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I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 909/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 July 2014
on improving securities settlement in the European Union and on central securities depositories
and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
(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) Central securities depositories (CSDs), together with central counterparties (CCPs) contribute to a large degree in maintaining post-trade infrastructures that safeguard financial markets and give market participants confidence that securities transactions are executed properly and in a timely manner, including during periods of extreme stress.
- (2) Due to their key position in the settlement process, the securities settlement systems operated by CSDs are of a systemic importance for the functioning of securities markets. Playing an important role in the securities holding systems through which their participants report the securities holdings of investors, the securities settlement systems operated by CSDs also serve as an essential tool to control the integrity of an issue, hindering the undue creation or reduction of issued securities, and thereby play an important role in maintaining investor confidence. Moreover, securities settlement systems operated by CSDs are closely involved in securing collateral for monetary policy operations as well as in securing collateral between credit institutions and are, therefore, important actors in the collateralisation process.

⁽¹⁾ OJ C 310, 13.10.2012, p. 12.

⁽²⁾ OJ C 299, 4.10.2012, p. 76.

⁽³⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

- (3) While Directive 98/26/EC of the European Parliament and of the Council ⁽¹⁾ reduced the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it is necessary to address other risks that securities settlement systems are facing, as well as the risk of insolvency or disruption in the functioning of the CSDs that operate securities settlement systems. A number of CSDs are subject to credit and liquidity risks deriving from the provision of banking services ancillary to settlement.
- (4) The increasing number of cross-border settlements as a consequence of the development of link agreements between CSDs calls into question the resilience, in the absence of common prudential rules, of CSDs when importing the risks encountered by CSDs from other Member States. Moreover, despite the increase in cross-border settlements, market-driven changes towards a more integrated market for CSD services have proven to be very slow. An open internal market in securities settlement should allow any investor in the Union to invest in all Union securities with the same ease as in, and using the same processes as for, domestic securities. However, the settlement markets in the Union remain fragmented across national borders and cross-border settlement remains more costly, due to different national rules regulating settlement and the activities of CSDs and limited competition between CSDs. That fragmentation hinders and creates additional risks and costs for cross-border settlement. Given the systemic relevance of CSDs, competition between them should be promoted so as to enable market participants a choice of provider and reduce reliance on any one infrastructure provider. In the absence of identical obligations for market operators and common prudential standards for CSDs, divergent measures likely to be taken at national level will have a direct negative impact on the safety, efficiency and competition in the settlement markets in the Union. It is necessary to remove those significant obstacles in the functioning of the internal market and avoid distortions of competition and to prevent such obstacles and distortions from arising in the future. The creation of an integrated market for securities settlement with no distinction between national and cross-border securities transactions is needed for the proper functioning of the internal market. Consequently, the appropriate legal basis for this Regulation should be Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.
- (5) It is necessary to lay down in a regulation a number of uniform obligations to be imposed on market participants regarding certain aspects of the settlement cycle and discipline and to provide a set of common requirements for CSDs operating securities settlement systems. The directly applicable rules of a regulation should ensure that all market operators and CSDs are subject to identical directly applicable obligations, standards and rules. A regulation should increase the safety and efficiency of settlement in the Union by preventing any diverging national rules as a result of the transposition of a directive. A regulation should reduce the regulatory complexity for market operators and CSDs resulting from different national rules and should allow CSDs to provide their services on a cross-border basis without having to comply with different sets of national requirements such as those concerning the authorisation, supervision, organisation or risks of CSDs. A regulation imposing identical requirements on CSDs should also contribute to eliminating competitive distortions.
- (6) On 20 October 2010, the Financial Stability Board called for more robust core market infrastructures and asked for the revision and enhancement of the existing standards. In April 2012, the Committee on Payments and Settlement Systems (CPSS) of the Bank of International Settlements (BIS) and the International Organisation of Securities Commissions (IOSCO) adopted global standards for financial market infrastructures. Those standards have replaced the BIS recommendations of 2001, which were adapted through non-binding guidelines at European level in 2009 by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators. Taking into account the global nature of financial markets and the systemic importance of CSDs, it is necessary to ensure international convergence of the prudential requirements to which they are subject. This Regulation should follow the existing principles for financial market infrastructures developed by CPSS-IOSCO. The Commission and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾, in close cooperation with the members of the ESCB, should ensure consistency with the existing standards and their future developments when drawing up or proposing to revise the regulatory technical standards and the implementing technical standards as well as the guidelines and recommendations referred to in this Regulation.

⁽¹⁾ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

⁽²⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (7) The Council, in its conclusions of 2 December 2008, emphasised the need to strengthen the safety and soundness of the securities settlement systems, and to address legal barriers to post-trading in the Union.
- (8) One of the basic tasks of the ESCB is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems. The members of the ESCB often act as settlement agents for the cash leg of securities transactions. They are also significant clients of CSDs, which often manage the collateralisation of monetary policy operations. The members of the ESCB should be closely involved, by being consulted, in the authorisation and supervision of CSDs, the recognition of third-country CSDs and the approval of certain CSD links. To prevent the emergence of parallel sets of rules, they should also be closely involved by being consulted in the setting of regulatory and implementing technical standards as well as of guidelines and recommendations although primary responsibility for the setting of such technical standards, guidelines and recommendations should rest with the Commission and ESMA, as laid down in this Regulation. This Regulation should be without prejudice to the responsibilities of the European Central Bank (ECB) and the national central banks to ensure efficient and sound clearing and payment systems within the Union and other countries. This Regulation should not prevent the members of the ESCB from accessing the information relevant for the performance of their duties, including the oversight of CSDs and other financial market infrastructures.
- (9) The members of the ESCB, any other bodies performing similar functions in certain Member States or other public bodies charged with or intervening in the management of the public debt in the Union may themselves provide a number of services, such as operating a securities settlement system, which would qualify them as a CSD. Such entities, when acting as CSDs without establishing a separate entity, should be exempt from the authorisation and supervision requirements, certain organisational requirements and capital and investment policy requirements, but should remain subject to the remaining prudential requirements for CSDs. Where such Member State entities act as CSDs, they should not provide their services in other Member States. Since the members of the ESCB act as settlement agents for the purpose of settlement, they should also be exempt from the requirements set out in Title IV of this Regulation.
- (10) This Regulation should apply to the settlement of transactions in all financial instruments and activities of CSDs unless specified otherwise. This Regulation should also be without prejudice to other legislation of the Union concerning specific financial instruments such as Directive 2003/87/EC of the European Parliament and of the Council ⁽¹⁾ and measures adopted in accordance with that Directive.
- (11) The recording of securities in book-entry form is an important step towards increasing the efficiency of settlement and ensuring the integrity of a securities issue, especially in a context of increasing complexity of holding and transfer methods. For reasons of safety, this Regulation provides for the recording in book-entry form of all transferable securities admitted to trading or traded on the trading venues regulated by Directive 2014/65/EU of the European Parliament and of the Council ⁽²⁾ and by Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽³⁾. This Regulation should not impose one particular method for the initial book-entry recording, which should be able to take the form of immobilisation or of immediate dematerialisation. This Regulation should not impose the type of institution that is to record securities in book-entry form upon issuance but, rather, should permit different actors, including registrars, to perform that function. However, once transactions in such securities are executed on trading venues regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014 or provided as collateral under the conditions laid down in Directive 2002/47/EC of the European Parliament and of the Council ⁽⁴⁾, such securities should be recorded in a CSD book-entry system in order to ensure, inter alia, that all such securities can be settled in a securities settlement system. Immobilisation and dematerialisation should not imply any loss of rights for the holders of securities and should be achieved in a way that ensures that holders of securities can verify their rights.

⁽¹⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁽²⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁽³⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁽⁴⁾ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

- (12) In order to ensure the safety of settlement, any participant in a securities settlement system buying or selling certain financial instruments, namely transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, should settle its obligation on the intended settlement date.
- (13) Longer settlement periods for transactions in transferable securities cause uncertainty and increased risk for securities settlement systems participants. Different durations of settlement periods across Member States hamper reconciliation and are sources of errors for issuers, investors and intermediaries. It is therefore necessary to provide a common settlement period which would facilitate the identification of the intended settlement date and facilitate the implementation of settlement discipline measures. The intended settlement date of transactions in transferable securities which are executed on trading venues regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014 should be no later than on the second business day after the trading takes place. For complex operations composed of several transactions such as securities repurchase or lending agreements, that requirement should apply to the first transaction involving a transfer of securities. Given their non-standardised character, that requirement should not apply to transactions that are negotiated privately by the relevant parties, but executed on the trading venues regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014 or to transactions that are executed bilaterally, but reported to a trading venue regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014. Moreover, that requirement should not apply to the first transaction where the transferable securities concerned are subject to initial recording in book-entry form.
- (14) CSDs and other market infrastructures should take measures to prevent and address settlement fails. It is essential that such rules be uniformly and directly applied in the Union. In particular, CSDs and other market infrastructures should be required to put in place procedures enabling them to take appropriate measures to suspend any participant that systematically causes settlement fails and to disclose its identity to the public, provided that that participant has the opportunity to submit observations before such a decision is taken.
- (15) One of the most efficient ways to address settlement fails is to require failing participants to be subject to a compulsory enforcement of the original agreement. This Regulation should provide for uniform rules concerning penalties and certain aspects of the buy-in transaction for all transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, such as timing and pricing. Those rules should be adapted to the specificities of different securities markets, certain trading venues such as SME growth markets as defined in Directive 2014/65/EU and certain complex operations such as very short-term securities repurchase or lending agreements, in order to avoid adversely impacting on the liquidity and efficiency of securities markets. The rules on settlement discipline should be applied in a manner that provides an incentive for the settlement of transactions in all relevant financial instruments by their intended settlement date.
- (16) The procedures and penalties relating to settlement fails should be commensurate with the scale and seriousness of such fails whilst being scaled in such a way that maintains and protects the liquidity of the relevant financial instruments. In particular, market-making activities play a crucial role in providing liquidity to markets within the Union, particularly to less liquid securities. Measures to prevent and address settlement fails should be balanced against the need to maintain and protect liquidity in those securities. Cash penalties imposed on failing participants should, where possible, be credited to the non-failing clients as compensation and should not, in any event, become a source of revenue for the CSD concerned. CSDs should consult the market infrastructures in respect of which they provide CSD services on the implementation of settlement discipline measures laid down in this Regulation.
- (17) In most cases a buy-in process should be initiated where the financial instruments are not delivered within four business days of the intended settlement date. However, for illiquid financial instruments it is appropriate that the period before initiating the buy-in process should be increased to a maximum of seven business days. The basis for determining when financial instruments are deemed to be illiquid should be established through regulatory technical standards, taking account of the assessments already made in Regulation (EU) No 600/2014. Where such a determination is made the extension of the deadline for initiating the buy-in process should be up to seven business days.

- (18) It is appropriate to allow SME growth markets the flexibility not to apply the buy-in process until up to 15 days after the trade has taken place so as to take into account the liquidity of such markets and to allow, in particular, for activity by market-makers in those less liquid markets. The settlement discipline measures specific to SME growth markets should apply only to transactions executed on such markets. As identified in the Commission Staff Working Paper of 7 December 2011 accompanying the Commission communication entitled, 'An action plan to improve access to finance for SMEs', access to capital markets should be developed as an alternative to bank lending to SMEs and it is therefore appropriate to tailor the rules to better serve the needs of those SME growth markets.
- (19) CSDs should be allowed to monitor the execution of a buy-in with respect to multiple settlement instructions on the same financial instruments and with the same date of expiry of the extension period with the aim of minimising the number of buy-ins to the extent compatible with the requirements of this Regulation.
- (20) As the main purpose of this Regulation is to introduce a number of legal obligations imposed directly on market operators consisting, inter alia, of the recording in book-entry form in CSDs of all transferable securities once such securities are traded on trading venues regulated by Directive 2014/65/EU and Regulation (EU) No 600/2014 or provided as collateral under the conditions of Directive 2002/47/EC and in the settling of their obligations no later than on the second business day after trading takes place and as CSDs are responsible for the operation of securities settlement systems and the application of measures to provide timely settlement in the Union, it is essential to ensure that all CSDs are safe and sound and comply at all times with stringent organisational, conduct of business and prudential requirements laid down in this Regulation, including by taking all reasonable steps to mitigate fraud and negligence. Uniform and directly applicable rules regarding the authorisation and ongoing supervision of CSDs are therefore an essential corollary of and are interrelated with the legal obligations imposed on market participants by this Regulation. It is, therefore, necessary to include rules regarding the authorisation and supervision of CSDs in the same act as the legal obligations imposed on market participants.
- (21) Taking into account that CSDs should be subject to common requirements and in order to dismantle the existing barriers to cross-border settlement, any authorised CSDs should enjoy the freedom to provide services within the territory of the Union, including through setting up a branch. In order to ensure an appropriate level of safety in the provision of services by CSDs in another Member State, such CSDs should be subject to a specific procedure laid down in this Regulation where they intend to provide certain core services as provided for in this Regulation or set up a branch in a host Member State.
- (22) Within a borderless Union settlement market, it is necessary to establish the competences of the different authorities involved in the application of this Regulation. Member States should specifically designate the competent authorities responsible for the application of this Regulation, which should be afforded the supervisory and investigatory powers necessary for the exercise of their functions. A CSD should be subject to authorisation and supervision by the competent authority of its home Member State, which is well placed and should be empowered to examine how CSDs operate on a daily basis, to carry out regular reviews and to take appropriate action when necessary. The competent authority concerned should however consult at the earliest stage and cooperate with other relevant authorities, which include the authorities responsible for the oversight of each securities settlement system operated by the CSD, the central banks that issue the most relevant settlement currencies, where applicable, the relevant central banks that act as settlement agent for each securities settlement system, and, also, where applicable, the competent authorities of other group entities. Such cooperation also implies exchanges of information between the authorities concerned and the immediate notification of those authorities in the case of an emergency situation affecting the liquidity and stability of the financial system in any of the Member States where the CSD or any of its participants is established.
- (23) Where a CSD provides its services in another Member State, the competent authority of the host Member State should be able to request from the competent authority of the home Member State all information concerning the activities of the CSD that is of relevance to the requesting authority. In order to enable effective coordination of supervision, that information could concern in particular the services provided to CSD users established in the host Member State or the instruments or currencies processed and may include information on adverse developments, results of risk assessments and remedial measures. The competent authority of the home Member State should also have access to any information periodically reported by the CSD to the competent authority of the host Member State.

- (24) Where a CSD provides its services in a Member State other than the Member State where it is established, including through setting up a branch, the competent authority of its home Member State is mainly responsible for the supervision of that CSD. When the activities of a CSD in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the competent authorities and relevant authorities of the home Member State and of the host Member State should establish cooperation arrangements for the supervision of the activities of that CSD in the host Member State. The competent authority of the home Member State should also be able to decide that those cooperation arrangements envisage multilateral cooperation, including cooperation of a collegial nature, between the competent authority of the home Member State and the competent authorities and relevant authorities of the host Member States concerned. Such cooperation arrangements, however, should not be considered to be colleges of supervisors as referred to in Regulation (EU) No 1095/2010. No Member State or group of Member States should be discriminated against directly or indirectly, as a location for CSD and settlement services. While performing its duties under this Regulation no authority should directly or indirectly discriminate against any undertaking from another Member State. Subject to this Regulation, a CSD from one Member State should not be restricted in or prevented from settling financial instruments in the currency of another Member State or in the currency of a third country.
- (25) This Regulation should not prevent Member States from requiring in their national law a specific legal framework for day-to-day cooperation at national level between the competent authority of the CSD and relevant authorities. Such a national legal framework should be consistent with the guidelines concerning supervisory practices and cooperation between authorities that ESMA may issue under this Regulation.
- (26) Any legal person falling within the scope of the definition of a CSD needs to be authorised by the competent national authorities before starting its activities. Taking into account different business models, a CSD should be defined by reference to certain core services, which consist of settlement, implying the operation of a securities settlement system, notary and central securities accounts maintenance services. A CSD should at least operate a securities settlement system and provide one other core service. This combination is essential for CSDs to play their role in securities settlement and in ensuring the integrity of a securities issue. Entities that do not operate securities settlement systems such as registrars, transfer agents, public authorities, bodies in charge of a registry system established under Directive 2003/87/EC, or CCPs that are regulated by Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁾ do not fall within the scope of the definition of a CSD.
- (27) CSDs should have in place recovery plans to ensure continuity of their critical operations. Without prejudice to Directive 2014/59/EU of the European Parliament and of the Council ⁽²⁾, the competent authorities should ensure that an adequate resolution plan is established and maintained for each CSD in accordance with the relevant national law.
- (28) In order to provide reliable data on the scale of securities settlement outside securities settlement systems and to ensure that the risks arising can be monitored and addressed, any institutions other than CSDs that settle securities transactions outside a securities settlement system should report their settlement activities to the competent authorities concerned. The recipient competent authorities should subsequently transmit that information to ESMA and should inform ESMA of any potential risk resulting from such settlement activities. Furthermore, ESMA should monitor such settlement activities and take into account the potential risks that they might create.
- (29) In order to avoid any risk-taking by CSDs in activities other than those subject to authorisation under this Regulation, the activities of authorised CSDs should be limited to the provision of services covered by their authorisation or notified under this Regulation and they should not hold any participation, as defined in this

⁽¹⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽²⁾ 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).

Regulation by reference to the Directive 2013/34/EU of the European Parliament and of the Council ⁽¹⁾, or any ownership, direct or indirect, of 20 % or more of the voting rights or capital in any institutions other than those providing similar services unless such a participation is approved by CSDs' competent authorities on the basis that it does not significantly increase the CSDs' risk profile.

- (30) In order to ensure the safe functioning of the securities settlement systems, they should be operated only by the CSDs or by central banks acting as CSDs, subject to this Regulation.
- (31) Without prejudice to specific requirements of Member State tax law, CSDs should be authorised to provide services ancillary to their core services that contribute to enhancing the safety, efficiency and transparency of the securities markets and that do not create undue risks to their core services. A non-exhaustive list of those services is set out in this Regulation in order to enable CSDs to respond to future market developments. Where the provision of such services relates to withholding and reporting obligations to the tax authorities, it will continue to be carried out in accordance with the law of the Member States concerned. In accordance with Article 114(2) TFEU, the power to adopt measures under Article 114(1) does not apply to fiscal provisions. In its judgement of 29 April 2004 in Case C-338/01 *Commission v Council* ⁽²⁾, the Court of Justice of the European Union held that the words 'fiscal provisions' are to be interpreted as 'covering not only the provisions determining taxable persons, taxable transactions, the basis of imposition, and rates of and exemptions from direct and indirect taxes, but also those relating to arrangements for the collection of such taxes.' This Regulation does not therefore cover arrangements for the collection of taxes for which a different legal basis would need to be used.
- (32) A CSD intending to outsource a core service to a third party or to provide a new core service or an ancillary service not listed in this Regulation, to operate another securities settlement system, to use another settlement agent or to set up any CSD links that involve significant risks should apply for authorisation following the same procedure as that required for initial authorisation, save that the competent authority should inform the applicant CSD within three months whether authorisation has been granted or refused. However, CSD links not involving significant risks or interoperable links of CSDs that outsource their services relating to those interoperable links to public entities, such as the members of the ESCB, should not be subject to prior authorisation, but should be notified by the relevant CSDs to their competent authorities.
- (33) Where a CSD intends to extend its services to non-banking type ancillary services explicitly listed in this Regulation which do not entail an increase in its risk profile, it should be able to do so following notification to the competent authority of its home Member State.
- (34) CSDs established in third countries should be able to offer their services in the Union, including through the setting-up of a branch. In order to ensure an appropriate level of safety in the provision of CSD services by third-country CSDs, such CSDs should be subject to recognition by ESMA where they intend to provide certain services listed in this Regulation or to set up a branch in the Union. Third-country CSDs should be able to set up links with CSDs established in the Union in the absence of such recognition provided that the relevant competent authority does not object. In view of the global nature of financial markets, ESMA is best placed to recognise third-country CSDs. ESMA should be able to recognise third-country CSDs only if the Commission concludes that they are subject to a legal and supervisory framework effectively equivalent to the one provided in this Regulation, if they are effectively authorised, supervised and subject to oversight in their country of establishment and cooperation arrangements have been established between ESMA, the competent authorities and relevant authorities of CSDs. Recognition by ESMA should be subject to an effective equivalent recognition of the prudential framework applicable to CSDs established in the Union and authorised under this Regulation.

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽²⁾ [2004] ECR I-4829.

- (35) Taking into account the complexity as well as the systemic nature of the CSDs and of the services they provide, transparent governance rules should ensure that senior management, members of the management body, shareholders and participants, who are in a position to exercise control, as defined by reference to the Directive 2013/34/EU, over the operation of the CSD are suitable to ensure the sound and prudent management of the CSD.
- (36) Different governance structures are used across Member States. In most cases a unitary or a dual board structure is used. The definitions used in this Regulation are intended to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aiming to achieve a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions should therefore not interfere with the general allocation of competences in accordance with national company law.
- (37) Transparent governance rules should ensure that the interests of the shareholders, the management and staff of the CSD, on the one hand, and the interests of their users whom CSDs are ultimately serving, on the other, are taken into account. Those governance rules should apply without prejudice to the ownership model adopted by the CSD. User committees should be established for each securities settlement system operated by the CSD to give users the opportunity to advise the management body of the CSD on the key issues that impact them and should be given the tools to perform their role. The interests of different users of CSDs, including those of holders of different types of securities, should be represented in the user committee.
- (38) CSDs should be able to outsource the operation of their services provided that the risks arising from such outsourcing arrangements are managed. Taking into account the significance of the tasks entrusted to CSDs, this Regulation should provide that CSDs do not transfer their responsibilities to third parties through the outsourcing by contract of their activities to third parties. Outsourcing of such activities should be subject to strict conditions that maintain the responsibility of CSDs for their activities and ensure that the supervision and oversight of the CSDs are not impaired. It should be possible to exempt outsourcing by a CSD of its activities to a public entity from those requirements under certain conditions.
- (39) This Regulation should not prevent Member States allowing direct securities holding systems from providing in their national law that parties other than CSDs shall or may perform certain functions, which in some other types of securities holding systems are typically performed by CSDs and specifying how those functions should be exercised. In particular, in some Member States account operators or participants in the securities settlement systems operated by CSDs record entries into securities accounts maintained by CSDs without necessarily being account providers themselves. In view of the need for legal certainty on the entries made into accounts at the CSD level, the specific role played by such other parties should be recognised by this Regulation. It should therefore be possible, under specific circumstances and subject to strict rules laid down by law, to share the responsibility between a CSD and the relevant other party or to provide for exclusive responsibility by that other party for certain aspects related to maintaining of securities accounts at the top tier level provided that such other party is subject to appropriate regulation and supervision. There should be no restrictions on the extent to which responsibility is shared.
- (40) Conduct of business rules should provide transparency in the relations between CSDs and their users. In particular, CSDs should have publicly disclosed, transparent, objective and non-discriminatory criteria for participation in the securities settlement system, which would allow restriction of access by participants only on the basis of the risks involved. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to participants. CSDs should publicly disclose prices and fees for their services. In order to provide open and non-discriminatory access to their services and in view of the significant market power that CSDs still enjoy in the territory of their respective Member States, CSDs should not be able to diverge from their published pricing policy for their core services and should maintain separate accounts for the costs and revenues associated with each of their core services and with their ancillary services. Those participation provisions complement and reinforce the right of market participants to use a settlement system in another Member State provided for in Directive 2014/65/EU.

- (41) In order to facilitate efficient recording, settlement and payment, CSDs should accommodate in their communication procedures with participants and with the market infrastructures they interface with, the relevant international open communication procedures and standards for messaging and reference data.
- (42) Taking into account the central role of securities settlement systems in the financial markets, CSDs should, when providing their services, make best efforts to ensure the timely settlement of securities transactions and the integrity of the securities issue. This Regulation should not interfere with the national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues. However, in order to enhance the protection of the assets of their participants and those of their clients, this Regulation should require CSDs to segregate the securities accounts maintained for each participant and offer, upon request, further segregation of the accounts of the participants' clients which in some cases might be available only at a higher cost to be borne by the participants' clients requesting further segregation. CSDs and their participants should be required to provide for both omnibus client segregation and individual client segregation so clients can choose the level of segregation they believe is appropriate to their needs.

The only exclusion from this should be where due to other public policy requirements, in particular in relation to efficient and transparent collection of taxation, a CSD and its participants are required to provide individual client segregation for citizens and residents of and legal persons established in a Member State where, at the date of entry into force of this Regulation, such individual client segregation is required under the national law of the Member State under which the securities are constituted and only for citizens, residents of and legal persons established in that Member State. CSDs should ensure that those requirements apply separately to each securities settlement system operated by them. Without prejudice to the provision of ancillary services, CSDs should not use on their own account any securities that belong to a participant unless explicitly authorised by that participant and should not otherwise use on their own account the securities that do not belong to them. In addition the CSD should require the participants to obtain any necessary prior consent from their clients.

- (43) Directive 98/26/EC provides that transfer orders entered into securities settlement systems in accordance with the rules of those systems should be legally enforceable and binding on third parties. However, since Directive 98/26/EC does not specifically refer to CSDs that operate securities settlement systems, for clarity, this Regulation should require CSDs to define the moment or moments when transfer orders are entered into their systems and become irrevocable in accordance with the rules of that Directive. In addition, in order to increase legal certainty, CSDs should disclose to their participants the moment when the transfer of securities and cash in a securities settlement system is legally enforceable and binding on third parties in accordance, as the case may be, with national law. CSDs should also take all reasonable steps to ensure that transfers of securities and cash are legally enforceable and binding on third parties no later than at the end of the business day of the actual settlement date.
- (44) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. If this option is not practical and available, a CSD should be able to settle through accounts opened with a credit institution established under the conditions provided in Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾ and subject to a specific authorisation procedure and prudential requirements provided in Title IV of this Regulation.
- (45) Banking services ancillary to settlement involving credit and liquidity risks should only be undertaken by CSDs or outsourced to entities authorised to provide the banking services ancillary to the CSD activities as laid down in this Regulation.

⁽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).

- (46) In order to secure efficiencies resulting from the provision of both CSD and banking services within the same group of undertakings, the requirements of this Regulation should not prevent credit institutions from belonging to the same group of undertakings as the CSD. It is appropriate to provide for arrangements under which CSDs could be authorised to provide to their participants and to other entities ancillary services from within the same legal entity or from within a separate legal entity which may be part of the same group of undertakings ultimately controlled by the same parent undertaking or not. Where a credit institution other than a central bank acts as a settlement agent, the credit institution should be able to provide to the CSD participants the services set out in this Regulation, which are covered by the authorisation, but should not provide other banking services from the same legal entity in order to limit the settlement system's exposure to the risks resulting from the failure of the credit institution.
- (47) Since Directive 2013/36/EU does not specifically address intra-day credit and liquidity risks resulting from the provision of banking services ancillary to settlement, credit institutions and CSDs providing such services should also be subject to specific enhanced credit and liquidity risk mitigation requirements, including a risk-based capital surcharge which reflects the relevant risks. Such enhanced credit and liquidity risk mitigation requirements should follow the global standards for financial market infrastructures and the principles for 'Monitoring tools for intra-day liquidity management' published in April 2013 by the Basel Committee on Banking Supervision.
- (48) Some CSDs also operating as credit institutions are subject to own funds and reporting requirements relevant for credit institutions and laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾ and in Directive 2013/36/EU. Given the systemic importance of such CSDs it is appropriate that the strictest requirements provided in Union law apply in order to avoid the cumulative application of various Union rules, for example in relation to the reporting of own funds requirements. In any areas where potential duplication of requirements is identified, the European Supervisory Authority (European Banking Authority) ('EBA') established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽²⁾ and ESMA should provide an opinion on the appropriate application of the Union acts in accordance with Article 34 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010.
- (49) In addition to the own funds requirements provided for in Regulation (EU) No 575/2013 and in Directive 2013/36/EU, credit institutions and CSDs should be subject to a capital surcharge that reflects the risks, such as credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services.
- (50) In order to ensure full compliance with specific measures aimed at mitigating credit and liquidity risks, the competent authorities should be able to require CSDs to designate more than one credit institution whenever they can demonstrate, based on the available evidence, that the exposures of one credit institution to the concentration of credit and liquidity risks is not fully mitigated. CSDs should also be able to designate more than one credit institution.
- (51) Supervision of the compliance of designated credit institutions or CSDs authorised to provide banking services ancillary to settlement with the requirements of Regulation (EU) No 575/2013 and of Directive 2013/36/EU and the specific relevant prudential requirements of this Regulation should be entrusted to the competent authorities referred to in Regulation (EU) No 575/2013. In order to ensure consistent application of supervisory standards, it is desirable that the banking services of CSDs which are of a scale and nature to pose a significant risk to the financial stability of the Union are directly supervised by the ECB under the conditions provided for in Council Regulation (EU) No 1024/2013 ⁽³⁾ concerning policies relating to the prudential supervision of credit institutions. This Regulation should be without prejudice to Regulation (EU) No 1024/2013.

⁽¹⁾ 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).

⁽²⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽³⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

- (52) A credit institution or a CSD authorised to provide banking services ancillary to settlement should comply with any present or future Union legislation applicable to credit institutions. This Regulation should be without prejudice to Directive 2014/59/EU and any future Union legislative act regarding the framework for the recovery and resolution of credit institutions, investment firms and other financial institutions.
- (53) In order to provide a sufficient degree of safety and continuity of services provided by CSDs, CSDs should be subject to specific uniform and directly applicable prudential and capital requirements which mitigate their legal, operational and investment risks.
- (54) The safety of the link arrangements set up between CSDs should be subject to specific requirements to enable the access of their respective participants to other securities settlement systems. The provision of banking-type ancillary services from within a separate legal entity should not prevent CSDs from receiving such services, in particular when they are participants in a securities settlement system operated by another CSD. It is particularly important that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated. For interoperable links, it is important that linked securities settlement systems have identical moments of entry of transfer orders into the system and irrevocability of such transfer orders and use equivalent rules concerning the moment of finality of transfers of securities and cash. The same principles should apply to CSDs that use a common settlement information technology (IT) infrastructure.
- (55) In order to allow competent authorities to supervise the activities of CSDs effectively, CSDs should be subject to strict record-keeping requirements. CSDs should maintain for at least 10 years all the records and data on all the services that they may provide, including transaction data on collateral management services that involve the processing of securities repurchase or lending agreements. CSDs might need to specify a common format in which their clients provide transaction data so as to allow this record-keeping requirement to be met, in conformity with any relevant regulatory and implementing technical standards adopted under this Regulation.
- (56) In many Member States issuers are required by national law to issue certain types of securities, notably shares, within their national CSDs. In order to remove this barrier to the smooth functioning of the Union post-trading market and to allow issuers to opt for the most efficient way of managing their securities, issuers should have the right to choose any CSD established in the Union for recording their securities and receiving any relevant CSD services. Since harmonisation of national corporate law is beyond the scope of this Regulation, such national corporate or similar law under which the securities are constituted should continue to apply and arrangements be made to ensure that the requirements of such national corporate or similar law can be met where the right of choice of CSD is exercised. Such national corporate and similar law under which the securities are constituted govern the relationship between their issuer and holders or any third parties, and their respective rights and duties attached to the securities such as voting rights, dividends and corporate actions. A refusal to provide services to an issuer should be permissible only based on a comprehensive risk assessment or if that CSD does not provide any issuance services in relation to securities constituted under the corporate or similar law of the relevant Member State. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to issuers.
- (57) In view of the increasing cross-border holdings and transfers of securities enhanced by this Regulation, it is of the utmost urgency and importance to establish clear rules on the law applicable to proprietary aspects in relation to the securities held in the accounts maintained by CSDs. Nevertheless, this is a horizontal issue which goes beyond the scope of this Regulation and could be dealt with in future Union legislative acts.
- (58) The European Code of Conduct for Clearing and Settlement of 7 November 2006 created a voluntary framework to enable access between CSDs and other market infrastructures. However, the post-trade sector remains fragmented along national lines, making cross-border trade unnecessarily costly. It is necessary to lay down uniform

conditions for links between CSDs and of access between CSDs and other market infrastructures. In order to enable CSDs to offer their participants access to other markets, they should have a right to become a participant in another CSD or request another CSD to develop special functions for having access to the latter. Such access should be granted on fair, reasonable and non-discriminatory terms and should be refused only where it threatens the smooth and orderly functioning of the financial markets or causes systemic risk. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of a CSD to grant access to another CSD. Where CSD links introduce significant risks for settlement, they should be subject to authorisation and increased supervision by the relevant competent authorities.

- (59) CSDs should also have access to transaction feeds from a CCP or a trading venue and those market infrastructures should have access to the securities settlement systems operated by CSDs. Such access may be refused only where it threatens the smooth and orderly functioning of the financial markets or causes systemic risk and may not be denied on the grounds of loss of market share.
- (60) A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs or market infrastructures to provide access to their services. This Regulation completes the access arrangements between trading venues, CCPs, and CSDs as laid down in Regulation (EU) No 648/2012 and in Regulation (EU) No 600/2014 necessary to establish a competitive internal market in post-trade services. ESMA and the Commission should continue to monitor closely the evolution of post-trade infrastructure and the Commission should, where necessary, intervene in order to prevent competitive distortions from occurring in the internal market.
- (61) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory and sanctioning regimes. To that end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on deterrent sanctioning regimes to be used against any unlawful conduct. A review of existing sanctioning powers and their practical application aiming to promote convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector'.
- (62) Therefore, in order to ensure effective compliance by CSDs, credit institutions designated as settlement agents, the members of their management bodies and any other persons who effectively control their business or any other persons with the requirements of this Regulation, competent authorities should be able to apply administrative sanctions and other measures which are effective, proportionate and dissuasive.
- (63) In order to provide deterrence and consistent application of the sanctions across Member States, this Regulation should provide a list of key administrative sanctions and other measures that need to be available to the competent authorities, for the power to impose those sanctions and other measures on all persons, whether legal or natural, responsible for an infringement, for a list of key criteria when determining the level and type of those sanctions and other measures and for levels of administrative pecuniary sanctions. Administrative fines should take into account factors such as any identified financial benefit resulting from the infringement, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for administrative fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).

- (64) In order to detect potential infringements, effective mechanisms to encourage reporting of potential or actual infringements of this Regulation to the competent authorities should be put in place. Those mechanisms should include adequate safeguards for the persons who report potential or actual infringements of this Regulation and the persons accused of such infringements. Appropriate procedures should be established to comply with the accused person's right to protection of personal data, with the right of defence and to be heard before the adoption of a final decision affecting that person as well as with the right to seek effective remedy before a tribunal against any decision or measure affecting that person.
- (65) This Regulation should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.
- (66) Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ governs the processing of personal data carried out in the Member States pursuant to this Regulation. Any exchange or transmission of personal data by competent authorities of the Member States should be undertaken in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ governs the processing of personal data carried out by ESMA pursuant to this Regulation. Any exchange or transmission of personal data carried out by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (67) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter, notably the rights to respect for private and family life, the right to the protection of personal data, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence, and the freedom to conduct a business, and has to be applied in accordance with those rights and principles.
- (68) ESMA should play a central role in the application of this Regulation by ensuring consistent application of Union rules by national competent authorities and by settling disagreements between them.
- (69) ESMA should submit annual reports to the Commission assessing the trends and potential risks in the markets covered by this Regulation. Those reports should include at least an assessment of settlement efficiency, internalised settlement, cross-border provision of services, the reasons for the rejection of access rights and any other substantive barriers to competition in post-trade financial services including any barriers arising from the inappropriate use of licensing arrangements, appropriateness of penalties for settlement fails, in particular the need for additional flexibility in relation to penalties for settlement fails in relation to illiquid financial instruments, the application of Member States' rules on civil liability to losses attributable to CSDs, the conditions relating to the provision of banking-type ancillary services, requirements regarding the protection of securities of participants and those of their clients, and the sanctions regime and may contain, where necessary, recommendations of preventative or remedial actions. ESMA should also conduct peer reviews covering the activities of the competent authorities under this Regulation within an appropriate time-frame and in accordance with Regulation (EU) No 1095/2010. Given the systemic importance of CSDs and the fact that they are being regulated for the first time at Union level, it is appropriate to require that such peer reviews should initially occur every three years at least in relation to the supervision of CSDs which make use of the freedom to provide services or participate in an interoperable link.
- (70) As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the development of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. Where specified, ESMA should also closely cooperate with the members of the ESCB and EBA.

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁽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).

- (71) The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 TFEU and with Articles 10 to 14 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010 with regard to the detailed elements of the settlement discipline measures; the reporting of internalised settlement; information and other elements to be included by a CSD in its application for authorisation; conditions under which the competent authorities of CSDs may approve their participations in the capital of certain legal entities, the information that different authorities shall supply each other when supervising CSDs; the information that the applicant CSD shall provide ESMA in its application for recognition; the elements of the governance arrangements for CSDs; the details of the records to be kept by CSDs; the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and competent authorities assessing the reasons for refusal of requests for access; the elements of the procedure for access of participants and issuers to CSDs, access between CSDs and between CSDs and other market infrastructures; the details of the measures to be taken by CSDs so that the integrity of the issue is maintained; the mitigation of the operational and investment risks and of the risks derived from the CSD links; the details of the capital requirements for CSDs; the details of the application for authorisation to provide banking-type ancillary services; the capital surcharge and the prudential requirements on credit and liquidity risks for CSDs and designated credit institutions that are authorised to provide banking-type ancillary services.
- (72) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010 with regard to standard forms and templates for reporting on internalised settlement; for the application for authorisation by CSDs; for the provision of information between different competent authorities for the purposes of supervision of CSDs; for the relevant cooperation arrangements between authorities of home and host Member States; for formats of records to be kept by CSDs; for the procedures in cases where a participant or an issuer is denied access to a CSD, CSDs are denied access between themselves or between CSDs and other market infrastructures; and for the consultation of different authorities prior to granting authorisation to a settlement agent.
- (73) In order to attain the objectives set out in this Regulation, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of specific details concerning some definitions, parameters for the calculation of cash penalties for the participants that cause settlement fails, the criteria under which the operations of a CSD in a host Member State should be considered to be of substantial importance for that Member State. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (74) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third-country CSDs. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁾.
- (75) When assessing the relevant rules of third countries, a proportionate, outcomes-based approach should be taken, focusing on compliance with applicable Union rules and, where relevant, international standards. Conditional or interim recognition may also be granted where there are no areas of substantive difference that would have foreseeable detrimental effects on Union markets.
- (76) Since the objectives of this Regulation, namely to lay down uniform requirements for settlement as well as for CSDs, cannot be sufficiently achieved by the Member States and can therefore, 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

⁽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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (77) It is necessary to amend Directive 98/26/EC to bring it in line with the Directive 2010/78/EU of the European Parliament and of the Council ⁽¹⁾, whereby designated securities settlement systems are no longer notified to the Commission but to ESMA.
- (78) Taking into account the fact that this Regulation harmonises at Union level the measures to prevent and address settlement fails and has a wider scope of application for such measures than Regulation (EU) No 236/2012 of the European Parliament and of the Council ⁽²⁾, it is necessary to repeal Article 15 of that Regulation.
- (79) CSDs should be exempt from the application of Directive 2014/65/EU and Regulation (EU) No 600/2014 where they provide services that are explicitly listed in this Regulation. However, in order to ensure that any entities providing investment services and activities are subject to Directive 2014/65/EU and Regulation (EU) No 600/2014 and to avoid competitive distortions between different types of providers of such services, it is necessary to require CSDs that provide investment services and activities in the course of their ancillary services to be subject to the requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014.
- (80) The application of the authorisation and recognition requirements of this Regulation should be deferred in order to provide CSDs established in the Union or in third countries with sufficient time to apply for authorisation and recognition of their activities provided for in this Regulation. Until a decision is made under this Regulation on the authorisation or recognition of CSDs and of their activities, including CSD links, the respective national rules on authorisation and recognition of CSDs should continue to apply.
- (81) It is also necessary to defer the application of the requirements concerning settlement discipline and requirements concerning reporting obligation of settlement internalisers until all the necessary delegated or implementing acts further specifying such requirements are in place, and of the requirements for recording certain transferable securities in book-entry form and settling obligations in securities settlement systems no later than on the second business day after the trading in order to provide market participants, holding securities in paper form or using longer settlement periods, with sufficient time to comply with those requirements,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation lays down uniform requirements for the settlement of financial instruments in the Union and rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement.
2. This Regulation applies to the settlement of all financial instruments and activities of CSDs unless otherwise specified in this Regulation.
3. This Regulation is without prejudice to provisions of Union law concerning specific financial instruments, in particular Directive 2003/87/EC.

