers

1. To contribute to efficient administration with respect to issuing, renewing, suspending and withdrawing certificates of qualification, Member States shall keep registers of the Union certificates of qualification, service record books and logbooks issued under their authority in accordance with this Directive and, where relevant, of documents recognised pursuant to Article 10(2) which have been issued, renewed, suspended or withdrawn, which have been reported lost, stolen or destroyed, or which have expired.

For Union certificates of qualification, registers shall include the data appearing on the Union certificates of qualification and the issuing authority.

For service record books, registers shall include the name of the holder and his identification number, the service record book identification number, the date of issuance and the issuing authority.

For logbooks, registers shall include the name of the craft, the European Number of Identification or European Vessel Identification Number (ENI number), the logbook identification number, the date of issuance and the issuing authority.

The Commission is empowered to adopt delegated acts in accordance with Article 31 in order to supplement the information in the registers for service record books and logbooks with other information required by the models of service record books and logbooks adopted pursuant to Article 22(4), with the objective of further facilitating the exchange of information between Member States.

2. For the purpose of implementing, enforcing and evaluating this Directive, for maintaining safety, for ease of navigation, as well as for statistical purposes, and in order to facilitate the exchange of information between the authorities that implement this Directive, Member States shall reliably record without delay data related to the certificates of qualification, service record books and logbooks referred to in paragraph 1 in a database kept by the Commission.

The Commission is empowered to adopt delegated acts in accordance with Article 31 to provide the standards laying down the characteristics of such a database and the conditions for its use, specifying in particular:

(a) the instructions for encoding data into the database;

(b) the access rights of the users, differentiated where appropriate according to the type of users, the type of access and the purpose for which the data is used;

(c) the maximum duration that data is retained in accordance with paragraph 3 of this Article, differentiated where appropriate according to the type of document;

(d) the instructions regarding the operation of the database and its interaction with the registers referred to in paragraph 1 of this Article.

3. Any personal data included in the registers referred to in paragraph 1 or in the database referred to in paragraph 2 shall be stored for no longer than is necessary for the purposes for which the data were collected or for which they are further processed pursuant to this Directive. Once such data are no longer needed for those purposes, they shall be destroyed.

4. The Commission may provide access to the database to an authority of a third country or to an international organisation in so far as this is necessary for the purposes referred to in paragraph 2 of this Article, provided that:

(a) the requirements of Article 9 of Regulation (EC) No 45/2001 are fulfilled; and

(b) the third country or the international organisation does not limit access by Member States or by the Commission to its corresponding database.

The Commission shall ensure that the third country or international organisation does not transfer the data to another third country or international organisation without the Commission's express written authorisation and under the conditions specified by the Commission.

Article 26

Competent authorities

1. Member States shall designate, where applicable, which competent authorities are to:

(a) organise and supervise the examinations referred to in Article 18;

(b) approve the training programmes referred to in Article 19;

(c) approve simulators referred to in Article 21;

(d) issue, renew, suspend or withdraw the certificates and issue the specific authorisations referred to in Articles 4, 5, 6, 11, 12, 13, 14 and 38 as well as the service record books and the logbooks referred to in Article 22;

(e) validate the navigation time in service record books referred to in Article 22;

(f) determine the medical practitioners who may issue medical certificates pursuant to Article 23;

(g) keep the registers referred to in Article 25;

(h) detect and combat fraud and other unlawful practices referred to in Article 29.

2. Member States shall notify the Commission of all competent authorities within their territory that they have designated in accordance with paragraph 1. The Commission shall make this information publicly available.

Article 27

Monitoring

1. Member States shall ensure that all activities by governmental and non-governmental bodies under their authority related to training, to assessments of competence, and to the issuing and updating of Union certificates of qualification, service record books and logbooks, are continuously monitored through a quality standards system to ensure the achievement of the objectives of this Directive.

2. Member States shall ensure that the training objectives and related standards of competence to be achieved are clearly defined and identify the levels of knowledge and skills to be assessed and examined in accordance with this Directive.

3. Member States shall ensure, having regard to the policies, systems, controls and internal quality-assurance reviews established to ensure achievement of the defined objectives, that the fields of application of the quality standards cover:

(a) the issuance, renewal, suspension and withdrawal of Union certificates of qualification, service record books and logbooks;

(b) all training courses and programmes;

(c) examinations and assessments carried out by or under the authority of each Member State; and

(d) the qualifications and experience required of trainers and examiners.

Article 28

Evaluation

1. Member States shall ensure that independent bodies evaluate activities relating to competence acquisition and assessment and to the administration of Union certificates of qualification, services record books and logbooks, by 17 January 2037 and at least every 10 years thereafter.

2. Member States shall ensure that the results of the evaluations by those independent bodies are duly documented and brought to the attention of the competent authorities concerned. If necessary, Member States shall take appropriate measures to remedy any shortcomings identified by the independent evaluation.

Article 29

Prevention of fraud and other unlawful practices

1. Member States shall take appropriate measures to prevent fraud and other unlawful practices involving Union certificates of qualification, service record books, logbooks, medical certificates and registers provided for in this Directive.

2. Member States shall exchange relevant information with the competent authorities of other Member States concerning the certification of persons involved in the operation of craft, including information on the suspension and withdrawal of certificates. In doing so, they shall comply fully with the principles of personal data protection laid down in Regulation (EU) 2016/679.

Article 30

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER 5

FINAL PROVISIONS

Article 31

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 17(1) and (4), Article 21(2), Article 23(6) and Article 25(1) and (2) shall be conferred on the Commission for a period of five years from 16 January 2018. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in this Article may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to this Article shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 32

CESNI Standards and Delegated Acts

Delegated acts adopted under this Directive shall, except for those based on Article 25, make reference to standards established by CESNI, provided that:

(a) those standards are available and up-to-date;

(b) those standards comply with any applicable requirements set out in the Annexes;

(c) Union interests are not compromised by changes in the decision-making process of CESNI.

Where these conditions are not met, the Commission may provide or refer to other standards.

Where delegated acts adopted under this Directive refer to standards, the Commission shall include the entire text of those standards in those delegated acts, and shall make or update the relevant reference and enter the date of application in Annex IV.

Article 33

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. References to the committee set up pursuant to Article 7 of Directive 91/672/EEC, which is repealed by this Directive, shall be construed as references to the committee set up by this Directive.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. If the committee's opinion is to be obtained by written procedure, its chair may decide to terminate the procedure without result within the time-limit for the delivery of the opinion.

Article 34

CESNI Standards and Implementing Acts

When adopting the implementing acts referred to in Articles 11(3), 18(3) and 22(4) the Commission shall make reference to standards established by CESNI, and set the date of application, provided that:

(a) those standards are available and up-to-date;

(b) those standards comply with any applicable requirements set out in the Annexes;

(c) Union interests are not compromised by changes in the decision-making process of CESNI.

Where these conditions are not met, the Commission may provide or refer to other standards.

Where implementing acts adopted under this Directive refer to standards, the Commission shall include the entire text of those standards in those implementing acts.

Article 35

Review

1. The Commission shall evaluate this Directive together with the implementing and delegated acts referred to in this Directive, and shall submit the results of the evaluation to the European Parliament and the Council no later than 17 January 2030.

2. By 17 January 2028, each Member State shall make available to the Commission the information needed for the purposes of monitoring the implementation and evaluation of this Directive, in accordance with guidelines provided by the Commission in consultation with Member States as regards information collection, format and content.

Article 36

Phasing-in

1. The Commission shall adopt delegated acts referred to in Article 17(1) and (4), Article 21(2), Article 23(6) and Article 25(1) and (2) by 17 January 2020.

At the latest 24 months after the adoption of the delegated acts referred to in Article 25(2), the Commission shall set up the database provided for in that Article.

2. The Commission shall adopt implementing acts referred to in Article 11(3), Article 18(3) and Article 22(4) by 17 January 2020.

Article 37

Repeal

Directives 91/672/EEC and 96/50/EC are repealed with effect from 18 January 2022.

References to the repealed Directives shall be construed as references to this Directive.

Article 38

Transitional provisions

1. Boatmasters' certificates issued in accordance with Directive 96/50/EC and certificates referred to in Article 1(6) of Directive 96/50/EC, as well as Rhine navigation licences referred to in Article 1(5) of Directive 96/50/EC, that were issued prior to 18 January 2022, shall remain valid on the Union inland waterways for which they were valid before that date, for a maximum of 10 years after that date.

Before 18 January 2032, the Member State that issued the certificates referred to in the first subparagraph shall issue to boatmasters who hold such certificates in accordance with the model prescribed by this Directive, upon their request, a Union certificate of qualification or a certificate as referred to in Article 10(2), subject to the boatmaster having provided satisfactory documentary evidence as referred to in points (a) and (c) of Article 11(1).

2. When issuing Union certificates of qualification in accordance with paragraph 1 of this Article, Member States shall safeguard previously granted entitlements as far as possible, in particular as regards the specific authorisations referred to in Article 6.

3. Crew members, other than boatmasters, who hold a certificate of qualification issued by a Member State prior to 18 January 2022, or who hold a qualification recognised in one or more Member States, may still rely on that certificate or qualification for a maximum of 10 years after that date. During that period, such crew members may continue to rely on Directive 2005/36/EC for the recognition of their qualification by other Member States' authorities. Before the expiry of that period, they may apply to a competent authority issuing such certificates for a Union certificate of qualification or a certificate in application of Article 10(2), subject to the crew members having provided satisfactory evidence as referred to in points (a) and (c) of Article 11(1).

Where crew members referred to in the first subparagraph of this paragraph apply for a Union certificate of qualification or a certificate referred to in Article 10(2), Member States shall ensure that a certificate of qualification is issued for which the competence requirements are similar to or lower than those of the certificate to be replaced. A certificate for which the requirements are higher than those of the certificate to be replaced shall only be issued where the following conditions are met:

(a) for the Union certificate of qualification as a boatman: 540 days of navigation time, including at least 180 days in inland navigation;

(b) for the Union certificate of qualification as an able boatman: 900 days of navigation time, including at least 540 days in inland navigation;

(c) for the Union certificate of qualification as a helmsman: 1 080 days of navigation time, including at least 720 days in inland navigation.

The navigation experience shall be demonstrated by means of a service record book, logbook or other proof.

The minimum durations of the navigation time as set in points (a), (b) and (c) of the second subparagraph of this paragraph may be reduced by a maximum of 360 days of navigation time where the applicant has a diploma which is recognised by the competent authority and which confirms the applicant's specialised training in inland navigation comprising practical navigation work. The reduction of the minimum duration may not be greater than the duration of the specialised training.

4. Service record books and logbooks issued prior to 18 January 2022 that were issued in accordance with rules other than those set out by this Directive may remain active for a maximum of 10 years after 18 January 2022.

5. By way of derogation from paragraph 3, for crew members on ferries who hold national certificates that do not fall within the scope of Directive 96/50/EC and that were issued prior to 18 January 2022, such certificates shall remain valid on those Union inland waterways for which they were valid before this date for a maximum of 20 years after that date.

Before the expiry of that period, such crew members may apply to a competent authority issuing such certificates for a Union certificate of qualification or for a certificate referred to in Article 10(2), on condition that they provide satisfactory evidence as referred to in points (a) and (c) of Article 11(1). The second and the third subparagraph of paragraph 3 of this Article shall apply accordingly.

6. By way of derogation from Article 4(1), until 17 January 2038, Member States may allow boatmasters who sail sea-going ships operating on specific inland waterways to carry a certificate of competency for masters that has been issued in accordance with the provisions of the STCW Convention, provided that:

(a) this inland navigation activity is performed at the beginning or at the end of a maritime transport journey; and

(b) the Member State has recognised certificates referred to in this paragraph for at least five years on 16 January 2018 on the inland waterways concerned.

Article 39

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 January 2022. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. By way of derogation from paragraph 1 of this Article, a Member State in which all persons referred to in Article 4(1), Article 5(1) and Article 6 operate exclusively on national inland waterways that are not linked to the navigable network of another Member State shall only be obliged to bring into force those measures which are necessary to ensure compliance with Articles 7, 8, 10 as regards recognition of certificates of qualification and the service record book, Article 14(2) and (3) as regards suspensions, the second subparagraph of Article 22(1) and (2), point (d) of Article 26(1) where applicable, points (e) and (h) of Article 26(1), Article 26(2), Article 29 as regards prevention of fraud, Article 30 as regards penalties and Article 38 with the exception of paragraph 2 of that Article as regards transitional provisions. Such Member State shall bring those measures into force by 17 January 2022.

Such Member State may not issue Union certificates of qualifications or approve training programmes or simulators until it has transposed and implemented the remaining provisions of this Directive and has informed the Commission that it has done so.

3. By way of derogation from paragraph 1 of this Article, a Member State in which all persons are exempted pursuant to Article 2(3) shall only be obliged to bring into force those measures which are necessary to ensure compliance with Article 10 as regards recognition of certificates of qualification and the service record book, with Article 38 as regards recognition of valid certificates, as well as with Article 15. Such Member State shall bring those measures into force by 17 January 2022.

Such Member State may not issue Union certificates of qualification or approve training programmes or simulators until it has transposed and implemented the remaining provisions of this Directive and has informed the Commission that it has done so.

4. By way of derogation from paragraph 1 of this Article, a Member State shall not be obliged to transpose this Directive as long as inland waterway navigation is not technically possible on its territory.

Such Member State may not issue Union certificates of qualification or approve training programmes or simulators until it has transposed and implemented the provisions of this Directive and informed the Commission that it has done so.

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

Article 40

Entry into force

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

Article 41

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

ANNEX I

MINIMUM REQUIREMENTS FOR AGE, ADMINISTRATIVE COMPLIANCE, COMPETENCE AND NAVIGATION TIME

The minimum requirements for the deck crew qualifications set out in this Annex are to be understood as an ascending level of qualifications, with the exception of the qualifications of deckhands and apprentices, which are considered to be at the same level.

1 Deck crew qualifications at entry level

1.1 Minimum requirements for certification as a deckhand

Every applicant for a Union certificate of qualification shall:

— be at least 16 years of age;

— have completed basic safety training according to national requirements.

1.2 Minimum requirements for certification as an apprentice

Every applicant for a Union certificate of qualification shall:

— be at least 15 years of age;

— have signed an apprenticeship agreement which provides for an approved training programme as referred to in Article 19.