⁽¹⁾ Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120).

⁽²⁾ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

4. Articles 10 to 20, 22 to 24 and 27, Article 28(6), Article 30(4) and Articles 46 and 47, the provisions of Title IV and the requirements to report to competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the ESCB, other Member States' national bodies performing similar functions, or to other public bodies charged with or intervening in the management of public debt in the Union in relation to any CSD which the aforementioned bodies directly manage under the responsibility of the same management body, which has access to the funds of those bodies and which is not a separate entity.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:
 - (1) 'central securities depository' or 'CSD' means a legal person that operates a securities settlement system referred to in point (3) of Section A of the Annex and provides at least one other core service listed in Section A of the Annex;
 - (2) 'third-country CSD' means any legal entity established in a third country that provides a similar service to the core service referred to in point (3) of Section A of the Annex and performs at least one other core service listed in Section A of the Annex;
 - (3) 'immobilisation' means the act of concentrating the location of physical securities in a CSD in a way that enables subsequent transfers to be made by book entry;
 - (4) 'dematerialised form' means the fact that financial instruments exist only as book entry records;
 - (5) 'receiving CSD' means the CSD which receives the request of another CSD to have access to its services through a CSD link;
 - (6) 'requesting CSD' means the CSD which requests access to the services of another CSD through a CSD link;
 - (7) 'settlement' means the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both;
 - (8) 'financial instruments' or 'securities' means financial instruments as defined in point (15) of Article 4(1) of Directive 2014/65/EU;
 - (9) 'transfer order' means transfer order as defined in the second indent of point (i) of Article 2 of Directive 98/26/EC;
 - (10) 'securities settlement system' means a system under the first, second and third indents of point (a) of Article 2 of Directive 98/26/EC that is not operated by a central counterparty whose activity consists of the execution of transfer orders;
 - (11) 'settlement internaliser' means any institution, including one authorised in accordance with Directive 2013/36/EU or with Directive 2014/65/EU, which executes transfer orders on behalf of clients or on its own account other than through a securities settlement system;
 - (12) 'intended settlement date' means the date that is entered into the securities settlement system as the settlement date and on which the parties to a securities transaction agree that settlement is to take place;
 - (13) 'settlement period' means the time period between the trade date and the intended settlement date;
 - (14) 'business day' means business day as defined in point (n) of Article 2 of Directive 98/26/EC;

- (15) 'settlement fail' means the non-occurrence of settlement, or partial settlement of a securities transaction on the intended settlement date, due to a lack of securities or cash and regardless of the underlying cause;
- (16) 'central counterparty' or 'CCP' means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
- (17) 'competent authority' means the authority designated by each Member State in accordance with Article 11, unless otherwise specified in this Regulation;
- (18) 'relevant authority' means any authority referred to in Article 12;
- (19) 'participant' means any participant, as defined in point (f) of Article 2 of Directive 98/26/EC in a securities settlement system;
- (20) 'participation' means participation within the meaning of the first sentence of point (2) of Article 2 of Directive 2013/34/EU, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;
- (21) 'control' means the relationship between two undertakings as described in Article 22 of Directive 2013/34/EU;
- (22) 'subsidiary' means a subsidiary undertaking within the meaning of Article 2(10) and Article 22 of Directive 2013/34/EU;
- (23) 'home Member State' means the Member State in which a CSD is established;
- (24) 'host Member State' means the Member State, other than the home Member State, in which a CSD has a branch or provides CSD services;
- (25) 'branch' means a place of business other than the head office which is a part of a CSD, which has no legal personality and which provides CSD services for which the CSD has been authorised;
- (26) 'default', in relation to a participant, means a situation where insolvency proceedings, as defined in point (j) of Article 2 of Directive 98/26/EC, are opened against a participant;
- (27) 'delivery versus payment' or 'DVP' means a securities settlement mechanism which links a transfer of securities with a transfer of cash in a way that the delivery of securities occurs if and only if the corresponding transfer of cash occurs and vice versa;
- (28) 'securities account' means an account on which securities may be credited or debited;
- (29) 'CSD link' means an arrangement between CSDs whereby one CSD becomes a participant in the securities settlement system of another CSD in order to facilitate the transfer of securities from the participants of the latter CSD to the participants of the former CSD or an arrangement whereby a CSD accesses another CSD indirectly via an intermediary. CSD links include standard links, customised links, indirect links, and interoperable links;
- (30) 'standard link' means a CSD link whereby a CSD becomes a participant in the securities settlement system of another CSD under the same terms and conditions as applicable to any other participant in the securities settlement system operated by the latter;

- (31) 'customised link' means a CSD link whereby a CSD that becomes a participant in the securities settlement system of another CSD is provided with additional specific services to the services normally provided by that CSD to participants in the securities settlement system;
- (32) 'indirect link' means an arrangement between a CSD and a third party other than a CSD, that is a participant in the securities settlement system of another CSD. Such link is set up by a CSD in order to facilitate the transfer of securities to its participants from the participants of another CSD;
- (33) 'interoperable link' means a CSD link whereby CSDs agree to establish mutual technical solutions for settlement in the securities settlement systems that they operate;
- (34) 'international open communication procedures and standards' means internationally accepted standards for communication procedures, such as standardised messaging formats and data representation, which are available on a fair, open and non-discriminatory basis to any interested party;
- (35) 'transferable securities' means transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU;
- (36) 'shares' means securities specified in point (44)(a) of Article 4(1) of Directive 2014/65/EU;
- (37) 'money-market instruments' means money-market instruments as defined in point (17) of Article 4(1) of Directive 2014/65/EU;
- (38) 'units in collective investment undertakings' means units in collective investment undertakings as referred to in point (3) of Section C of Annex I to Directive 2014/65/EU;
- (39) 'emission allowance' means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU, excluding derivatives in emission allowances;
- (40) 'regulated market' means regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (41) 'multilateral trading facility' or 'MTF' means multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU;
- (42) 'trading venue' means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU;
- (43) 'settlement agent' means settlement agent as defined in point (d) of Article 2 of Directive 98/26/EC;
- (44) 'SME growth market' means an SME growth market as defined in point (12) of Article 4(1) of Directive 2014/65/EU;
- (45) 'management body' means the body or bodies of a CSD, appointed in accordance with national law, which is empowered to set the CSD's strategy, objectives and overall direction, and which oversees and monitors management decision-making and includes persons who effectively direct the business of the CSD.

Where, according to national law, a management body comprises different bodies with specific functions, the requirements of this Regulation shall apply only to members of the management body to whom the applicable national law assigns the respective responsibility;

(46) 'senior management' means those natural persons who exercise executive functions within a CSD and who are responsible and accountable to the management body for the day-to-day management of that CSD.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 concerning measures to further specify the non-banking-type ancillary services set out in points (1) to (4) of Section B of the Annex and the banking-type ancillary services set out in Section C of the Annex.

TITLE II

SECURITIES SETTLEMENT

CHAPTER I

Book-entry form

Article 3

Book-entry form

1. Without prejudice to paragraph 2, any issuer established in the Union that issues or has issued transferable securities which are admitted to trading or traded on trading venues, shall arrange for such securities to be represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form.

2. Where a transaction in transferable securities takes place on a trading venue the relevant securities shall be recorded in book-entry form in a CSD on or before the intended settlement date, unless they have already been so recorded.

Where transferable securities are transferred following a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC, those securities shall be recorded in book-entry form in a CSD on or before the intended settlement date, unless they have already been so recorded.

Article 4

Enforcement

1. The authorities of the Member State where the issuer that issues securities is established shall ensure that Article 3(1) is applied.

2. The authorities competent for the supervision of the trading venues, including the competent authorities designated in accordance with Article 21(1) of Directive 2003/71/EC of the European Parliament and of the Council ⁽¹⁾, shall ensure that the first subparagraph of Article 3(2) of this Regulation is applied where the securities referred to in Article 3(1) of this Regulation are traded on trading venues.

3. Member States' authorities responsible for the application of Directive 2002/47/EC shall ensure that the second subparagraph of Article 3(2) of this Regulation is applied where the securities referred to in Article 3(1) of this Regulation are transferred following a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC.

⁽¹⁾ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

CHAPTER II

Settlement periods

Article 5

Intended settlement date

1. Any participant in a securities settlement system that settles in that system on its own account or on behalf of a third party transactions in transferable securities, money-market instruments, units in collective investment undertakings and emission allowances shall settle such transactions on the intended settlement date.
2. As regards transactions in transferable securities referred to in paragraph 1 which are executed on trading venues, the intended settlement date shall be no later than on the second business day after the trading takes place. That requirement shall not apply to transactions which are negotiated privately but executed on a trading venue, to transactions which are executed bilaterally but reported to a trading venue or to the first transaction where the transferable securities concerned are subject to initial recording in book-entry form pursuant to Article 3(2).
3. The competent authorities shall ensure that paragraph 1 is applied.

The authorities competent for the supervision of trading venues shall ensure that paragraph 2 is applied.

CHAPTER III

Settlement discipline

Article 6

Measures to prevent settlement fails

1. Trading venues shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5(1) on the date when the transaction has been executed.
2. Notwithstanding the requirement laid down in paragraph 1, investment firms authorised pursuant to Article 5 of Directive 2014/65/EU shall, where applicable, take measures to limit the number of settlement fails.

Such measures shall at least consist of arrangements between the investment firm and its professional clients as referred to in Annex II to Directive 2014/65/EU to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.

ESMA shall, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the standardised procedures and messaging protocols to be used for complying with the second subparagraph of this paragraph.

3. For each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) on the intended settlement date with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It shall promote early settlement on the intended settlement date through appropriate mechanisms.
4. For each securities settlement system it operates, a CSD shall put in place measures to encourage and incentivise the timely settlement of transactions by its participants. CSDs shall require participants to settle their transactions on the intended settlement date.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Measures to address settlement fails

1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails.

2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a penalty mechanism which will serve as an effective deterrent for participants that cause settlement fails.

Before establishing the procedures referred to in the first subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants'). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the end of a buy-in process referred to in paragraph 3, but no longer than the actual settlement day. The cash penalties shall not be configured as a revenue source for the CSD.

3. Without prejudice to the penalty mechanism referred to in paragraph 2 and the right to bilaterally cancel the transaction, where a failing participant does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within 4 business days after the intended settlement date ('extension period') a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate time-frame.

Where the transaction relates to a financial instrument traded on an SME growth market the extension period shall be 15 days unless the SME growth market decides to apply a shorter period.

4. The following exemptions from the requirement referred to in paragraph 3 shall apply:

- (a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from four business days up to a maximum of seven business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;

(b) for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 shall not apply where the timeframe of those operations is sufficiently short and renders the buy-in process ineffective.

5. Without prejudice to paragraph 7, the exemptions referred to in paragraph 4 shall not apply in relation to transactions for shares where those transactions are cleared by a CCP.

6. Without prejudice to the penalty mechanism referred to in paragraph 2, where the price of the shares agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

7. If the buy-in fails or is not possible, the receiving participant can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation shall be paid.

Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.

8. The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3, 4 and 5, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.

9. CSDs, CCPs and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided that the competent authorities of the CSDs, CCPs and trading venues, and of that participant have been duly informed. In addition to consulting before any suspension, CSDs, CCPs and trading venues shall notify, without delay, the respective competent authorities of the suspension of a participant. The competent authority shall immediately inform the relevant authorities of the suspension of a participant.

Public disclosure of suspensions shall not contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC.

10. Paragraphs 2 to 9 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:

(a) for transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in according to paragraphs 3 to 8;

(b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;

(c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.

A CSD shall provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

Without prejudice to points (a), (b) and (c) of the first subparagraph, CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

11. Paragraphs 2 to 9 shall not apply to failing participants which are CCPs.
12. Paragraphs 2 to 9 shall not apply if insolvency proceedings are opened against the failing participant.
13. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.
14. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to specify parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in the third subparagraph of paragraph 2 based on asset type and liquidity of the financial instrument and type of transaction that shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.
15. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify:
 - (a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;
 - (b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;
 - (c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time-frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;
 - (d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;
 - (e) type of operations and their specific time-frames referred to in point (b) of paragraph 4 that renders buy-in ineffective;
 - (f) a methodology for the calculation of the cash compensation referred to in paragraph 7;
 - (g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and
 - (h) the necessary settlement information referred to in the second subparagraph of paragraph 10.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 8

Enforcement

1. The competent authority of the CSD that operates the securities settlement system, the relevant authority responsible for the oversight of the securities settlement system concerned as well as the competent authorities for the supervision of trading venues, investment firms and CCPs shall be competent for ensuring that Articles 6 and 7 are applied by the institutions subject to their supervision and for monitoring the penalties imposed. Where necessary, the respective competent authorities shall cooperate closely. Member States shall inform ESMA about the designated competent authorities that are part of the supervision structure at the national level.

2. In order to ensure consistent, efficient and effective supervisory practices within the Union in relation to Articles 6 and 7 of this Regulation, ESMA may, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

3. An infringement of the rules under this Title shall not affect the validity of a private contract on financial instruments or the possibility for the parties to enforce the provisions of a private contract on financial instruments.

CHAPTER IV

Internalised settlement

Article 9

Settlement internalisers

1. Settlement internalisers shall report to the competent authorities of their place of establishment on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems.

Competent authorities shall without delay transmit the information received under the first subparagraph to ESMA and shall inform ESMA of any potential risk resulting from that settlement activity.

2. ESMA may, in close cooperation with the members of the ESCB, develop draft regulatory technical standards further specifying the content of such reporting.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the reporting and transmission of information referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

TITLE III

CENTRAL SECURITIES DEPOSITORIES

CHAPTER I

Authorisation and supervision of CSDs

Section 1

Authorities responsible for authorisation and supervision of CSDs

Article 10

Competent authority

Without prejudice to the oversight by the members of the ESCB referred to in Article 12(1), a CSD shall be authorised and supervised by the competent authority of its home Member State.

Article 11

Designation of the competent authority

1. Each Member State shall designate the competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of CSDs established in its territory and shall inform ESMA thereof.

Where a Member State designates more than one competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with other Member States' competent authorities, the relevant authorities, ESMA, and EBA, where specifically referred to in this Regulation.

2. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

3. The competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.

Article 12

Relevant authorities

1. The following authorities shall be involved in the authorisation and supervision of CSDs where specifically referred to in this Regulation:

(a) the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system;

(b) the central banks in the Union issuing the most relevant currencies in which settlement takes place;

(c) where relevant, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled.

2. ESMA shall publish on its website the list of the relevant authorities referred to in paragraph 1.

3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in point (b) of paragraph 1 are considered to be the most relevant, and efficient practical arrangements for the consultation of the relevant authorities referred to in points (b) and (c) of that paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 13

Exchange of information

1. Competent authorities, relevant authorities and ESMA shall, on request and without undue delay, provide one another with the information required for the purposes of carrying out their duties under this Regulation.
2. Competent authorities, relevant authorities, ESMA and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.

Article 14

Cooperation between authorities

1. Competent authorities, relevant authorities and ESMA shall cooperate closely, including by exchanging all relevant information for the application of this Regulation. Where appropriate and relevant, such cooperation shall include other public authorities and bodies, in particular those established or appointed under Directive 2003/87/EC.

In order to ensure consistent, efficient and effective supervisory practices within the Union, including cooperation between competent authorities and relevant authorities in the different assessments necessary for the application of this Regulation, ESMA may, in close cooperation with the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1095/2010.

2. The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular in the emergency situations referred to in Article 15, based on the available information.

Article 15

Emergency situations

Without prejudice to the notification procedure provided for in Article 6(3) of Directive 98/26/EC, competent authorities and relevant authorities shall immediately inform ESMA, the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council⁽¹⁾ and each other of any emergency situation relating to a CSD, including of any developments in financial markets, which may have an adverse effect on market liquidity, the stability of a currency in which settlement takes place, the integrity of monetary policy or on the stability of the financial system in any of the Member States where the CSD or one of its participants are established.

Section 2

Conditions and procedures for authorisation of CSDs

Article 16

Authorisation of a CSD

1. Any legal person that falls within the definition of CSD shall obtain an authorisation from the competent authority of the Member State where it is established before commencing its activities.

⁽¹⁾ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

2. The authorisation shall specify the core services listed in Section A of the Annex and non-banking-type ancillary services permitted under Section B of the Annex, which the CSD is authorised to provide.
3. A CSD shall comply at all times with the conditions necessary for authorisation.
4. A CSD as well as its independent auditors, shall, without undue delay, inform the competent authority of any substantive changes affecting the compliance with the conditions for authorisation.

Article 17

Procedure for granting authorisation

1. The applicant CSD shall submit an application for authorisation to its competent authority.
2. The application for authorisation shall be accompanied by all information necessary to enable the competent authority to satisfy itself that the applicant CSD has established, at the time of the authorisation, all the necessary arrangements to meet its obligations as laid down in this Regulation. The application for authorisation shall include a programme of operations setting out the types of business envisaged and the structural organisation of the CSD.
3. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.
4. From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the relevant authorities and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD. Each relevant authority may inform the competent authority of its views within 3 months of the receipt of the information by the relevant authority.
5. Where the applicant CSD intends to provide services referred to in point (2) of Article 4(1) of Directive 2014/65/EU in addition to the provision of non-banking-type ancillary services explicitly listed in Section B of the Annex, the competent authority shall transmit all information included in the application to the authority referred to in Article 67 of Directive 2014/65/EU and consult that authority on the ability of the applicant CSD to comply with the requirements of Directive 2014/65/EU and of Regulation (EU) No 600/2014.
6. The competent authority shall, before granting authorisation to the applicant CSD, consult the competent authorities of the other Member State involved in the following cases:
 - (a) the CSD is a subsidiary of a CSD authorised in another Member State;
 - (b) the CSD is a subsidiary of the parent undertaking of a CSD authorised in another Member State;
 - (c) the CSD is controlled by the same natural or legal persons who control a different CSD authorised in another Member State.

7. The consultation referred to in paragraph 6 shall cover the following:
- (a) the suitability of the shareholders and persons referred to in Article 27(6) and the reputation and experience of the persons who effectively direct the business of the CSD referred to in Article 27(1) and (4), where those shareholders and persons are common to the CSD and to a CSD authorised in another Member State;
 - (b) whether the relations referred to in points (a), (b) and (c) of paragraph 6 between the CSD authorised in another Member State and the applicant CSD do not affect the ability of the latter to comply with the requirements of this Regulation.
8. Within six months from the submission of a complete application, the competent authority shall inform the applicant CSD in writing with a fully reasoned decision whether the authorisation has been granted or refused.
9. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD is to provide to the competent authority in the application for authorisation.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

10. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 18

Effects of the authorisation

1. The activities of the authorised CSD shall be limited to the provision of services covered by its authorisation or by notification in accordance with Article 19(8).
2. Securities settlement systems may be operated only by authorised CSDs, including central banks acting as CSDs.
3. An authorised CSD may have a participation only in a legal person whose activities are limited to the provision of services listed in Sections A and B of the Annex, unless such a participation is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.
4. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the criteria to be taken into account by the competent authorities to approve the participation of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex. Such criteria may include whether the services provided by that legal person are complementary to the services provided by a CSD, and the extent of the CSD's exposure to liabilities arising from such participation.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 19

Extension and outsourcing of activities and services

1. An authorised CSD shall submit an application for authorisation to the competent authority of its home Member State where it wishes to outsource a core service to a third party under Article 30 or extend its activities to one or more of the following:

- (a) additional core services listed in Section A of the Annex, not covered by the initial authorisation;
- (b) ancillary services permitted under, but not explicitly listed in Section B of the Annex, not covered by the initial authorisation;
- (c) the operation of another securities settlement system;
- (d) the settlement of all or part of the cash leg of its securities settlement system in the books of another settlement agent;
- (e) setting up an interoperable link, including those with third-country CSDs.

2. The granting of authorisation under paragraph 1 shall follow the procedure laid down in Article 17.

The competent authority shall inform the applicant CSD whether the authorisation has been granted or refused within three months of the submission of a complete application.

3. CSDs established in the Union that intend to establish an interoperable link shall submit an application for authorisation as required under point (e) of paragraph 1, to their respective competent authorities. Those authorities shall consult each other regarding the approval of the CSD link. In the event of divergent decisions and if agreed by both competent authorities the matter may be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

4. The authorities referred to in paragraph 3 shall refuse to authorise a link only where such a CSD link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.

5. Interoperable links of CSDs that outsource some of their services related to those interoperable links to a public entity in accordance with Article 30(5) and CSD links that are not referred to in point (e) of paragraph 1 shall not be subject to authorisation under that point but shall be notified to the CSDs' competent and relevant authorities prior to their implementation by providing all relevant information that allows such authorities to assess compliance with the requirements provided in Article 48.

6. A CSD established and authorised in the Union may maintain or establish a link with a third-country CSD in accordance with the conditions and procedures provided in this Article. Where links are established with a third-country CSD the information provided by the requesting CSD shall allow the competent authority to evaluate whether such links fulfil the requirements provided in Article 48 or the requirements that are equivalent to those provided in Article 48.

7. The competent authority of the requesting CSD shall require that CSD to discontinue a CSD link that has been notified when such link does not fulfil the requirements provided for in Article 48 and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Where a competent authority requires the CSD to discontinue a CSD link, it shall follow the procedure laid down in Article 20(2) and (3).

8. The additional ancillary services explicitly listed in Section B of the Annex shall not be subject to authorisation, but shall be notified to the competent authority prior to their provision.

Article 20

Withdrawal of authorisation

1. Without prejudice to any remedial actions or measures under Title V, the competent authority of the home Member State shall withdraw the authorisation in any of the following circumstances, where the CSD:

- (a) has not made use of the authorisation during 12 months, expressly renounces the authorisation or has provided no services or performed no activity during the preceding six months;
- (b) has obtained the authorisation by making false statements or by any other unlawful means;
- (c) no longer complies with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time-frame;
- (d) has seriously or systematically infringed the requirements laid down in this Regulation or, where applicable, in Directive 2014/65/EU or Regulation (EU) No 600/2014.

2. From the moment when it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU on the necessity to withdraw the authorisation.

3. ESMA and any relevant authority and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU may, at any time, request that the competent authority of the home Member State examines whether the CSD still complies with the conditions under which the authorisation was granted.

4. The competent authority may limit the withdrawal of authorisation to a particular service, activity, or financial instrument.

5. A CSD shall establish, implement and maintain adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation referred to in paragraph 1.

Article 21

CSD register

1. Decisions taken by competent authorities under Articles 16, 19 and 20 shall be immediately communicated to ESMA.

2. Central banks shall without undue delay inform ESMA of any securities settlement system that they operate.

3. The name of each CSD operating in compliance with this Regulation and to which authorisation or recognition has been granted pursuant to Article 16, 19 or 25 shall be entered in a register specifying the services and, where applicable, classes of financial instruments for which the CSD has been authorised. The register shall include branches operated by the CSD in other Member States, CSD links and the information required under Article 31 where Member States have made use of the possibility provided for in that Article. ESMA shall make the register available on its dedicated website and keep it up to date.

Section 3

Supervision of CSDs

Article 22

Review and evaluation

1. The competent authority shall, at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets.

2. The competent authority shall require the CSD to submit to the competent authority an adequate recovery plan to ensure continuity of its critical operations.

3. The competent authority shall ensure that an adequate resolution plan is established and maintained for each CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned and any relevant resolution plan established in accordance with Directive 2014/59/EU.

4. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least on an annual basis.

5. The competent authority shall subject the CSD to on-site inspections.

6. When performing the review and evaluation referred to in paragraph 1, the competent authority shall, at an early stage, consult the relevant authorities, in particular concerning the functioning of the securities settlement systems operated by the CSD and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU.

7. The competent authority shall regularly, and at least once a year, inform the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU of the results, including any remedial actions or penalties, of the review and evaluation referred to in paragraph 1.

8. When performing the review and evaluation referred to in paragraph 1, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of Article 17(6) shall supply one another with all relevant information that is likely to facilitate their tasks.

9. The competent authority shall require a CSD that does not meet the requirements of this Regulation to take at an early stage the necessary actions or steps to address the situation.

10. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the following:

- (a) the information that the CSD is to provide to the competent authority for the purposes of the review and evaluation referred to in paragraph 1;
- (b) the information that the competent authority is to supply to the relevant authorities, as set out in paragraph 7;
- (c) the information that the competent authorities referred to in paragraph 8 are to supply one another.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with in Articles 10 to 14 of Regulation (EU) No 1095/2010.

11. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of information referred to in the first subparagraph of paragraph 10.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Section 4

Provision of services in another member state

Article 23

Freedom to provide services in another Member State

1. An authorised CSD may provide services referred to in the Annex within the territory of the Union, including through setting up a branch, provided that those services are covered by the authorisation.

2. An authorised CSD that intends to provide the core services referred to in points 1 and 2 of Section A of the Annex in relation to financial instruments constituted under the law of another Member State referred to in Article 49(1) or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7.

3. Any CSD wishing to provide the services referred to in paragraph 2 within the territory of another Member State for the first time, or to change the range of those services provided shall communicate the following information to the competent authority of the home Member State:

- (a) the Member State in which the CSD intends to operate;
- (b) a programme of operations stating in particular the services which the CSD intends to provide;
- (c) the currency or currencies that the CSD intends to process;
- (d) where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;

(e) where relevant, an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1).

4. Within three months from the receipt of the information referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State.

The competent authority of the host Member State shall without delay inform the relevant authorities of that Member State of any communication received under the first subparagraph.

5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate all the information referred to in paragraph 3 to the competent authority of the host Member State it shall give reasons for its refusal to the CSD concerned within three months of receiving all the information and inform the competent authority of the host Member State of its decision in relation to point (a) of paragraph 6. Where information is shared in response to such a request the competent authority of the host Member State shall not issue the communication referred to in point (a) of paragraph 6.

6. The CSD may start providing the services referred to in paragraph 2 in the host Member State under the following conditions:

(a) on receipt of a communication from the competent authority in the host Member State acknowledging receipt by the latter of the communication referred to in paragraph 4 and, where relevant, approving the assessment referred to in point (e) of paragraph 3;

(b) in the absence of any receipt of a communication, after three months from the date of transmission of the communication referred to in paragraph 4.

7. In the event of a change in any of the information communicated in accordance with paragraph 3, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change without delay by the competent authority of the home Member State.

Article 24

Cooperation between authorities of the home Member State and of the host Member State and peer review

1. Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State shall cooperate closely in the performance of their duties provided for in this Regulation, in particular when carrying out on-site inspections in that branch. The competent authority of the home Member State and of the host Member State may, in the exercise of their responsibilities, carry out on-site inspections in that branch after informing the competent authority of the host Member State or of the home Member State respectively.

2. The competent authority of the home Member State or of the host Member State may require CSDs which provide services in accordance with Article 23 to report to them periodically on their activities in that host Member State, including for the purpose of collecting statistics. The competent authority of the host Member State shall, on request from the competent authority of the home Member State, provide those periodic reports to the competent authority of the home Member State.

3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers and participants in the securities settlement systems operated by the CSD which provides services in that host Member State and any other relevant information concerning the activities of that CSD in the host Member State.

4. Where, taking into account the situation of the securities markets in the host Member State, the activities of a CSD have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the competent authority of the home Member State and of the host Member State and the relevant authorities of the home Member State and of the host Member State shall establish cooperation arrangements for the supervision of the activities of that CSD in the host Member State.

Where a CSD has become of substantial importance for the functioning of the securities markets and the protection of the investors in more than one host Member State, the home Member State may decide that such cooperation arrangements are to include colleges of supervisors.

5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall refer those findings to the competent authority of the home Member State and to ESMA.

Where, despite measures taken by the competent authority of the home Member State or because such measures prove inadequate, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ESMA shall be informed of such measures without delay.

The competent authority of the host Member State and of the home Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. Without prejudice to Article 30 of Regulation (EU) No 1095/2010, ESMA shall, after consulting the members of the ESCB, organise and conduct, at least every three years, a peer review of the supervision of CSDs which make use of the freedom to provide services in another Member State in accordance with Article 23 or to participate in an interoperable link.

In the context of the peer review referred to in the first subparagraph ESMA shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37 of Regulation (EU) No 1095/2010.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

8. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation referred to in paragraphs 1, 3 and 5.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Section 5

Relations with third countries

Article 25

Third countries

1. Third-country CSDs may provide services referred to in the Annex within the territory of the Union, including through setting up a branch.

2. Notwithstanding paragraph 1, a third-country CSD that intends to provide the core services referred to in points (1) and (2) of Section A of the Annex in relation to financial instruments constituted under the law of a Member State referred to in the second subparagraph of Article 49(1) or to set up a branch in a Member State shall be subject to the procedure referred to in paragraphs 4 to 11 of this Article.

3. A CSD established and authorised in the Union may maintain or establish a link with a third-country CSD in accordance with Article 48.

4. After consulting the authorities referred to in paragraph 5, ESMA may recognise a third-country CSD that has applied for recognition to provide the services referred to in paragraph 2, where the following conditions are met:

- (a) the Commission has adopted a decision in accordance with paragraph 9;
- (b) the third-country CSD is subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that third country;
- (c) cooperation arrangements between ESMA and the responsible authorities in that third country ('responsible third-country authorities') have been established pursuant to paragraph 10;
- (d) where relevant, the third-country CSD takes the necessary measures to allow its users to comply with the relevant national law of the Member State in which the third-country CSD intends to provide CSD services, including the law referred to in the second subparagraph of Article 49(1), and the adequacy of those measures has been confirmed by the competent authorities of the Member State in which the third-country CSD intends to provide CSD services.

5. When assessing whether the conditions referred to in paragraph 4 are met, ESMA shall consult:

- (a) the competent authorities of the Member States in which the third-country CSD intends to provide CSD services, in particular, on how the third-country CSD intends to comply with the requirement referred to in point (d) of paragraph 4;
- (b) the relevant authorities;
- (c) the responsible third-country authorities entrusted with the authorisation, supervision and oversight of CSDs.

6. The third-country CSD referred to in paragraph 2 shall submit its application for recognition to ESMA.

The applicant CSD shall provide ESMA with all information deemed to be necessary for its recognition. Within 30 working days from the receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a time limit by which the applicant CSD has to provide additional information.

The competent authorities of the Member States in which the third-country CSD intends to provide CSD services shall assess the compliance of the third-country CSD with the law referred to in point (d) of paragraph 4 and inform ESMA with a fully reasoned decision whether the compliance is met or not within three months from the receipt of all the necessary information from ESMA.

The recognition decision shall be based on the criteria laid down in paragraph 4.

Within six months from the submission of a complete application, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.

7. The competent authorities of the Member States in which the third-country CSD, duly recognised under paragraph 4, provides CSD services, in close cooperation with ESMA, may request the responsible third-country authorities to:

- (a) report periodically on the third-country CSD's activities in those host Member States, including for the purpose of collecting statistics;
- (b) communicate, within an appropriate time-frame, the identity of the issuers and participants in the securities settlement systems operated by the third-country CSD which provides services in that host Member State and any other relevant information concerning the activities of that third-country CSD in the host Member State.

8. ESMA shall, after consulting the authorities referred to in paragraph 5, review the recognition of the third-country CSD in the event of extensions by that CSD in the Union of its services under the procedure laid down in paragraphs 4, 5 and 6.

ESMA shall withdraw the recognition of that CSD where the conditions laid down in paragraph 4 are no longer met, or in the circumstances referred to in Article 20.

9. The Commission may adopt implementing acts to determine that the legal and supervisory arrangements of a third country ensure that CSDs authorised in that third country comply with legally binding requirements which are in effect equivalent to the requirements laid down in this Regulation, that those CSDs are subject to effective supervision, oversight and enforcement in that third country on an ongoing basis and that the legal framework of that third country provides for an effective equivalent system for the recognition of CSDs authorised under third-country legal regimes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 68(2).

In making the determination referred to in the first subparagraph, the Commission may also consider whether the legal and supervisory arrangements of a third country reflect the internationally agreed CPSS-IOSCO standards, in so far as the latter do not conflict with the requirements laid down in this Regulation.

10. In accordance with Article 33(1) of Regulation (EU) No 1095/2010, ESMA shall establish cooperation arrangements with the responsible third-country authorities whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 9. Such arrangements shall specify at least:

- (a) the mechanism for the exchange of information between ESMA, the competent authorities of the host Member State and the third-country responsible authorities, including access to all information regarding the CSDs authorised in third countries that is requested by ESMA and in particular access to information in the cases referred to in paragraph 7;
- (b) the mechanism for prompt notification of ESMA where a third-country responsible authority deems a CSD that it is supervising to infringe the conditions of its authorisation or of other applicable law;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

Where a cooperation agreement provides for transfers of personal data by a Member State, such transfers shall comply with the provisions of Directive 95/46/EC and where a cooperation agreement provides for transfers of personal data by ESMA, such transfers shall comply with the provisions of Regulation (EU) No 45/2001.

11. Where a third-country CSD has been recognised, in accordance with paragraphs 4 to 8, it may provide services referred to in the Annex within the territory of the Union, including by setting up a branch.

12. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD is to provide to ESMA in its application for recognition under paragraph 6.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER II

Requirements for CSDs

Section 1

Organisational requirements

Article 26

General provisions

1. A CSD shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.

2. A CSD shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, members of the management body or any person directly or indirectly linked to them, and its participants or their clients. It shall maintain and implement adequate resolution procedures where possible conflicts of interest occur.
4. A CSD shall make its governance arrangements and the rules governing its activity available to the public.
5. A CSD shall have appropriate procedures for its employees to report internally potential infringements of this Regulation through a specific channel.
6. A CSD shall be subject to regular and independent audits. The results of these audits shall be communicated to the management body and made available to the competent authority and, where appropriate taking into account potential conflicts of interest between the members of the user committee and the CSD, to the user committee.
7. Where a CSD is part of a group of undertakings including other CSDs or credit institutions referred to in Title IV, it shall adopt detailed policies and procedures specifying how the requirements laid down in this Article apply to the group and to the different entities in the group.
8. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying at the CSD level and at the group level as referred to in paragraph 7:
 - (a) the monitoring tools for the risks of the CSDs referred to in paragraph 1;
 - (b) the responsibilities of the key personnel in respect of the risks of the CSDs referred to in paragraph 1;
 - (c) the potential conflicts of interest referred to in paragraph 3;
 - (d) the audit methods referred to in paragraph 6; and
 - (e) the circumstances in which it would be appropriate, taking into account potential conflicts of interest between the members of the user committee and the CSD, to share audit findings with the user committee in accordance with paragraph 6.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 27

Senior management, management body and shareholders

1. The senior management of a CSD shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CSD.
2. A CSD shall have a management body of which at least one third, but no less than two, of its members are independent.
3. The remuneration of the independent and other non-executive members of the management body shall not be linked to the business performance of the CSD.

4. The management body shall be composed of suitable members of sufficiently good repute with an appropriate mix of skills, experience and knowledge of the entity and of the market. The non-executive members of the management body shall decide on a target for the representation of the under-represented gender in the management body and prepare a policy on how to increase the number of the under-represented gender in order to meet that target. The target, policy and its implementation shall be made public.

5. A CSD shall clearly determine the role and responsibilities of the management body in accordance with the relevant national law. A CSD shall make the minutes of the meetings of the management body available to the competent authority and the auditor upon request.

6. The CSD's shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the CSD shall be suitable to ensure the sound and prudent management of the CSD.

7. A CSD shall:

(a) provide the competent authority with, and make public, information regarding the ownership of the CSD, and in particular, the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD;

(b) inform and seek approval from its competent authority of any decision to transfer ownership rights which give rise to a change in the identity of the persons exercising control over the operation of the CSD. After receiving approval from its competent authority, the CSD shall make public the transfer of ownership rights.

Any natural or legal person shall inform without undue delay the CSD and its competent authority of a decision to acquire or dispose of its ownership rights that give rise to a change in the identity of the persons exercising control over the operation of the CSD.

8. Within 60 working days from the receipt of the information referred to in paragraph 7, the competent authority shall take a decision on the proposed changes in the control of the CSD. The competent authority shall refuse to approve proposed changes in the control of the CSD where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the CSD or to the ability of the CSD to comply with this Regulation.

Article 28

User committee

1. A CSD shall establish user committees for each securities settlement system it operates, which shall be composed of representatives of issuers and of participants in such securities settlement systems. The advice of the user committee shall be independent from any direct influence by the management of the CSD.

2. A CSD shall define in a non-discriminatory way the mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for user committee members. The governance arrangements shall be publicly available and shall ensure that the user committee reports directly to the management body and holds regular meetings.

3. User committees shall advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level.

4. User committees may submit a non-binding opinion to the management body containing detailed reasons regarding the pricing structures of the CSD.

5. Without prejudice to the right of competent authorities to be duly informed, the members of the user committees shall be bound by confidentiality. Where the chairman of a user committee determines that a member has an actual or a potential conflict of interest in relation to a particular matter, that member shall not be allowed to vote on that matter.

6. A CSD shall promptly inform the competent authority and the user committee of any decision in which the management body decides not to follow the advice of the user committee. The user committee may inform the competent authority of any areas in which it considers that the advice of the user committee has not been followed.

Article 29

Record keeping

1. A CSD shall maintain, for a period of at least 10 years, all its records on the services and activities, including on the ancillary services referred to in Sections B and C of the Annex, so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.

2. A CSD shall make the records referred to in paragraph 1 available upon request to the competent authority and the relevant authorities and any other public authority which under Union law or national law of its home Member State has a power to require access to such records for the purpose of fulfilling their mandate.