2 Deck crew qualifications at operational level

2.1 Minimum requirements for certification as a boatman

Every applicant for a Union certificate of qualification shall:

(a) — be at least 17 years of age;

— have completed an approved training programme, as referred to in Article 19, which was of a duration of at least two years, and which covered the standards of competence for the operational level set out in Annex II;

— have accumulated navigation time of at least 90 days as part of this approved training programme;

or

(b) — be at least 18 years of age;

— have passed an assessment of competence by an administrative authority as referred to in Article 18, to verify that the standards of competence for the operational level set out in Annex II are met;

— have accumulated navigation time of at least 360 days, or have accumulated navigation time of at least 180 days if the applicant can also provide proof of work experience of at least 250 days that the applicant acquired on a sea-going ship as a member of the deck crew;

or

(c) — have a minimum of five years' work experience prior to the enrolment in an approved training programme, or have at least 500 days' work experience on a sea-going ship as a member of the deck crew prior to the enrolment in an approved training programme, or have completed any vocational training programme of at least three years' duration prior to the enrolment in an approved training programme;

— have completed an approved training programme as referred to in Article 19, which was of a duration of at least nine months, and which covered the standards of competence for the operational level set out in Annex II;

— have accumulated navigation time of at least 90 days as part of that approved training programme.

2.2 Minimum requirements for certification as an able boatman

Every applicant for a Union certificate of qualification shall:

(a) — have accumulated navigation time of at least 180 days while qualified to serve as boatman;

or

(b) — have completed an approved training programme as referred to in Article 19, which was of a duration of at least three years, and which covered the standards of competence for the operational level set out in Annex II;

— have accumulated navigation time of at least 270 days as part of this approved training programme.

2.3 Minimum requirements for certification as a helmsman

Every applicant for a Union certificate of qualification shall:

(a) — have accumulated navigation time of at least 180 days while qualified to serve as able boatman;

— hold a radio operator's certificate;

or

(b) — have completed an approved training programme as referred to in Article 19, which was of a duration of at least three years, and which covered the standards of competence for the operational level set out in Annex II;

— have accumulated navigation time of at least 360 days as part of this approved training programme;

— hold a radio operator's certificate;

or

(c) — have a minimum of 500 days' work experience as a maritime master;

— have passed an assessment of competence by an administrative authority as referred to in Article 18 to verify that the standards of competence for the operational level set out in Annex II are met;

— hold a radio operator's certificate.

3 Deck crew qualifications at management level

3.1 Minimum requirements for certification as a boatmaster

Every applicant for a Union certificate of qualification shall:

(a) — be at least 18 years of age;

— have completed an approved training programme as referred to in Article 19, which was of a duration of at least three years and which covered the standards of competence for the management level set out in Annex II;

— have accumulated navigation time of at least 360 days as part of this approved training programme or after completion thereof;

— hold a radio operator's certificate;

or

(b) — be at least 18 years of age;

— hold a Union certificate of qualification as a helmsman or a certificate as a helmsman recognised in accordance with Article 10(2) or (3);

— have accumulated navigation time of at least 180 days;

— have passed an assessment of competence by an administrative authority as referred to in Article 18 to verify that the standards of competence for the management level set out in Annex II are met;

— hold a radio operator's certificate;

or

(c) — be at least 18 years of age;

— have accumulated navigation time of at least 540 days, or have accumulated navigation time of at least 180 days, if the applicant can also provide proof of work experience of at least 500 days that the applicant acquired on a sea-going ship as a member of the deck crew;

— have passed an assessment of competence by an administrative authority as referred to in Article 18 to verify that the standards of competence for the management level set out in Annex II are met;

— hold a radio operator's certificate;

or

(d) — have a minimum of five years' work experience prior to the enrolment in an approved training programme, or have at least 500 days' work experience on a sea-going ship as a member of the deck crew prior to the enrolment in an approved training programme, or have completed any vocational training programme of at least three years' duration prior to the enrolment in an approved training programme;

— have completed an approved training programme referred to in Article 19, which was of a duration of at least one and a half years, and which covered the standards of competence for the management level set out in Annex II;

— have accumulated navigation time of at least 180 days as part of that approved training programme and at least 180 days after completion thereof;

— hold a radio operator's certificate.

3.2 Minimum requirements for specific authorisations for Union certificates of qualification as a boatmaster

3.2.1 Waterways with a maritime character

Every applicant shall:

— meet the standards of competence for sailing on waterways with a maritime character set out in Annex II.

3.2.2 Radar

Every applicant shall:

— meet the standards of competence for sailing with the aid of radar set out in Annex II.

3.2.3 Liquefied natural gas

Every applicant shall:

— hold a Union certificate of qualification as a liquefied natural gas (LNG) expert referred to in section 4.2.

3.2.4 Large convoys

Every applicant shall have accumulated navigation time of at least 720 days, including at least 540 days while qualified to serve as a boatmaster and at least 180 days in steering a large convoy.

4 Qualifications for specific operations

4.1 Minimum requirements for the certification of a passenger navigation expert

Every applicant for the first Union certificate of qualification as a passenger navigation expert shall:

— be at least 18 years of age;

— meet the standards of competence for passenger navigation experts set out in Annex II.

Every applicant for the renewal of a Union certificate of qualification as a passenger navigation expert shall:

— pass a new administrative exam or complete a new approved training programme in accordance with Article 17(2).

4.2 Minimum requirements for certification as a LNG expert

Every applicant for the first Union certificate of qualification as a LNG expert shall:

— be at least 18 years of age;

— meet the standards of competence for LNG experts set out in Annex II.

Every applicant for the renewal of a Union certificate of qualification as a LNG expert shall:

(a) have accumulated the following navigation time aboard a craft using LNG as fuel:

— at least 180 days during the previous five years; or

— at least 90 days during the previous year;

or

(b) meet the standards of competence for LNG experts set out in Annex II.

ANNEX II

ESSENTIAL COMPETENCE REQUIREMENTS

1 Essential competence requirements at operational level

1.1 Navigation

The boatman shall assist the management of the craft in situations of manoeuvring and handling a craft on inland waterways. The boatman shall be able to do so on all types of waterways and in all types of ports. In particular the boatman shall be able to:

— assist in preparing the craft for sailing, in order to ensure a safe voyage in all circumstances;

— assist with mooring and anchoring operations;

— assist in the sailing and manoeuvring of the craft in a nautically safe and economical way.

1.2 Operation of craft

The boatman shall be able to:

— assist the management of the craft in controlling the operation of the craft and in the care of persons on board;

— use the equipment of the craft.

1.3 Cargo handling, stowage and passenger transport

The boatman shall be able to:

— assist the management of the craft in the preparation, stowage and monitoring of cargo during loading and unloading operations;

— assist the vessel's management in providing services to passengers;

— provide direct assistance to disabled persons and persons with reduced mobility in accordance with the training requirements and instructions of Annex IV of Regulation (EU) No 1177/2010 of the European Parliament and of the Council ([1]);

1.4 Marine engineering and electrical, electronic and control engineering

The boatman shall be able to:

— assist the management of the craft in marine, electrical, electronic, and control engineering to ensure general technical safety;

— perform maintenance work on marine, electrical, electronic, and control engineering equipment to ensure general technical safety.

1.5 Maintenance and repair

The boatman shall be able to:

— assist the management of the craft in maintaining and repairing the craft, its devices and its equipment.

([1]) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

1.6 Communication

The boatman shall be able to:

— communicate generally and professionally, which includes the ability to use standardised communication phrases in situations with communication problems;

— be sociable.

1.7 Health and safety and environmental protection

The boatman shall be able to:

— adhere to safe working rules, understand the importance of health and safety rules and the importance of the environment;

— acknowledge the importance of training on safety aboard and act immediately in the event of emergencies;

— take precautions to prevent fire, and use the firefighting equipment correctly;

— perform duties, taking into account the importance of protecting the environment.

2 Essential competence requirements for competences at management level

2.0 Supervision

The boatmaster shall be able to:

— instruct other deck crew members and supervise the tasks they exercise, as referred to Section 1 of this Annex, implying adequate abilities to perform these tasks.