3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish the format of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 30

Outsourcing

1. Where a CSD outsources services or activities to a third party, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:

(a) outsourcing does not result in the delegation of its responsibility;

(b) the relationship and obligations of the CSD towards its participants or issuers are not altered;

(c) the conditions for the authorisation of the CSD do not effectively change;

- (d) outsourcing does not prevent the exercise of supervisory and oversight functions, including on-site access to acquire any relevant information needed to fulfil those functions;
 - (e) outsourcing does not result in depriving the CSD of the systems and controls necessary to manage the risks it faces;
 - (f) the CSD retains the expertise and resources necessary for evaluating the quality of the services provided, the organisational and capital adequacy of the service provider, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;
 - (g) the CSD has direct access to the relevant information of the outsourced services;
 - (h) the service provider cooperates with the competent authority and the relevant authorities in connection with the outsourced activities;
 - (i) the CSD ensures that the service provider meets the standards set down by the relevant data protection law which would apply if the service providers were established in the Union. The CSD is responsible for ensuring that those standards are set out in a contract between the parties and that those standards are maintained.
2. The CSD shall define in a written agreement its rights and obligations and those of the service provider. The outsourcing agreement shall allow the CSD to terminate the agreement.
3. A CSD and a service provider shall make available upon request to the competent authority and the relevant authorities all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation.
4. The outsourcing of a core service shall be subject to authorisation under Article 19 by the competent authority.
5. Paragraphs 1 to 4 shall not apply where a CSD outsources some of its services or activities to a public entity and where that outsourcing is governed by a dedicated legal, regulatory and operational framework which has been jointly agreed and formalised by the public entity and the relevant CSD and agreed by the competent authorities on the basis of the requirements established in this Regulation.

Article 31

Services provided by parties other than CSDs

1. Notwithstanding Article 30 and where required by national law, a person other than CSD may be responsible for recording book entries into securities accounts maintained by CSDs.
2. Member States that allow parties other than CSDs to provide certain core services referred to in Section A of the Annex in accordance with paragraph 1 shall specify in their national law the requirements that will apply in such a case. Those requirements shall include the provisions of this Regulation which shall apply both to the CSD and, where relevant, to the other party concerned.
3. Member States that allow parties other than CSDs to provide certain core services referred to in Section A of the Annex in accordance with paragraph 1 shall communicate to ESMA all the relevant information concerning the provision of such services, including their relevant national law.

ESMA shall include such information in the CSD register referred to in Article 21.

Section 2

Conduct of business rules

Article 32

General provisions

1. A CSD shall have clearly defined goals and objectives that are achievable, such as in the areas of minimum service levels, risk-management expectations and business priorities.
2. A CSD shall have transparent rules for the handling of complaints.

Article 33

Requirements for participation

1. For each securities settlement system it operates a CSD shall have publicly disclosed criteria for participation which allow fair and open access for all legal persons that intend to become participants. Such criteria shall be transparent, objective, and non-discriminatory so as to ensure fair and open access to the CSD with due regard to risks to financial stability and the orderliness of markets. Criteria that restrict access shall be permitted only to the extent that their objective is to justifiably control a specified risk for the CSD.
2. A CSD shall treat requests for access promptly by providing a response to such requests within one month at the latest and shall make the procedures for treating access requests publicly available.
3. A CSD shall deny access to a participant meeting the criteria referred to in paragraph 1 only where duly justified in writing and based on a comprehensive risk assessment.

In the event of a refusal, the requesting participant has the right to complain to the competent authority of the CSD that has refused access.

That competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting participant with a reasoned reply.

That competent authority shall consult the competent authority of the place of establishment of the requesting participant on its assessment of the complaint. Where the authority of the requesting participant disagrees with the assessment provided, any one of the two competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to grant access to the requesting participant is deemed to be unjustified, the competent authority of the CSD that has refused access shall issue an order requiring that CSD to grant access to the requesting participant.

4. A CSD shall have objective and transparent procedures for the suspension and orderly exit of participants that no longer meet the criteria for participation referred to in paragraph 1.
5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3 and the elements of the procedure referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 3.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 34

Transparency

1. For each securities settlement system it operates, as well as for each of the other core services it performs, a CSD shall publicly disclose the prices and fees associated with the core services listed in Section A of the Annex that they provide. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clients separate access to the specific services provided.

2. A CSD shall publish its price list so as to facilitate the comparison of offers and to allow clients to anticipate the price they shall have to pay for the use of services.

3. A CSD shall be bound by its published pricing policy for its core services.

4. A CSD shall provide its clients with information that allows reconciling invoices with the published price lists.

5. A CSD shall disclose to all clients information that allows them to assess the risks associated with the services provided.

6. A CSD shall account separately for costs and revenues of the core services provided and shall disclose that information to the competent authority.

7. A CSD shall account for the cost and revenue of the ancillary services provided as a whole and shall disclose that information to the competent authority.

8. In order to ensure effective application of Union competition rules and enable the identification, inter alia, of cross-subsidisation of ancillary services by core services, a CSD shall maintain analytical accounting for its activities. Such analytical accounts shall at least separate the costs and revenues associated with each of its core services from those associated with ancillary services.

Article 35

Communication procedures with participants and other market infrastructures

CSDs shall use in their communication procedures with participants of the securities settlement systems they operate, and with the market infrastructures they interface with international open communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment and settlement.

Section 3

Requirements for CSD services

Article 36

General provisions

For each securities settlement system it operates a CSD shall have appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, and reduce and manage the risks associated with the safekeeping and settlement of transactions in securities.

Article 37

Integrity of the issue

1. A CSD shall take appropriate reconciliation measures to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD and, where relevant, on owner accounts maintained by the CSD. Such reconciliation measures shall be conducted at least daily.

2. Where appropriate and if other entities are involved in the reconciliation process for a certain securities issue, such as the issuer, registrars, issuance agents, transfer agents, common depositories, other CSDs or other entities, the CSD and any such entities shall organise adequate cooperation and information exchange measures with each other so that the integrity of the issue is maintained.

3. Securities overdrafts, debit balances or securities creation shall not be allowed in a securities settlement system operated by a CSD.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reconciliation measures a CSD is to take under paragraphs 1, 2 and 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 38

Protection of securities of participants and those of their clients

1. For each securities settlement system it operates, a CSD shall keep records and accounts that shall enable it, at any time and without delay, to segregate in the accounts with the CSD, the securities of a participant from those of any other participant and, if applicable, from the CSD's own assets.

2. A CSD shall keep records and accounts that enable any participant to segregate the securities of the participant from those of the participant's clients.

3. A CSD shall keep records and accounts that enable any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')

4. A CSD shall keep records and accounts that enable a participant to segregate the securities of any of the participant's clients, if and as required by the participant ('individual client segregation').

5. A participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.

However, a CSD and its participants shall provide individual clients segregation for citizens and residents of, and legal persons established in, a Member State where required under the national law of the Member State under which the securities are constituted as it stands at 17 September 2014. That obligation shall apply as long as the national law is not amended or repealed and its objectives are still valid.

6. CSDs and their participants shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdictions.

7. A CSD shall not use for any purpose securities that do not belong to it. A CSD may however use securities of a participant where it has obtained that participant's prior express consent. The CSD shall require its participants to obtain any necessary prior consent from their clients.

Article 39

Settlement finality

1. A CSD shall ensure that the securities settlement system it operates offers adequate protection to participants. Member States shall designate and notify the securities settlement systems operated by CSDs according to the procedures referred to in point (a) of Article 2 of Directive 98/26/EC.

2. A CSD shall ensure that each securities settlement system that it operates defines the moments of entry and of irrevocability of transfer orders in that securities settlement system in accordance with Articles 3 and 5 of Directive 98/26/EC.

3. A CSD shall disclose the rules governing the finality of transfers of securities and cash in a securities settlement system.

4. Paragraphs 2 and 3 shall apply without prejudice to the provisions applicable to CSD links, and without prejudice to paragraph 8 of Article 48.

5. A CSD shall take all reasonable steps to ensure that, in accordance with the rules referred to in paragraph 3, finality of transfers of securities and cash referred to in paragraph 3 is achieved either in real time or intra-day and in any case no later than by the end of the business day of the actual settlement date.

6. Where the CSD offers the services referred to in Article 40(2), it shall ensure that the cash proceeds of securities settlements shall be available for recipients to use no later than by the end of the business day of the intended settlement date.

7. All securities transactions against cash between direct participants in a securities settlement system operated by a CSD and settled in that securities settlement system shall be settled on a DVP basis.

Article 40

Cash settlement

1. For transactions denominated in the currency of the country where the settlement takes place, a CSD shall settle the cash payments of its securities settlement system through accounts opened with a central bank of issue of the relevant currency where practical and available.

2. Where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution or through its own accounts, it shall do so in accordance with the provisions of Title IV.

3. A CSD shall ensure that any information provided to market participants about the risks and costs associated with settlement in the accounts of credit institutions or through its own accounts is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement in the accounts of credit institutions or through its own accounts and shall provide such information on request.

Article 41

Participant default rules and procedures

1. For each securities settlement system it operates, a CSD shall have effective and clearly defined rules and procedures to manage the default of one or more of its participants ensuring that the CSD can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

2. A CSD shall make its default rules and relevant procedures available to the public.

3. A CSD shall undertake with its participants and other relevant stakeholders periodic testing and review of its default procedures to ensure that they are practical and effective.

4. In order to ensure consistent application of this Article, ESMA may, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

Section 4

Prudential requirements

Article 42

General requirements

A CSD shall adopt a sound risk-management framework for comprehensively managing legal, business, operational and other direct or indirect risks, including measures to mitigate fraud and negligence.

Article 43

Legal risks

1. For the purpose of its authorisation and supervision, as well as for the information of its clients, a CSD shall have rules, procedures, and contracts that are clear and understandable for all the securities settlement systems that it operates and all other services that it provides.

2. A CSD shall design its rules, procedures and contracts so that they are enforceable in all relevant jurisdictions, including in the case of the default of a participant.

3. A CSD conducting business in different jurisdictions shall take all reasonable steps to identify and mitigate the risks arising from potential conflicts of law across jurisdictions.

Article 44

General business risk

A CSD shall have robust management and control systems as well as IT tools in order to identify, monitor and manage general business risks, including losses from poor execution of business strategy, cash flows and operating expenses.

*Article 45***Operational risks**

1. A CSD shall identify sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate IT tools, controls and procedures, including for all the securities settlement systems it operates.
2. A CSD shall maintain appropriate IT tools that ensure a high degree of security and operational reliability, and have adequate capacity. IT tools shall adequately deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security, and the integrity and confidentiality of the information maintained.
3. For services that it provides as well as for each securities settlement system that it operates, a CSD shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan to ensure the preservation of its services, the timely recovery of operations and the fulfilment of the CSD's obligations in the case of events that pose a significant risk of disrupting operations.
4. The plan referred to in paragraph 3 shall provide for the recovery of all transactions and participants' positions at the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date, including by ensuring that critical IT systems can promptly resume operations from the time of disruption. It shall include the setting-up of a second processing site with sufficient resources, capabilities and functionalities and appropriate staffing arrangements.
5. The CSD shall plan and carry out a programme of tests of the arrangements referred to in paragraphs 1 to 4.
6. A CSD shall identify, monitor and manage the risks that key participants in the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations. It shall, upon request, provide competent and relevant authorities with information on any such risk identified.

It shall also inform the competent authority and relevant authorities without delay of any operational incidents resulting from such risks.

7. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the operational risks referred to in paragraphs 1 and 6 and the methods to test, to address or to minimise those risks, including the business continuity policies and disaster recovery plans referred to in paragraphs 3 and 4 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

*Article 46***Investment policy**

1. A CSD shall hold its financial assets at central banks, authorised credit institutions or authorised CSDs.
2. A CSD shall have prompt access to its assets, where required.
3. A CSD shall invest its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk. Those investments shall be capable of being liquidated rapidly with minimal adverse price effect.

4. The amount of capital, including retained earnings and reserves of a CSD which are not invested in accordance with paragraph 3 shall not be taken into account for the purposes of Article 47(1).

5. A CSD shall ensure that its overall risk exposure to any individual authorised credit institution or authorised CSD with which it holds its financial assets remains within acceptable concentration limits.

6. ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory technical standards specifying the financial instruments that can be considered to be highly liquid with minimal market and credit risk as referred to in paragraph 3, the appropriate timeframe for access to assets referred to in paragraph 2 and the concentration limits as referred to in paragraph 5. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 47(8) of Regulation (EU) No 648/2012.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 47

Capital requirements

1. Capital, together with retained earnings and reserves of a CSD, shall be proportional to the risks stemming from the activities of the CSD. It shall be at all times sufficient to:

- (a) ensure that the CSD is adequately protected against operational, legal, custody, investment and business risks so that the CSD can continue to provide services as a going concern;
- (b) ensure an orderly winding-down or restructuring of the CSD's activities over an appropriate time span of at least six months under a range of stress scenarios.

2. A CSD shall maintain a plan for the following:

- (a) the raising of additional capital should its equity capital approach or fall below the requirements laid down in paragraph 1;
- (b) ensuring the orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital.

The plan shall be approved by the management body or an appropriate committee of the management body and updated regularly. Each update of the plan shall be provided to the competent authority. The competent authority may require the CSD to take additional measures or to make any alternative provision where the competent authority considers that the CSD's plan is insufficient.

3. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards specifying requirements regarding the capital, retained earnings and reserves of a CSD referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Section 5

Requirements for CSD links*Article 48***CSD links**

1. Before establishing a CSD link and on an ongoing basis once the CSD link is established, all CSDs concerned shall identify, assess, monitor and manage all potential sources of risk for themselves and for their participants arising from the CSD link and take appropriate measures to mitigate them.

2. CSDs that intend to establish links shall submit an application for authorisation to the competent authority of the requesting CSD as required under point (e) of Article 19(1) or notify the competent and relevant authorities of the requesting CSD as required under Article 19(5).

3. A link shall provide adequate protection to the linked CSDs and their participants, in particular as regards possible credits taken by CSDs and the concentration and liquidity risks as a result of the link arrangement.

A link shall be supported by an appropriate contractual arrangement that sets out the respective rights and obligations of the linked CSDs and, where necessary, of the CSDs' participants. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law that govern each aspect of the link's operations.

4. In the event of a provisional transfer of securities between linked CSDs, retransfer of securities prior to the first transfer becoming final shall be prohibited.

5. A CSD that uses an indirect link or an intermediary to operate a CSD link with another CSD shall measure, monitor, and manage the additional risks arising from the use of that indirect link or intermediary and take appropriate measures to mitigate them.

6. Linked CSDs shall have robust reconciliation procedures to ensure that their respective records are accurate.

7. Links between CSDs shall permit DVP settlement of transactions between participants in linked CSDs, where practical and feasible. Detailed reasons for any CSD link not allowing for DVP settlement shall be notified to the relevant and competent authorities.

8. Interoperable securities settlement systems and CSDs, which use a common settlement infrastructure shall establish identical moments of:

(a) entry of transfer orders into the system;

(b) irrevocability of transfer orders.

The securities settlement systems and CSDs referred to in the first subparagraph shall use equivalent rules concerning the moment of finality of transfers of securities and cash.

9. By 18 September 2019 all interoperable links between CSDs operating in Member States shall be, where applicable, DVP-settlement supporting links.

10. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the conditions provided for in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular where a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6, the cases where DVP settlement through CSD links is practical and feasible as provided for in paragraph 7 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Powers is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER III

Access to CSDs

Section 1

Access of issuers to CSDs

Article 49

Freedom to issue in a CSD authorised in the Union

1. An issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD established in any Member State, subject to compliance by that CSD with conditions referred to in Article 23.

Without prejudice to the issuer's right referred to in the first subparagraph, the corporate or similar law of the Member State under which the securities are constituted shall continue to apply.

Member States shall ensure that a list of key relevant provisions of their law, as referred to in the second subparagraph, is compiled. Competent authorities shall communicate that list to ESMA by 18 December 2014. ESMA shall publish the list by 18 January 2015.

The CSD may charge a reasonable commercial fee for the provision of its services to issuers on a cost-plus basis, unless otherwise agreed by both parties.

2. Where an issuer submits a request for recording its securities in a CSD, the latter shall treat such request promptly and in a non-discriminatory manner and provide a response to the requesting issuer within three months.

3. A CSD may refuse to provide services to an issuer. Such a refusal shall be based only on a comprehensive risk assessment or if that CSD does not provide the services referred to in point (1) of Section A of the Annex in relation to securities constituted under the corporate or similar law of the relevant Member State.

4. Without prejudice to Directive 2005/60/EC of the European Parliament and of the Council⁽¹⁾ and Commission Directive 2006/70/EC⁽²⁾, where a CSD refuses to provide services to an issuer, it shall provide the requesting issuer with full written reasons for its refusal.

⁽¹⁾ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

⁽²⁾ Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L 214, 4.8.2006, p. 29).

In the case of a refusal, the requesting issuer shall have the right to complain to the competent authority of the CSD that refuses to provide its services.

The competent authority of that CSD shall duly examine the complaint by assessing the reasons for refusal provided by the CSD and shall provide the issuer with a reasoned reply.

The competent authority of the CSD shall consult the competent authority of the place of establishment of the requesting issuer on its assessment of the complaint. Where the competent authority of the place of establishment of the requesting issuer disagrees with that assessment, any one of the two competent authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to provide its services to an issuer is deemed to be unjustified, the responsible competent authority shall issue an order requiring the CSD to provide its services to the requesting issuer.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and competent authorities assessing the reasons for refusal in accordance with paragraphs 3 and 4, and the elements of the procedure referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 4.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Section 2

Access between CSDs

Article 50

Standard link access

A CSD shall have the right to become a participant of another CSD and set up a standard link with that CSD in accordance with Article 33 and subject to the prior notification of the CSD link provided under Article 19(5).

Article 51

Customised link access

1. Where a CSD requests another CSD to establish a customised link for having access to the latter, the receiving CSD shall reject such a request only on the basis of risk considerations. It shall not deny a request on the grounds of loss of market share.

2. The receiving CSD may charge a reasonable commercial fee on a cost-plus basis to the requesting CSD for making customised link access available, unless otherwise agreed by both parties.

*Article 52***Procedure for CSD links**

1. When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the latter shall treat such request promptly and shall provide a response to the requesting CSD within three months.

2. A CSD shall deny access to a requesting CSD only where such access would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Such a refusal shall be based only on a comprehensive risk assessment.

Where a CSD refuses access, it shall provide the requesting CSD with full reasons for its refusal.

In the case of a refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

The competent authority of the receiving CSD shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting CSD with a reasoned reply.

The competent authority of the receiving CSD shall consult the competent authority of the requesting CSD and the relevant authority of the requesting CSD referred to in point (a) of Article 12(1) on its assessment of the complaint. Where any of the authorities of the requesting CSD disagrees with the assessment provided, any one of the authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to grant access to the requesting CSD is deemed to be unjustified, the competent authority of the receiving CSD shall issue an order requiring that CSD to grant access to the requesting CSD.

3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 2, and the elements of the procedure referred to in paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedures referred to in paragraphs 1 and 2.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Section 3

Access between a CSD and another market infrastructure*Article 53***Access between a CSD and another market infrastructure**

1. A CCP and a trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD upon request by the CSD and may charge a reasonable commercial fee for such transaction feeds to the requesting CSD on a cost-plus basis, unless otherwise agreed by both parties.

A CSD shall provide access to its securities settlement systems on a non-discriminatory and transparent basis to a CCP or a trading venue and may charge a reasonable commercial fee for such access on a cost-plus basis, unless otherwise agreed by both parties.

2. When a party submits a request for access to another party in accordance with paragraph 1, such request shall be treated promptly and a response to the requesting party shall be provided within three months.

3. The receiving party shall deny access only where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk. It shall not deny a request on the grounds of loss of market share.

A party that refuses access shall provide the requesting party with full written reasons for such refusal based on a comprehensive risk assessment. In the case of a refusal, the requesting party has the right to complain to the competent authority of the party that has refused access.

The competent authority of the receiving party and the relevant authority referred to in point (a) of Article 12(1) shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting party with a reasoned reply.

The competent authority of the receiving party shall consult the competent authority of the requesting party and the relevant authority referred to in point (a) of Article 12(1) on its assessment of the complaint. Where any of the authorities of the requesting party disagrees with the assessment provided, any of them may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by a party to grant access is deemed to be unjustified, the responsible competent authority shall issue an order requiring that party to grant access to its services within three months.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal in accordance with paragraph 3, and the elements of the procedure referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 2 and 3.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

TITLE IV

PROVISION OF BANKING-TYPE ANCILLARY SERVICES FOR CSD PARTICIPANTS

Article 54

Authorisation and designation to provide banking-type ancillary services

1. A CSD shall not itself provide any banking-type ancillary services set out in Section C of the Annex unless it has obtained an additional authorisation to provide such services in accordance with this Article.

2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) or otherwise wishes to provide any banking-type ancillary services referred to in paragraph 1 shall be authorised either:

(a) to offer such services itself under the conditions specified in this Article; or

(b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU.

3. Where a CSD seeks to provide any banking-type ancillary services from within the same legal entity as the legal entity operating the securities settlement system the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

(a) the CSD is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU;

(b) the CSD meets the prudential requirements laid down in Article 59(1), (3) and (4) and the supervisory requirements laid down in Article 60;

(c) the authorisation referred to in point (a) of this subparagraph is used only to provide the banking-type ancillary services referred to in Section C of the Annex and not to carry out any other activities;

(d) the CSD is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;

(e) the CSD reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation;

(f) the CSD has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type ancillary services.

In the case of conflicting provisions laid down in this Regulation, in Regulation (EU) No 575/2013 and in Directive 2013/36/EU, the CSD referred to in point (a) of the first subparagraph shall comply with the stricter requirements on prudential supervision. The regulatory technical standards referred to in Articles 47 and 59 of this Regulation shall clarify the cases of conflicting provisions.

4. Where a CSD seeks to designate a credit institution to provide any banking-type ancillary services from within a separate legal entity which may be part of the same group of undertakings ultimately controlled by the same parent undertaking or not, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

- (a) the separate legal entity is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU;
- (b) the separate legal entity meets the prudential requirements laid down in Article 59(1), (3) and (4) and supervisory requirements laid down in Article 60;
- (c) the separate legal entity does not itself carry out any of the core services referred to in Section A of the Annex;
- (d) the authorisation referred to in point (a) is used only to provide the banking-type ancillary services referred to in Section C of the Annex and not to carry out any other activities;
- (e) the separate legal entity is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;
- (f) the separate legal entity reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation; and
- (g) the separate legal entity has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type ancillary services from within a separate legal entity.

5. Paragraph 4 shall not apply to credit institutions referred to in point (b) of paragraph 2 that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions, calculated over a one-year period, is less than one per cent of the total value of all securities transactions against cash settled in the books of the CSD and does not exceed a maximum of EUR 2,5 billion per year.

The competent authority shall monitor at least once per year that the threshold defined in the first subparagraph is respected and report its findings to ESMA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within six months.

6. The competent authority may require a CSD to designate more than one credit institution, or to designate a credit institution in addition to providing services itself in accordance with point (a) of paragraph 2 of this Article where it considers that the exposure of one credit institution to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated. The designated credit institutions shall be considered to be settlement agents.

7. A CSD authorised to provide any banking-type ancillary services and a credit institution designated in accordance with point (b) of paragraph 2 shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any substantive changes affecting the conditions for authorisation.

8. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the additional risk based capital surcharge referred to in point (d) of paragraph 3 and point (e) of paragraph 4.

EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 55

Procedure for granting and refusing authorisation to provide banking-type ancillary services

1. The CSD shall submit its application for authorisation to designate a credit institution or to provide any banking-type ancillary service, as required under Article 54, to the competent authority of its home Member State.

2. The application shall contain all the information that is necessary to enable the competent authority to satisfy itself that the CSD and where applicable the designated credit institution have established, at the time of the authorisation, all the necessary arrangements to meet their obligations as laid down in this Regulation. It shall contain a programme of operations setting out the banking-type ancillary services envisaged, the structural organisation of the relations between the CSD and the designated credit institutions where applicable and how that CSD or where applicable the designated credit institution intends to meet the prudential requirements laid down in Article 59(1), (3) and (4) and the other conditions laid down in Article 54.

3. The competent authority shall apply the procedure under Article 17(3) and (8).

4. From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the following authorities:

(a) the relevant authorities;

(b) the competent authority referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013;

(c) the competent authorities in the Member States where the CSD has established interoperable links with another CSD except where the CSD has established interoperable links referred to in Article 19(5);

(d) the competent authorities in the host Member State where the activities of the CSD are of substantial importance for the functioning of the securities markets and the protection of investors within the meaning of Article 24(4);

(e) the competent authorities responsible for the supervision of the participants of the CSD that are established in the three Member States with the largest settlement values in the CSD's securities settlement system on an aggregate basis over a one-year period;

(f) ESMA; and

(g) EBA.

5. The authorities referred to in points (a) to (e) of paragraph 4 shall issue a reasoned opinion on the authorisation within 30 days of receipt of the information referred to in paragraph 4. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.

Where at least one of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 days provide the authorities referred to in points (a) to (e) of paragraph 4 with a reasoned decision addressing the negative opinion.

Where 30 days after that decision has been presented any of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative opinion and the competent authority still wishes to grant the authorisation any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under point (c) of Article 31 of Regulation (EU) No 1095/2010.

Where 30 days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in points (a) to (e) of paragraph 4.

Where the competent authority wishes to refuse authorisation, the matter shall not be referred to ESMA.

Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other parts of Union law are not met.

6. Where ESMA considers that the competent authority referred to in paragraph 1 has granted an authorisation which may not be in conformity with Union law it shall act in accordance with Article 17 of Regulation (EU) No 1095/2010.

7. ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft regulatory technical standards to specify the information that the CSD is to provide to the competent authority for the purpose of obtaining the relevant authorisations to provide the banking-type services ancillary to settlement.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of the authorities referred to in paragraph 4 prior to granting authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 56

Extension of the banking-type ancillary services

1. A CSD that intends to extend the banking-type ancillary services for which it designates a credit institution or that it provides itself in accordance with Article 54, shall submit a request for extension to the competent authority of its home Member State.

2. The request for extension shall be subject to the procedure under Article 55.

Article 57

Withdrawal of authorisation

1. Without prejudice to any remedial actions or measures under Title V, the competent authority of the CSD's home Member State shall withdraw the authorisations referred to in Article 54 in any of the following circumstances:

- (a) where the CSD has not made use of the authorisation within 12 months, expressly renounces the authorisation or where the designated credit institution has provided no services or performed no activity for the preceding six months;
- (b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;
- (c) where the CSD or the designated credit institution is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time-frame;
- (d) where the CSD or the designated credit institution has seriously and systematically infringed the requirements laid down in this Regulation.

2. From the moment when it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the authorities referred to in Article 55(4) on the necessity of withdrawing the authorisation.

3. ESMA, any relevant authority under point (a) of Article 12(1) and any authority referred to in Article 60(1) or, respectively, the authorities referred to in Article 55(4) may, at any time, request that the competent authority of the CSD's home Member State examine whether the CSD and where applicable the designated credit institution is still in compliance with the conditions under which the authorisation is granted.

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

5. A CSD and the designated credit institution shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another settlement agent in the event of a withdrawal of authorisation referred to in paragraph 1.

Article 58

CSD register

1. Decisions taken by competent authorities under Articles 54, 56 and 57 shall be notified to ESMA.
2. ESMA shall introduce in the register, that it is required to make available on its dedicated website in accordance with Article 21(3), the following information:
 - (a) the name of each CSD which was subject to a decision under Articles 54, 56 and 57;
 - (b) the name of each designated credit institution;
 - (c) the list of banking-type ancillary services that a designated credit institution or a CSD authorised under Article 54 is authorised to provide for the CSD's participants.

3. The competent authorities shall notify to ESMA those entities that provide banking-type ancillary services according to requirements of national law by 16 December 2014.

Article 59

Prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services

1. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall provide only the services set out in Section C of the Annex that are covered by the authorisation.

2. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with any present or future legislation applicable to credit institutions.

3. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the credit risks related to those services in respect of each securities settlement system:

- (a) it shall establish a robust framework to manage the corresponding credit risks;
- (b) it shall identify the sources of such credit risks, frequently and regularly, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;
- (c) it shall fully cover corresponding credit exposures to individual borrowing participants using collateral and other equivalent financial resources;
- (d) if collateral is used to manage its corresponding credit risk, it shall accept highly liquid collateral with minimal credit and market risk; it may use other types of collateral in specific situations if an appropriate haircut is applied;
- (e) it shall establish and apply appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c), taking into account the objective of ensuring that collateral can be liquidated promptly without significant adverse price effects;
- (f) it shall set limits on its corresponding credit exposures;
- (g) it shall analyse and plan for how to address any potential residual credit exposures, and adopt rules and procedures to implement such plans;
- (h) it shall provide credit only to participants that have cash accounts with it;
- (i) it shall provide for effective reimbursement procedures of intra-day credit and discourage overnight credit through the application of sanctioning rates which act as an effective deterrent.

4. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the liquidity risks relating to those services in respect of each securities settlement system:

- (a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the security settlement system for which it acts as settlement agent;

- (b) it shall measure and monitor on an ongoing and timely basis, and at least daily, its liquidity needs and the level of liquid assets it holds; in doing so, it shall determine the value of its available liquid assets taking into account appropriate haircuts on those assets;
- (c) it shall have sufficient liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including its parent undertakings and subsidiaries, to which it has the largest exposures;
- (d) it shall mitigate the corresponding liquidity risks with qualifying liquid resources in each currency such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or similar arrangements and highly liquid collateral or investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions and it shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;
- (e) where prearranged funding arrangements are used, it shall select only creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;
- (f) it shall determine and test the sufficiency of the corresponding resources by regular and rigorous stress testing;
- (g) it shall analyse and plan for how to address any unforeseen and potentially uncovered liquidity shortfalls, and adopt rules and procedures to implement such plans;
- (h) where practical and available, without prejudice to the eligibility rules of the central bank, it shall have access to central bank accounts and other central bank services to enhance its management of liquidity risks and Union credit institutions shall deposit the corresponding cash balances on dedicated accounts with Union central banks of issue;
- (i) it shall have prearranged and highly reliable arrangements to ensure that it can liquidate in a timely fashion the collateral provided to it by a defaulting client;
- (j) it shall report regularly to the authorities referred to in Article 60(1), and disclose to the public, as to how it measures, monitors and manages its liquidity risks, including intra-day liquidity risks.

5. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks and tools for the monitoring, the measuring, the management, the reporting and the public disclosure of the credit and liquidity risks, including those which occur intra-day, referred to in paragraphs 3 and 4. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 46(3) of Regulation (EU) No 648/2012.

EBA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

*Article 60***Supervision of designated credit institutions and CSDs authorised to provide banking-type ancillary services**

1. Without prejudice to Articles 17 and 22 of this Regulation, the competent authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 are responsible for the authorisation as credit institutions and supervision as credit institutions under the conditions provided in Regulation (EU) No 575/2013 and in Directive 2013/36/EU of the designated credit institutions and CSDs authorised under this Regulation to provide banking-type ancillary services.

The competent authorities referred to in the first subparagraph shall also be responsible for the supervision of designated credit institutions and CSDs referred to in that subparagraph as regards their compliance with the prudential requirements referred to in Article 59 of this Regulation.

The competent authorities referred to in the first subparagraph shall regularly, and at least once a year, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD which shall then inform the authorities referred to in Article 55(4), of the results, including any remedial actions or penalties, of its supervision under this paragraph.

2. The competent authority of the CSD shall, after consulting competent authorities referred to paragraph 1, review and evaluate at least on an annual basis the following:

- (a) in the case referred to in point (b) of Article 54(2), whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations as laid down in this Regulation;
- (b) in the case referred to in point (a) of Article 54(2), whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.

The competent authority of the CSD shall regularly, and at least once a year, inform the authorities referred to in Article 55(4) of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.

Where a CSD designates an authorised credit institution in accordance with Article 54, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD and to competent authorities referred to in paragraph 1.

3. In order to ensure consistent, efficient and effective supervision within the Union of credit institutions and CSDs authorised to provide banking-type ancillary services, EBA may, in close cooperation with ESMA and the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010.

TITLE V

SANCTIONS*Article 61***Administrative sanctions and other measures**

1. Without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on and ensure that their competent authorities may impose the administrative sanctions and other measures applicable in the circumstances defined in Article 63 to the persons responsible for infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such sanctions and other measures shall be effective, proportionate and dissuasive.

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in that subparagraph are already subject to criminal sanctions in their national law by 18 September 2016. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By 18 September 2016, the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

2. The competent authorities shall be able to apply administrative sanctions and other measures, to CSDs, designated credit institutions, and, subject to the conditions laid down in national law in areas not harmonised by this Regulation, the members of their management bodies and any other persons who effectively control their business as well as to any other legal or natural person who under national law is held responsible for an infringement.

3. In the exercise of their sanctioning powers in the circumstances defined in Article 63 competent authorities shall cooperate closely to ensure that the administrative sanctions and other measures produce the results pursued by this Regulation and coordinate their actions in order to avoid any duplication or overlap when applying administrative sanctions and other measures to cross border cases in accordance with Article 14.

4. Where Member States have chosen, in accordance with paragraph 1 to lay down criminal sanctions for the infringements of the provisions referred to in Article 63, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

5. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

6. Member States shall provide ESMA annually with aggregated information regarding all sanctions and other measures imposed in accordance with paragraph 1. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for the infringements of the provisions referred to in Article 63 their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

7. Where the competent authority has disclosed an administrative sanction or an administrative measure or a criminal sanction to the public, it shall, at the same time, report that fact to ESMA.

8. Competent authorities shall exercise their functions and powers in accordance with their national frameworks:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to entities to which tasks have been delegated according to this Regulation; or

(d) by application to the competent judicial authorities.

*Article 62***Publication of decisions**

1. Member States shall ensure that the competent authorities publish on their official websites any decision imposing an administrative sanction or other measure for an infringement of this Regulation without undue delay after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of a natural or legal person on whom the sanction has been imposed.

Where the decision to impose a sanction or other measure is subject to an appeal before the relevant judicial or other relevant authorities, competent authorities shall, without undue delay, also publish on their official websites information on the appeal status and outcome thereof. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, Member States shall ensure that competent authorities do one of the following:

- (a) delay the publication of the decision to impose the sanction or other measure until the moment when the reasons for non-publication cease to exist;
- (b) publish the decision to impose the sanction or other measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures effective protection of the personal data;
- (c) not publish the decision to impose a sanction or other measure at all in the event that the options set out in points (a) and (b) above are considered to be insufficient to ensure:
 - (i) that the stability of financial markets would not be put in jeopardy;
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or other measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (c) of the third subparagraph including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

2. Competent authorities shall ensure that any publication, in accordance with this Article, shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period necessary under the applicable data protection rules.

*Article 63***Sanctions for infringements**

1. This Article shall apply to the following provisions of this Regulation:
 - (a) provision of services set out in Sections A, B and C of the Annex in infringement of Articles 16, 25 and 54;
 - (b) obtaining the authorisations required under Articles 16 and 54 by making false statements or by any other unlawful means as provided for in point (b) of Article 20(1) and point (b) of Article 57(1);
 - (c) failure of CSDs to hold the required capital, thus infringing Article 47(1);
 - (d) failure of CSDs to comply with the organisational requirements, thus infringing Articles 26 to 30;
 - (e) failure of CSDs to comply with the conduct of business rules, thus infringing Articles 32 to 35;
 - (f) failure of CSDs to comply with the requirements for CSD services, thus infringing Articles 37 to 41;
 - (g) failure of CSDs to comply with the prudential requirements, thus infringing Articles 43 to 47;
 - (h) failure of CSDs to comply with the requirements for CSD links, thus infringing Article 48;
 - (i) abusive refusals by CSDs to grant different types of access, thus infringing Articles 49 to 53;
 - (j) failure of designated credit institutions to comply with the specific prudential requirements related to credit risks, thus infringing Article 59(3);
 - (k) failure of designated credit institutions to comply with specific prudential requirements related to liquidity risks, thus infringing Article 59(4).

2. Without prejudice to the supervisory powers of competent authorities, at least in the event of an infringement referred to in this Article, the competent authorities shall, in conformity with national law, have the power to impose at least the following administrative sanctions and other measures:
 - (a) a public statement which indicates the person responsible for the infringement and the nature of the infringement in accordance with Article 62;
 - (b) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
 - (c) withdrawal of the authorisations granted under Article 16 or 54, in accordance with Article 20 or 57;
 - (d) a temporary or, for repeated serious infringements, a permanent ban against any member of the institution's management body or any other natural person, who is held responsible, from exercising management functions in the institution;
 - (e) maximum administrative pecuniary sanctions of at least twice the amounts of the profit gained as a result of an infringement where those amounts can be determined;

- (f) in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 million or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of adoption of this Regulation;
 - (g) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 20 million or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant Accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.
3. Competent authorities may have other sanctioning powers in addition to those referred in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.

Article 64

Effective application of sanctions

Member States shall ensure that, when determining the type and level of administrative sanctions or other measures, the competent authorities take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the financial strength of the person responsible for the infringement, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- (e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous infringements by the person responsible for the infringement.

Article 65

Reporting of infringements

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of potential or actual infringements of this Regulation to competent authorities.
2. The mechanisms referred to in paragraph 1 shall include at least:
- (a) specific procedures for the receipt and investigation of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;
 - (b) appropriate protection for employees of institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;
 - (c) protection of personal data concerning both the person who reports the potential or actual infringements and the natural person who is allegedly responsible for an infringement in compliance with the principles laid down in Directive 95/46/EC;

- (d) protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.
3. Member States shall require institutions to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as is referred to in points (b), (c) and (d) of paragraph 2 shall apply.

Article 66

Right of appeal

Member States shall ensure that decisions and measures taken in pursuance of this Regulation are properly reasoned and subject to a right of appeal before a tribunal. The right of appeal before a tribunal shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

TITLE VI

DELEGATION OF POWER, IMPLEMENTING POWERS, TRANSITIONAL, AMENDING AND FINAL PROVISIONS

Article 67

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 2(2), Article 7(14) and Article 24(7) shall be conferred on the Commission for an indeterminate period of time from 17 September 2014.
3. The delegation of power referred to in Article 2(2), Article 7(14) and Article 24(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 2(2), Article 7(14) and Article 24(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or of the Council.

Article 68

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC⁽¹⁾. 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.

⁽¹⁾ Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

*Article 69***Transitional provisions**

1. The competent authorities shall communicate to ESMA those institutions that operate as CSDs by 16 December 2014.
2. CSDs shall apply for all authorisations that are necessary for the purposes of this Regulation and shall notify the relevant CSD links within six months from the date of entry into force of all the regulatory technical standards adopted under Articles 17, 26, 45, 47, 48, and, where relevant, Articles 55 and 59.
3. Within six months from the later of the date of entry into force of the regulatory technical standards adopted under Articles 12, 17, 25, 26, 45, 47, 48, and, where relevant, Articles 55 and 59 or the implementing decision referred to in Article 25(9), a third-country CSD shall apply for recognition from ESMA where it intends to provide its services on the basis of Article 25.
4. Until the decision is made under this Regulation on the authorisation or recognition of CSDs and of their activities, including CSD links, the respective national rules on authorisation and recognition of CSDs shall continue to apply.
5. CSDs operated by the entities referred to in Article 1(4) shall comply with the requirements of this Regulation at the latest within one year from the date of entry into force of the regulatory technical standards referred to in paragraph 2.

*Article 70***Amendments to Directive 98/26/EC**

Directive 98/26/EC is amended as follows:

- (1) the third indent of the first subparagraph of point (a) of Article 2 is replaced by the following:

‘— designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the European Securities and Markets Authority by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.’;

- (2) in Article 11, the following paragraph is added:

‘3. By 18 March 2015, Member States shall adopt and publish and communicate to the Commission measures necessary to comply with the third indent of the first subparagraph of point (a) of Article 2.’.

*Article 71***Amendments to Directive 2014/65/EU**

Directive 2014/65/EU is amended as follows:

- (1) in Article 2(1), point (o) is replaced by the following:

‘(o) CSDs except as provided for in Article 73 of Regulation (EU) No 909/2014 of the European Parliament and of the Council (*).