2.1 Navigation

The boatmaster shall be able to:

— plan a journey and conduct navigation on inland waterways, including being able to choose the most logical, economic and ecological sailing route to reach the loading and unloading destinations, taking into account the applicable traffic regulations and agreed set of rules applicable in inland navigation;

— apply knowledge of the applicable rules on the manning of craft, including knowledge on resting time and on deck crew members composition;

— sail and manoeuvre, ensuring the safe operation of the craft in all conditions on inland waterways, including in situations that involve high traffic density or where other craft carry dangerous goods and require basic knowledge on the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN);

— respond to navigational emergencies on inland waterways.

2.2 Operation of craft

The boatmaster shall be able to:

— apply knowledge of inland waterway shipbuilding and construction methods to the operation of various types of craft and have basic knowledge of the technical requirements for inland waterway vessels, as referred to in Directive (EU) 2016/1629 of the European Parliament and of the Council [1];

— control and monitor the mandatory equipment as mentioned in the applicable craft certificate.

2.3 Cargo handling, stowage and passenger transport

The boatmaster shall be able to:

— plan and ensure the safe loading, stowage, securing, unloading and care of cargoes during the voyage;

[1] Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC (OJ L 252, 16.9.2016, p. 118).

— plan and ensure the stability of the craft;

— plan and ensure the safe transport of and care for passengers during the voyage, including providing direct assistance to disabled persons and persons with reduced mobility in accordance with the training requirements and instructions of Annex IV of Regulation (EU) No 1177/2010.

2.4 Marine engineering and electrical, electronic and control engineering

The boatmaster shall be able to:

— plan the workflow of marine engineering and electrical, electronic and control engineering;

— monitor the main engines and auxiliary machinery and equipment;

— plan and give instructions in relation to the pump and the pump control system of the craft;

— organise the safe use and application, maintenance and repair of the electro-technical devices of the craft;

— control the safe maintenance and repair of technical devices.

2.5 Maintenance and repair

The boatmaster shall be able to:

— organise the safe maintenance and repair of the craft and its equipment.

2.6 Communication

The boatmaster shall be able to:

— perform human resources management, be socially responsible, and take care of the organisation of workflow and training on board the craft;

— ensure good communication at all times, which includes the use of standardised communication phrases in situations with communication problems;

— foster a well-balanced and sociable working environment on board.

2.7 Health and safety, passenger rights and environmental protection

The boatmaster shall be able to:

— monitor the applicable legal requirements and take measures to ensure the safety of life;

— maintain safety and security for persons on board, including providing direct assistance to disabled persons and persons with reduced mobility in accordance with the training requirements and instructions of Annex IV of Regulation (EU) No 1177/2010;

— set-up emergency and damage control plans, and handle emergency situations;

— ensure compliance with requirements for environmental protection.

3 Essential competence requirements for specific authorisations

3.1 Sailing on inland waterways with a maritime character

The boatmaster shall be able to:

— work with up-to-date charts and maps, notices to skippers and mariners and other publications specific to waterways with a maritime character;

— use tidal datums, tidal currents, periods and cycles, the time of tidal currents and tides and variations across an estuary;

— use SIGNI (Signalisation de voies de Navigation Intérieure) and IALA (International Association of Marine Aids to Navigation and Lighthouse Authorities) for safe navigation on inland waterways with a maritime character.

3.2 Radar navigation

The boatmaster shall be able to:

— take appropriate action in relation to navigation with the aid of radar before casting off;

— interpret radar displays and analyse the information supplied by radar;

— reduce interference of varying origin;

— navigate by radar taking into account the agreed set of rules applicable to inland navigation and in accordance with the regulations specifying the requirements for navigating by radar (such as manning requirements or technical requirements for vessels);

— handle specific circumstances, such as density of traffic, failure of devices, dangerous situations.

4 Essential competence requirements for specific operations

4.1 Passenger navigation expert

Every applicant shall be able to:

— organise the use of life-saving equipment on board passenger vessels;

— apply safety instructions and take the necessary measures to protect passengers in general, especially in the event of emergencies (e.g. evacuation, damage, collision, running aground, fire, explosion or other situations which may give rise to panic), including providing direct assistance to disabled persons and persons with reduced mobility in accordance with training requirements and instructions of Annex IV of Regulation (EU) No 1177/2010;

— communicate in elementary English;

— meet the relevant requirements of Regulation (EU) No 1177/2010.

4.2 Liquefied natural gas (LNG) expert

Every applicant shall be able to:

— ensure compliance with legislation and standards applicable to craft that use LNG as fuel, as well as with other relevant health and safety regulations;

— be aware of specific points of attention related to LNG, recognise the risks and manage them;

— operate the systems specific to LNG in a safe way;

— ensure regular checking of the LNG system;

— know how to perform LNG bunkering operations in a safe and controlled manner;

— prepare the LNG system for craft maintenance;

— handle emergency situations related to LNG.

ANNEX III

ESSENTIAL REQUIREMENTS REGARDING MEDICAL FITNESS

Medical fitness, comprising of physical and psychological fitness, means not suffering from any disease or disability which makes the person serving on board a craft unable to:

— execute the tasks necessary to operate a craft;

— perform assigned duties at any time; or

— perceive their environment correctly.

The examination shall, in particular, cover visual and auditory acuity, motor functions, the neuro-psychiatric state and cardiovascular conditions.

ANNEX IV

APPLICABLE REQUIREMENTS

Table A

Subject matter, Article	Conformity requirements	Start of application
Practical examinations, Article 17(4)	[CESNI …]	[___]
Approval of simulators, Article 21(2)		
Characteristics and conditions of use of registers, Article 25(2)		

Table B

Item	Essential competence requirement	Conformity requirements	Start of application
1	Essential competence requirements at operational level	[CESNI ….]	[___]
2	Essential competence requirements for competences at management level	—	—
3	Essential requirements for competence for specific authorisations		
3.1	Sailing on waterways with a maritime character		
3.2	Radar navigation		
4	Essential requirements for competence for specific operations		
4.1	Passenger navigation expert		
4.2	Liquefied natural gas (LNG) expert		

Table C

Essential requirements regarding medical fitness	Conformity requirements	Start of application
Medical fitness examination	[CESNI ….]	[___]

DIRECTIVE (EU) 2017/2398 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 153(2), in conjunction with point (a) of Article 153(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Directive 2004/37/EC of the European Parliament and of the Council ([3]) aims to protect workers against risks to their health and safety from exposure to carcinogens or mutagens at the workplace. A consistent level of protection from the risks related to carcinogens and mutagens is provided for in that Directive by a framework of general principles to enable Member States to ensure the consistent application of the minimum requirements. Binding occupational exposure limit values established on the basis of available information, including scientific and technical data, economic feasibility, a thorough assessment of the socioeconomic impact and availability of exposure measurement protocols and techniques at the workplace, are important components of the general arrangements for the protection of workers established by that Directive. The minimum requirements provided for in that Directive aim to protect workers at Union level. More stringent binding occupational exposure limit values can be set by Member States.

(2) Occupational exposure limit values are part of risk management under Directive 2004/37/EC. Compliance with those limit values is without prejudice to other obligations on employers pursuant to that Directive, in particular the reduction of the use of carcinogens and mutagens at the workplace, the prevention or reduction of workers' exposure to carcinogens or mutagens and the measures which should be implemented to that effect. Those measures should include, in so far as is technically possible, the replacement of the carcinogen or mutagen by a substance, mixture or process which is not dangerous or is less dangerous to workers' health, the use of a closed system or other measures aiming to reduce the level of workers' exposure. In that context, it is essential to take the precautionary principle into account where there are uncertainties.

(3) For most carcinogens and mutagens, it is not scientifically possible to identify levels below which exposure would not lead to adverse effects. While setting the limit values at the workplace in relation to carcinogens and mutagens pursuant to this Directive does not completely eliminate risks to the health and safety of workers arising from exposure at work (residual risk), it nonetheless contributes to a significant reduction of risks arising from such exposure in the stepwise and goal-setting approach pursuant to Directive 2004/37/EC. For other carcinogens and mutagens, it is scientifically possible to identify levels below which exposure is not expected to lead to adverse effects.

([1]) OJ C 487, 28.12.2016, p. 113.
([2]) Position of the European Parliament of 25 October 2017 (not yet published in the Official Journal) and decision of the Council of 7 December 2017.
([3]) Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (OJ L 158, 30.4.2004, p. 50).

(4) Maximum levels for the exposure of workers to some carcinogens or mutagens are established by values which, pursuant to Directive 2004/37/EC, must not be exceeded. Those limit values should be revised and limit values should be set for additional carcinogens and mutagens.

(5) On the basis of the implementation reports submitted by Member States every five years pursuant to Article 17a of Council Directive 89/391/EEC [1], the Commission is to evaluate the implementation of the occupational safety and health legal framework, including Directive 2004/37/EC, and, where necessary, to inform the relevant institutions and the Advisory Committee on Safety and Health at Work (ACSH) of initiatives to improve the operation of that framework, including, where necessary, appropriate legislative proposals.

(6) The limit values set out in this Directive should be revised where necessary in the light of available information, including new scientific and technical data and evidence-based best practices, techniques and protocols for exposure level measurement at the workplace. That information should, if possible, include data on residual risks to the health of workers and opinions of the Scientific Committee on Occupational Exposure Limits (SCOEL) and of the ACSH. Information related to residual risk, made publicly available at Union level, is valuable for future work to limit risks from occupational exposure to carcinogens and mutagens, including by revising the limit values set out in this Directive. Transparency of such information should be further encouraged.

(7) Due to the lack of consistent data on substance exposure, it is necessary to protect exposed workers or workers who are at risk of exposure by enforcing relevant health surveillance. It should therefore be possible for appropriate health surveillance of workers, for whom the results of the assessment referred to in Article 3(2) of Directive 2004/37/EC reveal a risk to health or safety, to continue after the end of exposure following an indication by the doctor or authority responsible for the health surveillance. Such surveillance should be carried out in accordance with the national law or practice of the Member States. Article 14 of Directive 2004/37/EC should therefore be amended to ensure such health surveillance for all workers concerned.

(8) Appropriate and consistent data collection by Member States from employers is necessary to ensure the safety and proper care of workers. The Member States are to provide the Commission with information for the purposes of its reports on the implementation of Directive 2004/37/EC. The Commission already supports best practices with regard to data collection in Member States and should propose, as appropriate, further improvements to the data collection required pursuant to Directive 2004/37/EC.

(9) Directive 2004/37/EC requires employers to use existing appropriate procedures for the measurement of exposure levels to carcinogens and mutagens at the workplace, in consideration of the fact that SCOEL notes in its recommendations the feasibility of monitoring exposure at any recommended occupational exposure limit value and biological limit values. The improvement of the equivalence of methodologies for measurement of the concentration in the air of carcinogens and mutagens in relation to limit values set out in Directive 2004/37/EC is important in order to reinforce the obligations provided for therein and ensure a similar and a high-level of health protection for workers and a level playing field across the Union.

(10) Amendments to Annex III to Directive 2004/37/EC provided for in this Directive are the first step in a longer term process to update it. As the next step in that process, the Commission has submitted a proposal for the establishment of limit values and skin notations with regard to seven additional carcinogens. Moreover, the Commission stated in its Communication of 10 January 2017, 'Safer and Healthier Work for All — Modernisation of the EU Occupational Safety and Health Legislation and Policy', that there are to be further amendments to Directive 2004/37/EC. The Commission should, on an ongoing basis, continue its work on updates of Annex III to Directive 2004/37/EC, in line with Article 16 thereof and established practice. That work should result, where appropriate, in proposals for future revisions of the limit values set out in Directive 2004/37/EC and in this Directive, as well as proposals for additional limit values.

[1] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

(11) It is necessary to consider other absorption pathways of all carcinogens and mutagens, including the possibility of uptake through the skin, in order to ensure the best possible level of protection.

(12) SCOEL assists the Commission, in particular in identifying, evaluating and analysing in detail the latest available scientific data, and in proposing occupational exposure limit values for the protection of workers from chemical risks, which are to be set at Union level pursuant to Council Directive 98/24/EC ([1]) and Directive 2004/37/EC. As regards the chemical agents o-toluidine and 2-nitropropane, there were no SCOEL recommendations available in 2016 and therefore other sources of scientific information, adequately robust and in the public domain, have been considered.

(13) The limit values for vinyl chloride monomer and hardwood dusts set out in Annex III to Directive 2004/37/EC should be revised in the light of more recent scientific and technical data. The distinction between hardwood and softwood dust should be further assessed as regards the limit value set out in that Annex, as recommended by SCOEL and the International Agency for Research on Cancer.

(14) Mixed exposure to more than one species of wood is very common, which complicates the exposure assessment of different species of wood. Exposure to dust from softwood and hardwood is common among workers in the Union and may cause respiratory symptoms and diseases, with the most serious health effect being the risk of nasal and sinonasal cancers. It is therefore appropriate to establish that if hardwood dusts are mixed with other wood dusts, the limit value set out in the Annex for hardwood dust should apply to all wood dusts present in that mixture.

(15) Certain chromium (VI) compounds meet the criteria for classification as carcinogenic (category 1A or 1B) in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council ([2]) and are therefore carcinogens within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for chromium (VI) compounds that are carcinogens within the meaning of Directive 2004/37/EC. It is therefore appropriate to establish a limit value for those chromium (VI) compounds.

(16) With regard to chromium VI, a limit value of 0,005 mg/m^3 may not be appropriate and, in some sectors, may be difficult to achieve in the short term. A transitional period should therefore be introduced during which the limit value of 0,010 mg/m^3 should apply. For the specific situation where the work activity concerns work involving welding or plasma cutting processes or similar such processes that generate fume, a limit value of 0,025 mg/m^3 should apply during that transitional period, after which the generally applicable limit value of 0,005 mg/m^3 should apply.

(17) Certain refractory ceramic fibres meet the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and are therefore carcinogens within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for refractory ceramic fibres that are carcinogens within the meaning of Directive 2004/37/EC. It is therefore appropriate to establish a limit value for those refractory ceramic fibres.

(18) There is sufficient evidence of the carcinogenicity of respirable crystalline silica dust. On the basis of available information, including scientific and technical data, a limit value for respirable crystalline silica dust should be established. Respirable crystalline silica dust generated by a work process is not subject to classification in accordance with Regulation (EC) No 1272/2008. It is therefore appropriate to include work involving exposure to respirable crystalline silica dust generated by a work process in Annex I to Directive 2004/37/EC and to establish a limit value for respirable crystalline silica dust ('respirable fraction') that should be subject to review, in particular in light of the number of workers exposed.

([1]) Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 131, 5.5.1998, p. 11).