(*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).’;

(2) in Article 4(1), the following point is added:

'(64) 'central securities depository' or 'CSD' means a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014.';

(3) in Section B of Annex I, point (1) is replaced by the following:

'(1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding providing and maintaining securities accounts at the top tier level ('central maintenance service') referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014.'.

Article 72

Amendment to Regulation (EU) No 236/2012

Article 15 of Regulation (EU) No 236/2012 is deleted.

Article 73

Application of Directive 2014/65/EU and Regulation (EU) No 600/2014

CSDs authorised in accordance with Article 16 of this Regulation shall not require authorisation under Directive 2014/65/EU in order to provide the services explicitly listed in Sections A and B of the Annex to this Regulation.

Where a CSD authorised in accordance with Article 16 of this Regulation provides one or more investment services or carries out one or more investment activities in addition to providing the services explicitly listed in Sections A and B of the Annex to this Regulation, Directive 2014/65/EU with the exception of Articles 5 to 8, Article 9(1) to (2) and (4) to (6) and Articles 10 to 13, and Regulation (EU) No 600/2014 shall apply.

Article 74

Reports

1. ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit annual reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. Those reports shall include at least an assessment of the following:

- (a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails, amount of penalties referred to in Article 7(2), number and volumes of buy-in transactions referred to in Article 7(3) and (4) and any other relevant criteria;
- (b) the appropriateness of penalties for settlement fails, in particular the need for additional flexibility in relation to penalties for settlement fails in relation to illiquid financial instruments referred to in Article 7(4);
- (c) measuring settlement which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions based on the information received under Article 9 and any other relevant criteria;
- (d) the cross-border provision of services covered by this Regulation based on the number and types of CSD links, number of foreign participants in the securities settlement systems operated by CSDs, number and volume of transactions involving such participants, number of foreign issuers recording their securities in a CSD in accordance with Article 49 and any other relevant criteria;

- (e) the handling of access requests in Articles 49, 52 and 53 to identify the reasons for rejection of access requests by CSDs, CCPs and trading venues any trends in such rejections and ways in which the risks identified could be mitigated in future so as to allow for access to be granted, and any other substantive barriers to competition in post-trade financial services;
- (f) the handling of applications submitted in accordance with the procedures referred to in Article 23(3) to (7) and Article 25(4) to (10);
- (g) where applicable, the findings of the peer review process for cross-border supervision in Article 24(6) and whether the frequency of such reviews could be reduced in the future, including an indication of whether such findings indicate the need for more formal colleges of supervisors;
- (h) the application of civil liability rules of Member States relating to the losses attributable to CSDs;
- (i) the procedures and conditions under which CSDs have been authorised to designate credit institutions or themselves to provide banking-type ancillary services in accordance with Articles 54 and 55, including an assessment of the effects that such provision may have on financial stability and competition for settlement and banking-types ancillary services in the Union;
- (j) the application of the rules referred to in Article 38 on protection of securities of participants and those of their clients, in particular those in Article 38(5);
- (k) the application of the sanctions and in particular the need to further harmonise the administrative sanctions for the infringement of the requirements laid down in this Regulation.

2. The reports referred to in paragraph 1 covering a calendar year shall be communicated to the Commission by 30 April of the following calendar year.

Article 75

Review

By 18 September 2019, the Commission shall review and prepare a general report on this Regulation. That report shall, in particular, assess the matters referred to in points (a) to (k) of Article 74(1), whether there are other substantive barriers to competition in relation to the services subject to this Regulation which are insufficiently addressed and the potential need for further measures to limit the impact on taxpayers of the failure of CSDs. The Commission shall submit the report to the European Parliament and to the Council, together with any appropriate proposals.

Article 76

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. Article 3(1) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities.
3. Article 5(2) shall apply from 1 January 2015.

By way of derogation from the first subparagraph of this paragraph, in the case of a trading venue that has access to a CSD referred to in Article 30(5), Article 5(2) shall apply at least six months before such a CSD outsources its activities to the relevant public entity, and in any event from 1 January 2016.

4. The settlement discipline measures referred to in Article 6(1) to (4) shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 6(5).

5. The settlement discipline measures referred to in Article 7(1) to (13) and the amendment laid down in Article 72 shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(15).

An MTF that complies with the criteria laid down in Article 33(3) of Directive 2014/65/EU shall be subject to the second subparagraph of Article 7(3) of this Regulation:

(a) until the final determination of its application for registration under Article 33 of Directive 2014/65/EU; or

(b) where an MTF has not applied for registration under Article 33 of Directive 2014/65/EU, until 13 June 2017.

6. The reporting measures referred to in Article 9(1) shall apply from the date of entry into force of the implementing act adopted by the Commission pursuant to Article 9(3).

7. References in this Regulation to Directive 2014/65/EU and Regulation (EU) No 600/2014 shall, before 3 January 2017, be read as references to Directive 2004/39/EC in accordance with the correlation table set out in Annex IV to Directive 2014/65/EU in so far as that correlation table contains provisions referring to Directive 2004/39/EC.

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

Done at Brussels, 23 July 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
S. GOZI

ANNEX

LIST OF SERVICES

SECTION A

Core services of central securities depositories

1. Initial recording of securities in a book-entry system ('notary service');
2. Providing and maintaining securities accounts at the top tier level ('central maintenance service');
3. Operating a securities settlement system ('settlement service').

SECTION B

Non-banking-type ancillary services of CSDs that do not entail credit or liquidity risks

Services provided by CSDs that contribute to enhancing the safety, efficiency and transparency of the securities markets, which may include but are not restricted to:

1. Services related to the settlement service, such as:
 - (a) Organising a securities lending mechanism, as agent among participants of a securities settlement system;
 - (b) Providing collateral management services, as agent for participants in a securities settlement system;
 - (c) Settlement matching, instruction routing, trade confirmation, trade verification.
2. Services related to the notary and central maintenance services, such as:
 - (a) Services related to shareholders' registers;
 - (b) Supporting the processing of corporate actions, including tax, general meetings and information services;
 - (c) New issue services, including allocation and management of ISIN codes and similar codes;
 - (d) Instruction routing and processing, fee collection and processing and related reporting.
3. Establishing CSD links, providing, maintaining or operating securities accounts in relation to the settlement service, collateral management, other ancillary services.
4. Any other services, such as:
 - (a) Providing general collateral management services as agent;
 - (b) Providing regulatory reporting;
 - (c) Providing information, data and statistics to market/census bureaus or other governmental or inter-governmental entities;
 - (d) Providing IT services.

SECTION C

Banking-type ancillary services

Banking-type services directly related to core or ancillary services listed in Sections A and B, such as:

- (a) Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex I to Directive 2013/36/EU;

- (b) Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex I to Directive 2013/36/EU;
 - (c) Payment services involving processing of cash and foreign exchange transactions, within the meaning of point 4 of Annex I to Directive 2013/36/EU;
 - (d) Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex I to Directive 2013/36/EU;
 - (e) Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex I to Directive 2013/36/EU.
-

REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 July 2014
on electronic identification and trust services for electronic transactions in the internal market and
repealing Directive 1999/93/EC

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) Building trust in the online environment is key to economic and social development. Lack of trust, in particular because of a perceived lack of legal certainty, makes consumers, businesses and public authorities hesitate to carry out transactions electronically and to adopt new services.
- (2) This Regulation seeks to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services, electronic business and electronic commerce in the Union.
- (3) Directive 1999/93/EC of the European Parliament and of the Council ⁽³⁾, dealt with electronic signatures without delivering a comprehensive cross-border and cross-sector framework for secure, trustworthy and easy-to-use electronic transactions. This Regulation enhances and expands the *acquis* of that Directive.
- (4) The Commission communication of 26 August 2010 entitled 'A Digital Agenda for Europe' identified the fragmentation of the digital market, the lack of interoperability and the rise in cybercrime as major obstacles to the virtuous cycle of the digital economy. In its EU Citizenship Report 2010, entitled 'Dismantling the obstacles to EU citizens' rights', the Commission further highlighted the need to solve the main problems that prevent Union citizens from enjoying the benefits of a digital single market and cross-border digital services.
- (5) In its conclusions of 4 February 2011 and of 23 October 2011, the European Council invited the Commission to create a digital single market by 2015, to make rapid progress in key areas of the digital economy and to promote a fully integrated digital single market by facilitating the cross-border use of online services, with particular attention to facilitating secure electronic identification and authentication.

⁽¹⁾ OJ C 351, 15.11.2012, p. 73.

⁽²⁾ Position of the European Parliament of 3 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽³⁾ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

- (6) In its conclusions of 27 May 2011, the Council invited the Commission to contribute to the digital single market by creating appropriate conditions for the mutual recognition of key enablers across borders, such as electronic identification, electronic documents, electronic signatures and electronic delivery services, and for interoperable e-government services across the European Union.
- (7) The European Parliament, in its resolution of 21 September 2010 on completing the internal market for e-commerce ⁽¹⁾, stressed the importance of the security of electronic services, especially of electronic signatures, and of the need to create a public key infrastructure at pan-European level, and called on the Commission to set up a European validation authorities gateway to ensure the cross-border interoperability of electronic signatures and to increase the security of transactions carried out using the internet.
- (8) Directive 2006/123/EC of the European Parliament and of the Council ⁽²⁾ requires Member States to establish 'points of single contact' (PSCs) to ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof can be easily completed, at a distance and by electronic means, through the appropriate PSC with the appropriate authorities. Many online services accessible through PSCs require electronic identification, authentication and signature.
- (9) In most cases, citizens cannot use their electronic identification to authenticate themselves in another Member State because the national electronic identification schemes in their country are not recognised in other Member States. That electronic barrier excludes service providers from enjoying the full benefits of the internal market. Mutually recognised electronic identification means will facilitate cross-border provision of numerous services in the internal market and enable businesses to operate on a cross-border basis without facing many obstacles in interactions with public authorities.
- (10) Directive 2011/24/EU of the European Parliament and of the Council ⁽³⁾ set up a network of national authorities responsible for e-health. To enhance the safety and the continuity of cross-border healthcare, the network is required to produce guidelines on cross-border access to electronic health data and services, including by supporting 'common identification and authentication measures to facilitate transferability of data in cross-border healthcare'. Mutual recognition of electronic identification and authentication is key to making cross-border healthcare for European citizens a reality. When people travel for treatment, their medical data need to be accessible in the country of treatment. That requires a solid, safe and trusted electronic identification framework.
- (11) This Regulation should be applied in full compliance with the principles relating to the protection of personal data provided for in Directive 95/46/EC of the European Parliament and of the Council ⁽⁴⁾. In this respect, having regard to the principle of mutual recognition established by this Regulation, authentication for an online service should concern processing of only those identification data that are adequate, relevant and not excessive to grant access to that service online. Furthermore, requirements under Directive 95/46/EC concerning confidentiality and security of processing should be respected by trust service providers and supervisory bodies.
- (12) One of the objectives of this Regulation is to remove existing barriers to the cross-border use of electronic identification means used in the Member States to authenticate, for at least public services. This Regulation does not aim to intervene with regard to electronic identity management systems and related infrastructures established in Member States. The aim of this Regulation is to ensure that for access to cross-border online services offered by Member States, secure electronic identification and authentication is possible.

⁽¹⁾ OJ C 50 E, 21.2.2012, p. 1.

⁽²⁾ 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).

⁽³⁾ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

⁽⁴⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (13) Member States should remain free to use or to introduce means for the purposes of electronic identification for accessing online services. They should also be able to decide whether to involve the private sector in the provision of those means. Member States should not be obliged to notify their electronic identification schemes to the Commission. The choice to notify the Commission of all, some or none of the electronic identification schemes used at national level to access at least public online services or specific services is up to Member States.
- (14) Some conditions need to be set out in this Regulation with regard to which electronic identification means have to be recognised and how the electronic identification schemes should be notified. Those conditions should help Member States to build the necessary trust in each other's electronic identification schemes and to mutually recognise electronic identification means falling under their notified schemes. The principle of mutual recognition should apply if the notifying Member State's electronic identification scheme meets the conditions of notification and the notification was published in the *Official Journal of the European Union*. However, the principle of mutual recognition should only relate to authentication for an online service. The access to those online services and their final delivery to the applicant should be closely linked to the right to receive such services under the conditions set out in national legislation.
- (15) The obligation to recognise electronic identification means should relate only to those means the identity assurance level of which corresponds to the level equal to or higher than the level required for the online service in question. In addition, that obligation should only apply when the public sector body in question uses the assurance level 'substantial' or 'high' in relation to accessing that service online. Member States should remain free, in accordance with Union law, to recognise electronic identification means having lower identity assurance levels.
- (16) Assurance levels should characterise the degree of confidence in electronic identification means in establishing the identity of a person, thus providing assurance that the person claiming a particular identity is in fact the person to which that identity was assigned. The assurance level depends on the degree of confidence that electronic identification means provides in claimed or asserted identity of a person taking into account processes (for example, identity proofing and verification, and authentication), management activities (for example, the entity issuing electronic identification means and the procedure to issue such means) and technical controls implemented. Various technical definitions and descriptions of assurance levels exist as the result of Union-funded Large-Scale Pilots, standardisation and international activities. In particular, the Large-Scale Pilot STORK and ISO 29115 refer, inter alia, to levels 2, 3 and 4, which should be taken into utmost account in establishing minimum technical requirements, standards and procedures for the assurance levels low, substantial and high within the meaning of this Regulation, while ensuring consistent application of this Regulation in particular with regard to assurance level high related to identity proofing for issuing qualified certificates. The requirements established should be technology-neutral. It should be possible to achieve the necessary security requirements through different technologies.
- (17) Member States should encourage the private sector to voluntarily use electronic identification means under a notified scheme for identification purposes when needed for online services or electronic transactions. The possibility to use such electronic identification means would enable the private sector to rely on electronic identification and authentication already largely used in many Member States at least for public services and to make it easier for businesses and citizens to access their online services across borders. In order to facilitate the use of such electronic identification means across borders by the private sector, the authentication possibility provided by any Member State should be available to private sector relying parties established outside of the territory of that Member State under the same conditions as applied to private sector relying parties established within that Member State. Consequently, with regard to private sector relying parties, the notifying Member State may define terms of access to the authentication means. Such terms of access may inform whether the authentication means related to the notified scheme is presently available to private sector relying parties.
- (18) This Regulation should provide for the liability of the notifying Member State, the party issuing the electronic identification means and the party operating the authentication procedure for failure to comply with the relevant obligations under this Regulation. However, this Regulation should be applied in accordance with national rules on liability. Therefore, it does not affect those national rules on, for example, definition of damages or relevant applicable procedural rules, including the burden of proof.

- (19) The security of electronic identification schemes is key to trustworthy cross-border mutual recognition of electronic identification means. In this context, Member States should cooperate with regard to the security and interoperability of the electronic identification schemes at Union level. Whenever electronic identification schemes require specific hardware or software to be used by relying parties at the national level, cross-border interoperability calls for those Member States not to impose such requirements and related costs on relying parties established outside of their territory. In that case appropriate solutions should be discussed and developed within the scope of the interoperability framework. Nevertheless technical requirements stemming from the inherent specifications of national electronic identification means and likely to affect the holders of such electronic means (e.g. smartcards), are unavoidable.
- (20) Cooperation by Member States should facilitate the technical interoperability of the notified electronic identification schemes with a view to fostering a high level of trust and security appropriate to the degree of risk. The exchange of information and the sharing of best practices between Member States with a view to their mutual recognition should help such cooperation.
- (21) This Regulation should also establish a general legal framework for the use of trust services. However, it should not create a general obligation to use them or to install an access point for all existing trust services. In particular, it should not cover the provision of services used exclusively within closed systems between a defined set of participants, which have no effect on third parties. For example, systems set up in businesses or public administrations to manage internal procedures making use of trust services should not be subject to the requirements of this Regulation. Only trust services provided to the public having effects on third parties should meet the requirements laid down in the Regulation. Neither should this Regulation cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form laid down by national or Union law. In addition, it should not affect national form requirements pertaining to public registers, in particular commercial and land registers.
- (22) In order to contribute to their general cross-border use, it should be possible to use trust services as evidence in legal proceedings in all Member States. It is for the national law to define the legal effect of trust services, except if otherwise provided in this Regulation.
- (23) To the extent that this Regulation creates an obligation to recognise a trust service, such a trust service may only be rejected if the addressee of the obligation is unable to read or verify it due to technical reasons lying outside the immediate control of the addressee. However, that obligation should not in itself require a public body to obtain the hardware and software necessary for the technical readability of all existing trust services.
- (24) Member States may maintain or introduce national provisions, in conformity with Union law, relating to trust services as far as those services are not fully harmonised by this Regulation. However, trust services that comply with this Regulation should circulate freely in the internal market.
- (25) Member States should remain free to define other types of trust services in addition to those making part of the closed list of trust services provided for in this Regulation, for the purpose of recognition at national level as qualified trust services.
- (26) Because of the pace of technological change, this Regulation should adopt an approach which is open to innovation.
- (27) This Regulation should be technology-neutral. The legal effects it grants should be achievable by any technical means provided that the requirements of this Regulation are met.

- (28) To enhance in particular the trust of small and medium-sized enterprises (SMEs) and consumers in the internal market and to promote the use of trust services and products, the notions of qualified trust services and qualified trust service provider should be introduced with a view to indicating requirements and obligations that ensure high-level security of whatever qualified trust services and products are used or provided.
- (29) In line with the obligations under the United Nations Convention on the Rights of Persons with Disabilities, approved by Council Decision 2010/48/EC ⁽¹⁾, in particular Article 9 of the Convention, persons with disabilities should be able to use trust services and end-user products used in the provision of those services on an equal basis with other consumers. Therefore, where feasible, trust services provided and end-user products used in the provision of those services should be made accessible for persons with disabilities. The feasibility assessment should include, inter alia, technical and economic considerations.
- (30) Member States should designate a supervisory body or supervisory bodies to carry out the supervisory activities under this Regulation. Member States should also be able to decide, upon a mutual agreement with another Member State, to designate a supervisory body in the territory of that other Member State.
- (31) Supervisory bodies should cooperate with data protection authorities, for example, by informing them about the results of audits of qualified trust service providers, where personal data protection rules appear to have been breached. The provision of information should in particular cover security incidents and personal data breaches.
- (32) It should be incumbent on all trust service providers to apply good security practice appropriate to the risks related to their activities so as to boost users' trust in the single market.
- (33) Provisions on the use of pseudonyms in certificates should not prevent Member States from requiring identification of persons pursuant to Union or national law.
- (34) All Member States should follow common essential supervision requirements to ensure a comparable security level of qualified trust services. To ease the consistent application of those requirements across the Union, Member States should adopt comparable procedures and should exchange information on their supervision activities and best practices in the field.
- (35) All trust service providers should be subject to the requirements of this Regulation, in particular those on security and liability to ensure due diligence, transparency and accountability of their operations and services. However, taking into account the type of services provided by trust service providers, it is appropriate to distinguish as far as those requirements are concerned between qualified and non-qualified trust service providers.
- (36) Establishing a supervisory regime for all trust service providers should ensure a level playing field for the security and accountability of their operations and services, thus contributing to the protection of users and to the functioning of the internal market. Non-qualified trust service providers should be subject to a light touch and reactive *ex post* supervisory activities justified by the nature of their services and operations. The supervisory body should therefore have no general obligation to supervise non-qualified service providers. The supervisory body should only take action when it is informed (for example, by the non-qualified trust service provider itself, by another supervisory body, by a notification from a user or a business partner or on the basis of its own investigation) that a non-qualified trust service provider does not comply with the requirements of this Regulation.

⁽¹⁾ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).

- (37) This Regulation should provide for the liability of all trust service providers. In particular, it establishes the liability regime under which all trust service providers should be liable for damage caused to any natural or legal person due to failure to comply with the obligations under this Regulation. In order to facilitate the assessment of financial risk that trust service providers might have to bear or that they should cover by insurance policies, this Regulation allows trust service providers to set limitations, under certain conditions, on the use of the services they provide and not to be liable for damages arising from the use of services exceeding such limitations. Customers should be duly informed about the limitations in advance. Those limitations should be recognisable by a third party, for example by including information about the limitations in the terms and conditions of the service provided or through other recognisable means. For the purposes of giving effect to those principles, this Regulation should be applied in accordance with national rules on liability. Therefore, this Regulation does not affect those national rules on, for example, definition of damages, intention, negligence, or relevant applicable procedural rules.
- (38) Notification of security breaches and security risk assessments is essential with a view to providing adequate information to concerned parties in the event of a breach of security or loss of integrity.
- (39) To enable the Commission and the Member States to assess the effectiveness of the breach notification mechanism introduced by this Regulation, supervisory bodies should be requested to provide summary information to the Commission and to European Union Agency for Network and Information Security (ENISA).
- (40) To enable the Commission and the Member States to assess the effectiveness of the enhanced supervision mechanism introduced by this Regulation, supervisory bodies should be requested to report on their activities. This would be instrumental in facilitating the exchange of good practice between supervisory bodies and would ensure the verification of the consistent and efficient implementation of the essential supervision requirements in all Member States.
- (41) To ensure sustainability and durability of qualified trust services and to boost users' confidence in the continuity of qualified trust services, supervisory bodies should verify the existence and the correct application of provisions on termination plans in cases where qualified trust service providers cease their activities.
- (42) To facilitate the supervision of qualified trust service providers, for example, when a provider is providing its services in the territory of another Member State and is not subject to supervision there, or when the computers of a provider are located in the territory of a Member State other than the one where it is established, a mutual assistance system between supervisory bodies in the Member States should be established.
- (43) In order to ensure the compliance of qualified trust service providers and the services they provide with the requirements set out in this Regulation, a conformity assessment should be carried out by a conformity assessment body and the resulting conformity assessment reports should be submitted by the qualified trust service providers to the supervisory body. Whenever the supervisory body requires a qualified trust service provider to submit an ad hoc conformity assessment report, the supervisory body should respect, in particular, the principles of good administration, including the obligation to give reasons for its decisions, as well as the principle of proportionality. Therefore, the supervisory body should duly justify its decision to require an ad hoc conformity assessment.
- (44) This Regulation aims to ensure a coherent framework with a view to providing a high level of security and legal certainty of trust services. In this regard, when addressing the conformity assessment of products and services, the Commission should, where appropriate, seek synergies with existing relevant European and international schemes such as the Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽¹⁾ which sets out the requirements for accreditation of conformity assessment bodies and market surveillance of products.

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (45) In order to allow an efficient initiation process, which should lead to the inclusion of qualified trust service providers and the qualified trust services they provide into trusted lists, preliminary interactions between prospective qualified trust service providers and the competent supervisory body should be encouraged with a view to facilitating the due diligence leading to the provisioning of qualified trust services.
- (46) Trusted lists are essential elements in the building of trust among market operators as they indicate the qualified status of the service provider at the time of supervision.
- (47) Confidence in and convenience of online services are essential for users to fully benefit and consciously rely on electronic services. To this end, an EU trust mark should be created to identify the qualified trust services provided by qualified trust service providers. Such an EU trust mark for qualified trust services would clearly differentiate qualified trust services from other trust services thus contributing to transparency in the market. The use of an EU trust mark by qualified trust service providers should be voluntary and should not lead to any requirement other than those provided for in this Regulation.
- (48) While a high level of security is needed to ensure mutual recognition of electronic signatures, in specific cases, such as in the context of Commission Decision 2009/767/EC ⁽¹⁾, electronic signatures with a lower security assurance should also be accepted.
- (49) This Regulation should establish the principle that an electronic signature should not be denied legal effect on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic signature. However, it is for national law to define the legal effect of electronic signatures, except for the requirements provided for in this Regulation according to which a qualified electronic signature should have the equivalent legal effect of a handwritten signature.
- (50) As competent authorities in the Member States currently use different formats of advanced electronic signatures to sign their documents electronically, it is necessary to ensure that at least a number of advanced electronic signature formats can be technically supported by Member States when they receive documents signed electronically. Similarly, when competent authorities in the Member States use advanced electronic seals, it would be necessary to ensure that they support at least a number of advanced electronic seal formats.
- (51) It should be possible for the signatory to entrust qualified electronic signature creation devices to the care of a third party, provided that appropriate mechanisms and procedures are implemented to ensure that the signatory has sole control over the use of his electronic signature creation data, and the qualified electronic signature requirements are met by the use of the device.
- (52) The creation of remote electronic signatures, where the electronic signature creation environment is managed by a trust service provider on behalf of the signatory, is set to increase in the light of its multiple economic benefits. However, in order to ensure that such electronic signatures receive the same legal recognition as electronic signatures created in an entirely user-managed environment, remote electronic signature service providers should apply specific management and administrative security procedures and use trustworthy systems and products, including secure electronic communication channels, in order to guarantee that the electronic signature creation environment is reliable and is used under the sole control of the signatory. Where a qualified electronic signature has been created using a remote electronic signature creation device, the requirements applicable to qualified trust service providers set out in this Regulation should apply.

⁽¹⁾ Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the 'points of single contact' under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 274, 20.10.2009, p. 36).

- (53) The suspension of qualified certificates is an established operational practice of trust service providers in a number of Member States, which is different from revocation and entails the temporary loss of validity of a certificate. Legal certainty calls for the suspension status of a certificate to always be clearly indicated. To that end, trust service providers should have the responsibility to clearly indicate the status of the certificate and, if suspended, the precise period of time during which the certificate has been suspended. This Regulation should not impose the use of suspension on trust service providers or Member States, but should provide for transparency rules when and where such a practice is available.
- (54) Cross-border interoperability and recognition of qualified certificates is a precondition for cross-border recognition of qualified electronic signatures. Therefore, qualified certificates should not be subject to any mandatory requirements exceeding the requirements laid down in this Regulation. However, at national level, the inclusion of specific attributes, such as unique identifiers, in qualified certificates should be allowed, provided that such specific attributes do not hamper cross-border interoperability and recognition of qualified certificates and electronic signatures.
- (55) IT security certification based on international standards such as ISO 15408 and related evaluation methods and mutual recognition arrangements is an important tool for verifying the security of qualified electronic signature creation devices and should be promoted. However, innovative solutions and services such as mobile signing and cloud signing rely on technical and organisational solutions for qualified electronic signature creation devices for which security standards may not yet be available or for which the first IT security certification is ongoing. The level of security of such qualified electronic signature creation devices could be evaluated by using alternative processes only where such security standards are not available or where the first IT security certification is ongoing. Those processes should be comparable to the standards for IT security certification insofar as their security levels are equivalent. Those processes could be facilitated by a peer review.
- (56) This Regulation should lay down requirements for qualified electronic signature creation devices to ensure the functionality of advanced electronic signatures. This Regulation should not cover the entire system environment in which such devices operate. Therefore, the scope of the certification of qualified signature creation devices should be limited to the hardware and system software used to manage and protect the signature creation data created, stored or processed in the signature creation device. As detailed in relevant standards, the scope of the certification obligation should exclude signature creation applications.
- (57) To ensure legal certainty as regards the validity of the signature, it is essential to specify the components of a qualified electronic signature, which should be assessed by the relying party carrying out the validation. Moreover, specifying the requirements for qualified trust service providers that can provide a qualified validation service to relying parties unwilling or unable to carry out the validation of qualified electronic signatures themselves, should stimulate the private and public sector to invest in such services. Both elements should make qualified electronic signature validation easy and convenient for all parties at Union level.
- (58) When a transaction requires a qualified electronic seal from a legal person, a qualified electronic signature from the authorised representative of the legal person should be equally acceptable.
- (59) Electronic seals should serve as evidence that an electronic document was issued by a legal person, ensuring certainty of the document's origin and integrity.
- (60) Trust service providers issuing qualified certificates for electronic seals should implement the necessary measures in order to be able to establish the identity of the natural person representing the legal person to whom the qualified certificate for the electronic seal is provided, when such identification is necessary at national level in the context of judicial or administrative proceedings.

- (61) This Regulation should ensure the long-term preservation of information, in order to ensure the legal validity of electronic signatures and electronic seals over extended periods of time and guarantee that they can be validated irrespective of future technological changes.
- (62) In order to ensure the security of qualified electronic time stamps, this Regulation should require the use of an advanced electronic seal or an advanced electronic signature or of other equivalent methods. It is foreseeable that innovation may lead to new technologies that may ensure an equivalent level of security for time stamps. Whenever a method other than an advanced electronic seal or an advanced electronic signature is used, it should be up to the qualified trust service provider to demonstrate, in the conformity assessment report, that such a method ensures an equivalent level of security and complies with the obligations set out in this Regulation.
- (63) Electronic documents are important for further development of cross-border electronic transactions in the internal market. This Regulation should establish the principle that an electronic document should not be denied legal effect on the grounds that it is in an electronic form in order to ensure that an electronic transaction will not be rejected only on the grounds that a document is in electronic form.
- (64) When addressing formats of advanced electronic signatures and seals, the Commission should build on existing practices, standards and legislation, in particular Commission Decision 2011/130/EU ⁽¹⁾.
- (65) In addition to authenticating the document issued by the legal person, electronic seals can be used to authenticate any digital asset of the legal person, such as software code or servers.
- (66) It is essential to provide for a legal framework to facilitate cross-border recognition between existing national legal systems related to electronic registered delivery services. That framework could also open new market opportunities for Union trust service providers to offer new pan-European electronic registered delivery services.
- (67) Website authentication services provide a means by which a visitor to a website can be assured that there is a genuine and legitimate entity standing behind the website. Those services contribute to the building of trust and confidence in conducting business online, as users will have confidence in a website that has been authenticated. The provision and the use of website authentication services are entirely voluntary. However, in order for website authentication to become a means to boosting trust, providing a better experience for the user and furthering growth in the internal market, this Regulation should lay down minimal security and liability obligations for the providers and their services. To that end, the results of existing industry-led initiatives, for example the Certification Authorities/Browsers Forum — CA/B Forum, have been taken into account. In addition, this Regulation should not impede the use of other means or methods to authenticate a website not falling under this Regulation nor should it prevent third country providers of website authentication services from providing their services to customers in the Union. However, a third country provider should only have its website authentication services recognised as qualified in accordance with this Regulation, if an international agreement between the Union and the country of establishment of the provider has been concluded.
- (68) The concept of 'legal persons', according to the provisions of the Treaty on the Functioning of the European Union (TFEU) on establishment, leaves operators free to choose the legal form which they deem suitable for carrying out their activity. Accordingly, 'legal persons', within the meaning of the TFEU, means all entities constituted under, or governed by, the law of a Member State, irrespective of their legal form.
- (69) The Union institutions, bodies, offices and agencies are encouraged to recognise electronic identification and trust services covered by this Regulation for the purpose of administrative cooperation capitalising, in particular, on existing good practices and the results of ongoing projects in the areas covered by this Regulation.

⁽¹⁾ Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (OJ L 53, 26.2.2011, p. 66).

- (70) In order to complement certain detailed technical aspects of this Regulation in a flexible and rapid manner, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of criteria to be met by the bodies responsible for the certification of qualified electronic signature creation devices. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (71) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission, in particular for specifying reference numbers of standards the use of which would raise a presumption of compliance with certain requirements laid down in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (72) When adopting delegated or implementing acts, the Commission should take due account of the standards and technical specifications drawn up by European and international standardisation organisations and bodies, in particular the European Committee for Standardisation (CEN), the European Telecommunications Standards Institute (ETSI), the International Organisation for Standardisation (ISO) and the International Telecommunication Union (ITU), with a view to ensuring a high level of security and interoperability of electronic identification and trust services.
- (73) For reasons of legal certainty and clarity, Directive 1999/93/EC should be repealed.
- (74) To ensure legal certainty for market operators already using qualified certificates issued to natural persons in compliance with Directive 1999/93/EC, it is necessary to provide for a sufficient period of time for transitional purposes. Similarly, transitional measures should be established for secure signature creation devices, the conformity of which has been determined in accordance with Directive 1999/93/EC, as well as for certification service providers issuing qualified certificates before 1 July 2016. Finally, it is also necessary to provide the Commission with the means to adopt the implementing acts and delegated acts before that date.
- (75) The application dates set out in this Regulation do not affect existing obligations that Member States already have under Union law, in particular under Directive 2006/123/EC.
- (76) Since the objectives of this Regulation 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 Regulation does not go beyond what is necessary in order to achieve those objectives.
- (77) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ and delivered an opinion on 27 September 2012 ⁽³⁾,

⁽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 the 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⁾ OJ C 28, 30.1.2013, p. 6.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

With a view to ensuring the proper functioning of the internal market while aiming at an adequate level of security of electronic identification means and trust services this Regulation:

- (a) lays down the conditions under which Member States recognise electronic identification means of natural and legal persons falling under a notified electronic identification scheme of another Member State;
- (b) lays down rules for trust services, in particular for electronic transactions; and
- (c) establishes a legal framework for electronic signatures, electronic seals, electronic time stamps, electronic documents, electronic registered delivery services and certificate services for website authentication.

Article 2

Scope

1. This Regulation applies to electronic identification schemes that have been notified by a Member State, and to trust service providers that are established in the Union.
2. This Regulation does not apply to the provision of trust services that are used exclusively within closed systems resulting from national law or from agreements between a defined set of participants.
3. This Regulation does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.

Article 3

Definitions

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

- (1) 'electronic identification' means the process of using person identification data in electronic form uniquely representing either a natural or legal person, or a natural person representing a legal person;
- (2) 'electronic identification means' means a material and/or immaterial unit containing person identification data and which is used for authentication for an online service;
- (3) 'person identification data' means a set of data enabling the identity of a natural or legal person, or a natural person representing a legal person to be established;
- (4) 'electronic identification scheme' means a system for electronic identification under which electronic identification means are issued to natural or legal persons, or natural persons representing legal persons;

- (5) 'authentication' means an electronic process that enables the electronic identification of a natural or legal person, or the origin and integrity of data in electronic form to be confirmed;
- (6) 'relying party' means a natural or legal person that relies upon an electronic identification or a trust service;
- (7) 'public sector body' means a state, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law, or a private entity mandated by at least one of those authorities, bodies or associations to provide public services, when acting under such a mandate;
- (8) 'body governed by public law' means a body defined in point (4) of Article 2(1) of Directive 2014/24/EU of the European Parliament and of the Council ⁽¹⁾;
- (9) 'signatory' means a natural person who creates an electronic signature;
- (10) 'electronic signature' means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign;
- (11) 'advanced electronic signature' means an electronic signature which meets the requirements set out in Article 26;
- (12) 'qualified electronic signature' means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures;
- (13) 'electronic signature creation data' means unique data which is used by the signatory to create an electronic signature;
- (14) 'certificate for electronic signature' means an electronic attestation which links electronic signature validation data to a natural person and confirms at least the name or the pseudonym of that person;
- (15) 'qualified certificate for electronic signature' means a certificate for electronic signatures, that is issued by a qualified trust service provider and meets the requirements laid down in Annex I;
- (16) 'trust service' means an electronic service normally provided for remuneration which consists of:
- (a) the creation, verification, and validation of electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates related to those services, or
 - (b) the creation, verification and validation of certificates for website authentication; or
 - (c) the preservation of electronic signatures, seals or certificates related to those services;
- (17) 'qualified trust service' means a trust service that meets the applicable requirements laid down in this Regulation;

⁽¹⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

- (18) 'conformity assessment body' means a body defined in point 13 of Article 2 of Regulation (EC) No 765/2008, which is accredited in accordance with that Regulation as competent to carry out conformity assessment of a qualified trust service provider and the qualified trust services it provides;
- (19) 'trust service provider' means a natural or a legal person who provides one or more trust services either as a qualified or as a non-qualified trust service provider;
- (20) 'qualified trust service provider' means a trust service provider who provides one or more qualified trust services and is granted the qualified status by the supervisory body;
- (21) 'product' means hardware or software, or relevant components of hardware or software, which are intended to be used for the provision of trust services;
- (22) 'electronic signature creation device' means configured software or hardware used to create an electronic signature;
- (23) 'qualified electronic signature creation device' means an electronic signature creation device that meets the requirements laid down in Annex II;
- (24) 'creator of a seal' means a legal person who creates an electronic seal;
- (25) 'electronic seal' means data in electronic form, which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;
- (26) 'advanced electronic seal' means an electronic seal, which meets the requirements set out in Article 36;
- (27) 'qualified electronic seal' means an advanced electronic seal, which is created by a qualified electronic seal creation device, and that is based on a qualified certificate for electronic seal;
- (28) 'electronic seal creation data' means unique data, which is used by the creator of the electronic seal to create an electronic seal;
- (29) 'certificate for electronic seal' means an electronic attestation that links electronic seal validation data to a legal person and confirms the name of that person;
- (30) 'qualified certificate for electronic seal' means a certificate for an electronic seal, that is issued by a qualified trust service provider and meets the requirements laid down in Annex III;
- (31) 'electronic seal creation device' means configured software or hardware used to create an electronic seal;
- (32) 'qualified electronic seal creation device' means an electronic seal creation device that meets mutatis mutandis the requirements laid down in Annex II;
- (33) 'electronic time stamp' means data in electronic form which binds other data in electronic form to a particular time establishing evidence that the latter data existed at that time;
- (34) 'qualified electronic time stamp' means an electronic time stamp which meets the requirements laid down in Article 42;

- (35) 'electronic document' means any content stored in electronic form, in particular text or sound, visual or audiovisual recording;
- (36) 'electronic registered delivery service' means a service that makes it possible to transmit data between third parties by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage or any unauthorised alterations;
- (37) 'qualified electronic registered delivery service' means an electronic registered delivery service which meets the requirements laid down in Article 44;
- (38) 'certificate for website authentication' means an attestation that makes it possible to authenticate a website and links the website to the natural or legal person to whom the certificate is issued;
- (39) 'qualified certificate for website authentication' means a certificate for website authentication, which is issued by a qualified trust service provider and meets the requirements laid down in Annex IV;
- (40) 'validation data' means data that is used to validate an electronic signature or an electronic seal;
- (41) 'validation' means the process of verifying and confirming that an electronic signature or a seal is valid.

Article 4

Internal market principle

1. There shall be no restriction on the provision of trust services in the territory of a Member State by a trust service provider established in another Member State for reasons that fall within the fields covered by this Regulation.
2. Products and trust services that comply with this Regulation shall be permitted to circulate freely in the internal market.

Article 5

Data processing and protection

1. Processing of personal data shall be carried out in accordance with Directive 95/46/EC.
2. Without prejudice to the legal effect given to pseudonyms under national law, the use of pseudonyms in electronic transactions shall not be prohibited.

CHAPTER II

ELECTRONIC IDENTIFICATION

Article 6

Mutual recognition

1. When an electronic identification using an electronic identification means and authentication is required under national law or by administrative practice to access a service provided by a public sector body online in one Member State, the electronic identification means issued in another Member State shall be recognised in the first Member State for the purposes of cross-border authentication for that service online, provided that the following conditions are met:
 - (a) the electronic identification means is issued under an electronic identification scheme that is included in the list published by the Commission pursuant to Article 9;

- (b) the assurance level of the electronic identification means corresponds to an assurance level equal to or higher than the assurance level required by the relevant public sector body to access that service online in the first Member State, provided that the assurance level of that electronic identification means corresponds to the assurance level substantial or high;
- (c) the relevant public sector body uses the assurance level substantial or high in relation to accessing that service online.

Such recognition shall take place no later than 12 months after the Commission publishes the list referred to in point (a) of the first subparagraph.