([2]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

(19) Guides and examples of good practices produced by the Commission, the Member States or the social partners, or other initiatives, such as the Social Dialogue 'Agreement on Workers' Health Protection Through the Good Handling and Use of Crystalline Silica and Products Containing it' (NEPSi) are valuable and necessary instruments to complement regulatory measures and in particular to support the effective implementation of limit values, and should therefore be given serious consideration. They include measures to prevent or minimise exposure such as water-assisted suppression to prevent dust from becoming airborne in the case of respirable crystalline silica.

(20) Ethylene oxide meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for that carcinogen. SCOEL has identified, for ethylene oxide, the possibility of significant uptake through the skin. It is therefore appropriate to establish a limit value for ethylene oxide and to assign to it a notation indicating the possibility of significant uptake through the skin.

(21) 1,2-Epoxypropane meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to identify an exposure level below which exposure to that carcinogen is not expected to lead to adverse effects. It is therefore appropriate to establish a limit value for 1,2-epoxypropane.

(22) Acrylamide meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for that carcinogen. SCOEL has identified, for acrylamide, the possibility of significant uptake through the skin. It is therefore appropriate to establish a limit value for acrylamide and to assign to it a notation indicating the possibility of significant uptake through the skin.

(23) 2-Nitropropane meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for that carcinogen. It is therefore appropriate to establish a limit value for 2-nitropropane.

(24) o-Toluidine meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for that carcinogen. It is therefore appropriate to establish a limit value for o-toluidine and to assign to it a notation indicating the possibility of significant uptake through the skin.

(25) 1,3-Butadiene meets the criteria for classification as carcinogenic (category 1A) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of the available information, including scientific and technical data, to set a limit value for that carcinogen. It is therefore appropriate to establish a limit value for 1,3-butadiene.

(26) Hydrazine meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of available information, including scientific and technical data, to set a limit value for that carcinogen. SCOEL has identified, for hydrazine, the possibility of significant uptake through the skin. It is therefore appropriate to establish a limit value for hydrazine and to assign to it a notation indicating the possibility of significant uptake through the skin.

(27) Bromoethylene meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and is therefore a carcinogen within the meaning of Directive 2004/37/EC. It is possible, on the basis of available information, including scientific and technical data, to set a limit value for that carcinogen. It is therefore appropriate to establish a limit value for bromoethylene.

(28) This Directive strengthens the protection of workers' health and safety at their workplace. Member States should transpose this Directive into their national law. They should ensure that competent authorities have a sufficient number of trained staff and other resources necessary to carry out their tasks related to the proper and effective implementation of this Directive, in accordance with national law or practice. Application of this Directive by employers would be facilitated if they had guidance, where relevant, to identify better ways to achieve compliance with this Directive.

(29) The Commission has consulted the ACSH. It has also carried out a two-stage consultation of management and labour at Union level in accordance with Article 154 of the Treaty on the Functioning of the European Union.

(30) In its opinions, the ACSH has referred to a review period for binding occupational exposure limit values for several substances, such as respirable crystalline silica dust, acrylamide and 1,3-butadiene. The Commission is to take into account those opinions when prioritising substances for scientific evaluation.

(31) In its opinion on refractory ceramic fibres, the ACSH agreed that a binding occupational exposure limit value is necessary but failed to reach a common position on a threshold. The Commission should therefore encourage the ACSH to submit an up-to-date opinion on refractory ceramic fibres with a view to reaching a common position on the limit value for that substance, without prejudice to the working methods of the ACSH and the autonomy of the social partners.

(32) At the workplace, men and women are often exposed to a cocktail of substances, which can increase health risks and cause adverse effects, inter alia, on their reproductive systems, including impaired fertility or infertility, and have a negative impact on foetal development and lactation. Substances which are toxic to reproduction are subject to Union measures providing for minimum requirements of the protection of health and safety of workers, in particular those provided for in Directive 98/24/EC and Council Directive 92/85/EEC [1]. Reprotoxic substances that are also carcinogens or mutagens are subject to the provisions of Directive 2004/37/EC. The Commission should evaluate the need to extend the application of the measures for the protection of health and safety of workers provided for in Directive 2004/37/EC to all reprotoxic substances.

(33) This Directive respects fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to life and the right to fair and just working conditions provided for, respectively, in Articles 2 and 31 thereof.

(34) The limit values set out in this Directive will be kept under review in the light of the implementation of Regulation (EC) No 1907/2006 of the European Parliament and of the Council [2], in particular to take account of the interaction between limit values set out under Directive 2004/37/EC and derived no effect levels for hazardous chemicals under that Regulation in order to protect workers effectively.

(35) Since the objectives of this Directive, which are to improve working conditions and to protect the health of workers from the specific risks arising from exposure to carcinogens and mutagens, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(36) Given that this Directive concerns the protection of the health and safety of workers at their workplace, it should be transposed within two years of the date of its entry into force.

(37) Directive 2004/37/EC should therefore be amended accordingly,

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[1] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

[2] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2004/37/EC is amended as follows:

(1) in Article 6, the following paragraph is added:

'The Member States shall take into account the information under points (a) to (g) of the first paragraph of this Article in their reports submitted to the Commission under Article 17a of Directive 89/391/EEC.';

(2) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The Member States shall establish, in accordance with national law or practice, arrangements for carrying out relevant health surveillance of workers for whom the results of the assessment referred to in Article 3(2) reveal a risk to health or safety. The doctor or authority responsible for the health surveillance of workers may indicate that health surveillance must continue after the end of exposure for as long as they consider it to be necessary to safeguard the health of the worker concerned.';

(b) paragraph 8 is replaced by the following:

'8. All cases of cancer identified in accordance with national law or practice as resulting from occupational exposure to a carcinogen or mutagen shall be notified to the competent authority.

The Member States shall take into account the information under this paragraph in their reports submitted to the Commission under Article 17a of Directive 89/391/EEC.';

(3) the following Article is inserted:

'*Article 18a*

Evaluation

The Commission shall, as part of the next evaluation of the implementation of this Directive in the context of the evaluation referred to in Article 17a of Directive 89/391/EEC, also evaluate the need to modify the limit value for respirable crystalline silica dust. The Commission shall propose, where appropriate, necessary amendments and modifications related to that substance.

No later than in the first quarter of 2019, the Commission shall, taking into account the latest developments in scientific knowledge, assess the option of amending the scope of this Directive to include reprotoxic substances. On that basis, the Commission shall present, if appropriate, and after consulting management and labour, a legislative proposal.';

(4) in Annex I, the following point is added:

'6. Work involving exposure to respirable crystalline silica dust generated by a work process';

(5) Annex III is replaced by the text in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 January 2020. They shall immediately inform the Commission of the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

ANNEX

'ANNEX III

Limit values and other directly related provisions (Article 16)

A. LIMIT VALUES FOR OCCUPATIONAL EXPOSURE

Name of agent	EC No [1]	CAS No [2]	Limit values [3]			Notation	Transitional measures
			mg/m^3 [4]	ppm [5]	f/ml [6]		
Hardwood dusts	—	—	2 [7]	—	—	—	Limit value 3 mg/m^3 until 17 January 2023
Chromium (VI) compounds which are carcinogens within the meaning of point (i) of Article 2(a) (as chromium)	—	—	0,005	—	—	—	Limit value 0,010 mg/m^3 until 17 January 2025 Limit value: 0,025 mg/m^3 for welding or plasma cutting processes or similar work processes that generate fume until 17 January 2025
Refractory ceramic fibres which are carcinogens within the meaning of point (i) of Article 2(a)	—	—	—	—	0,3	—	
Respirable crystalline silica dust	—	—	0,1 [8]	—	—	—	
Benzene	200-753-7	71-43-2	3,25	1	—	skin [9]	
Vinyl chloride monomer	200-831-0	75-01-4	2,6	1	—	—	
Ethylene oxide	200-849-9	75-21-8	1,8	1	—	skin [9]	
1,2-Epoxypropane	200-879-2	75-56-9	2,4	1	—	—	
Acrylamide	201-173-7	79-06-1	0,1	—	—	skin [9]	
2-Nitropropane	201-209-1	79-46-9	18	5	—	—	
o-Toluidine	202-429-0	95-53-4	0,5	0,1	—	skin [9]	

Name of agent	EC No (1)	CAS No (2)	Limit values (3)			Notation	Transitional measures
			mg/m^3 (4)	ppm (5)	f/ml (6)		
1,3-Butadiene	203-450-8	106-99-0	2,2	1	—	—	
Hydrazine	206-114-9	302-01-2	0,013	0,01	—	skin (9)	
Bromoethylene	209-800-6	593-60-2	4,4	1	—	—	

(1) EC No, i.e. Einecs, ELINCS or NLP, is the official number of the substance within the European Union, as defined in Section 1.1.1.2 in Annex VI, Part 1, to Regulation (EC) No 1272/2008.
(2) CAS No: Chemical Abstract Service Registry Number.
(3) Measured or calculated in relation to a reference period of eight hours.
(4) mg/m^3 = milligrams per cubic metre of air at 20 °C and 101,3 kPa (760 mm mercury pressure).
(5) ppm = parts per million by volume in air (ml/m^3).
(6) f/ml = fibres per millilitre.
(7) Inhalable fraction: if hardwood dusts are mixed with other wood dusts, the limit value shall apply to all wood dusts present in that mixture.
(8) Respirable fraction.
(9) Substantial contribution to the total body burden via dermal exposure possible.

B. OTHER DIRECTLY RELATED PROVISIONS

p.m.'

DIRECTIVE (EU) 2017/2399 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ([1]),

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

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) On 9 November 2015, the Financial Stability Board (FSB) published the Total Loss-absorbing Capacity (TLAC) Term Sheet ('the TLAC standard'),which was endorsed by the G20 in November 2015. The objective of the TLAC standard is to ensure that global systemically important banks (G-SIBs), referred to in the Union framework as global systemically important institutions (G-SIIs), have the loss-absorbing and recapitalisation capacity necessary to help ensure that, in and immediately following a resolution, critical functions can be continued without taxpayers' funds (public funds) or financial stability being put at risk. In its communication of 24 November 2015 entitled 'Towards the completion of the Banking Union', the Commission committed itself to bringing forward, by the end of 2016, a legislative proposal that would enable the TLAC standard to be implemented into Union law by the internationally agreed deadline of 2019.

(2) The implementation of the TLAC standard into Union law needs to take into account the existing institution-specific minimum requirement for own funds and eligible liabilities (MREL) applicable to all Union institutions as laid down in Directive 2014/59/EU of the European Parliament and of the Council ([4]). As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss-absorbing and recapitalisation capacity, the two requirements should be complementary elements of a common framework. Concretely, the Commission proposed that the harmonised minimum level of the TLAC standard for G-SIIs ('the TLAC minimum requirement') and the eligibility criteria for liabilities used to comply with that standard should be introduced in Union law through amendments to Regulation (EU) No 575/2013 of the European Parliament and of the Council ([5]), while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs as well as relevant eligibility criteria should be addressed through targeted amendments to Directive 2014/59/EU and to Regulation (EU) No 806/2014 of the European Parliament and of the Council ([6]).

([1]) OJ C 132, 26.4.2017, p. 1.
([2]) OJ C 173, 31.5.2017, p. 41.
([3]) Position of the European Parliament of 30 November 2017 (not yet published in the Official Journal) and decision of the Council of 7 December 2017.
([4]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).
([5]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([6]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

This Directive, which concerns the ranking of unsecured debt instruments in insolvency hierarchy, is complementary to the aforementioned legislative acts, as proposed to be amended, and to Directive 2013/36/EU of the European Parliament and of the Council [1].

(3) In view of those proposals and in order to ensure legal certainty for markets and for entities subject to MREL and TLAC, it is important to ensure timely clarity about the eligibility criteria of liabilities used for compliance with MREL and with Union law implementing TLAC, and to introduce appropriate grandfathering provisions for the eligibility of liabilities issued before the revised eligibility criteria come into effect.

(4) Member States should ensure that institutions have sufficient loss-absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation with a minimum impact on financial stability and while aiming to avoid an impact on taxpayers. That should be achieved through constant compliance by institutions with the TLAC minimum requirement, which is to be implemented in Union law through an amendment of Regulation (EU) No 575/2013, and with a requirement for own funds and eligible liabilities as provided for in Directive 2014/59/EU.

(5) The TLAC standard requires G-SIIs to meet the TLAC minimum requirement, with certain exceptions, with subordinated liabilities that rank in insolvency below liabilities excluded from TLAC ('subordination requirement'). Under the TLAC standard, subordination is to be achieved through the legal effects of a contract (known as contractual subordination), the laws of a given jurisdiction (known as statutory subordination) or a given corporate structure (known as structural subordination). Where required by Directive 2014/59/EU, institutions falling within the scope of that Directive should meet their firm-specific requirement with subordinated liabilities so as to minimise the risk of legal challenge by creditors, on the basis that the creditors' losses in resolution are greater than the losses that they would have incurred under normal insolvency proceedings (the no-creditor-worse-off principle).

(6) A number of Member States have amended or are in the process of amending the rules on insolvency ranking of unsecured senior debt under their national insolvency law to allow their institutions to comply with the subordination requirement in a more efficient manner, thereby facilitating resolution.

(7) The national rules adopted so far diverge significantly. The absence of harmonised Union rules creates uncertainty for issuing institutions and investors alike and is likely to make the application of the bail-in tool for cross-border institutions more difficult. The absence of harmonised Union rules is also likely to result in competitive distortions on the internal market, given that the costs for institutions to comply with the subordination requirement and the costs borne by investors when buying debt instruments issued by institutions could differ considerably across the Union.

(8) In its resolution of 10 March 2016 on the Banking Union [2], the European Parliament called on the Commission to present proposals to reduce further the legal risks of claims under the no creditor worse off principle, and, in its conclusions of 17 June 2016, the Council invited the Commission to put forward a proposal on a common approach to the bank creditors' hierarchy to enhance legal certainty in the event of resolution.

(9) It is, therefore, necessary to remove the significant obstacles in the functioning of the internal market and avoid distortions of competition resulting from the absence of harmonised Union rules on bank creditors' hierarchy and to prevent such obstacles and distortions from arising in the future. Consequently, the appropriate legal basis for this Directive is Article 114 of the Treaty on the Functioning of the European Union.

(10) In order to reduce to a minimum the costs of compliance with the subordination requirement and any negative impact on funding costs, this Directive should allow Member States to keep, where applicable, the existing class of ordinary unsecured senior debt, which is less costly for institutions to issue than any other subordinated liabilities. In order to enhance the resolvability of institutions, this Directive should, nevertheless, require Member States to create a new class of non-preferred senior debt that should rank in insolvency above own funds instruments and

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

[2] Not yet published in the Official Journal.

subordinated liabilities that do not qualify as own funds instruments, but below other senior liabilities. Institutions should remain free to issue debt in both the senior and the non-preferred senior classes. Of those two classes, and without prejudice to other options and exemptions provided for in the TLAC standard to comply with the subordination requirement, only the non-preferred senior class should be eligible to meet the subordination requirement. That is intended to enable institutions to use the less costly ordinary senior debt for their funding or any other operational reasons and to issue debt in the new non-preferred senior class to obtain funding while complying with the subordination requirement. Member States should be allowed to create several classes for other ordinary unsecured liabilities provided that they ensure, without prejudice to other options and exemptions provided for in the TLAC standard, that only the non-preferred senior class of debt instruments is eligible to meet the subordination requirement.