2. An electronic identification means which is issued under an electronic identification scheme included in the list published by the Commission pursuant to Article 9 and which corresponds to the assurance level low may be recognised by public sector bodies for the purposes of cross-border authentication for the service provided online by those bodies.

Article 7

Eligibility for notification of electronic identification schemes

An electronic identification scheme shall be eligible for notification pursuant to Article 9(1) provided that all of the following conditions are met:

- (a) the electronic identification means under the electronic identification scheme are issued:
 - (i) by the notifying Member State;
 - (ii) under a mandate from the notifying Member State; or
 - (iii) independently of the notifying Member State and are recognised by that Member State;
- (b) the electronic identification means under the electronic identification scheme can be used to access at least one service which is provided by a public sector body and which requires electronic identification in the notifying Member State;
- (c) the electronic identification scheme and the electronic identification means issued thereunder meet the requirements of at least one of the assurance levels set out in the implementing act referred to in Article 8(3);
- (d) the notifying Member State ensures that the person identification data uniquely representing the person in question is attributed, in accordance with the technical specifications, standards and procedures for the relevant assurance level set out in the implementing act referred to in Article 8(3), to the natural or legal person referred to in point 1 of Article 3 at the time the electronic identification means under that scheme is issued;
- (e) the party issuing the electronic identification means under that scheme ensures that the electronic identification means is attributed to the person referred to in point (d) of this Article in accordance with the technical specifications, standards and procedures for the relevant assurance level set out in the implementing act referred to in Article 8(3);
- (f) the notifying Member State ensures the availability of authentication online, so that any relying party established in the territory of another Member State is able to confirm the person identification data received in electronic form.

For relying parties other than public sector bodies the notifying Member State may define terms of access to that authentication. The cross-border authentication shall be provided free of charge when it is carried out in relation to a service online provided by a public sector body.

Member States shall not impose any specific disproportionate technical requirements on relying parties intending to carry out such authentication, where such requirements prevent or significantly impede the interoperability of the notified electronic identification schemes;

- (g) at least six months prior to the notification pursuant to Article 9(1), the notifying Member State provides the other Member States for the purposes of the obligation under Article 12(5) a description of that scheme in accordance with the procedural arrangements established by the implementing acts referred to in Article 12(7);
- (h) the electronic identification scheme meets the requirements set out in the implementing act referred to in Article 12(8).

Article 8

Assurance levels of electronic identification schemes

1. An electronic identification scheme notified pursuant to Article 9(1) shall specify assurance levels low, substantial and/or high for electronic identification means issued under that scheme.
2. The assurance levels low, substantial and high shall meet respectively the following criteria:
 - (a) assurance level low shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a limited degree of confidence in the claimed or asserted identity of a person, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to decrease the risk of misuse or alteration of the identity;
 - (b) assurance level substantial shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a substantial degree of confidence in the claimed or asserted identity of a person, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to decrease substantially the risk of misuse or alteration of the identity;
 - (c) assurance level high shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a higher degree of confidence in the claimed or asserted identity of a person than electronic identification means with the assurance level substantial, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to prevent misuse or alteration of the identity.
3. By 18 September 2015, taking into account relevant international standards and subject to paragraph 2, the Commission shall, by means of implementing acts, set out minimum technical specifications, standards and procedures with reference to which assurance levels low, substantial and high are specified for electronic identification means for the purposes of paragraph 1.

Those minimum technical specifications, standards and procedures shall be set out by reference to the reliability and quality of the following elements:

- (a) the procedure to prove and verify the identity of natural or legal persons applying for the issuance of electronic identification means;

- (b) the procedure for the issuance of the requested electronic identification means;
- (c) the authentication mechanism, through which the natural or legal person uses the electronic identification means to confirm its identity to a relying party;
- (d) the entity issuing the electronic identification means;
- (e) any other body involved in the application for the issuance of the electronic identification means; and
- (f) the technical and security specifications of the issued electronic identification means.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 9

Notification

1. The notifying Member State shall notify to the Commission the following information and, without undue delay, any subsequent changes thereto:

- (a) a description of the electronic identification scheme, including its assurance levels and the issuer or issuers of electronic identification means under the scheme;
- (b) the applicable supervisory regime and information on the liability regime with respect to the following:
 - (i) the party issuing the electronic identification means; and
 - (ii) the party operating the authentication procedure;
- (c) the authority or authorities responsible for the electronic identification scheme;
- (d) information on the entity or entities which manage the registration of the unique person identification data;
- (e) a description of how the requirements set out in the implementing acts referred to in Article 12(8) are met;
- (f) a description of the authentication referred to in point (f) of Article 7;
- (g) arrangements for suspension or revocation of either the notified electronic identification scheme or authentication or the compromised parts concerned.

2. One year from the date of application of the implementing acts referred to in Articles 8(3) and 12(8), the Commission shall publish in the *Official Journal of the European Union* a list of the electronic identification schemes which were notified pursuant to paragraph 1 of this Article and the basic information thereon.

3. If the Commission receives a notification after the expiry of the period referred to in paragraph 2, it shall publish in the *Official Journal of the European Union* the amendments to the list referred to in paragraph 2 within two months from the date of receipt of that notification.

4. A Member State may submit to the Commission a request to remove an electronic identification scheme notified by that Member State from the list referred to in paragraph 2. The Commission shall publish in the *Official Journal of the European Union* the corresponding amendments to the list within one month from the date of receipt of the Member State's request.

5. The Commission may, by means of implementing acts, define the circumstances, formats and procedures of notifications under paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 10

Security breach

1. Where either the electronic identification scheme notified pursuant to Article 9(1) or the authentication referred to in point (f) of Article 7 is breached or partly compromised in a manner that affects the reliability of the cross-border authentication of that scheme, the notifying Member State shall, without delay, suspend or revoke that cross-border authentication or the compromised parts concerned, and shall inform other Member States and the Commission.

2. When the breach or compromise referred to in paragraph 1 is remedied, the notifying Member State shall re-establish the cross-border authentication and shall inform other Member States and the Commission without undue delay.

3. If the breach or compromise referred to in paragraph 1 is not remedied within three months of the suspension or revocation, the notifying Member State shall notify other Member States and the Commission of the withdrawal of the electronic identification scheme.

The Commission shall publish in the *Official Journal of the European Union* the corresponding amendments to the list referred to in Article 9(2) without undue delay.

Article 11

Liability

1. The notifying Member State shall be liable for damage caused intentionally or negligently to any natural or legal person due to a failure to comply with its obligations under points (d) and (f) of Article 7 in a cross-border transaction.

2. The party issuing the electronic identification means shall be liable for damage caused intentionally or negligently to any natural or legal person due to a failure to comply with the obligation referred to in point (e) of Article 7 in a cross-border transaction.

3. The party operating the authentication procedure shall be liable for damage caused intentionally or negligently to any natural or legal person due to a failure to ensure the correct operation of the authentication referred to in point (f) of Article 7 in a cross-border transaction.

4. Paragraphs 1, 2 and 3 shall be applied in accordance with national rules on liability.

5. Paragraphs 1, 2 and 3 are without prejudice to the liability under national law of parties to a transaction in which electronic identification means falling under the electronic identification scheme notified pursuant to Article 9(1) are used.

Article 12

Cooperation and interoperability

1. The national electronic identification schemes notified pursuant to Article 9(1) shall be interoperable.

2. For the purposes of paragraph 1, an interoperability framework shall be established.

3. The interoperability framework shall meet the following criteria:
 - (a) it aims to be technology neutral and does not discriminate between any specific national technical solutions for electronic identification within a Member State;
 - (b) it follows European and international standards, where possible;
 - (c) it facilitates the implementation of the principle of privacy by design; and
 - (d) it ensures that personal data is processed in accordance with Directive 95/46/EC.
4. The interoperability framework shall consist of:
 - (a) a reference to minimum technical requirements related to the assurance levels under Article 8;
 - (b) a mapping of national assurance levels of notified electronic identification schemes to the assurance levels under Article 8;
 - (c) a reference to minimum technical requirements for interoperability;
 - (d) a reference to a minimum set of person identification data uniquely representing a natural or legal person, which is available from electronic identification schemes;
 - (e) rules of procedure;
 - (f) arrangements for dispute resolution; and
 - (g) common operational security standards.
5. Member States shall cooperate with regard to the following:
 - (a) the interoperability of the electronic identification schemes notified pursuant to Article 9(1) and the electronic identification schemes which Member States intend to notify; and
 - (b) the security of the electronic identification schemes.
6. The cooperation between Member States shall consist of:
 - (a) the exchange of information, experience and good practice as regards electronic identification schemes and in particular technical requirements related to interoperability and assurance levels;
 - (b) the exchange of information, experience and good practice as regards working with assurance levels of electronic identification schemes under Article 8;
 - (c) peer review of electronic identification schemes falling under this Regulation; and
 - (d) examination of relevant developments in the electronic identification sector.

7. By 18 March 2015, the Commission shall, by means of implementing acts, establish the necessary procedural arrangements to facilitate the cooperation between the Member States referred to in paragraphs 5 and 6 with a view to fostering a high level of trust and security appropriate to the degree of risk.

8. By 18 September 2015, for the purpose of setting uniform conditions for the implementation of the requirement under paragraph 1, the Commission shall, subject to the criteria set out in paragraph 3 and taking into account the results of the cooperation between Member States, adopt implementing acts on the interoperability framework as set out in paragraph 4.

9. The implementing acts referred to in paragraphs 7 and 8 of this Article shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER III

TRUST SERVICES

SECTION 1

General provisions

Article 13

Liability and burden of proof

1. Without prejudice to paragraph 2, trust service providers shall be liable for damage caused intentionally or negligently to any natural or legal person due to a failure to comply with the obligations under this Regulation.

The burden of proving intention or negligence of a non-qualified trust service provider shall lie with the natural or legal person claiming the damage referred to in the first subparagraph.

The intention or negligence of a qualified trust service provider shall be presumed unless that qualified trust service provider proves that the damage referred to in the first subparagraph occurred without the intention or negligence of that qualified trust service provider.

2. Where trust service providers duly inform their customers in advance of the limitations on the use of the services they provide and where those limitations are recognisable to third parties, trust service providers shall not be liable for damages arising from the use of services exceeding the indicated limitations.

3. Paragraphs 1 and 2 shall be applied in accordance with national rules on liability.

Article 14

International aspects

1. Trust services provided by trust service providers established in a third country shall be recognised as legally equivalent to qualified trust services provided by qualified trust service providers established in the Union where the trust services originating from the third country are recognised under an agreement concluded between the Union and the third country in question or an international organisation in accordance with Article 218 TFEU.

2. Agreements referred to in paragraph 1 shall ensure, in particular, that:
 - (a) the requirements applicable to qualified trust service providers established in the Union and the qualified trust services they provide are met by the trust service providers in the third country or international organisations with which the agreement is concluded, and by the trust services they provide;
 - (b) the qualified trust services provided by qualified trust service providers established in the Union are recognised as legally equivalent to trust services provided by trust service providers in the third country or international organisation with which the agreement is concluded.

Article 15

Accessibility for persons with disabilities

Where feasible, trust services provided and end-user products used in the provision of those services shall be made accessible for persons with disabilities.

Article 16

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive.

SECTION 2

Supervision

Article 17

Supervisory body

1. Member States shall designate a supervisory body established in their territory or, upon mutual agreement with another Member State, a supervisory body established in that other Member State. That body shall be responsible for supervisory tasks in the designating Member State.

Supervisory bodies shall be given the necessary powers and adequate resources for the exercise of their tasks.

2. Member States shall notify to the Commission the names and the addresses of their respective designated supervisory bodies.

3. The role of the supervisory body shall be the following:

- (a) to supervise qualified trust service providers established in the territory of the designating Member State to ensure, through *ex ante* and *ex post* supervisory activities, that those qualified trust service providers and the qualified trust services that they provide meet the requirements laid down in this Regulation;
- (b) to take action if necessary, in relation to non-qualified trust service providers established in the territory of the designating Member State, through *ex post* supervisory activities, when informed that those non-qualified trust service providers or the trust services they provide allegedly do not meet the requirements laid down in this Regulation.

4. For the purposes of paragraph 3 and subject to the limitations provided therein, the tasks of the supervisory body shall include in particular:

- (a) to cooperate with other supervisory bodies and provide them with assistance in accordance with Article 18;
- (b) to analyse the conformity assessment reports referred to in Articles 20(1) and 21(1);
- (c) to inform other supervisory bodies and the public about breaches of security or loss of integrity in accordance with Article 19(2);
- (d) to report to the Commission about its main activities in accordance with paragraph 6 of this Article;
- (e) to carry out audits or request a conformity assessment body to perform a conformity assessment of the qualified trust service providers in accordance with Article 20(2);
- (f) to cooperate with the data protection authorities, in particular, by informing them without undue delay, about the results of audits of qualified trust service providers, where personal data protection rules appear to have been breached;
- (g) to grant qualified status to trust service providers and to the services they provide and to withdraw this status in accordance with Articles 20 and 21;
- (h) to inform the body responsible for the national trusted list referred to in Article 22(3) about its decisions to grant or to withdraw qualified status, unless that body is also the supervisory body;
- (i) to verify the existence and correct application of provisions on termination plans in cases where the qualified trust service provider ceases its activities, including how information is kept accessible in accordance with point (h) of Article 24(2);
- (j) to require that trust service providers remedy any failure to fulfil the requirements laid down in this Regulation.

5. Member States may require the supervisory body to establish, maintain and update a trust infrastructure in accordance with the conditions under national law.

6. By 31 March each year, each supervisory body shall submit to the Commission a report on its previous calendar year's main activities together with a summary of breach notifications received from trust service providers in accordance with Article 19(2).

7. The Commission shall make the annual report referred to in paragraph 6 available to Member States.

8. The Commission may, by means of implementing acts, define the formats and procedures for the report referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

*Article 18***Mutual assistance**

1. Supervisory bodies shall cooperate with a view to exchanging good practice.

A supervisory body shall, upon receipt of a justified request from another supervisory body, provide that body with assistance so that the activities of supervisory bodies can be carried out in a consistent manner. Mutual assistance may cover, in particular, information requests and supervisory measures, such as requests to carry out inspections related to the conformity assessment reports as referred to in Articles 20 and 21.

2. A supervisory body to which a request for assistance is addressed may refuse that request on any of the following grounds:

- (a) the supervisory body is not competent to provide the requested assistance;
- (b) the requested assistance is not proportionate to supervisory activities of the supervisory body carried out in accordance with Article 17;
- (c) providing the requested assistance would be incompatible with this Regulation.

3. Where appropriate, Member States may authorise their respective supervisory bodies to carry out joint investigations in which staff from other Member States' supervisory bodies is involved. The arrangements and procedures for such joint actions shall be agreed upon and established by the Member States concerned in accordance with their national law.

*Article 19***Security requirements applicable to trust service providers**

1. Qualified and non-qualified trust service providers shall take appropriate technical and organisational measures to manage the risks posed to the security of the trust services they provide. Having regard to the latest technological developments, those measures shall ensure that the level of security is commensurate to the degree of risk. In particular, measures shall be taken to prevent and minimise the impact of security incidents and inform stakeholders of the adverse effects of any such incidents.

2. Qualified and non-qualified trust service providers shall, without undue delay but in any event within 24 hours after having become aware of it, notify the supervisory body and, where applicable, other relevant bodies, such as the competent national body for information security or the data protection authority, of any breach of security or loss of integrity that has a significant impact on the trust service provided or on the personal data maintained therein.

Where the breach of security or loss of integrity is likely to adversely affect a natural or legal person to whom the trusted service has been provided, the trust service provider shall also notify the natural or legal person of the breach of security or loss of integrity without undue delay.

Where appropriate, in particular if a breach of security or loss of integrity concerns two or more Member States, the notified supervisory body shall inform the supervisory bodies in other Member States concerned and ENISA.

The notified supervisory body shall inform the public or require the trust service provider to do so, where it determines that disclosure of the breach of security or loss of integrity is in the public interest.

3. The supervisory body shall provide ENISA once a year with a summary of notifications of breach of security and loss of integrity received from trust service providers.

4. The Commission may, by means of implementing acts,:

(a) further specify the measures referred to in paragraph 1; and

(b) define the formats and procedures, including deadlines, applicable for the purpose of paragraph 2.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 3

Qualified trust services

Article 20

Supervision of qualified trust service providers

1. Qualified trust service providers shall be audited at their own expense at least every 24 months by a conformity assessment body. The purpose of the audit shall be to confirm that the qualified trust service providers and the qualified trust services provided by them fulfil the requirements laid down in this Regulation. The qualified trust service providers shall submit the resulting conformity assessment report to the supervisory body within the period of three working days after receiving it.

2. Without prejudice to paragraph 1, the supervisory body may at any time audit or request a conformity assessment body to perform a conformity assessment of the qualified trust service providers, at the expense of those trust service providers, to confirm that they and the qualified trust services provided by them fulfil the requirements laid down in this Regulation. Where personal data protection rules appear to have been breached, the supervisory body shall inform the data protection authorities of the results of its audits.

3. Where the supervisory body requires the qualified trust service provider to remedy any failure to fulfil requirements under this Regulation and where that provider does not act accordingly, and if applicable within a time limit set by the supervisory body, the supervisory body, taking into account, in particular, the extent, duration and consequences of that failure, may withdraw the qualified status of that provider or of the affected service it provides and inform the body referred to in Article 22(3) for the purposes of updating the trusted lists referred to in Article 22(1). The supervisory body shall inform the qualified trust service provider of the withdrawal of its qualified status or of the qualified status of the service concerned.

4. The Commission may, by means of implementing acts, establish reference number of the following standards:

(a) accreditation of the conformity assessment bodies and for the conformity assessment report referred to in paragraph 1;

(b) auditing rules under which conformity assessment bodies will carry out their conformity assessment of the qualified trust service providers as referred to in paragraph 1.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

*Article 21***Initiation of a qualified trust service**

1. Where trust service providers, without qualified status, intend to start providing qualified trust services, they shall submit to the supervisory body a notification of their intention together with a conformity assessment report issued by a conformity assessment body.

2. The supervisory body shall verify whether the trust service provider and the trust services provided by it comply with the requirements laid down in this Regulation, and in particular, with the requirements for qualified trust service providers and for the qualified trust services they provide.

If the supervisory body concludes that the trust service provider and the trust services provided by it comply with the requirements referred to in the first subparagraph, the supervisory body shall grant qualified status to the trust service provider and the trust services it provides and inform the body referred to in Article 22(3) for the purposes of updating the trusted lists referred to in Article 22(1), not later than three months after notification in accordance with paragraph 1 of this Article.

If the verification is not concluded within three months of notification, the supervisory body shall inform the trust service provider specifying the reasons for the delay and the period within which the verification is to be concluded.

3. Qualified trust service providers may begin to provide the qualified trust service after the qualified status has been indicated in the trusted lists referred to in Article 22(1).

4. The Commission may, by means of implementing acts, define the formats and procedures for the purpose of paragraphs 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

*Article 22***Trusted lists**

1. Each Member State shall establish, maintain and publish trusted lists, including information related to the qualified trust service providers for which it is responsible, together with information related to the qualified trust services provided by them.

2. Member States shall establish, maintain and publish, in a secured manner, the electronically signed or sealed trusted lists referred to in paragraph 1 in a form suitable for automated processing.

3. Member States shall notify to the Commission, without undue delay, information on the body responsible for establishing, maintaining and publishing national trusted lists, and details of where such lists are published, the certificates used to sign or seal the trusted lists and any changes thereto.

4. The Commission shall make available to the public, through a secure channel, the information referred to in paragraph 3 in electronically signed or sealed form suitable for automated processing.

5. By 18 September 2015 the Commission shall, by means of implementing acts, specify the information referred to in paragraph 1 and define the technical specifications and formats for trusted lists applicable for the purposes of paragraphs 1 to 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

*Article 23***EU trust mark for qualified trust services**

1. After the qualified status referred to in the second subparagraph of Article 21(2) has been indicated in the trusted list referred to in Article 22(1), qualified trust service providers may use the EU trust mark to indicate in a simple, recognisable and clear manner the qualified trust services they provide.
2. When using the EU trust mark for the qualified trust services referred to in paragraph 1, qualified trust service providers shall ensure that a link to the relevant trusted list is made available on their website.
3. By 1 July 2015 the Commission shall, by means of implementing acts, provide for specifications with regard to the form, and in particular the presentation, composition, size and design of the EU trust mark for qualified trust services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

*Article 24***Requirements for qualified trust service providers**

1. When issuing a qualified certificate for a trust service, a qualified trust service provider shall verify, by appropriate means and in accordance with national law, the identity and, if applicable, any specific attributes of the natural or legal person to whom the qualified certificate is issued.

The information referred to in the first subparagraph shall be verified by the qualified trust service provider either directly or by relying on a third party in accordance with national law:

- (a) by the physical presence of the natural person or of an authorised representative of the legal person; or
- (b) remotely, using electronic identification means, for which prior to the issuance of the qualified certificate, a physical presence of the natural person or of an authorised representative of the legal person was ensured and which meets the requirements set out in Article 8 with regard to the assurance levels 'substantial' or 'high'; or
- (c) by means of a certificate of a qualified electronic signature or of a qualified electronic seal issued in compliance with point (a) or (b); or
- (d) by using other identification methods recognised at national level which provide equivalent assurance in terms of reliability to physical presence. The equivalent assurance shall be confirmed by a conformity assessment body.

2. A qualified trust service provider providing qualified trust services shall:

- (a) inform the supervisory body of any change in the provision of its qualified trust services and an intention to cease those activities;
- (b) employ staff and, if applicable, subcontractors who possess the necessary expertise, reliability, experience, and qualifications and who have received appropriate training regarding security and personal data protection rules and shall apply administrative and management procedures which correspond to European or international standards;
- (c) with regard to the risk of liability for damages in accordance with Article 13, maintain sufficient financial resources and/or obtain appropriate liability insurance, in accordance with national law;

- (d) before entering into a contractual relationship, inform, in a clear and comprehensive manner, any person seeking to use a qualified trust service of the precise terms and conditions regarding the use of that service, including any limitations on its use;
- (e) use trustworthy systems and products that are protected against modification and ensure the technical security and reliability of the processes supported by them;
- (f) use trustworthy systems to store data provided to it, in a verifiable form so that:
 - (i) they are publicly available for retrieval only where the consent of the person to whom the data relates has been obtained,
 - (ii) only authorised persons can make entries and changes to the stored data,
 - (iii) the data can be checked for authenticity;
- (g) take appropriate measures against forgery and theft of data;
- (h) record and keep accessible for an appropriate period of time, including after the activities of the qualified trust service provider have ceased, all relevant information concerning data issued and received by the qualified trust service provider, in particular, for the purpose of providing evidence in legal proceedings and for the purpose of ensuring continuity of the service. Such recording may be done electronically;
- (i) have an up-to-date termination plan to ensure continuity of service in accordance with provisions verified by the supervisory body under point (i) of Article 17(4);
- (j) ensure lawful processing of personal data in accordance with Directive 95/46/EC;
- (k) in case of qualified trust service providers issuing qualified certificates, establish and keep updated a certificate database.

3. If a qualified trust service provider issuing qualified certificates decides to revoke a certificate, it shall register such revocation in its certificate database and publish the revocation status of the certificate in a timely manner, and in any event within 24 hours after the receipt of the request. The revocation shall become effective immediately upon its publication.

4. With regard to paragraph 3, qualified trust service providers issuing qualified certificates shall provide to any relying party information on the validity or revocation status of qualified certificates issued by them. This information shall be made available at least on a per certificate basis at any time and beyond the validity period of the certificate in an automated manner that is reliable, free of charge and efficient.

5. The Commission may, by means of implementing acts, establish reference numbers of standards for trustworthy systems and products, which comply with the requirements under points (e) and (f) of paragraph 2 of this Article. Compliance with the requirements laid down in this Article shall be presumed where trustworthy systems and products meet those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 4

Electronic signatures

Article 25

Legal effects of electronic signatures

1. An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.
2. A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.
3. A qualified electronic signature based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic signature in all other Member States.

Article 26

Requirements for advanced electronic signatures

An advanced electronic signature shall meet the following requirements:

- (a) it is uniquely linked to the signatory;
- (b) it is capable of identifying the signatory;
- (c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and
- (d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

Article 27

Electronic signatures in public services

1. If a Member State requires an advanced electronic signature to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic signatures, advanced electronic signatures based on a qualified certificate for electronic signatures, and qualified electronic signatures in at least the formats or using methods defined in the implementing acts referred to in paragraph 5.
2. If a Member State requires an advanced electronic signature based on a qualified certificate to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic signatures based on a qualified certificate and qualified electronic signatures in at least the formats or using methods defined in the implementing acts referred to in paragraph 5.
3. Member States shall not request for cross-border use in an online service offered by a public sector body an electronic signature at a higher security level than the qualified electronic signature.
4. The Commission may, by means of implementing acts, establish reference numbers of standards for advanced electronic signatures. Compliance with the requirements for advanced electronic signatures referred to in paragraphs 1 and 2 of this Article and in Article 26 shall be presumed when an advanced electronic signature meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

5. By 18 September 2015, and taking into account existing practices, standards and Union legal acts, the Commission shall, by means of implementing acts, define reference formats of advanced electronic signatures or reference methods where alternative formats are used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 28

Qualified certificates for electronic signatures

1. Qualified certificates for electronic signatures shall meet the requirements laid down in Annex I.
2. Qualified certificates for electronic signatures shall not be subject to any mandatory requirement exceeding the requirements laid down in Annex I.
3. Qualified certificates for electronic signatures may include non-mandatory additional specific attributes. Those attributes shall not affect the interoperability and recognition of qualified electronic signatures.
4. If a qualified certificate for electronic signatures has been revoked after initial activation, it shall lose its validity from the moment of its revocation, and its status shall not in any circumstances be reverted.
5. Subject to the following conditions, Member States may lay down national rules on temporary suspension of a qualified certificate for electronic signature:
 - (a) if a qualified certificate for electronic signature has been temporarily suspended that certificate shall lose its validity for the period of suspension;
 - (b) the period of suspension shall be clearly indicated in the certificate database and the suspension status shall be visible, during the period of suspension, from the service providing information on the status of the certificate.
6. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified certificates for electronic signature. Compliance with the requirements laid down in Annex I shall be presumed where a qualified certificate for electronic signature meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 29

Requirements for qualified electronic signature creation devices

1. Qualified electronic signature creation devices shall meet the requirements laid down in Annex II.
2. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified electronic signature creation devices. Compliance with the requirements laid down in Annex II shall be presumed where a qualified electronic signature creation device meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 30

Certification of qualified electronic signature creation devices

1. Conformity of qualified electronic signature creation devices with the requirements laid down in Annex II shall be certified by appropriate public or private bodies designated by Member States.

2. Member States shall notify to the Commission the names and addresses of the public or private body referred to in paragraph 1. The Commission shall make that information available to Member States.

3. The certification referred to in paragraph 1 shall be based on one of the following:

- (a) a security evaluation process carried out in accordance with one of the standards for the security assessment of information technology products included in the list established in accordance with the second subparagraph; or
- (b) a process other than the process referred to in point (a), provided that it uses comparable security levels and provided that the public or private body referred to in paragraph 1 notifies that process to the Commission. That process may be used only in the absence of standards referred to in point (a) or when a security evaluation process referred to in point (a) is ongoing.

The Commission shall, by means of implementing acts, establish a list of standards for the security assessment of information technology products referred to in point (a). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 47 concerning the establishment of specific criteria to be met by the designated bodies referred to in paragraph 1 of this Article.

Article 31

Publication of a list of certified qualified electronic signature creation devices

1. Member States shall notify to the Commission without undue delay and no later than one month after the certification is concluded, information on qualified electronic signature creation devices that have been certified by the bodies referred to in Article 30(1). They shall also notify to the Commission, without undue delay and no later than one month after the certification is cancelled, information on electronic signature creation devices that are no longer certified.

2. On the basis of the information received, the Commission shall establish, publish and maintain a list of certified qualified electronic signature creation devices.

3. The Commission may, by means of implementing acts, define formats and procedures applicable for the purpose of paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 32

Requirements for the validation of qualified electronic signatures

1. The process for the validation of a qualified electronic signature shall confirm the validity of a qualified electronic signature provided that:

- (a) the certificate that supports the signature was, at the time of signing, a qualified certificate for electronic signature complying with Annex I;
- (b) the qualified certificate was issued by a qualified trust service provider and was valid at the time of signing;
- (c) the signature validation data corresponds to the data provided to the relying party;

- (d) the unique set of data representing the signatory in the certificate is correctly provided to the relying party;
- (e) the use of any pseudonym is clearly indicated to the relying party if a pseudonym was used at the time of signing;
- (f) the electronic signature was created by a qualified electronic signature creation device;
- (g) the integrity of the signed data has not been compromised;
- (h) the requirements provided for in Article 26 were met at the time of signing.

2. The system used for validating the qualified electronic signature shall provide to the relying party the correct result of the validation process and shall allow the relying party to detect any security relevant issues.

3. The Commission may, by means of implementing acts, establish reference numbers of standards for the validation of qualified electronic signatures. Compliance with the requirements laid down in paragraph 1 shall be presumed where the validation of qualified electronic signatures meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 33

Qualified validation service for qualified electronic signatures

1. A qualified validation service for qualified electronic signatures may only be provided by a qualified trust service provider who:

- (a) provides validation in compliance with Article 32(1); and
- (b) allows relying parties to receive the result of the validation process in an automated manner, which is reliable, efficient and bears the advanced electronic signature or advanced electronic seal of the provider of the qualified validation service.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified validation service referred to in paragraph 1. Compliance with the requirements laid down in paragraph 1 shall be presumed where the validation service for a qualified electronic signature meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 34

Qualified preservation service for qualified electronic signatures

1. A qualified preservation service for qualified electronic signatures may only be provided by a qualified trust service provider that uses procedures and technologies capable of extending the trustworthiness of the qualified electronic signature beyond the technological validity period.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for the qualified preservation service for qualified electronic signatures. Compliance with the requirements laid down in paragraph 1 shall be presumed where the arrangements for the qualified preservation service for qualified electronic signatures meet those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 5

Electronic seals

Article 35

Legal effects of electronic seals

1. An electronic seal shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic seals.
2. A qualified electronic seal shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked.
3. A qualified electronic seal based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic seal in all other Member States.

Article 36

Requirements for advanced electronic seals

An advanced electronic seal shall meet the following requirements:

- (a) it is uniquely linked to the creator of the seal;
- (b) it is capable of identifying the creator of the seal;
- (c) it is created using electronic seal creation data that the creator of the seal can, with a high level of confidence under its control, use for electronic seal creation; and
- (d) it is linked to the data to which it relates in such a way that any subsequent change in the data is detectable.

Article 37

Electronic seals in public services

1. If a Member State requires an advanced electronic seal in order to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic seals, advanced electronic seals based on a qualified certificate for electronic seals and qualified electronic seals at least in the formats or using methods defined in the implementing acts referred to in paragraph 5.
2. If a Member State requires an advanced electronic seal based on a qualified certificate in order to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic seals based on a qualified certificate and qualified electronic seal at least in the formats or using methods defined in the implementing acts referred to in paragraph 5.
3. Member States shall not request for the cross-border use in an online service offered by a public sector body an electronic seal at a higher security level than the qualified electronic seal.
4. The Commission may, by means of implementing acts, establish reference numbers of standards for advanced electronic seals. Compliance with the requirements for advanced electronic seals referred to in paragraphs 1 and 2 of this Article and Article 36 shall be presumed when an advanced electronic seal meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

5. By 18 September 2015, and taking into account existing practices, standards and legal acts of the Union, the Commission shall, by means of implementing acts, define reference formats of advanced electronic seals or reference methods where alternative formats are used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 38

Qualified certificates for electronic seals

1. Qualified certificates for electronic seals shall meet the requirements laid down in Annex III.
2. Qualified certificates for electronic seals shall not be subject to any mandatory requirements exceeding the requirements laid down in Annex III.
3. Qualified certificates for electronic seals may include non-mandatory additional specific attributes. Those attributes shall not affect the interoperability and recognition of qualified electronic seals.
4. If a qualified certificate for an electronic seal has been revoked after initial activation, it shall lose its validity from the moment of its revocation, and its status shall not in any circumstances be reverted.
5. Subject to the following conditions, Member States may lay down national rules on temporary suspension of qualified certificates for electronic seals:
 - (a) if a qualified certificate for electronic seal has been temporarily suspended, that certificate shall lose its validity for the period of suspension;
 - (b) the period of suspension shall be clearly indicated in the certificate database and the suspension status shall be visible, during the period of suspension, from the service providing information on the status of the certificate.
6. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified certificates for electronic seals. Compliance with the requirements laid down in Annex III shall be presumed where a qualified certificate for electronic seal meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 39

Qualified electronic seal creation devices

1. Article 29 shall apply mutatis mutandis to requirements for qualified electronic seal creation devices.
2. Article 30 shall apply mutatis mutandis to the certification of qualified electronic seal creation devices.
3. Article 31 shall apply mutatis mutandis to the publication of a list of certified qualified electronic seal creation devices.

Article 40

Validation and preservation of qualified electronic seals

Articles 32, 33 and 34 shall apply mutatis mutandis to the validation and preservation of qualified electronic seals.

SECTION 6

Electronic time stamps

Article 41

Legal effect of electronic time stamps

1. An electronic time stamp shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic time stamp.
2. A qualified electronic time stamp shall enjoy the presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound.
3. A qualified electronic time stamp issued in one Member State shall be recognised as a qualified electronic time stamp in all Member States.

Article 42

Requirements for qualified electronic time stamps

1. A qualified electronic time stamp shall meet the following requirements:
 - (a) it binds the date and time to data in such a manner as to reasonably preclude the possibility of the data being changed undetectably;
 - (b) it is based on an accurate time source linked to Coordinated Universal Time; and
 - (c) it is signed using an advanced electronic signature or sealed with an advanced electronic seal of the qualified trust service provider, or by some equivalent method.
2. The Commission may, by means of implementing acts, establish reference numbers of standards for the binding of date and time to data and for accurate time sources. Compliance with the requirements laid down in paragraph 1 shall be presumed where the binding of date and time to data and the accurate time source meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 7

Electronic registered delivery services

Article 43

Legal effect of an electronic registered delivery service

1. Data sent and received using an electronic registered delivery service shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic registered delivery service.
2. Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

*Article 44***Requirements for qualified electronic registered delivery services**

1. Qualified electronic registered delivery services shall meet the following requirements:
 - (a) they are provided by one or more qualified trust service provider(s);
 - (b) they ensure with a high level of confidence the identification of the sender;
 - (c) they ensure the identification of the addressee before the delivery of the data;
 - (d) the sending and receiving of data is secured by an advanced electronic signature or an advanced electronic seal of a qualified trust service provider in such a manner as to preclude the possibility of the data being changed undetectably;
 - (e) any change of the data needed for the purpose of sending or receiving the data is clearly indicated to the sender and addressee of the data;
 - (f) the date and time of sending, receiving and any change of data are indicated by a qualified electronic time stamp.

In the event of the data being transferred between two or more qualified trust service providers, the requirements in points (a) to (f) shall apply to all the qualified trust service providers.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for processes for sending and receiving data. Compliance with the requirements laid down in paragraph 1 shall be presumed where the process for sending and receiving data meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 8

Website authentication*Article 45***Requirements for qualified certificates for website authentication**

1. Qualified certificates for website authentication shall meet the requirements laid down in Annex IV.
2. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified certificates for website authentication. Compliance with the requirements laid down in Annex IV shall be presumed where a qualified certificate for website authentication meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER IV

ELECTRONIC DOCUMENTS*Article 46***Legal effects of electronic documents**

An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form.

CHAPTER V

DELEGATIONS OF POWER AND IMPLEMENTING PROVISIONS*Article 47***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 30(4) shall be conferred on the Commission for an indeterminate period of time from 17 September 2014.
3. The delegation of power referred to in Article 30(4) 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 30(4) shall enter into force only if no objection has been expressed either by the European Parliament or 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 48***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.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER VI

FINAL PROVISIONS*Article 49***Review**

The Commission shall review the application of this Regulation and shall report to the European Parliament and to the Council no later than 1 July 2020. The Commission shall evaluate in particular whether it is appropriate to modify the scope of this Regulation or its specific provisions, including Article 6, point (f) of Article 7 and Articles 34, 43, 44 and 45, taking into account the experience gained in the application of this Regulation, as well as technological, market and legal developments.

The report referred to in the first paragraph shall be accompanied, where appropriate, by legislative proposals.

In addition, the Commission shall submit a report to the European Parliament and the Council every four years after the report referred to in the first paragraph on the progress towards achieving the objectives of this Regulation.

*Article 50***Repeal**

1. Directive 1999/93/EC is repealed with effect from 1 July 2016.
2. References to the repealed Directive shall be construed as references to this Regulation.

*Article 51***Transitional measures**

1. Secure signature creation devices of which the conformity has been determined in accordance with Article 3(4) of Directive 1999/93/EC shall be considered as qualified electronic signature creation devices under this Regulation.
2. Qualified certificates issued to natural persons under Directive 1999/93/EC shall be considered as qualified certificates for electronic signatures under this Regulation until they expire.
3. A certification-service-provider issuing qualified certificates under Directive 1999/93/EC shall submit a conformity assessment report to the supervisory body as soon as possible but not later than 1 July 2017. Until the submission of such a conformity assessment report and the completion of its assessment by the supervisory body, that certification-service-provider shall be considered as qualified trust service provider under this Regulation.
4. If a certification-service-provider issuing qualified certificates under Directive 1999/93/EC does not submit a conformity assessment report to the supervisory body within the time limit referred to in paragraph 3, that certification-service-provider shall not be considered as qualified trust service provider under this Regulation from 2 July 2017.

*Article 52***Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from 1 July 2016, except for the following:
 - (a) Articles 8(3), 9(5), 12(2) to (9), 17(8), 19(4), 20(4), 21(4), 22(5), 23(3), 24(5), 27(4) and (5), 28(6), 29(2), 30(3) and (4), 31(3), 32(3), 33(2), 34(2), 37(4) and (5), 38(6), 42(2), 44(2), 45(2), and Articles 47 and 48 shall apply from 17 September 2014;
 - (b) Article 7, Article 8(1) and (2), Articles 9, 10, 11 and Article 12(1) shall apply from the date of application of the implementing acts referred to in Articles 8(3) and 12(8);
 - (c) Article 6 shall apply from three years as from the date of application of the implementing acts referred to in Articles 8(3) and 12(8).
3. Where the notified electronic identification scheme is included in the list published by the Commission pursuant to Article 9 before the date referred to in point (c) of paragraph 2 of this Article, the recognition of the electronic identification means under that scheme pursuant to Article 6 shall take place no later than 12 months after the publication of that scheme but not before the date referred to in point (c) of paragraph 2 of this Article.

4. Notwithstanding point (c) of paragraph 2 of this Article, a Member State may decide that electronic identification means under electronic identification scheme notified pursuant to Article 9(1) by another Member State are recognised in the first Member State as from the date of application of the implementing acts referred to in Articles 8(3) and 12(8). Member States concerned shall inform the Commission. The Commission shall make this information public.

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

Done at Brussels, 23 July 2014.

For the Parliament

The President

M. SCHULZ

For the Council

The President

S. GOZI

ANNEX I

REQUIREMENTS FOR QUALIFIED CERTIFICATES FOR ELECTRONIC SIGNATURES

Qualified certificates for electronic signatures shall contain:

- (a) an indication, at least in a form suitable for automated processing, that the certificate has been issued as a qualified certificate for electronic signature;
 - (b) a set of data unambiguously representing the qualified trust service provider issuing the qualified certificates including at least, the Member State in which that provider is established and:
 - for a legal person: the name and, where applicable, registration number as stated in the official records,
 - for a natural person: the person's name;
 - (c) at least the name of the signatory, or a pseudonym; if a pseudonym is used, it shall be clearly indicated;
 - (d) electronic signature validation data that corresponds to the electronic signature creation data;
 - (e) details of the beginning and end of the certificate's period of validity;
 - (f) the certificate identity code, which must be unique for the qualified trust service provider;
 - (g) the advanced electronic signature or advanced electronic seal of the issuing qualified trust service provider;
 - (h) the location where the certificate supporting the advanced electronic signature or advanced electronic seal referred to in point (g) is available free of charge;
 - (i) the location of the services that can be used to enquire about the validity status of the qualified certificate;
 - (j) where the electronic signature creation data related to the electronic signature validation data is located in a qualified electronic signature creation device, an appropriate indication of this, at least in a form suitable for automated processing.
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ANNEX II

REQUIREMENTS FOR QUALIFIED ELECTRONIC SIGNATURE CREATION DEVICES

1. Qualified electronic signature creation devices shall ensure, by appropriate technical and procedural means, that at least:
 - (a) the confidentiality of the electronic signature creation data used for electronic signature creation is reasonably assured;
 - (b) the electronic signature creation data used for electronic signature creation can practically occur only once;
 - (c) the electronic signature creation data used for electronic signature creation cannot, with reasonable assurance, be derived and the electronic signature is reliably protected against forgery using currently available technology;
 - (d) the electronic signature creation data used for electronic signature creation can be reliably protected by the legitimate signatory against use by others.
 2. Qualified electronic signature creation devices shall not alter the data to be signed or prevent such data from being presented to the signatory prior to signing.
 3. Generating or managing electronic signature creation data on behalf of the signatory may only be done by a qualified trust service provider.
 4. Without prejudice to point (d) of point 1, qualified trust service providers managing electronic signature creation data on behalf of the signatory may duplicate the electronic signature creation data only for back-up purposes provided the following requirements are met:
 - (a) the security of the duplicated datasets must be at the same level as for the original datasets;
 - (b) the number of duplicated datasets shall not exceed the minimum needed to ensure continuity of the service.
-

ANNEX III

REQUIREMENTS FOR QUALIFIED CERTIFICATES FOR ELECTRONIC SEALS

Qualified certificates for electronic seals shall contain:

- (a) an indication, at least in a form suitable for automated processing, that the certificate has been issued as a qualified certificate for electronic seal;
 - (b) a set of data unambiguously representing the qualified trust service provider issuing the qualified certificates including at least the Member State in which that provider is established and:
 - for a legal person: the name and, where applicable, registration number as stated in the official records,
 - for a natural person: the person's name;
 - (c) at least the name of the creator of the seal and, where applicable, registration number as stated in the official records;
 - (d) electronic seal validation data, which corresponds to the electronic seal creation data;
 - (e) details of the beginning and end of the certificate's period of validity;
 - (f) the certificate identity code, which must be unique for the qualified trust service provider;
 - (g) the advanced electronic signature or advanced electronic seal of the issuing qualified trust service provider;
 - (h) the location where the certificate supporting the advanced electronic signature or advanced electronic seal referred to in point (g) is available free of charge;
 - (i) the location of the services that can be used to enquire as to the validity status of the qualified certificate;
 - (j) where the electronic seal creation data related to the electronic seal validation data is located in a qualified electronic seal creation device, an appropriate indication of this, at least in a form suitable for automated processing.
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ANNEX IV

REQUIREMENTS FOR QUALIFIED CERTIFICATES FOR WEBSITE AUTHENTICATION

Qualified certificates for website authentication shall contain:

- (a) an indication, at least in a form suitable for automated processing, that the certificate has been issued as a qualified certificate for website authentication;
 - (b) a set of data unambiguously representing the qualified trust service provider issuing the qualified certificates including at least the Member State in which that provider is established and:
 - for a legal person: the name and, where applicable, registration number as stated in the official records,
 - for a natural person: the person's name;
 - (c) for natural persons: at least the name of the person to whom the certificate has been issued, or a pseudonym. If a pseudonym is used, it shall be clearly indicated;

for legal persons: at least the name of the legal person to whom the certificate is issued and, where applicable, registration number as stated in the official records;
 - (d) elements of the address, including at least city and State, of the natural or legal person to whom the certificate is issued and, where applicable, as stated in the official records;
 - (e) the domain name(s) operated by the natural or legal person to whom the certificate is issued;
 - (f) details of the beginning and end of the certificate's period of validity;
 - (g) the certificate identity code, which must be unique for the qualified trust service provider;
 - (h) the advanced electronic signature or advanced electronic seal of the issuing qualified trust service provider;
 - (i) the location where the certificate supporting the advanced electronic signature or advanced electronic seal referred to in point (h) is available free of charge;
 - (j) the location of the certificate validity status services that can be used to enquire as to the validity status of the qualified certificate.
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**REGULATION (EU) No 911/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 July 2014**

**on multiannual funding for the action of the European Maritime Safety Agency in the field of
response to marine pollution caused by ships and oil and gas installations**

(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 100(2) 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) Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽³⁾ established a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (2) Regulation (EC) No 724/2004 of the European Parliament and of the Council ⁽⁴⁾, which amended Regulation (EC) No 1406/2002, assigned to the Agency tasks in the fields of prevention and response to pollution caused by ships, following accidents in Union waters, particularly those of the oil tankers 'Erika' and 'Prestige'.
- (3) Regulation (EU) No 100/2013 of the European Parliament and of the Council ⁽⁵⁾, amending Regulation (EC) No 1406/2002, assigned to the Agency tasks with regard to response to marine pollution caused by oil and gas installations and extended the Agency's services to the States applying for accession to the Union and to the European Neighbourhood partner countries.
- (4) Regulation (EC) No 2038/2006 of the European Parliament and of the Council ⁽⁶⁾ established a multiannual funding for the action of the Agency in the field of response to pollution caused by ships which expired on 31 December 2013.

⁽¹⁾ OJ C 327, 12.11.2013, p. 108.

⁽²⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽³⁾ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

⁽⁴⁾ Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency (OJ L 129, 29.4.2004, p. 1).

⁽⁵⁾ Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency (OJ L 39, 9.2.2013, p. 30).

⁽⁶⁾ Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships (OJ L 394, 30.12.2006, p. 1).

- (5) Given the potentially devastating ecological impact and extremely high economic costs of pollution incidents, as well as the possible socioeconomic impact of such incidents on other sectors, such as tourism and fisheries, the Agency should have sufficient means to allow it to carry out its assigned tasks in relation to response to marine pollution by ships and oil and gas installations. Those tasks are important in preventing further damage of both a monetary and non-monetary nature.
- (6) For the purposes of implementing the tasks of preventing and responding to pollution by ships, the Administrative Board of the Agency adopted on 22 October 2004 an Action Plan for Oil Pollution Preparedness and Response, which determines the Agency's oil pollution response activities and which is aimed at the optimum use of the financial resources available to the Agency. On 12 June 2007, the Administrative Board adopted an Action Plan for Hazardous and Noxious Substances Pollution Preparedness and Response. In accordance with Article 15 of Regulation (EC) No 1406/2002, both Action Plans are updated yearly through the Agency's annual work programme.
- (7) Regard should be had to the existing agreements on accidental pollution, which facilitate mutual assistance and cooperation between Member States in this field, as well as to the relevant international conventions and agreements for the protection of European maritime areas from pollution incidents requiring parties to take all appropriate measures to prepare for and respond to an oil pollution incident.
- (8) The pollution response action of the Agency, as specified in its action plans, relates to activities in the fields of information, cooperation and coordination, including with regard to marine pollution caused by hazardous and noxious substances. Above all, that response action relates to the provision of operational assistance to the affected Member States or third countries sharing a regional sea basin with the Union ('affected States') by supplying, on request, additional anti-pollution vessels to combat oil pollution caused by ships as well as marine pollution caused by oil and gas installations. The Agency should pay particular attention to those areas identified as most vulnerable without prejudice to any other area in need.
- (9) The activities of the Agency in the field of pollution response should comply with existing cooperation arrangements providing for mutual assistance in the event of a maritime pollution incident. The Union has acceded to various regional organisations and is preparing to accede to other regional organisations.
- (10) The Agency's action should be coordinated with the activities under the bilateral and regional agreements to which the Union is a party. In the event of a maritime pollution incident, the Agency should assist affected States, under whose authority clean-up operations are conducted.
- (11) The Agency should play an active role in maintaining and further developing the European Satellite Oil Monitoring Service (CleanSeaNet) for surveillance, the early detection of pollution and the identification of the ships or oil and gas installations responsible, for example in the case of discharges of oil from ships and of operational releases and accidental spills from offshore platforms. That service should improve the availability of data and the effectiveness and timeliness of the pollution response.
- (12) The additional means to be provided by the Agency to affected States should be made available through the Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

- (13) The information related to public and private pollution response mechanisms and associated response capabilities in the various regions of the Union should be made available by Member States through the Common Emergency Communication and Information System (CECIS) established by Council Decision 2007/779/EC, Euratom ⁽¹⁾, when available for that purpose.
- (14) In order to make the Agency's operational assistance more efficient in view of the extension of the Agency's pollution response mandate to third countries sharing a regional sea basin with the Union, the Agency should make every effort to encourage those third countries to pool information and cooperate in the maintenance by the Agency of a list of response mechanisms and associated response capabilities.
- (15) In order to improve the effectiveness of the Agency's pollution response activities, Member States should share with the Agency scientific studies they may have carried out on the effects of chemicals used as dispersants which could be relevant for those activities.
- (16) In order to ensure thorough implementation of the Agency's action plans, the Agency should be provided with a viable and cost-effective system for financing, in particular, the provision of operational assistance to affected States.
- (17) Financial security should therefore be provided for the funding of the tasks entrusted to the Agency in the field of pollution response and associated actions on the basis of a multiannual commitment. The size of that multiannual commitment should reflect the expansion of the Agency's remit with regard to pollution response, and also the need for the Agency to increase the efficiency in using the funds allocated to it, in a context of budgetary constraints. The annual amounts of the Union contribution should be determined by the European Parliament and the Council in accordance with the annual budgetary procedure. It is of particular importance that the Commission carry out a mid-term evaluation of the Agency's ability to fulfil its responsibilities in the field of response to marine pollution caused by ships and oil and gas installations in an effective and cost-efficient manner.
- (18) The amounts to be committed for the funding of pollution response should cover the period from 1 January 2014 to 31 December 2020, in line with the multiannual financial framework laid down in Council Regulation (EU, Euratom) No 1311/2013 ⁽²⁾ ('the multiannual financial framework'). A financial envelope covering the same period should therefore be provided.
- (19) The Agency's support to States applying for accession to the Union and to the European Neighbourhood partner countries should be financed through existing Union programmes for those States and countries and should therefore not be part of the multiannual funding of the Agency.
- (20) In order to optimise the allocation of commitments and take into account any changes with regard to activities in response to pollution caused by ships, it is necessary to ensure continuous monitoring of the particular needs for action so as to allow for adaptation of the annual financial commitments.
- (21) In accordance with Regulation (EC) No 1406/2002, the Agency should report on the financial execution of the multiannual funding of the Agency in its annual report.
- (22) It is appropriate to ensure continuity in the funding support provided under the action of the Agency in the field of response to marine pollution caused by ships and oil and gas installations, and to align the period of application of this Regulation with that of Regulation (EU, Euratom) No 1311/2013. Therefore, this Regulation should apply from 1 January 2014,

⁽¹⁾ Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (OJ L 314, 1.12.2007, p. 9).

⁽²⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation lays down the detailed arrangements for the financial contribution of the Union to the budget of the European Maritime Safety Agency ('the Agency') for the implementation of the tasks assigned to it in the field of response to marine pollution caused by ships and oil and gas installations, pursuant to Articles 1 and 2 of Regulation (EC) No 1406/2002.
2. The activities of the Agency in the field of pollution response shall not relieve coastal States of their responsibility to have appropriate pollution response mechanisms in place.

Article 2

Definitions

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

- (a) 'oil' means petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products as established by the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, of the International Maritime Organisation (IMO);
- (b) 'hazardous and noxious substances' means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, as established by the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000, of the IMO;
- (c) 'oil and gas installation' means a stationary fixed or mobile facility, or a combination of facilities permanently interconnected by bridges or other structures, used for offshore oil or gas operations or in connection with those operations; 'oil and gas installation' includes mobile offshore drilling units only if they are stationed in offshore waters for drilling, production or other activities associated with offshore oil or gas operations, as well as infrastructure and facilities used to transport the oil and gas onshore and to onshore terminals.

Article 3

Scope

The financial contribution of the Union referred to in Article 1 shall be allocated to the Agency with the aim of financing actions in the field of response to marine pollution caused by ships and oil and gas installations as referred to in the detailed plan established in accordance with point (k) of Article 10(2) of Regulation (EC) No 1406/2002, in particular those relating to:

- (a) operational assistance and supporting with additional means, such as stand-by anti-pollution ships, satellite images and equipment, of pollution response actions, upon request by the affected States, in accordance with point (d) of Article 2(3) and Article 2(5) of Regulation (EC) No 1406/2002 in the event of accidental or deliberate marine pollution caused by ships or oil and gas installations;
- (b) cooperation and coordination and the provision to the Member States and the Commission of technical and scientific assistance in the framework of the relevant activities of the Union Civil Protection Mechanism, the IMO and the relevant regional organisations;

- (c) information, in particular the gathering, analysis and dissemination of best practices, expertise, techniques and innovations in the field of response to marine pollution caused by ships and oil and gas installations.

Article 4

Union funding

1. Within the limits of the multiannual financial framework, the Agency shall be given the appropriations necessary to fulfil its responsibilities in the field of response to marine pollution caused by ships and oil and gas installations in an effective and cost-efficient manner.
2. The financial envelope for the implementation of the tasks referred to in Article 3 for the period from 1 January 2014 to 31 December 2020 shall be EUR 160 500 000 expressed in current prices.
3. Annual appropriations shall be determined by the European Parliament and the Council within the limits of the multiannual financial framework. In this connection the necessary funding of operational assistance to the Member States pursuant to point (a) of Article 3 shall be guaranteed.

Article 5

Monitoring existing capabilities

1. In order to define the requirements for, and to improve the efficiency of, the Agency's provision of operational assistance, for example in the form of anti-pollution vessels additional to Member States' capacities, the Agency shall maintain a list of the public and, where available, private pollution response mechanisms and associated response capabilities in the various regions of the Union.
2. The Agency shall maintain that list on the basis of information that Member States shall provide. In maintaining that list, the Agency shall aim at obtaining information on pollution response mechanisms and associated response capabilities from third countries sharing a regional sea basin with the Union.
3. The Administrative Board of the Agency shall take into account that list and other appropriate information relevant to the pollution response objectives set out in Article 1 of Regulation (EC) No 1406/2002, such as that contained in risk assessments and scientific studies on the effects of chemicals used as dispersants, before deciding on the Agency's pollution response activities in the framework of the Agency's annual work programmes. In this context, the Agency shall pay particular attention to those areas identified as most vulnerable, without prejudice to any other area in need.

Article 6

Protection of the Union's financial interests

1. The Commission and the Agency shall ensure that, when actions funded under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by means of effective checks and inspections and, where irregularities are detected, the recovery of any amounts unduly paid and by imposing effective, proportional and dissuasive penalties, in accordance with Council Regulations (EC, Euratom) No 2988/95⁽¹⁾ and (Euratom, EC) No 2185/96⁽²⁾ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽³⁾.

⁽¹⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

⁽²⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁽³⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

2. For the Union actions funded under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union law or any breach of a contractual obligation resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Union or budgets managed by it, by an unjustified item of expenditure.

3. The Commission and the Agency shall, each within its respective sphere of competence, ensure that best value for money is achieved in the funding of Union actions under this Regulation.

Article 7

Mid-term evaluation

1. No later than 31 December 2017, the Commission shall submit to the European Parliament and to the Council, on the basis of information provided by the Agency, a report on the implementation of this Regulation. That report, which shall be established without prejudice to the role of the Administrative Board of the Agency, shall set out the results of the use of the Union contribution referred to in Article 4 as regards commitments and expenditure covering the period between 1 January 2014 and 31 December 2016.

2. In that report, the Commission shall present an evaluation of the Agency's ability to fulfil its responsibilities in an effective and cost-efficient manner. For the period 2018–2020, based on the evaluation and considering the need for the Agency to carry out the tasks assigned to it, the Commission shall, if necessary, propose an appropriate adjustment, by a maximum of 8 %, of the multiannual financial envelope allocated to the Agency for the implementation of the tasks referred to in Article 3. The possible adjustment shall remain within the limits of the multiannual financial framework and is without prejudice to the annual budgetary procedures or the upcoming review of the multiannual financial framework.

3. That report shall contain information on the socioeconomic, ecological and financial implications, if available, of the Agency's response preparedness relating to marine pollution caused by ships and oil and gas installations.

4. Furthermore, on the basis of that report, the Commission may, if appropriate, propose amendments to this Regulation, in particular in order to take account of scientific progress in the field of combating marine pollution caused by ships and oil and gas installations, including with regard to pollution caused by hazardous and noxious substances, as well as of relevant changes to the instruments establishing regional organisations whose activities are covered by the Agency's activities with regard to pollution response and to which the Union has acceded.

Article 8

Entry into force and date of application

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 2014 to 31 December 2020.

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

Done at Brussels, 23 July 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
S. GOZI

**REGULATION (EU) No 912/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 July 2014**

**establishing a framework for managing financial responsibility linked to investor-to-state dispute
settlement tribunals established by international agreements to which the European Union is party**

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 207(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) With the entry into force of the Treaty of Lisbon foreign direct investment is included in the list of matters falling under the common commercial policy. In accordance with point (e) of Article 3(1) of the Treaty on the Functioning of the European Union (TFEU), the Union has exclusive competence with respect to the common commercial policy and may be a party to international agreements covering provisions on foreign direct investment.
- (2) Agreements providing for investment protection may include an investor-to-state dispute settlement mechanism, which allows an investor from a third country to bring a claim against a state in which it has made an investment. Investor-to-state dispute settlement can result in awards for monetary compensation. Furthermore, significant costs for administering the arbitration as well as costs relating to the defence of a case will inevitably be incurred in any such case.
- (3) International responsibility for treatment subject to dispute settlement follows the division of competences between the Union and the Member States. As a consequence, the Union will in principle be responsible for defending any claims alleging a violation of rules included in an agreement which fall within the Union's exclusive competence, irrespective of whether the treatment at issue is afforded by the Union itself or by a Member State.
- (4) Union agreements should afford foreign investors the same high level of protection as Union law and the general principles common to the laws of the Member States grant to investors from within the Union, but not a higher level of protection. Union agreements should ensure that the Union's legislative powers and right to regulate are respected and safeguarded.
- (5) Where the Union, as an entity having legal personality, has international responsibility for the treatment afforded, it will be expected, as a matter of international law, to pay any adverse award and bear the costs of any dispute. However, an adverse award may potentially flow either from treatment afforded by the Union itself or from treatment afforded by a Member State. It would as a consequence be inequitable if awards and the costs of arbitration were to be paid from the budget of the Union where the treatment was afforded by a Member State, unless the treatment in question is required by Union law. It is therefore necessary that financial responsibility be allocated, as a matter of Union law, between the Union itself and the Member State responsible for the treatment afforded on the basis of criteria established by this Regulation.

⁽¹⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

- (6) In its resolution of 6 April 2011 on the future European international investment policy, the European Parliament explicitly called for the creation of the mechanism provided for in this Regulation. Furthermore, in its Conclusions of 25 October 2010 on a Comprehensive international investment policy, the Council requested the Commission to study the matter.
- (7) Financial responsibility should be allocated to the entity responsible for the treatment found to be inconsistent with the relevant provisions of the agreement. Therefore the Union itself should bear the financial responsibility where the treatment concerned is afforded by an institution, body, office or agency of the Union. The Member State concerned should bear the financial responsibility where the treatment concerned is afforded by that Member State. However, where the Member State acts in a manner required by Union law, for example in transposing a directive adopted by the Union, the Union itself should bear financial responsibility in so far as the treatment concerned is required by Union law. This Regulation should also provide for the possibility that individual cases concern both treatment afforded by a Member State and treatment required by Union law and should cover all actions taken by Member States and by the Union. In such cases, the Member States and the Union should bear financial responsibility for the specific treatment afforded by either of them.
- (8) The Union should always act as the respondent where a dispute exclusively concerns treatment afforded by the institutions, bodies, offices or agencies of the Union, so that the Union bears the potential financial responsibility arising from the dispute in accordance with the above criteria.
- (9) Where a Member State would bear the potential financial responsibility arising from a dispute, it is equitable and appropriate that such Member State acts as a respondent in order to defend the treatment which it has afforded to the investor. The arrangements laid down in this Regulation are aimed at ensuring that the budget of the Union and Union non-financial resources are not burdened, even temporarily, by either the costs of litigation or any award made against the Member State concerned.
- (10) Member States may, nevertheless, prefer that the Union act as the respondent in this type of dispute, for example for reasons of technical expertise. Member States should, therefore, have the possibility to decline to act as the respondent, without prejudice to their financial responsibility.
- (11) In order to ensure that the interests of the Union can be appropriately safeguarded, it is essential that, in exceptional circumstances, the Union itself act as the respondent in disputes involving treatment afforded by a Member State. Those circumstances are limited to cases where the dispute also involves treatment afforded by the Union, where it appears that the treatment afforded by a Member State is required by Union law and where similar treatment is being challenged in a related claim against the Union in the World Trade Organisation (WTO), where a panel has been established and the claim concerns the same specific legal issue and where it is necessary to ensure a consistent argumentation in the WTO case.
- (12) Where the Union acts as the respondent in cases involving Member State measures, the Commission should conduct its defence in a manner which protects the financial interests of the Member State concerned.
- (13) Decisions on whether the Union or a Member State should act as the respondent should be taken within the framework laid down in this Regulation. It is appropriate that the Commission immediately informs the European Parliament and the Council about the manner in which this framework is applied.

- (14) This Regulation should provide for some practical arrangements for the conduct of arbitration proceedings in disputes concerning treatment afforded by a Member State. Those arrangements should aim for the best possible management of the dispute whilst ensuring compliance with the duty of sincere cooperation referred to in Article 4(3) of the Treaty on European Union (TEU) and the defence and protection of the interests of the Member State concerned.
- (15) Where the Union acts as the respondent such arrangements should provide for very close cooperation including the prompt notification of any significant procedural steps, the provision of relevant documents, frequent consultations and participation in the delegation to the proceedings.
- (16) Where a Member State acts as the respondent, it is appropriate that, in accordance with the duty of sincere cooperation referred to in Article 4(3) of the TEU, it keeps the Commission informed of developments in the case and in particular ensures timely information of any significant procedural steps, the provision of relevant documents, frequent consultations and participation in the delegation to the proceedings. It is also appropriate that the Commission is provided with adequate opportunity to identify any point of law or any other element of Union interest raised by the dispute.
- (17) Without prejudice to the outcome of the arbitration proceedings, a Member State should be able at any time to accept that it would be financially responsible in the event that compensation is to be paid. In such a case, the Member State and the Commission should be able to enter into arrangements for the periodic payment of costs and for the payment of any compensation. Such acceptance does not imply that the Member State accepts that the claim under dispute is well founded. The Commission should be able in such a case to adopt a decision requiring the Member State to make provision for such costs. In the event that the tribunal awards costs to the Union, the Commission should ensure that any advance payment of costs is immediately reimbursed to the Member State concerned.
- (18) In some cases, it may be appropriate to reach a settlement in order to avoid costly and unnecessary arbitration. It is necessary to lay down a procedure for making such settlements. Such a procedure should permit the Commission, acting in accordance with the examination procedure, to settle a case involving the financial responsibility of the Union, where this would be in the interests of the Union. Where the case also concerns treatment afforded by a Member State, it is appropriate that the Union would only be able to settle a dispute if the settlement would not have any financial or budgetary implications for the Member State concerned. In such cases, it is appropriate that there should be close cooperation and consultations between the Commission and the Member State concerned. The Member State should remain free to settle the case at all times, provided that it accepts full financial responsibility and that any such settlement is consistent with Union law.
- (19) Where an award has been rendered against the Union, that award should be paid without delay. The Commission should make arrangements for the payment of such awards, unless a Member State has already accepted financial responsibility.
- (20) The Commission should consult closely with the Member State concerned in order to reach agreement on the apportionment of financial responsibility. Where the Commission determines that a Member State is responsible, and the Member State does not accept that determination, the Commission should pay the award, but should also address a decision to the Member State requesting it to provide the amounts concerned to the budget of the Union, together with applicable interest. The interest payable should be that laid down pursuant to Article 78(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽¹⁾. Article 263 TFEU is available in cases where a Member State considers that the decision falls short of the criteria set out in 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).

- (21) The budget of the Union should provide coverage of the expenditure resulting from agreements covering provisions on foreign direct investment to which the Union is a party and which provide for investor-to-state dispute settlement. Where Member States have financial responsibility pursuant to this Regulation, the Union should be able to either accumulate the contributions of the Member State concerned first before implementing the relevant expenditure or implement the relevant expenditure first and be reimbursed by the Member State concerned after. Use of both of these mechanisms of budgetary treatment should be possible, depending on what is feasible, in particular in terms of timing. For both mechanisms, the contributions or reimbursements paid by the Member State concerned should be treated as internal assigned revenue of the budget of the Union. The appropriations arising from this internal assigned revenue should not only cover the relevant expenditure but they should also be eligible for replenishment of other parts of the budget of the Union which provided the initial appropriations to implement the relevant expenditure under the second mechanism.
- (22) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission.
- (23) The implementing powers relating to Article 9(2) and (3), Article 13(1), Article 14(8), Article 15(3) and Article 16(3) should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (24) The advisory procedure should be used for the adoption of decisions providing that the Union act as the respondent pursuant to Article 9(2), given that it is necessary for the Union to take over the defence in such cases, but that this should still be subject to control by the Member States. The advisory procedure should be used for the adoption of decisions on settlement of disputes pursuant to Article 15(3) given that those decisions will have at most a merely temporary impact on the budget of the Union, since the Member State concerned will be required to assume any financial responsibility arising from the dispute, and because of the detailed criteria laid down in this Regulation for acceptability of such settlements,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. Without prejudice to the division of competences established by the TFEU, this Regulation applies to investor-to-state dispute settlement conducted pursuant to an agreement to which the Union is party, or the Union and its Member States are parties, and initiated by a claimant of a third country. In particular, the adoption and application of this Regulation shall not affect the delimitation of competences established by the Treaties, including in relation to the treatment afforded by the Member States or the Union and challenged by a claimant in investor-to-state dispute settlement conducted pursuant to an agreement.
2. For information purposes, the Commission shall publish in the *Official Journal of the European Union* and keep up to date a list of the agreements falling within the scope of this Regulation.

Article 2

Definitions

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

- (a) 'agreement' means any international agreement covering provisions on foreign direct investment to which the Union is party, or the Union and its Member States are parties, and which provides for investor-to-state dispute settlement;

⁽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).

- (b) 'costs arising from the arbitration' means the fees and costs of the arbitration tribunal and the arbitration institution, and the costs of representation and expenses awarded to the claimant by the arbitration tribunal, such as costs of translation, costs of legal and economic analysis and other relevant costs with respect to the arbitration proceedings;
- (c) 'dispute' means a claim brought by a claimant against the Union or a Member State pursuant to an agreement and on which an arbitration tribunal will rule;
- (d) 'investor-to-state dispute settlement' means a mechanism provided for by an agreement by which a claimant may initiate claims against the Union or a Member State;
- (e) 'Member State' means one or more Member States of the European Union;
- (f) 'Member State concerned' means the Member State which has afforded the treatment alleged to be inconsistent with the agreement;
- (g) 'financial responsibility' means an obligation to pay a sum of money awarded by an arbitration tribunal or agreed as part of a settlement and including the costs arising from the arbitration;
- (h) 'settlement' means any agreement between the Union or a Member State, or both, of the one part, and a claimant, of the other, whereby the claimant agrees not to pursue its claims in exchange for the payment of a sum of money or action other than the payment of money, including where the settlement is recorded in an award of an arbitration tribunal;
- (i) 'arbitration tribunal' means any person or body designated under an agreement to rule on an investor-to-state dispute;
- (j) 'claimant' means any natural or legal person which may bring a claim to investor-to-state dispute settlement pursuant to an agreement or any natural or legal person to whom the claims of the claimant under the agreement have been lawfully assigned;
- (k) 'Union law' means the TFEU and the TEU, as well as any legal acts of the Union referred to in the second, third and fourth paragraphs of Article 288 TFEU and any international agreements to which the Union is party or the Union and its Member States are parties; for the sole purposes of this Regulation 'Union law' shall not mean the investment protection provisions in the agreement;
- (l) 'required by Union law' refers to treatment where the Member State concerned could only have avoided the alleged breach of the agreement by disregarding an obligation under Union law such as where it has no discretion or margin of appreciation as to the result to be achieved.

CHAPTER II

APPORTIONMENT OF FINANCIAL RESPONSIBILITY

Article 3

Apportionment criteria

1. Financial responsibility arising from a dispute under an agreement shall be apportioned in accordance with the following criteria:
 - (a) the Union shall bear the financial responsibility arising from treatment afforded by the institutions, bodies, offices or agencies of the Union;

- (b) the Member State concerned shall bear the financial responsibility arising from treatment afforded by that Member State;
- (c) by way of exception to point (b), the Union shall bear the financial responsibility arising from treatment afforded by a Member State where such treatment was required by Union law.

Notwithstanding point (c) of the first subparagraph, where the Member State concerned is required to act pursuant to Union law in order to remedy the inconsistency with Union law of a prior act, that Member State shall be financially responsible unless such prior act was required by Union law.

2. Where provided for in this Regulation, the Commission shall adopt a decision determining the financial responsibility of the Member State concerned in accordance with the criteria laid down in paragraph 1. The European Parliament and the Council shall be informed of such a decision.

3. Notwithstanding paragraph 1 of this Article, the Member State concerned shall bear the financial responsibility where:

(a) it has accepted potential financial responsibility pursuant to Article 12; or

(b) it enters into a settlement, pursuant to Article 15.

4. Notwithstanding paragraph 1 of this Article, the Union shall bear the financial responsibility where the Union acts as the respondent pursuant to Article 4.

CHAPTER III

CONDUCT OF DISPUTES

SECTION 1

conduct of disputes concerning treatment afforded by the union

Article 4

Treatment afforded by the Union

1. The Union shall act as the respondent where the dispute concerns treatment afforded by the institutions, bodies, offices or agencies of the Union.

2. Where the Commission receives a request for consultations from a claimant or a notice by which a claimant states its intention to initiate arbitration proceedings in accordance with an agreement, it shall immediately notify the European Parliament and the Council.

SECTION 2

conduct of disputes concerning treatment afforded by a Member State

Article 5

Treatment afforded by a Member State

This Section shall apply in disputes concerning, fully or partially, treatment afforded by a Member State.

*Article 6***Cooperation and consultations between the Commission and the Member State concerned**

1. In accordance with the principle of sincere cooperation referred to in Article 4(3) TEU, the Commission and the Member State concerned shall take all necessary steps to defend and protect the interests of the Union and of the Member State concerned.
2. The Commission and the Member State concerned shall enter into consultations on the management of disputes pursuant to this Regulation, bearing in mind any deadlines laid down in this Regulation and in the agreement concerned, and shall share with each other information where relevant to the conduct of disputes.

*Article 7***Request for consultations**

1. Where the Commission receives a request for consultations from a claimant in accordance with an agreement, it shall immediately notify the Member State concerned. Where a Member State has been made aware of or has received a request for consultations, it shall immediately inform the Commission.
2. Representatives of the Member State concerned and of the Commission shall form part of the Union's delegation to the consultations.
3. The Member State concerned and the Commission shall immediately provide to each other relevant information for the case.
4. The Commission shall inform the European Parliament and the Council of any such requests for consultations.

*Article 8***Notice of intention to initiate arbitration proceedings**

1. Where the Commission receives notice by which a claimant states its intention to initiate arbitration proceedings, in accordance with an agreement, it shall immediately notify the Member State concerned. When a claimant states its intention to initiate arbitration proceedings against the Union or a Member State, the Commission shall inform the European Parliament and the Council, within 15 working days of receiving the notice, of the name of the claimant, the provisions of the agreement alleged to have been breached, the economic sector involved, the treatment alleged to be in breach of the agreement and the amount of damages claimed.
2. Where a Member State receives notice by which a claimant states its intention to initiate arbitration proceedings, it shall immediately notify the Commission.
3. The Commission shall inform the European Parliament and the Council of any such notices of intention to initiate arbitration proceedings.

*Article 9***Respondent status**

1. The Member State concerned shall act as the respondent except where either of the following situations arise:
 - (a) the Commission, following consultations pursuant to Article 6, has taken a decision pursuant to paragraph 2 or 3 of this Article within 45 days of receiving the notice or notification referred to in Article 8; or
 - (b) the Member State, following consultations pursuant to Article 6, has confirmed to the Commission in writing that it does not intend to act as the respondent within 45 days of receiving the notice or notification referred to in Article 8.

If either of the situations referred to in point (a) or (b) arise, the Union shall act as the respondent.

2. The Commission may decide by means of implementing acts, based on a full and balanced factual analysis and legal reasoning provided to the Member States, in accordance with the advisory procedure referred to in Article 22(2), that the Union is to act as the respondent where one or more of the following circumstances arise:

(a) the Union would bear all or at least part of the potential financial responsibility arising from the dispute in accordance with the criteria laid down in Article 3; or

(b) the dispute also concerns treatment afforded by the institutions, bodies, offices or agencies of the Union.

3. The Commission may decide by means of implementing acts, based on a full and balanced factual analysis and legal reasoning provided to the Member States in accordance with the examination procedure referred to in Article 22(3), that the Union is to act as the respondent where similar treatment is being challenged in a related claim against the Union in the WTO, where a panel has been established and the claim concerns the same specific legal issue, and where it is necessary to ensure a consistent argumentation in the WTO case.

4. In acting pursuant to this Article, the Commission shall ensure that the Union's defence protects the financial interests of the Member State concerned.

5. The Commission and the Member State concerned shall immediately after receiving the notice or notification referred to in Article 8 enter into consultations pursuant to Article 6 on the management of the case pursuant to this Article. The Commission and the Member State concerned shall ensure that any deadlines set down in the agreement are respected.

6. When the Union acts as the respondent in accordance with paragraphs 2 and 5, the Commission shall consult the Member State concerned on any pleading or observation prior to the finalisation and submission thereof. Representatives of the Member State concerned shall, at the Member State's request and at its expense, form part of the Union's delegation to any hearing and the Commission shall take due account of the Member State's interest.

7. The Commission shall immediately inform the European Parliament and the Council of any dispute in which this Article is applied and the manner in which it has been applied.

Article 10

Conduct of arbitration proceedings by a Member State

1. Where a Member State acts as the respondent, in all phases of the dispute, including possible annulment, appeal or review, the Member State pursuant to Article 6 shall:

(a) provide the Commission in a timely manner with relevant documents relating to the proceeding;

(b) inform the Commission in a timely manner of all significant procedural steps, and upon request enter into consultations with the Commission with a view to taking into due consideration any point of law or any other element of Union interest raised by the dispute and identified by the Commission in a non-binding written analysis provided to the Member State concerned; and

(c) permit representatives of the Commission, at its request and its own expense to form part of the delegation representing the Member State.

2. The Commission shall provide the Member State with relevant documents relating to the proceedings, so as to ensure as effective a defence as possible.

3. As soon as an award is rendered, the Member State shall inform the Commission. The Commission shall inform the European Parliament and the Council.

Article 11

Conduct of arbitration proceedings by the Union

1. Pursuant to Article 6, the following provisions shall apply throughout arbitration proceedings, where the Union acts as the respondent in any disputes in which a Member State would be liable to bear all or part of the potential financial responsibility:

(a) the Commission shall take all necessary measures to defend and protect the interests of the Member State concerned;

(b) the Member State concerned shall provide all necessary assistance to the Commission;

(c) the Commission shall provide the Member State concerned with relevant documents relating to the proceeding, keep the Member State informed of all significant procedural steps and enter into consultations with the Member State in any event when requested by the Member State concerned, so as to ensure as effective a defence as possible;

(d) the Commission and the Member State concerned shall prepare the defence in close cooperation with each other; and,

(e) the Union's delegation to the proceedings shall comprise the Commission and representatives of the Member State concerned, unless the Member State concerned informs the Commission that it intends not to form part of the Union's delegation to the proceedings.

2. The Commission shall regularly inform the European Parliament and the Council of developments in the arbitration proceedings referred to in paragraph 1.

Article 12

Acceptance by the Member State concerned of potential financial responsibility where the Union is the respondent

Where the Union acts as the respondent in any disputes in which a Member State would be liable to bear all or part of the potential financial responsibility, the Member State concerned may, at any time, accept any potential financial responsibility arising from the arbitration. To this end, the Member State concerned and the Commission may enter into arrangements dealing with, *inter alia*:

(a) mechanisms for the periodic payment of costs arising from the arbitration;

(b) mechanisms for the payment of any awards made against the Union.

CHAPTER IV

SETTLEMENT OF DISPUTES WHERE THE UNION IS THE RESPONDENT

Article 13

Settlement of disputes concerning treatment afforded by the Union

1. If the Commission considers that a settlement of a dispute concerning treatment exclusively afforded by the Union would be in the interests of the Union, it may adopt an implementing act to approve the settlement. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22(3).

2. Should a settlement potentially involve action other than the payment of a monetary sum, the relevant procedures for such action shall apply.

Article 14

Settlement of disputes concerning treatment afforded in full or in part by a Member State where the Union wishes to settle

1. Where the Union is the respondent in a dispute concerning treatment afforded, whether fully or in part, by a Member State, and the Commission considers that the settlement of the dispute would be in the financial interests of the Union, the Commission shall first consult with the Member State concerned pursuant to Article 6. The Member State may also initiate such consultations with the Commission.

2. If the Commission and the Member State concerned agree to settle the dispute, the Member State concerned shall endeavour to enter into an arrangement with the Commission setting out the necessary elements for the negotiation and implementation of the settlement.

3. Where the Union is the respondent in a dispute pursuant to which a Member State would incur financial responsibility and where no Union financial responsibility is involved, only the Member State concerned may settle the dispute, pursuant to Article 15.

4. Where the Union is the respondent pursuant to point (b) of Article 9(1), the Commission may, following consultations pursuant to Article 6(1), decide to settle the dispute where the settlement is in the financial interests of the Union. In so deciding, the Commission shall provide a full and balanced factual analysis and legal reasoning demonstrating the financial interests of the Union.

5. Where the Union is the respondent in a dispute pursuant to Article 9(2) which solely involves the financial responsibility of the Union and where no Member State financial responsibility is involved, the Commission may decide to settle the dispute.