(11) To ensure that the new non-preferred senior class of debt instruments meets the eligibility criteria as described in the TLAC standard and as set out in Directive 2014/59/EU, thereby enhancing legal certainty, Member States should ensure that those debt instruments have an original contractual maturity of at least one year, do not contain embedded derivatives and are not derivatives themselves, and that the relevant contractual documentation related to their issuance and, where applicable, the prospectus explicitly refer to their lower ranking under normal insolvency proceedings. Debt instruments with variable interest derived from a broadly used reference rate, such as Euribor or Libor, and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, should not be considered to be debt instruments containing embedded derivatives solely because of those features. This Directive should be without prejudice to any requirement in national law to register debt instruments in the issuer's company registry for liabilities to meet the conditions for non-preferred senior class of debt instruments provided for in this Directive.

(12) To enhance legal certainty for investors, Member States should ensure that ordinary unsecured debt instruments and other ordinary unsecured liabilities that are not debt instruments have a higher priority ranking in their national insolvency laws than the new non-preferred senior class of debt instruments. Member States should also ensure that the new non-preferred senior class of debt instruments has a higher priority ranking than the priority ranking of own funds instruments and the priority ranking of any subordinated liabilities that do not qualify as own funds.

(13) Since the objectives of this Directive, namely to lay down harmonised rules for the insolvency ranking of unsecured debt instruments for the purposes of the Union recovery and resolution framework and, in particular, to improve the effectiveness of the bail-in regime, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. In particular, this Directive should be without prejudice to other options and exemptions provided for in the TLAC standard to comply with the subordination requirement.

(14) It is appropriate for the amendments to Directive 2014/59/EU provided for in this Directive to apply to unsecured claims resulting from debt instruments issued on or after the date of application of this Directive. However, for the purposes of legal certainty and to mitigate transitional costs as much as possible, it is necessary to introduce appropriate safeguards as regards the insolvency ranking of claims resulting from debt instruments issued before that date. Member States should therefore ensure that the insolvency ranking of all outstanding unsecured claims resulting from debt instruments that institutions have issued before that date is governed by the laws of the Member States as adopted at 31 December 2016. To the extent that certain national laws as adopted at 31 December 2016 already address the objective of allowing institutions to issue subordinated liabilities, part or all of the outstanding unsecured claims resulting from debt instruments issued prior to the date of application of this Directive should be able to have the same insolvency ranking as the non-preferred senior debt instruments issued under the conditions of this Directive. In addition, after 31 December 2016 and before the date of entry into force of this Directive, Member States should be able to adapt their national laws governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such laws in order to comply with the conditions laid down in this Directive. In that case, only the unsecured claims resulting from the debt instruments issued before the application of that new national law should continue to be governed by the laws of the Member States as adopted at 31 December 2016.

(15) This Directive should not prevent Member States from providing that this Directive should continue to apply when the issuing entities are no longer subject to the Union recovery and resolution framework because of, in particular, the divestment of their credit or investment activities to a third party.

(16) This Directive harmonises the ranking under normal insolvency proceedings of unsecured claims resulting from debt instruments and does not cover the insolvency ranking of deposits beyond the existing applicable provisions of Directive 2014/59/EU. This Directive is therefore without prejudice to any existing or future national laws of Member States governing normal insolvency proceedings that cover the insolvency ranking of deposits, to the extent that such ranking is not harmonised by Directive 2014/59/EU, irrespective of the date on which the deposits were made. By 29 December 2020, the Commission should review the application of Directive 2014/59/EU with regard to the ranking of deposits in insolvency and assess in particular the need for any further amendments thereto.

(17) To ensure legal certainty for markets and individual institutions and to facilitate the effective application of the bail-in tool, this Directive should enter into force on the day following that of its publication,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) in Article 2(1), point (48) is replaced by the following:

'(48) "debt instruments":

(i) for the purpose of points (g) and (j) of Article 63(1), means bonds and other forms of transferrable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments; and

(ii) for the purpose of Article 108, means bonds and other forms of transferrable debt and instruments creating or acknowledging a debt;';

(2) Article 108 is replaced by the following:

'*Article 108*

Ranking in insolvency hierarchy

1. Member States shall ensure that in their national laws governing normal insolvency proceedings:

(a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors:

(i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the Union of institutions established within the Union;

(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

2. Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in their national laws governing normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(a) the original contractual maturity of the debt instruments is of at least one year;

(b) the debt instruments contain no embedded derivatives and are not derivatives themselves;

(c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph.

3. Member States shall ensure that unsecured claims resulting from debt instruments that meet the conditions laid down in points (a), (b) and (c) of paragraph 2 of this Article have a higher priority ranking in their national laws governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

4. Without prejudice to paragraphs 5 and 7, Member States shall ensure that their national laws governing normal insolvency proceedings as they were adopted at 31 December 2016 apply to the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) of this Directive prior to the date of entry into force of measures under national law transposing Directive (EU) 2017/2399 of the European Parliament and of the Council (*).

5. Where, after 31 December 2016 and before 28 December 2017, a Member State adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, paragraph 4 of this Article shall not apply to claims resulting from debt instruments issued after the date of application of that national law, provided that all of the following conditions are met:

(a) under that national law, and for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

   (i) the original contractual maturity of the debt instruments is of at least one year;

   (ii) the debt instruments contain no embedded derivatives and are not derivatives themselves; and

   (iii) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under the national law;

(b) under that national law, unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this subparagraph have, in normal insolvency proceedings, a higher priority ranking than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

On the date of entry into force of measures under national law transposing Directive (EU) 2017/2399, the unsecured claims resulting from debt instruments referred to in point (b) of the first subparagraph shall have the same priority ranking as the one referred to in points (a), (b) and (c) of paragraph 2 and in paragraph 3 of this Article.

6. For the purposes of point (b) of paragraph 2 and point (a)(ii) of the first subparagraph of paragraph 5, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

7. Member States that, prior to 31 December 2016, adopted a national law governing normal insolvency proceedings whereby ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) are split into two or more different priority rankings, or whereby the priority ranking of ordinary unsecured claims resulting from such debt instruments is changed in relation to all other ordinary unsecured claims of the same ranking, may provide that debt instruments with the lowest priority ranking among those ordinary unsecured claims have the same ranking as that of claims that meet the conditions of points (a), (b) and (c) of paragraph 2 and of paragraph 3 of this Article.

(*) Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (OJ L 345, 27.12.2017, p. 96).'.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 December 2018. They shall immediately inform the Commission thereof.

Member States shall apply those measures as from the date of their entry into force in national law.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

3. Paragraph 2 shall not apply where the national measures of Member States in force before the date of entry into force of this Directive comply with this Directive. In such cases, Member States shall notify the Commission accordingly.

4. Member States shall communicate to the Commission and to the European Banking Authority the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

Review

By 29 December 2020, the Commission shall review the application of Article 108(1) of Directive 2014/59/EU. The Commission shall assess in particular the need for any further amendments with regard to the ranking of deposits in insolvency. The Commission shall submit a report thereon to the European Parliament and to the Council.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2017.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	M. MAASIKAS

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