6. Where the Union is the respondent in a dispute pursuant to Article 9(2) which involves the financial responsibility of the Union and of a Member State, the Commission may not settle the dispute without the agreement of the Member State concerned. The Member State concerned may submit a full analysis of the impact of the proposed settlement on its financial interests. Where the Member State does not agree to settle the dispute, the Commission may nonetheless decide to settle provided that such settlement does not have any financial or budgetary implications for the Member State concerned on the basis of a full and balanced factual analysis and legal reasoning, taking account of the Member State's analysis and demonstrating the financial interests of the Union and of the Member State concerned. In that case Article 19 shall not apply.

7. The terms of settlement under paragraphs 4, 5 and 6 shall not include actions on the part of the Member State concerned other than the payment of a monetary sum.

8. Any settlements under this Article shall be subject to approval by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22(3).

Article 15

Settlement of disputes concerning treatment afforded exclusively by a Member State where the Member State wishes to settle

1. Where the Union is the respondent in a dispute exclusively concerning treatment afforded by a Member State, the Member State concerned may propose to settle a dispute where:

(a) the Member State concerned accepts any potential financial responsibility arising from the settlement;

(b) any settlement arrangement is enforceable only against the Member State concerned; and

(c) the terms of the settlement are compatible with Union law.

2. The Commission and the Member State concerned shall enter into consultations to evaluate a Member State's intention to settle a dispute.

3. The Member State concerned shall notify the Commission of the draft settlement arrangement. The Commission shall be deemed to have accepted the draft settlement arrangement unless, within 90 days following the notification of the draft settlement by the Member State, it decides otherwise by means of an implementing act adopted in accordance with the advisory procedure referred to in Article 22(2), on the grounds that the draft settlement does not meet all of the conditions set out in paragraph 1 of this Article. When the draft settlement is accepted, the Commission shall take all necessary steps to make the settlement arrangements effective.

Article 16

Settlement of disputes concerning treatment afforded in part by a Member State where that Member State wishes to settle

1. Where the Union is the respondent in a dispute concerning treatment afforded in part by a Member State, and the Member State considers that the settlement of the dispute would be in its financial interest, it shall first consult with the Commission pursuant to Article 6.

2. If the Commission and the Member State concerned agree to settle the dispute, the Member State concerned shall endeavour to enter into an arrangement with the Commission setting out the necessary elements for the negotiation and implementation of the settlement.

3. In the event that the Commission does not consent to the settlement of the dispute, the Commission may decide to refuse to settle, based on a full and balanced factual analysis and legal reasoning provided to Member States, by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22(3).

CHAPTER V

PAYMENT OF FINAL AWARDS OR SETTLEMENTS

Article 17

Scope

This Chapter shall apply where the Union acts as the respondent in a dispute.

Article 18

Procedure for the payment of awards or settlements

1. A claimant having obtained a final award pursuant to an agreement may present a request to the Commission for payment of that award. The Commission shall pay any such award, except where the Member State concerned has accepted financial responsibility pursuant to Article 12, in which case the Member State shall pay the award.

2. Where a settlement pursuant to Article 13 or 14 is not recorded in an award, a claimant may present a request to the Commission for payment of the settlement. The Commission shall pay any such settlement within any relevant time periods set down in the settlement agreement.

Article 19

Procedure where there is no agreement as to financial responsibility

1. Where the Union acts as the respondent pursuant to Article 9, and the Commission considers that the award or settlement or costs arising from the arbitration in question should be paid, in part or in full, by the Member State concerned on the basis of the criteria laid down in Article 3(1), the procedure set out in paragraphs 2 to 5 of this Article shall apply.
2. The Commission and the Member State concerned shall immediately enter into consultations to seek agreement on the financial responsibility of the Member State concerned, and the Union where applicable.
3. Within three months of receipt by the Commission of the request for payment of the award or settlement or costs arising from the arbitration, the Commission shall adopt a decision addressed to the Member State concerned, determining the amount to be paid by that Member State. The Commission shall inform the European Parliament and the Council of such decision and its financial reasoning.
4. Unless the Member State concerned objects to the Commission's determination within two months of the entry into force of the decision referred to in paragraph 3, the Member State concerned shall compensate the budget of the Union for the payment of the award or settlement or costs arising from the arbitration within six months of the entry into force of the Commission's decision. The Member State concerned shall be liable for any interest due at the rate applicable to other monies owed to the budget of the Union.
5. If the Member State concerned objects and the Commission disagrees with the Member State's objection, the Commission shall adopt a decision within six months of receipt of the Member State's objection, requiring the Member State concerned to reimburse the amount paid by the Commission, together with interest at the rate applicable to other monies owed to the budget of the Union.
6. The Commission's decisions pursuant to paragraphs 3 and 5 shall be published in the *Official Journal of the European Union*.

Article 20

Advance payment of costs arising from the arbitration

1. The Commission may adopt a decision requiring the Member State concerned to advance financial contributions to the budget of the Union in respect of foreseeable or incurred costs arising from the arbitration. Such a decision on financial contributions shall be proportionate, taking into account the criteria set down in Article 3.
2. To the extent that the costs arising from the arbitration are awarded to the Union by the arbitration tribunal, and the Member State concerned has made periodic payment of costs arising from the arbitration, the Commission shall ensure that they are transferred to the Member State which has paid them in advance, together with interest at the rate applicable to other monies owed to the budget of the Union.

Article 21

Payment by a Member State

A Member State's reimbursement or payment to the budget of the Union, for the payment of an award or a settlement or costs arising from the arbitration, including those referred to in Article 20(1) of this Regulation, shall be considered as internal assigned revenue in the sense of Article 21(4) of Regulation (EU, Euratom) No 966/2012. It may be used to cover expenditure resulting from agreements concluded pursuant to Article 218 TFEU providing for investor-to-state dispute settlement or to replenish appropriations initially provided to cover the payment of an award or a settlement or costs arising from the arbitration.

CHAPTER VI

FINAL PROVISIONS

Article 22

Committee procedure

1. The Commission shall be assisted by the Committee for Investment Agreements established by Regulation (EU) No 1219/2012 of the European Parliament and of the Council⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 23

Report and review

1. The Commission shall submit a detailed report on the operation of this Regulation to the European Parliament and to the Council at regular intervals. That report shall contain all relevant information including the listing of the claims made against the Union or the Member States, related proceedings and rulings, and the financial impact on the budget of the Union. The first report shall be submitted by 18 September 2019. Subsequent reports shall be submitted every three years thereafter.
2. The Commission shall annually submit to the European Parliament and to the Council a list of requests for consultations from claimants, claims and arbitration rulings.
3. The Commission may also submit, together with the report referred to in paragraph 1 and based on the Commission's findings, a proposal to the European Parliament and to the Council for the amendment of this Regulation.

Article 24

Disputes under agreements concluded before the entry into force of this Regulation

With regard to disputes under agreements covered under Article 1 and concluded before 17 September 2014, this Regulation shall apply only in respect of disputes where the submission of a claim to arbitration has been lodged after 17 September 2014, and that concern treatment afforded after 17 September 2014.

Article 25

Entry into force

This Regulation shall enter into force on the twentieth 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 Brussels, 23 July 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

S. GOZI

⁽¹⁾ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (OJ L 351 20.12.2012, p. 40).

Joint declaration by the European Parliament, the Council and the Commission

The adoption and application of this Regulation are without prejudice to the division of competences established by the Treaties and shall not be interpreted as an exercise of shared competence by the Union in areas where the Union's competence has not been exercised.

DIRECTIVES

DIRECTIVE 2014/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 July 2014

establishing a framework for maritime spatial planning

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 43(2), 100(2), 192(1), and 194(2) 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) The high and rapidly increasing demand for maritime space for different purposes, such as installations for the production of energy from renewable sources, oil and gas exploration and exploitation, maritime shipping and fishing activities, ecosystem and biodiversity conservation, the extraction of raw materials, tourism, aquaculture installations and underwater cultural heritage, as well as the multiple pressures on coastal resources, require an integrated planning and management approach.
- (2) Such an approach to ocean management and maritime governance has been developed in the Integrated Maritime Policy for the European Union (IMP), including, as its environmental pillar, Directive 2008/56/EC of the European Parliament and of the Council ⁽⁴⁾. The objective of the IMP is to support the sustainable development of seas and oceans and to develop coordinated, coherent and transparent decision-making in relation to the Union's sectoral policies affecting the oceans, seas, islands, coastal and outermost regions and maritime sectors, including through sea-basin strategies or macro-regional strategies, whilst achieving good environmental status as set out in Directive 2008/56/EC.
- (3) The IMP identifies maritime spatial planning as a cross-cutting policy tool enabling public authorities and stakeholders to apply a coordinated, integrated and trans-boundary approach. The application of an ecosystem-based approach will contribute to promoting the sustainable development and growth of the maritime and coastal economies and the sustainable use of marine and coastal resources.

⁽¹⁾ OJ C 341, 21.11.2013, p. 67.

⁽²⁾ OJ C 356, 5.12.2013, p. 124.

⁽³⁾ Position of the European Parliament of 17 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽⁴⁾ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

- (4) Maritime spatial planning supports and facilitates the implementation of the Europe 2020 Strategy for smart, sustainable and inclusive growth (‘the Europe 2020 Strategy’), endorsed by the European Council in its conclusions of 17 June 2010, which aims to deliver high levels of employment, productivity and social cohesion, including promotion of a more competitive, resource-efficient and green economy. The coastal and maritime sectors have significant potential for sustainable growth and are keys to the implementation of the Europe 2020 Strategy.
- (5) In its communication entitled ‘Blue Growth: opportunities for marine and maritime sustainable growth’, the Commission has identified a number of ongoing Union initiatives which are intended to implement the Europe 2020 Strategy, as well as a number of activities on which blue growth initiatives could focus in the future and which could be adequately supported by greater confidence and certainty for investors provided through maritime spatial planning.
- (6) Regulation (EU) No 1255/2011 of the European Parliament and of the Council ⁽¹⁾ supported and facilitated the implementation of maritime spatial planning and integrated coastal management. European Structural and Investment Funds, including the European Maritime and Fisheries Fund ⁽²⁾, will provide opportunities to support the implementation of this Directive for 2014-2020.
- (7) The United Nations Convention on the Law of the Sea of 1982 (‘Unclos’) states in its preamble that issues relating to the use of ocean space are closely interrelated and need to be considered as a whole. Planning of ocean space is the logical advancement and structuring of obligations and of the use of rights granted under Unclos and a practical tool in assisting Member States to comply with their obligations.
- (8) In order to promote the sustainable coexistence of uses and, where applicable, the appropriate apportionment of relevant uses in the maritime space, a framework should be put in place that consists at least of the establishment and implementation by Member States of maritime spatial planning, resulting in plans.
- (9) Maritime spatial planning will contribute to the effective management of marine activities and the sustainable use of marine and coastal resources, by creating a framework for consistent, transparent, sustainable and evidence-based decision-making. In order to achieve its objectives, this Directive should lay down obligations to establish a maritime planning process, resulting in a maritime spatial plan or plans; such a planning process should take into account land-sea interactions and promote cooperation among Member States. Without prejudice to the existing Union *acquis* in the areas of energy, transport, fisheries and the environment, this Directive should not impose any other new obligations, notably in relation to the concrete choices of the Member States about how to pursue the sectoral policies in those areas, but should rather aim to contribute to those policies through the planning process.
- (10) In order to ensure consistency and legal clarity, the geographical scope for maritime spatial planning should be defined in conformity with existing legislative instruments of the Union and international maritime law, in particular Unclos. The competences of Member States relating to maritime boundaries and jurisdiction are not altered by this Directive.
- (11) While it is appropriate for the Union to provide a framework for maritime spatial planning, Member States remain responsible and competent for designing and determining, within their marine waters, the format and content of such plans, including institutional arrangements and, where applicable, any apportionment of maritime space to different activities and uses respectively.

⁽¹⁾ Regulation (EU) No 1255/2011 of the European Parliament and of the Council of 30 November 2011 establishing a Programme to support the further development of an Integrated Maritime Policy (OJ L 321, 5.12.2011, p. 1).

⁽²⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

- (12) In order to respect proportionality and subsidiarity, as well as to minimise additional administrative burdens, the transposition and implementation of this Directive should to the greatest extent possible build upon existing national, regional and local rules and mechanisms, including those set out in Recommendation 2002/413/EC of the European Parliament and of the Council ⁽¹⁾ or in Council Decision 2010/631/EU ⁽²⁾.
- (13) In marine waters, ecosystems and marine resources are subject to significant pressures. Human activities, but also climate change effects, natural hazards and shoreline dynamics such as erosion and accretion, can have severe impacts on coastal economic development and growth, as well as on marine ecosystems, leading to deterioration of environmental status, loss of biodiversity and degradation of ecosystem services. Due regard should be had to these various pressures in the establishment of maritime spatial plans. Moreover, healthy marine ecosystems and their multiple services, if integrated in planning decisions, can deliver substantial benefits in terms of food production, recreation and tourism, climate change mitigation and adaptation, shoreline dynamics control and disaster prevention.
- (14) In order to promote the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources, maritime spatial planning should apply an ecosystem-based approach as referred to in Article 1(3) of Directive 2008/56/EC with the aim of ensuring that the collective pressure of all activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while contributing to the sustainable use of marine goods and services by present and future generations. In addition, an ecosystem-based approach should be applied in a way that is adapted to the specific ecosystems and other specificities of the different marine regions and that takes into consideration the ongoing work in the Regional Sea Conventions, building on existing knowledge and experience. The approach will also allow for an adaptive management which ensures refinement and further development as experience and knowledge increase, taking into account the availability of data and information at sea basin level to implement that approach. Member States should take into account the precautionary principle and the principle that preventive action should be taken, as laid down in Article 191(2) of the Treaty on the Functioning of the European Union.
- (15) Maritime spatial planning will contribute, inter alia, to achieving the aims of Directive 2009/28/EC of the European Parliament and of the Council ⁽³⁾, Council Regulation (EC) No 2371/2002 ⁽⁴⁾, Directive 2009/147/EC of the European Parliament and of the Council ⁽⁵⁾, Council Directive 92/43/EEC ⁽⁶⁾, Decision No 884/2004/EC of the European Parliament and of the Council ⁽⁷⁾, Directive 2000/60/EC of the European Parliament and of the Council ⁽⁸⁾, Directive 2008/56/EC, recalling the Commission communication of 3 May 2011 entitled 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020', the Commission communication of 20 September 2011 entitled 'Roadmap to a Resource Efficient Europe', the Commission communication of 16 April 2013 entitled 'An EU Strategy on Adaptation to Climate Change' and the Commission communication of 21 January 2009 entitled 'Strategic goals and recommendations for the EU's maritime transport policy until 2018', as well as, where appropriate, those of the Union's Regional Policy, including the sea-basin and macro-regional strategies.

⁽¹⁾ Recommendation 2002/413/EC of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (OJ L 148, 6.6.2002, p. 24).

⁽²⁾ Council Decision 2010/631/EU of 13 September 2010 concerning the conclusion, on behalf of the European Union, of the Protocol on Integrated Coastal Zone Management in the Mediterranean to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (OJ L 279, 23.10.2010, p. 1).

⁽³⁾ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

⁽⁴⁾ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

⁽⁵⁾ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

⁽⁶⁾ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

⁽⁷⁾ Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network (OJ L 167, 30.4.2004, p. 1).

⁽⁸⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

- (16) Marine and coastal activities are often closely interrelated. In order to promote the sustainable use of maritime space, maritime spatial planning should take into account land-sea interactions. For this reason, maritime spatial planning can play a very useful role in determining orientations related to sustainable and integrated management of human activities at sea, preservation of the living environment, the fragility of coastal ecosystems, erosion and social and economic factors. Maritime spatial planning should aim to integrate the maritime dimension of some coastal uses or activities and their impacts and ultimately allow an integrated and strategic vision.
- (17) This framework Directive does not interfere with Member States' competence for town and country planning, including any terrestrial or land spatial planning system used to plan how land and coastal zone should be used. If Member States apply terrestrial planning to coastal waters or parts thereof, this Directive should not apply to those waters.
- (18) Maritime spatial planning should cover the full cycle of problem and opportunity identification, information collection, planning, decision-making, implementation, revision or updating, and the monitoring of implementation, and should have due regard to land-sea interactions and best available knowledge. Best use should be made of mechanisms set out in existing or future legislation, including Commission Decision 2010/477/EU ⁽¹⁾ and the Commission's Marine Knowledge 2020 initiative.
- (19) The main purpose of maritime spatial planning is to promote sustainable development and to identify the utilisation of maritime space for different sea uses as well as to manage spatial uses and conflicts in marine areas. Maritime spatial planning also aims at identifying and encouraging multi-purpose uses, in accordance with the relevant national policies and legislation. In order to achieve that purpose, Member States need at least to ensure that the planning process or processes result in a comprehensive planning identifying the different uses of maritime space and taking into consideration long-term changes due to climate change.
- (20) Member States should consult and coordinate their plans with the relevant Member States and should cooperate with third-country authorities in the marine region concerned in conformity with the rights and obligations of those Member States and of the third countries concerned under Union and international law. Effective cross-border cooperation between Member States and with neighbouring third countries requires that the competent authorities in each Member State be identified. Member States therefore need to designate the competent authority or authorities responsible for the implementation of this Directive. Given the differences between various marine regions or sub-regions and coastal zones, it is not appropriate to prescribe in detail in this Directive the form which those cooperation mechanisms should take.
- (21) The management of marine areas is complex and involves different levels of authorities, economic operators and other stakeholders. In order to promote sustainable development in an effective manner, it is essential that stakeholders, authorities and the public be consulted at an appropriate stage in the preparation of maritime spatial plans under this Directive, in accordance with relevant Union legislation. A good example of public consultation provisions can be found in Article 2(2) of Directive 2003/35/EC of the European Parliament and of the Council ⁽²⁾.

⁽¹⁾ Commission Decision 2010/477/EU of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters (OJ L 232, 2.9.2010, p. 14).

⁽²⁾ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17).

- (22) Through maritime spatial plans, Member States can reduce the administrative burden and costs in support of their action to implement other relevant Union legislation. The timelines for maritime spatial plans should therefore, where possible, be coherent with the timetables set out in other relevant legislation, especially: Directive 2009/28/EC, which requires the share of energy from renewable sources in gross final consumption of energy in 2020 to be at least 20 % and which identifies coordination of authorisation, certification and planning procedures, including spatial planning, as an important contribution to the achievement of the Union's targets for energy from renewable sources; Directive 2008/56/EC and point 6 of Part A of the Annex to Decision 2010/477/EU, which require Member States to take the necessary measures to achieve or maintain good environmental status in the marine environment by 2020 and which identify maritime spatial planning as a tool to support the ecosystem-based approach to the management of human activities in order to achieve good environmental status; Decision No 884/2004/EC, which requires that the trans-European transport network be established by 2020 by means of the integration of Europe's land, sea and air transport infrastructure networks.
- (23) Directive 2001/42/EC of the European Parliament and of the Council ⁽¹⁾ establishes environmental assessment as an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes. Where maritime spatial plans are likely to have significant effects on the environment, they are subject to Directive 2001/42/EC. Where maritime spatial plans include Natura 2000 sites, such an environmental assessment can be combined with the requirements of Article 6 of Directive 92/43/EEC, to avoid duplication.
- (24) With a view to ensuring that maritime spatial plans are based on reliable data and to avoid additional administrative burdens, it is essential that Member States make use of the best available data and information by encouraging the relevant stakeholders to share information and by making use of existing instruments and tools for data collection, such as those developed in the context of the Marine Knowledge 2020 initiative and Directive 2007/2/EC of the European Parliament and of the Council ⁽²⁾.
- (25) Member States should send copies of their maritime spatial plans and any updates to the Commission, so as to enable the latter to monitor the implementation of this Directive. The Commission will use the information provided by the Member States, and existing information available under Union legislation, to keep the European Parliament and the Council informed of progress made in implementing this Directive.
- (26) Timely transposition of this Directive is essential since the Union has adopted a number of policy initiatives that are to be implemented by the year 2020 and which this Directive aims to support and complement.
- (27) A landlocked Member State would be under a disproportionate and unnecessary obligation if it had to transpose and implement this Directive. Therefore, such Member States should be exempted from the obligation to transpose and implement this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes a framework for maritime spatial planning aimed at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources.

⁽¹⁾ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

⁽²⁾ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

2. Within the Integrated Maritime Policy of the Union, that framework provides for the establishment and implementation by Member States of maritime spatial planning, with the aim of contributing to the objectives specified in Article 5, taking into account land-sea interactions and enhanced cross-border cooperation, in accordance with relevant Unclos provisions.

Article 2

Scope

1. This Directive shall apply to marine waters of Member States, without prejudice to other Union legislation. It shall not apply to coastal waters or parts thereof falling under a Member State's town and country planning, provided that this is communicated in its maritime spatial plans.
2. This Directive shall not apply to activities the sole purpose of which is defence or national security.
3. This Directive shall not interfere with Member States' competence to design and determine, within their marine waters, the extent and coverage of their maritime spatial plans. It shall not apply to town and country planning.
4. This Directive shall not affect the sovereign rights and jurisdiction of Member States over marine waters which derive from relevant international law, particularly Unclos. In particular, the application of this Directive shall not influence the delineation and delimitation of maritime boundaries by the Member States in accordance with the relevant provisions of Unclos.

Article 3

Definitions

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

- (1) 'Integrated Maritime Policy' (IMP) means a Union policy whose aim is to foster coordinated and coherent decision-making to maximise the sustainable development, economic growth and social cohesion of Member States, and notably the coastal, insular and outermost regions in the Union, as well as maritime sectors, through coherent maritime-related policies and relevant international cooperation;
- (2) 'maritime spatial planning' means a process by which the relevant Member State's authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives;
- (3) 'marine region' means the marine region referred to in Article 4 of Directive 2008/56/EC;
- (4) 'marine waters' means the waters, the seabed and subsoil as defined in point (1)(a) of Article 3 of Directive 2008/56/EC and coastal waters as defined in point 7 of Article 2 of Directive 2000/60/EC and their seabed and their subsoil.

CHAPTER II

MARITIME SPATIAL PLANNING

Article 4

Establishment and implementation of maritime spatial planning

1. Each Member State shall establish and implement maritime spatial planning.
2. In doing so, Member States shall take into account land-sea interactions.

3. The resulting plan or plans shall be developed and produced in accordance with the institutional and governance levels determined by Member States. This Directive shall not interfere with Member States' competence to design and determine the format and content of that plan or those plans.

4. Maritime spatial planning shall aim to contribute to the objectives listed in Article 5 and fulfil the requirements laid down in Articles 6 and 8.

5. When establishing maritime spatial planning, Member States shall have due regard to the particularities of the marine regions, relevant existing and future activities and uses and their impacts on the environment, as well as to natural resources, and shall also take into account land-sea interactions.

6. Member States may include or build on existing national policies, regulations or mechanisms that have been or are being established before the entry into force of this Directive, provided they are in conformity with the requirements of this Directive.

Article 5

Objectives of maritime spatial planning

1. When establishing and implementing maritime spatial planning, Member States shall consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses.

2. Through their maritime spatial plans, Member States shall aim to contribute to the sustainable development of energy sectors at sea, of maritime transport, and of the fisheries and aquaculture sectors, and to the preservation, protection and improvement of the environment, including resilience to climate change impacts. In addition, Member States may pursue other objectives such as the promotion of sustainable tourism and the sustainable extraction of raw materials.

3. This Directive is without prejudice to the competence of Member States to determine how the different objectives are reflected and weighted in their maritime spatial plan or plans.

Article 6

Minimum requirements for maritime spatial planning

1. Member States shall establish procedural steps to contribute to the objectives listed in Article 5, taking into account relevant activities and uses in marine waters.

2. In doing so, Member States shall:

(a) take into account land-sea interactions;

(b) take into account environmental, economic and social aspects, as well as safety aspects;

(c) aim to promote coherence between maritime spatial planning and the resulting plan or plans and other processes, such as integrated coastal management or equivalent formal or informal practices;

(d) ensure the involvement of stakeholders in accordance with Article 9;

(e) organise the use of the best available data in accordance with Article 10;

(f) ensure trans-boundary cooperation between Member States in accordance with Article 11;

(g) promote cooperation with third countries in accordance with Article 12.

3. Maritime spatial plans shall be reviewed by Member States as decided by them but at least every ten years.

Article 7

Land-sea interactions

1. In order to take into account land-sea interactions in accordance with Article 4(2), should this not form part of the maritime spatial planning process as such, Member States may use other formal or informal processes, such as integrated coastal management. The outcome shall be reflected by Member States in their maritime spatial plans.
2. Without prejudice to Article 2(3), Member States shall aim through maritime spatial planning to promote coherence of the resulting maritime spatial plan or plans with other relevant processes.

Article 8

Setting-up of maritime spatial plans

1. When establishing and implementing maritime spatial planning, Member States shall set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters, in order to contribute to the objectives set out in Article 5.
2. In doing so and in accordance with Article 2(3), Member States shall take into consideration relevant interactions of activities and uses. Without prejudice to Member States' competences, possible activities and uses and interests may include:
 - aquaculture areas,
 - fishing areas,
 - installations and infrastructures for the exploration, exploitation and extraction of oil, of gas and other energy resources, of minerals and aggregates, and for the production of energy from renewable sources,
 - maritime transport routes and traffic flows,
 - military training areas,
 - nature and species conservation sites and protected areas,
 - raw material extraction areas,
 - scientific research,
 - submarine cable and pipeline routes,
 - tourism,
 - underwater cultural heritage.

Article 9

Public participation

1. Member States shall establish means of public participation by informing all interested parties and by consulting the relevant stakeholders and authorities, and the public concerned, at an early stage in the development of maritime spatial plans, in accordance with relevant provisions established in Union legislation.

2. Member States shall also ensure that the relevant stakeholders and authorities, and the public concerned, have access to the plans once they are finalised.

Article 10

Data use and sharing

1. Member States shall organise the use of the best available data, and decide how to organise the sharing of information, necessary for maritime spatial plans.

2. The data referred to in paragraph 1 may include, inter alia:

(a) environmental, social and economic data collected in accordance with Union legislation pertaining to the activities referred to in Article 8;

(b) marine physical data about marine waters.

3. When implementing paragraph 1, Member States shall make use of relevant instruments and tools, including those already available under the IMP, and under other relevant Union policies, such as those mentioned in Directive 2007/2/EC.

Article 11

Cooperation among Member States

1. As part of the planning and management process, Member States bordering marine waters shall cooperate with the aim of ensuring that maritime spatial plans are coherent and coordinated across the marine region concerned. Such cooperation shall take into account, in particular, issues of a transnational nature.

2. The cooperation referred to in paragraph 1 shall be pursued through:

(a) existing regional institutional cooperation structures such as Regional Sea Conventions; and/or

(b) networks or structures of Member States' competent authorities; and/or

(c) any other method that meets the requirements of paragraph 1, for example in the context of sea-basin strategies.

Article 12

Cooperation with third countries

Member States shall endeavour, where possible, to cooperate with third countries on their actions with regard to maritime spatial planning in the relevant marine regions and in accordance with international law and conventions, such as by using existing international forums or regional institutional cooperation.

CHAPTER III

IMPLEMENTATION

Article 13

Competent authorities

1. Each Member State shall designate the authority or authorities competent for the implementation of this Directive.

2. Each Member State shall provide the Commission with a list of those competent authorities, together with the items of information listed in the Annex to this Directive.

3. Each Member State shall inform the Commission of any change to the information provided pursuant to paragraph 1 within six months of such a change coming into effect.

Article 14

Monitoring and reporting

1. Member States shall send copies of the maritime spatial plans, including relevant existing explanatory material on the implementation of this Directive, and all subsequent updates, to the Commission and to any other Member States concerned within three months of their publication.
2. The Commission shall submit to the European Parliament and to the Council, at the latest one year after the deadline for establishment of the maritime spatial plans, and every four years thereafter, a report outlining the progress made in implementing this Directive.

CHAPTER IV

FINAL PROVISIONS

Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 September 2016. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. The authority or authorities referred to in Article 13(1) shall be designated by 18 September 2016.
3. The maritime spatial plans referred to in Article 4 shall be established as soon as possible, and at the latest by 31 March 2021.
4. The obligation to transpose and implement this Directive shall not apply to landlocked Member States.

Article 16

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 17

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 23 July 2014.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
S. GOZI

ANNEX

COMPETENT AUTHORITIES

- (1) Name and address of the competent authority or authorities — the official name and address of the competent authority or authorities identified.
 - (2) Legal status of the competent authority or authorities — a brief description of the legal status of the competent authority or authorities.
 - (3) Responsibilities — a brief description of the legal and administrative responsibilities of the competent authority or authorities, and of its/their role in relation to the marine waters concerned.
 - (4) Membership — when the competent authority or authorities act(s) as a coordinating body for other competent authorities, a list of the latter is required together with a summary of the institutional relationships established, in order to ensure coordination.
 - (5) Regional coordination — a summary is required of the mechanisms established, in order to ensure coordination between Member States where their waters are covered by this Directive and fall within the same marine region or sub-region.
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DIRECTIVE 2014/90/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 July 2014
on marine equipment and repealing Council Directive 96/98/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 100(2) 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) The global dimension of shipping calls for the Union to apply and support the international regulatory framework for maritime safety. The international maritime safety conventions require flag States to ensure that the equipment carried on board ships complies with certain safety requirements as regards design, construction and performance, and to issue the relevant certificates. To that end, detailed performance and testing standards for certain types of marine equipment have been developed by the International Maritime Organization (IMO) and by the international and European standardisation bodies.
- (2) The international instruments leave a significant margin of discretion to the flag administrations. In the absence of harmonisation, this leads to varying levels of safety for products which the competent national authorities have certified as complying with those conventions and standards; as a result, the smooth functioning of the internal market is affected as it becomes difficult for the Member States to accept equipment certified in another Member State to be placed on board ships flying their flags without further verification.
- (3) Harmonisation by the Union resolves these problems. Council Directive 96/98/EC ⁽³⁾ thus laid down common rules to eliminate differences in the implementation of international standards by means of a clearly identified set of requirements and uniform certification procedures.
- (4) There are various other instruments of Union law which lay down requirements and conditions, inter alia, in order to ensure the free movement of goods within the internal market or for environmental purposes, for certain products which are similar in nature to equipment used on board ships but which do not meet the international

⁽¹⁾ OJ C 161, 6.6.2013, p. 93.

⁽²⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽³⁾ Council Directive 96/98/EC of 20 December 1996 on marine equipment (OJ L 46, 17.2.1997, p. 25).

standards – which may substantially differ from the internal legislation of the Union and are in constant evolution. Those products cannot therefore be certified by the Member States in accordance with the relevant international maritime safety conventions. Equipment to be placed onboard EU ships in accordance with international safety standards should therefore be regulated exclusively by this Directive, which should in any event be considered the *lex specialis*; furthermore, a specific marking should be established to indicate that equipment bearing that mark complies with the requirements laid down in the relevant international conventions and instruments which have entered into force.

- (5) As well as setting out detailed performance and testing standards for marine equipment, the international instruments sometimes allow for measures that deviate from the prescriptive requirements but which, under certain conditions, are suitable to satisfy the intent of those requirements. The International Convention for the Safety of Life at Sea (SOLAS), 1974, allows for alternative designs and arrangements which could be applied by individual Member States acting under their own responsibility.
- (6) Experience in the implementation of Directive 96/98/EC has shown that it is necessary to take additional measures in order to enhance the implementation and enforcement mechanisms of that Directive and simplify the regulatory environment while guaranteeing that IMO requirements are applied and implemented in a harmonised way across the Union.
- (7) Requirements should therefore be established for marine equipment to meet the safety standards laid down in the applicable international instruments, including the relevant testing standards, in order to ensure that equipment which complies with those requirements can circulate unimpeded within the internal market and be placed on board ships flying the flag of any Member State.
- (8) In order to allow for fair competition in the development of marine equipment, every effort should be made to promote the use of open standards in order to make them available freely or at a nominal charge, and permissible to all to copy, distribute and use for no fee or at a nominal fee.
- (9) Decision No 768/2008/EC of the European Parliament and of the Council ⁽¹⁾ lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. That Decision constitutes a general framework of a horizontal nature for future legislation harmonising the conditions for the marketing of products and a reference text for existing legislation. That general framework provides appropriate solutions to the problems identified in the implementation of Directive 96/98/EC. It is therefore necessary to incorporate the definitions and reference provisions of Decision No 768/2008/EC into this Directive by making the adaptations which are required by the specific features of the marine equipment sector.
- (10) In order to provide market surveillance authorities with additional, specific means to facilitate their task, an electronic tag could supplement or replace the wheel mark in due time.
- (11) The responsibilities of the economic operators should be laid down in a way which is proportionate and non-discriminatory for those economic operators who are established within the Union, taking into account the fact that a significant proportion of the marine equipment falling within the scope of this Directive may never be imported and distributed in the territory of the Member States.

⁽¹⁾ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

- (12) Given that marine equipment is placed on board ships at the time of their construction or repair all over the world, market surveillance becomes particularly difficult and cannot be effectively supported by border controls. Therefore, the respective obligations of Member States and of economic operators within the Union should be clearly specified. Member States should ensure that only compliant equipment is installed on board ships flying their flags and that this obligation is fulfilled through issuance, endorsement or renewal of the certificates of such ships by the flag State administration under the international conventions, as well as through national market surveillance arrangements in place in accordance with the Union market surveillance framework laid down in Chapter III of Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽¹⁾. Member States should be supported in fulfilling those obligations by the information systems made available by the Commission for the assessment, notification and monitoring of bodies authorised to carry out conformity assessment tasks, the sharing of information in relation to approved marine equipment, applications withdrawn or refused, and non-compliance of equipment.
- (13) In the first instance, the affixing of the wheel mark to the marine equipment by the manufacturer or, where relevant, the importer should be the guarantee pursuant to their obligations under this Directive that the equipment is compliant and may be placed on the market with a view to being placed on board an EU ship. Thereafter, certain provisions are necessary for the safe continuation and applicability of the wheel mark after it has been affixed and for the effective discharge of the task of national market surveillance authorities. The manufacturer or, where relevant, the importer or the distributor, should be obliged to provide the competent authorities with full and truthful information in relation to the equipment it has wheel marked to ensure that marine equipment remains safe. The manufacturer should be obliged to cooperate with market surveillance authorities, including as regard standards against which it has manufactured and certified equipment, and should also exercise due diligence in relation to marine equipment it places on the market. In this regard, a manufacturer located outside the Union should appoint an authorised representative in order to ensure cooperation with competent national authorities.
- (14) Compliance with international testing standards could best be demonstrated by means of conformity assessment procedures such as those laid down in Decision No 768/2008/EC. However, only those conformity assessment procedures which meet the requirements of the international instruments should be made available to manufacturers.
- (15) In order to ensure a fair and efficient procedure when examining suspected non-compliance, the Member States should be encouraged to take all measures conducive to an exhaustive and objective evaluation of the risks; if the Commission is satisfied that this condition has been met, it should not be obliged to repeat that evaluation when reviewing the restrictive measures adopted by the Member States as regards non-compliant equipment.
- (16) When performing its investigative duties with regard to notified bodies, the Commission should keep Member States informed and should cooperate with them as far as possible, taking due account of its independent role.
- (17) When the surveillance authorities of a Member State consider that marine equipment covered by this Directive is liable to present a risk to maritime safety, to health or to the environment, they should carry out evaluations or tests in relation to the equipment concerned. In cases where a risk is detected, the Member State should call upon the economic operator concerned to take the appropriate corrective action, or even to withdraw or recall the equipment concerned.
- (18) The use of marine equipment not bearing the wheel mark should be allowed in exceptional circumstances, especially when it is not possible for a ship to obtain equipment bearing the wheel mark in a port or installation outside the Union or when equipment bearing the wheel mark is not available in the market.

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products (OJ L 218, 13.8.2008, p. 30).

- (19) It is necessary to ensure that the attainment of the objectives of this Directive is not impaired by the absence of international standards or serious weaknesses or anomalies in existing standards, including testing standards, for specific items of marine equipment falling within the scope of this Directive. It is also necessary to identify the specific items of marine equipment which could benefit from electronic tagging. Moreover, it is necessary to keep up to date a non-essential element of this Directive, namely the references to standards as referred to in Annex III, when new standards become available. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should therefore be delegated to the Commission in respect of the adoption, under certain conditions and on an interim basis, of harmonised technical specifications and testing standards and in order to amend those references. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (20) In order to meet the objectives of this Directive, the international instruments should be uniformly implemented in the internal market. It is therefore necessary, for each item of marine equipment for which the approval of the flag State is required by the international conventions, to identify in a clear and timely way the design, construction and performance requirements as well as the associated testing standards laid down in the international instruments for that equipment, and to adopt common criteria and procedures, including timeframes, for the implementation of those requirements and standards by notified bodies, Member State authorities and economic operators, including any operator responsible for placing equipment on board an EU ship. It is also necessary to ensure that the attainment of the objectives of this Directive is not impaired by shortcomings in the applicable technical specifications and testing standards or in cases where the IMO has failed to produce appropriate standards for marine equipment falling within the scope of this Directive.
- (21) The international instruments, with the exception of testing standards, should automatically apply in their up-to-date version. In order to mitigate the risk that the introduction of new testing standards into Union legislation causes disproportionate difficulties for the Union fleet and for economic operators, from the standpoint of clarity and legal certainty, the entry into force of such new testing standards should not be automatic but, rather, should be explicitly indicated by the Commission.
- (22) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁾.
- (23) In order to facilitate a harmonised, rapid and simple implementation of this Directive, implementing acts adopted pursuant to this Directive should take the form of Commission Regulations.
- (24) In line with established practice, the committee referred to in this Directive can play a useful role in examining matters concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.
- (25) When matters relating to this Directive, other than its implementation or infringements, are being examined, for example, in a Commission expert group, the European Parliament should, in line with existing practice, receive full information and documentation and, where appropriate, an invitation to attend meetings.

⁽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).

- (26) The Commission is assisted by the European Maritime Safety Agency, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁽¹⁾, in the effective implementation of relevant binding legal acts of the Union and in the performance of the tasks therein entrusted to the Commission.
- (27) The competent authorities and all economic operators should make all possible efforts to facilitate written communication in accordance with international practice, with a view to finding common means of communication.
- (28) Since the objectives of this Directive, namely to enhance safety at sea and the prevention of marine pollution through the uniform application of the relevant international instruments relating to equipment to be placed on board ships, and to ensure the free movement of such equipment within the Union, 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.
- (29) The measures to be adopted represent a major modification of the provisions of Directive 96/98/EC and therefore, in the interests of clarity, that Directive should be repealed and replaced by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objective

The objective of this Directive is to enhance safety at sea and to prevent marine pollution through the uniform application of the relevant international instruments relating to marine equipment to be placed on board EU ships, and to ensure the free movement of such equipment within the Union.

Article 2

Definitions

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

- (1) 'marine equipment' means equipment falling within the scope of this Directive in accordance with Article 3;
- (2) 'EU ship' means a ship flying the flag of a Member State and falling within the scope of the international conventions;
- (3) 'international conventions' means the following conventions, together with their protocols and codes of mandatory application, adopted under the auspices of the International Maritime Organization (IMO), which have entered into force and which lay down specific requirements for the approval by the flag State of equipment to be placed on board ships:

— the 1972 Convention on the International Regulations for Preventing Collisions at Sea (Colreg),

⁽¹⁾ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

- the 1973 International Convention for the Prevention of Pollution from Ships (Marpol),
 - the 1974 International Convention for the Safety of Life at Sea (Solas);
- (4) 'testing standards' means the testing standards for marine equipment set by:
- the International Maritime Organization (IMO),
 - the International Organization for Standardization (ISO),
 - the International Electrotechnical Commission (IEC),
 - the European Committee for Standardization (CEN),
 - the European Committee for Electrotechnical Standardization (Cenelec),
 - the International Telecommunication Union (ITU),
 - the European Telecommunications Standards Institute (ETSI),
 - the Commission, in accordance with Article 8 and Article 27(6) of this Directive,
 - the regulatory authorities recognised in the mutual recognition agreements to which the Union is a party;
- (5) 'international instruments' means the international conventions, together with the resolutions and circulars of the IMO giving effect to those conventions in their up-to-date version, and the testing standards;
- (6) 'wheel mark' means the symbol referred to in Article 9 and set out in Annex I or, as appropriate, the electronic tag referred to in Article 11;
- (7) 'notified body' means an organisation designated by the competent national administration of a Member State in accordance with Article 17;
- (8) 'making available on the market' means any supply of marine equipment on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (9) 'placing on the market' means the first making available of marine equipment on the Union market;
- (10) 'manufacturer' means any natural or legal person who manufactures marine equipment or has marine equipment designed or manufactured, and markets that equipment under its name or trademark;
- (11) 'authorised representative' means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks;

- (12) 'importer' means any natural or legal person established within the Union who places marine equipment from a third country on the Union market;
- (13) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes marine equipment available on the market;
- (14) 'economic operators' means the manufacturer, the authorised representative, the importer and the distributor;
- (15) 'accreditation' means accreditation as defined in point 10 of Article 2 of Regulation (EC) No 765/2008;
- (16) 'national accreditation body' means national accreditation body as defined in point 11 of Article 2 of Regulation (EC) No 765/2008;
- (17) 'conformity assessment' means the process carried out by the notified bodies, in accordance with Article 15, demonstrating whether marine equipment complies with the requirements laid down in this Directive;
- (18) 'conformity assessment body' means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (19) 'recall' means any measure aimed at achieving the return of marine equipment that has already been placed on board EU ships or purchased with the intention of being placed on board EU ships;
- (20) 'withdrawal' means any measure aimed at preventing marine equipment in the supply chain from being made available on the market;
- (21) 'EU declaration of conformity' means a statement issued by the manufacturer in accordance with Article 16;
- (22) 'product' means an item of marine equipment.

Article 3

Scope

1. This Directive shall apply to equipment placed or to be placed on board an EU ship and for which the approval of the flag State administration is required by the international instruments, regardless of whether the ship is situated in the Union at the time when it is fitted with the equipment.
2. Notwithstanding the fact that the equipment referred to in paragraph 1 may also fall within the scope of instruments of Union law other than this Directive, that equipment shall, for the purpose set out in Article 1, be subject only to this Directive.

Article 4

Requirements for marine equipment

1. Marine equipment that is placed on board an EU ship on or after the date referred to in the second subparagraph of Article 39(1) shall meet the design, construction and performance requirements of the international instruments as applicable at the time when that equipment is placed on board.

2. Compliance of marine equipment with the requirements referred to in paragraph 1 shall be demonstrated solely in accordance with the testing standards and by means of the conformity assessment procedures referred to in Article 15.
3. The international instruments shall apply, without prejudice to the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council ⁽¹⁾.
4. The requirements and standards referred to in paragraphs 1 and 2 shall be implemented in a uniform manner, in accordance with Article 35(2).

Article 5

Application

1. When Member States issue, endorse or renew the certificates of the ships flying their flag as required by the international conventions, they shall ensure that the marine equipment on board those ships complies with the requirements of this Directive.
2. Member States shall take the necessary measures to ensure that marine equipment on board ships flying their flag complies with the requirements in the international instruments which are applicable to equipment already placed on board. Implementing powers shall be conferred upon the Commission to ensure the uniform application of those measures, in accordance with Article 35(3).

Article 6

Functioning of the internal market

Member States shall not prohibit the placing on the market or the placing on board an EU ship of marine equipment which complies with this Directive, nor refuse to issue the certificates relating thereto to the ships flying their flag, or to renew the said certificates.

Article 7

Transfer of a ship to the flag of a Member State

1. In the case of a non-EU ship which is to be transferred to the flag of a Member State, that ship shall, during transfer, be subject to inspection by the receiving Member State to verify that the actual condition of its marine equipment corresponds to its safety certificates and either complies with this Directive and bears the wheel mark or is equivalent, to the satisfaction of that Member State's administration, to marine equipment certified in accordance with this Directive as of 18 September 2016.
2. In cases where the date of installation on board of marine equipment cannot be established, Member States may determine satisfactory requirements of equivalence, taking into account relevant international instruments.
3. Unless the equipment either bears the wheel mark or the administration considers it to be equivalent, it shall be replaced.
4. Marine equipment which is considered equivalent pursuant to this Article shall be issued with a certificate by the Member State which shall at all times be carried with the equipment. That certificate shall give the flag Member State's permission for the equipment to be retained on board the ship and impose any restrictions or lay down any provisions relating to the use of the equipment.

⁽¹⁾ Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) (OJ L 324, 29.11.2002, p. 1.).

*Article 8***Standards for marine equipment**

1. Without prejudice to Directive 98/34/EC of the European Parliament and the Council ⁽¹⁾, as amended by Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽²⁾, the Union shall pursue the development by the IMO and by standardisation bodies of appropriate international standards, including detailed technical specifications and testing standards, for marine equipment whose use or installation on board ships is deemed necessary to enhance maritime safety and the prevention of marine pollution. The Commission shall monitor such development on a regular basis.

2. In the absence of an international standard for a specific item of marine equipment, in exceptional circumstances where duly justified by an appropriate analysis and in order to remove a serious and unacceptable threat to maritime safety, to health or to the environment and taking into account any ongoing work at IMO level, the Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 37, harmonised technical specifications and testing standards for that specific item of marine equipment.

It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.

Those technical specifications and testing standards shall apply on an interim basis until such time as the IMO has adopted a standard for that specific item of marine equipment.

3. In exceptional circumstances where duly justified by an appropriate analysis and if it is necessary to remove an identified unacceptable threat to maritime safety, to health or to the environment due to a serious weakness or anomaly in an existing standard for a specific item of marine equipment indicated by the Commission pursuant to Article 35(2) or (3) and taking into account any ongoing work at IMO level, the Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 37, harmonised technical specifications and testing standards for that specific item of marine equipment, to the extent necessary to remedy the serious weakness or anomaly only.

It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.

Those technical specifications and testing standards shall apply on an interim basis until such time as the IMO has reviewed the standard applicable to that specific item of marine equipment.

4. The technical specifications and standards adopted in accordance with paragraphs 2 and 3 shall be made accessible free of charge by the Commission.

CHAPTER 2

THE WHEEL MARK*Article 9***The wheel mark**

1. Marine equipment the compliance of which with the requirements laid down in this Directive has been demonstrated in accordance with the relevant conformity assessment procedures shall have the wheel mark affixed to it.

⁽¹⁾ Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

⁽²⁾ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

2. The wheel mark shall not be affixed to any other product.
3. The form of the wheel mark to be used shall be as set out in Annex I.
4. Use of the wheel mark shall be subject to the general principles set out in paragraphs 1 and 3 to 6 of Article 30 of Regulation (EC) No 765/2008, where any reference to the CE marking shall be construed as a reference to the wheel mark.

Article 10

Rules and conditions for affixing the wheel mark

1. The wheel mark shall be affixed visibly, legibly and indelibly to the product or to its data plate and, where relevant, embedded in its software. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents.
2. The wheel mark shall be affixed at the end of the production phase.
3. The wheel mark shall be followed by the identification number of the notified body, where that body is involved in the production control phase, and by the year in which the mark is affixed.
4. The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or the manufacturer's authorised representative.

Article 11

Electronic tag

1. In order to facilitate market surveillance and prevent the counterfeiting of specific items of marine equipment referred to in paragraph 3, manufacturers may use an appropriate and reliable form of electronic tag instead of, or in addition to, the wheel mark. In such a case, Articles 9 and 10 shall apply, as appropriate, *mutatis mutandis*.
2. The Commission shall carry out a cost-benefit analysis concerning the use of the electronic tag as a supplement to, or a replacement of, the wheel mark.
3. The Commission may adopt delegated acts, in accordance with Article 37, in order to identify the specific items of marine equipment which can benefit from electronic tagging. It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.
4. Implementing powers shall be conferred upon the Commission in order to lay down, in the form of Commission Regulations and in accordance with the examination procedure referred to in Article 38(2), appropriate technical criteria as regards the design, performance, affixing and use of electronic tags.
5. For the equipment identified in accordance with paragraph 3, the wheel mark may, within three years after the date of adoption of the appropriate technical criteria referred to in paragraph 4, be supplemented by an appropriate and reliable form of electronic tag.
6. For the equipment identified in accordance with paragraph 3, the wheel mark may be replaced, five years after the date of adoption of the appropriate technical criteria referred to in paragraph 4, by an appropriate and reliable form of electronic tag.

CHAPTER 3

OBLIGATIONS OF ECONOMIC OPERATORS*Article 12***Obligations of manufacturers**

1. By affixing the wheel mark, manufacturers shall take on responsibility for guaranteeing that the marine equipment to which the mark is affixed has been designed and manufactured in accordance with the technical specifications and standards implemented in accordance with Article 35(2), and shall assume the obligations laid down in paragraphs 2 to 9 of this Article.
2. Manufacturers shall draw up the required technical documentation and have the applicable conformity assessment procedures carried out.
3. Where the compliance of marine equipment with the applicable requirements has been demonstrated by the conformity assessment procedure, manufacturers shall draw up an EU declaration of conformity in accordance with Article 16 and affix the wheel mark in accordance with Articles 9 and 10.
4. Manufacturers shall keep the technical documentation and the EU declaration of conformity referred to in Article 16 for at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned.
5. Manufacturers shall ensure that procedures are in place for series production to remain in conformity. Changes in marine equipment design or characteristics and changes in the requirements in the international instruments as referred to in Article 4, on the basis of which conformity of marine equipment is declared, shall be taken into account. When necessary in accordance with Annex II, manufacturers shall have a new conformity assessment carried out.
6. Manufacturers shall ensure that their products bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product or both, as appropriate.
7. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product or both, as appropriate. The address must indicate a single point at which the manufacturer can be contacted.
8. Manufacturers shall ensure that the product is accompanied by instructions and all necessary information for safe installation on board and safe use of the product, including limitations of use, if any, that can be easily understood by the users, together with any other documentation required by the international instruments or testing standards.
9. Manufacturers who consider or have reason to believe that a product to which they have affixed the wheel mark is not in conformity with the applicable design, construction and performance requirements and with the testing standards implemented in accordance with Article 35(2) and (3), shall immediately take the necessary corrective measures to bring that product into conformity, to withdraw it or to recall it, if appropriate. In addition, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States, giving details, in particular, of the non-compliance and of any corrective measures taken.

10. Manufacturers shall, further to a reasoned request from a competent authority, promptly provide it with all the information and documentation necessary to demonstrate the conformity of the product, in a language which can be easily understood by or is acceptable to that authority, grant that authority access to their premises for market surveillance purposes in accordance with Article 19 of Regulation (EC) No 765/2008 and provide samples or access to samples in accordance with Article 25(4) of this Directive. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

Article 13

Authorised representatives

1. A manufacturer who is not located in the territory of at least one Member State shall, by a written mandate, appoint an authorised representative for the Union and shall indicate in the mandate the name of the authorised representative and the address at which it can be contacted.

2. Fulfilment of the obligations laid down in Article 12(1) and the drawing-up of technical documentation shall not form part of the authorised representative's mandate.

3. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:

(a) keep the EU declaration of conformity and the technical documentation at the disposal of national surveillance authorities for at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned;

(b) further to a reasoned request from a competent authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product;

(c) cooperate with the competent authorities, at their request, on any action taken to eliminate the risks posed by products covered by its mandate.

Article 14

Other economic operators

1. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product or both, as appropriate.

2. Importers and distributors shall, further to a reasoned request from a competent authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product in a language which can be easily understood by, or is acceptable to, that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

3. An importer or distributor shall be considered a manufacturer for the purposes of this Directive and shall be subject to the obligations of the manufacturer under Article 12, where it places marine equipment on the market or on board an EU ship under its name or trademark or modifies marine equipment already placed on the market in such a way that compliance with the applicable requirements may be affected.

4. For a period of at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned, economic operators shall, on request, identify the following to the market surveillance authorities:

- (a) any economic operator who has supplied them with a product;
- (b) any economic operator to whom they have supplied a product.

CHAPTER 4

CONFORMITY ASSESSMENT AND NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Article 15

Conformity assessment procedures

1. The conformity assessment procedures shall be as set out in Annex II.
2. Member States shall ensure that the manufacturer or the manufacturer's authorised representative has the conformity assessment carried out, through a notified body, for a specific item of marine equipment, by using one of the options provided by means of implementing acts adopted by the Commission in accordance with the examination procedure referred to in Article 38(2), from among one of the following procedures:
 - (a) where the EC type-examination (module B) is to be used, before being placed on the market, all marine equipment shall be subject to:
 - production-quality assurance (module D); or
 - product-quality assurance (module E); or
 - product verification (module F);
 - (b) where sets of marine equipment are produced individually or in small quantities and not in series or in mass, the conformity assessment procedure may be the EC unit verification (module G).
3. The Commission shall, by means of the information system made available for that purpose, keep an up to date list of approved marine equipment and applications withdrawn or refused and shall make that list available to interested parties.

Article 16

EU declaration of conformity

1. The EU declaration of conformity shall state that the fulfilment of the requirements laid down in accordance with Article 4 has been demonstrated.
2. The EU declaration of conformity shall follow the model structure set out in Annex III to Decision No 768/2008/EC. It shall contain the elements specified in the relevant modules set out in Annex II to this Directive and shall be kept up to date.
3. By drawing up the EU declaration of conformity, the manufacturer shall assume the responsibility and the obligations referred to in Article 12(1).

4. When marine equipment is placed on board an EU ship, a copy of the EU declaration of conformity covering the equipment concerned shall be provided to the ship, and shall be kept on board until the said equipment is removed from the ship. It shall be translated by the manufacturer into the language or languages required by the flag Member State, including at least a language commonly used in the maritime transport sector.

5. A copy of the EU declaration of conformity shall be provided to the notified body or to the bodies which carried out the relevant conformity assessment procedures.

Article 17

Notification of conformity assessment bodies

1. Member States shall, by means of the information system made available by the Commission for that purpose, notify the Commission and the other Member States of bodies authorised to carry out conformity assessment tasks under this Directive.

2. Notified bodies shall comply with the requirements laid down in Annex III.

Article 18

Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 20.

2. Notified bodies shall be monitored at least every two years. The Commission may choose to participate as an observer in the monitoring exercise.

3. Member States may decide that the assessment and monitoring referred to in paragraph 1 are to be carried out by a national accreditation body.

4. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Annex V. In addition, it shall have in place arrangements to cover liability arising out of its activities.

5. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 4.

6. The notifying authority shall comply with the requirements laid down in Annex V.

Article 19

Information obligation on notifying authorities

1. Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of such bodies, and of any changes thereto.

2. The Commission shall, by means of the information system made available for that purpose, make that information publicly available.

*Article 20***Subsidiaries of, and subcontracting by, notified bodies**

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Annex III and shall inform the notifying authority accordingly.
2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of the subcontractor or the subsidiary and the work carried out by such subcontractor or subsidiary under this Directive.

*Article 21***Changes to notifications**

1. Where a notifying authority has ascertained, or has been informed, that a notified body no longer meets the requirements laid down in Annex III, or that it is failing to fulfil its obligations under this Directive, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall, by means of the information system made available by the Commission for that purpose, immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

*Article 22***Challenges to the competence of notified bodies**

1. The Commission shall investigate all cases where it doubts, based on the information available to it or brought to its attention, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
4. Where the Commission ascertains that a notified body does not meet, or no longer meets, the requirements for its notification, it shall without delay inform the notifying Member State accordingly and request it to take the necessary corrective measures without delay, including de-notification if necessary.

*Article 23***Operational obligations of notified bodies**

1. Notified bodies shall carry out conformity assessments or have them carried out in accordance with the procedures provided for in Article 15.

2. Where a notified body finds that the obligations laid down in Article 12 have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures without delay and shall not issue a conformity certificate.

3. Where, in the course of monitoring conformity following the issue of a conformity certificate, a notified body finds that a product no longer complies, it shall require the manufacturer to take appropriate corrective measures without delay and shall suspend or withdraw the certificate if necessary. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw the certificate, as appropriate.

Article 24

Obligation of notified bodies to provide information

1. Notified bodies shall inform the notifying authority of the following:
 - (a) any refusal, restriction, suspension or withdrawal of a conformity certificate;
 - (b) any circumstances affecting the scope of, and the conditions for, notification;
 - (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
 - (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.
2. Notified bodies shall provide the Commission and the Member States, on request, with relevant information concerning issues relating to negative and positive conformity assessment results. Notified bodies shall provide the other notified bodies carrying out conformity assessment activities covering the same products with information concerning negative and, on request, positive conformity assessment results.

CHAPTER 5

UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS, SAFEGUARD PROVISIONS

Article 25

EU market surveillance framework

1. As regards marine equipment, the Member States shall undertake market surveillance in accordance with the EU market surveillance framework laid down in Chapter III of Regulation (EC) No 765/2008, subject to paragraphs 2 and 3 of this Article.
2. National market surveillance infrastructures and programmes shall take into account the specific features of the marine equipment sector, including the various procedures carried out as part of the conformity assessment, and in particular the responsibilities placed on the flag State administration by the international conventions.
3. Market surveillance may include documentary checks as well as checks of marine equipment which bears the wheel mark, whether or not it has been placed on board ships. Checks of marine equipment already placed on board shall be limited to such examination as can be carried out while the equipment concerned remains fully functional on board.

4. Where the market surveillance authorities of a Member State, as defined in Regulation (EC) No 765/2008, intend to carry out sample checks, they may, when it is reasonable and practicable to do so, request the manufacturer to make the necessary samples available or to give on-the-spot access to the samples at the manufacturer's own cost.

Article 26

Procedure for dealing with marine equipment presenting a risk at national level

1. Where the market surveillance authorities of a Member State have sufficient reason to believe that marine equipment covered by this Directive presents a risk to maritime safety, to health or to the environment, they shall carry out an evaluation in relation to the marine equipment concerned covering all the requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the marine equipment does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the marine equipment into compliance with those requirements, to withdraw the marine equipment from the market, or to recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph of this paragraph.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory or to ships flying their flag, they shall inform the Commission and the other Member States, by means of the information system made available by the Commission for market surveillance purposes, of the results of the evaluation carried out under paragraph 1 and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union or, as the case may be, placed or delivered to be placed on board EU ships.

4. Where the relevant economic operator does not take adequate corrective action within the period prescribed by the market surveillance authorities in accordance with the second subparagraph of paragraph 1, or otherwise fails to meet its obligations under this Directive, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the marine equipment being made available on their national market or placed on board ships flying their flag, to withdraw the product from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5. The information on the measures taken by the market surveillance authorities referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant marine equipment, the origin of the product, the nature of the alleged non-compliance and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the economic operator concerned. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either:

(a) failure of the marine equipment to comply with the applicable design, construction and performance requirements as laid down pursuant to Article 4;

- (b) non-compliance with the testing standards referred to in Article 4 during the conformity assessment procedure;
- (c) shortcomings in those testing standards.

6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the marine equipment concerned, and, in the event of disagreement with the notified national measure, of their objections.

7. Where, within four months of receipt of the information concerning the measures taken by the market surveillance authorities, as referred to in paragraph 4, no objection has been raised by a Member State or by the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

8. Member States shall ensure that appropriate restrictive measures in respect of the marine equipment concerned, such as withdrawal of the product from their market, are taken without delay.

Article 27

EU safeguard procedure

1. Where, on completion of the procedure set out in Article 26(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers that a national measure may be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the relevant national measure. On the basis of the results of that evaluation, the Commission shall decide whether or not the relevant national measure is justified.

2. For the purposes of paragraph 1, where the Commission is satisfied that the procedure followed in the adoption of the national measure is appropriate for an exhaustive and objective evaluation of the risk and that the national measure complies with Article 21 of Regulation (EC) No 765/2008, it may limit itself to examining the appropriateness and proportionality of the relevant national measure in relation to the said risk.

3. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator or operators.

4. If the relevant national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant marine equipment is withdrawn from their market, and, where necessary, recalled. They shall inform the Commission accordingly.

5. If the relevant national measure is considered unjustified, the Member State concerned shall withdraw it.

6. Where the non-compliance of the marine equipment is attributed to shortcomings in the testing standards referred to in Article 4, the Commission may, in order to fulfil the objective of this Directive, confirm, modify or revoke a national safeguard measure by means of implementing acts in accordance with the examination procedure referred to in Article 38(2).

The Commission shall furthermore be empowered to adopt, by means of delegated acts in accordance with the procedure referred to in Article 37, interim harmonised requirements and testing standards for that specific item of marine equipment. The criteria laid down in Article 8(3) shall apply accordingly. These requirements and testing standards shall be made accessible free of charge by the Commission.

7. Where the testing standard concerned is a European standard, the Commission shall inform the relevant European standardisation body or bodies and shall bring the matter before the committee set up by Article 5 of Directive 98/34/EC. That committee shall consult the relevant European standardisation body or bodies and deliver its opinion without delay.

Article 28

Compliant products which present a risk to maritime safety, to health or to the environment

1. Where, having performed an evaluation under Article 26(1), a Member State finds that marine equipment which is in compliance with this Directive nevertheless presents a risk to maritime safety, to health or to the environment, it shall require the economic operator concerned to take all appropriate measures to ensure that the marine equipment concerned, when placed on the market, no longer presents that risk, to withdraw the marine equipment from the market or to recall it within such reasonable period, commensurate with the nature of the risk, as it may prescribe.

2. The economic operator shall ensure that corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union or placed on board EU ships.

3. The Member State shall immediately inform the Commission and the other Member States. The information provided shall include all available details, in particular the data necessary for the identification of the marine equipment concerned, the origin and the supply chain of the marine equipment, the nature of the risk involved and the nature and duration of the national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide whether or not the measure is justified and shall where necessary propose appropriate measures. Article 27(2) shall apply *mutatis mutandis* for this purpose.

5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator or operators.

Article 29

Formal non-compliance

1. Without prejudice to Article 26, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

(a) the wheel mark has been affixed in violation of Article 9 or Article 10;

(b) the wheel mark has not been affixed;

(c) the EU declaration of conformity has not been drawn up;

(d) the EU declaration of conformity has not been drawn up correctly;

(e) technical documentation is either not available or not complete;

(f) the EU declaration of conformity has not been sent to the ship.

2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or to prohibit the marine equipment being made available on the market or to ensure that it is recalled or withdrawn from the market.

*Article 30***Exemptions based on technical innovation**

1. In exceptional circumstances of technical innovation, the flag State administration may permit marine equipment which does not comply with the conformity assessment procedures to be placed on board an EU ship if it is established by trial or otherwise to the satisfaction of the flag State administration that such equipment meets the objectives of this Directive.
2. The trial procedures shall in no way discriminate between marine equipment produced in the flag Member State and marine equipment produced in other States.
3. Marine equipment covered by this Article shall be given a certificate by the flag Member State which shall at all times be carried with the equipment and which gives the flag Member State's permission for the equipment to be placed on board the ship and imposes any restrictions or lays down any provisions relating to the use of the equipment.
4. Where a Member State allows marine equipment covered by this Article to be placed on board an EU ship, that Member State shall forthwith communicate the particulars thereof together with the reports of all relevant trials, assessments and conformity assessment procedures to the Commission and to the other Member States.
5. Within 12 months of receipt of the communication referred to in paragraph 4, the Commission, if it considers that the conditions laid down in paragraph 1 are not met, may require the Member State concerned to withdraw the permission granted within a specified deadline. For this purpose, the Commission shall act by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).
6. Where a ship with marine equipment on board which is covered by paragraph 1 is transferred to another Member State, the receiving flag Member State may take the necessary measures, which may include tests and practical demonstrations, to ensure that the equipment is at least as effective as equipment which does comply with the conformity assessment procedures.

*Article 31***Exemptions for testing or evaluation**

A flag State administration may permit marine equipment which does not comply with the conformity assessment procedures or which is not covered by Article 30 to be placed on board an EU ship for reasons of testing or evaluation, if the following cumulative conditions are complied with:

- (a) the marine equipment shall be given a certificate by the flag Member State which shall at all times be carried with the equipment, state that Member State's permission for the equipment to be placed on board the EU ship, impose all necessary restrictions and lay down any other appropriate provisions as regards the use of the equipment concerned;
- (b) the permission shall be limited to the period considered by the flag State as being necessary to complete the testing, which should be as short as possible;
- (c) the marine equipment shall not be relied on in place of equipment which meets the requirements of this Directive and shall not replace such equipment, which shall remain on board the EU ship in working order and ready for immediate use.

*Article 32***Exemptions in exceptional circumstances**

1. In exceptional circumstances, which shall be duly justified to the flag State administration, when marine equipment needs to be replaced in a port outside the Union where it is not practicable in terms of reasonable time, delay and cost to place on board equipment which bears the wheel mark, other marine equipment may be placed on board subject to paragraphs 2 to 4.
2. The marine equipment placed on board shall be accompanied by documentation issued by a Member State of the IMO which is a party to the relevant conventions, certifying compliance with the relevant IMO requirements.
3. The flag State administration shall be informed at once of the nature and characteristics of such other marine equipment.
4. The flag State administration shall, at the earliest opportunity, ensure that the marine equipment referred to in paragraph 1, along with its testing documentation, complies with the relevant requirements of the international instruments and of this Directive.
5. Where it has been demonstrated that specific marine equipment bearing the wheel mark is not available on the market, the flag Member State may authorise other marine equipment to be placed on board, subject to paragraphs 6 to 8.
6. The authorised marine equipment shall comply, as much as possible, with the requirements and testing standards referred to in Article 4.
7. The marine equipment placed on board shall be accompanied by an interim certificate of approval issued by the flag Member State or by another Member State, stating the following:
 - (a) the equipment bearing the wheel mark which the certified equipment is due to replace;
 - (b) the exact circumstances under which the certificate of approval has been issued, and in particular the unavailability in the market of equipment bearing the wheel mark;
 - (c) the exact design, construction and performance requirements against which the equipment has been approved by the certifying Member State;
 - (d) the testing standards applied, if any, in the relevant approval procedures.
8. The Member State issuing an interim certificate of approval shall inform the Commission forthwith. If the Commission considers that the conditions of paragraphs 6 and 7 have not been met, it may require that Member State to revoke that certificate or take other appropriate measures by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

CHAPTER 6

FINAL PROVISIONS*Article 33***Exchange of experience**

The Commission shall provide for the organisation of exchanges of experience between the Member States' national authorities responsible for notification policy, especially as regards market surveillance.

*Article 34***Coordination of notified bodies**

1. The Commission shall ensure that appropriate coordination and cooperation between notified bodies are put in place and properly operated in the form of a sectoral group of notified bodies.
2. Member States shall ensure that the bodies notified by them participate in the work of the sectoral group, directly or by means of designated representatives.

*Article 35***Implementing measures**

1. The Member States shall, by means of the information system made available by the Commission for that purpose, notify to the Commission the name and contact details of the authorities in charge of the implementation of this Directive. The Commission shall draw up, periodically update and make public a list of those authorities.
2. For each item of marine equipment for which the approval of the flag State administration is required by the international conventions, the Commission shall indicate by means of implementing acts the respective design, construction and performance requirements and the testing standards provided for in the international instruments. When adopting those acts, the Commission shall explicitly indicate the dates from which those requirements and testing standards are to apply, including the dates for placing on the market and placing on board, in accordance with the international instruments, and taking into consideration timeframes for ship-building. The Commission may also specify the common criteria and detailed procedures for their application.
3. The Commission shall, by means of implementing acts, indicate the respective design, construction and performance requirements newly provided for in the international instruments and which apply to equipment already placed on board, in order to ensure that equipment placed on board EU ships complies with the international instruments.
4. The Commission shall set up and maintain a database containing at least the following information:
 - (a) the list and essential details of the conformity certificates issued pursuant to this Directive, as provided by the notified bodies;
 - (b) the list and essential details of the declarations of conformity issued pursuant to this Directive, as provided by the manufacturers;
 - (c) an up-to-date list of the applicable international instruments, and of the requirements and testing standards applicable by virtue of Article 4(4);
 - (d) the list and full text of the criteria and procedures referred to in paragraph 2;
 - (e) the requirements and conditions for electronic tagging referred to in Article 11, when applicable;
 - (f) any other useful information with a view to facilitating correct implementation of this Directive by the Member States, the notified bodies and the economic operators.

That database shall be made accessible to the Member States. It shall also be made available to the public for information purposes only.

5. The implementing acts referred to in this Article shall be adopted in the form of Commission Regulations in accordance with the examination procedure referred to in Article 38(2).

Article 36

Amendments

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 in order to update the references to standards, as referred to in Annex III, when new standards become available.

Article 37

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 Articles 8, 11, 27 and 36 shall be conferred on the Commission for a period of five years from 17 September 2014. 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 Articles 8, 11, 27 and 36 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8, 11, 27 and 36 shall enter into force only if no objection has been expressed either by the European Parliament or 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 38

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002. 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. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 39

Transposition

1. Member States shall adopt and publish, by 18 September 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 18 September 2016.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. 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

Repeal

1. Directive 96/98/EC is repealed with effect from 18 September 2016.
2. The requirements and testing standards for marine equipment applicable on 18 September 2016 pursuant to the provisions of national law adopted by the Member States in order to comply with Directive 96/98/EC shall continue to apply until the entry into force of the implementing acts referred to in Article 35(2).
3. References to the repealed Directive shall be construed as references to this Directive.

Article 41

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 42

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 23 July 2014.

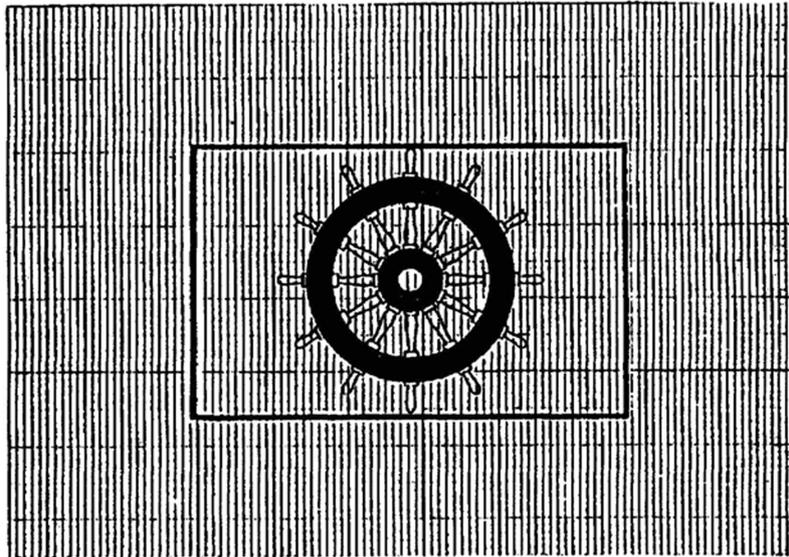
For the European Parliament
The President
M. SCHULZ

For the Council
The President
S. GOZI

ANNEX I

WHEEL MARK

The mark of conformity must take the following form:



If the wheel mark is reduced or enlarged the proportions given in the graduated drawing must be respected.

The various components of the wheel mark must have substantially the same vertical dimension, which may not be less than 5 mm.

That minimum dimension may be waived for small devices.

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ANNEX II

CONFORMITY ASSESSMENT PROCEDURES

I. MODULE B: EC TYPE-EXAMINATION

1. EC type-examination is the part of a conformity assessment procedure in which a notified body examines the technical design of marine equipment and verifies and attests that the technical design of the marine equipment meets the relevant requirements.
2. EC type-examination may be carried out in either of the following manners:
 - examination of a specimen, representative of the production envisaged, of the complete product (production type);
 - assessment of the adequacy of the technical design of the marine equipment through examination of the technical documentation and supporting evidence referred to in point 3, plus examination of specimens, representative of the production envisaged, of one or more critical parts of the product (combination of production type and design type).
3. The manufacturer shall lodge an application for EC type-examination with a single notified body of its choice.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- the technical documentation. The technical documentation shall make it possible to assess the conformity of the marine equipment with the applicable requirements of the international instruments as referred to in Article 4, and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and shall cover, as far as relevant for the assessment, the design, manufacture and operation of the marine equipment. The technical documentation shall contain, wherever applicable, at least the following elements:
 - (a) a general description of the marine equipment;
 - (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.;
 - (c) descriptions and explanations necessary for the understanding of those drawings and schemes and of the operation of the marine equipment;
 - (d) a list of the requirements and testing standards which are applicable to the marine equipment concerned in accordance with this Directive, together with a description of the solutions adopted to meet those requirements;
 - (e) results of design calculations made, examinations carried out, etc.; and
 - (f) test reports;
- the specimens representative of the production envisaged. The notified body may request further specimens if needed for carrying out the test programme;

- the supporting evidence for the adequacy of the technical design solution. This supporting evidence shall mention any documents that have been used. The supporting evidence shall include, where necessary, the results of tests carried out by the appropriate laboratory of the manufacturer, or by another testing laboratory on the manufacturer's behalf and under its responsibility.

4. The notified body shall:

For the marine equipment:

- 4.1. examine the technical documentation and supporting evidence to assess the adequacy of the technical design of the marine equipment;

For the specimen(s):

- 4.2. verify that the specimen(s) have been manufactured in conformity with the technical documentation, and identify the elements which have been designed in accordance with the applicable provisions of the relevant requirements and testing standards, as well as the elements which have been designed without applying the relevant provisions of those standards;

- 4.3. carry out appropriate examinations and tests, or have them carried out, in accordance with this Directive;

- 4.4. agree with the manufacturer on a location where the examinations and tests will be carried out.

5. The notified body shall draw up an evaluation report that records the activities undertaken in accordance with point 4 and their outcomes. Without prejudice to its obligations vis-à-vis the notifying authorities, the notified body shall release the content of that report, in full or in part, only with the agreement of the manufacturer.

6. Where the type meets the requirements of the specific international instruments that apply to the marine equipment concerned, the notified body shall issue an EC type-examination certificate to the manufacturer. The certificate shall contain the name and address of the manufacturer, the conclusions of the examination, the conditions (if any) for its validity and the necessary data for identification of the approved type. The certificate may have one or more annexes attached.

The certificate and its annexes shall contain all relevant information to allow the conformity of manufactured products with the examined type to be evaluated and to allow for in-service control.

Where the type does not satisfy the applicable requirements of the international instruments, the notified body shall refuse to issue an EC type-examination certificate and shall inform the applicant accordingly, giving detailed reasons for its refusal.

7. If the approved type no longer complies with the applicable requirements, the notified body shall determine whether further testing or a new conformity assessment procedure is necessary.

The manufacturer shall inform the notified body that holds the technical documentation relating to the EC type-examination certificate of all modifications to the approved type that may affect the conformity of the marine equipment with the requirements of the relevant international instruments or the conditions for validity of the certificate. Such modifications shall require additional approval in the form of an addition to the original EC type-examination certificate.

8. Each notified body shall inform its notifying authorities concerning the EC type-examination certificates and/or any additions thereto which it has issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of certificates and/or any additions thereto refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies concerning the EC type-examination certificates and/or any additions thereto which it has refused, withdrawn, suspended or otherwise restricted, and, upon request, concerning the certificates and/or additions thereto which it has issued.

The Commission, the Member States and the other notified bodies may, on request, obtain a copy of the EC type-examination certificates and/or additions thereto. On request, the Commission and the Member States may obtain a copy of the technical documentation and the results of the examinations carried out by the notified body. The notified body shall keep a copy of the EC type-examination certificate, its annexes and additions, as well as the technical file including the documentation submitted by the manufacturer, until the expiry of the validity of the certificate.

9. The manufacturer shall keep a copy of the EC type-examination certificate, its annexes and additions together with the technical documentation at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.
10. The manufacturer's authorised representative may lodge the application referred to in point 3 and fulfil the obligations set out in points 7 and 9, provided that they are specified in the mandate.

II. MODULE D: CONFORMITY TO TYPE BASED ON QUALITY ASSURANCE OF THE PRODUCTION PROCESS

1. Conformity to type based on quality assurance of the production process is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on its sole responsibility that the marine equipment concerned is in conformity with the type described in the EC type-examination certificate and that it satisfies the requirements of the international instruments that apply to it.

2. Manufacturing

The manufacturer shall operate an approved quality system for production, final product inspection and testing of the products concerned as specified in point 3, and shall be subject to surveillance as specified in point 4.

3. Quality system

- 3.1. The manufacturer shall lodge an application for assessment of its quality system with the notified body of its choice, for the marine equipment concerned.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- all relevant information for the marine equipment category envisaged;
- the documentation concerning the quality system;
- the technical documentation of the approved type and a copy of the EC type-examination certificate.

- 3.2. The quality system shall ensure that the products are in conformity with the type described in the EC type-examination certificate and that they comply with the requirements of the international instruments that apply to them.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
- the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
- the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.; and
- the means of monitoring the achievement of the required product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant marine equipment field and marine equipment technology concerned, and knowledge of the applicable requirements of the international instruments. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in the fifth indent of point 3.1 in order to verify the manufacturer's ability to identify the relevant requirements of the international instruments and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a re-assessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites, and shall provide it with all necessary information, in particular:

- the quality system documentation;
- the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.

4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system, and shall provide the manufacturer with an audit report.

4.4. In addition, the notified body may pay unexpected visits to the manufacturer, except where, under national law, and for defence or security reasons, certain restrictions apply to such visits. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

5. Conformity marking and declaration of conformity

5.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product that is in conformity with the type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.

5.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

6. The manufacturer shall keep at the disposal of the competent authorities, for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned:

- the documentation referred to in point 3.1;
- the change referred to in point 3.5, as approved;
- the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.

7. Each notified body shall inform its notifying authorities of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended, withdrawn or otherwise restricted, and, upon request, of quality system approvals which it has issued.

8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

III. MODULE E: CONFORMITY TO TYPE BASED ON PRODUCT QUALITY ASSURANCE

1. Conformity to type based on product quality assurance is that part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on its sole responsibility that the marine equipment concerned is in conformity with the type described in the EC type-examination certificate and that it satisfies the requirements of the international instruments that apply to it.

2. Manufacturing

The manufacturer shall operate an approved quality system for final product inspection and testing of the products concerned as specified in point 3, and shall be subject to surveillance as specified in point 4.

3. Quality system

3.1. The manufacturer shall lodge an application for assessment of its quality system with the notified body of its choice, for the marine equipment concerned.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- all relevant information for the marine equipment category envisaged;
- the documentation concerning the quality system; and
- the technical documentation of the approved type and a copy of the EC type-examination certificate.

3.2. The quality system shall ensure compliance of the products with the type described in the EC type-examination certificate and with the applicable requirements of the international instruments.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests that will be carried out after manufacture;
- the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.;
- the means of monitoring the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant marine equipment field and marine equipment technology concerned, and knowledge of the applicable requirements of the international instruments. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in the fifth indent of point 3.1, in order to verify the manufacturer's ability to identify the relevant requirements of the international instruments and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a re-assessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites, and shall provide it with all necessary information, in particular:

— the quality system documentation;

— the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.

- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system, and shall provide the manufacturer with an audit report.
- 4.4. In addition, the notified body may pay unexpected visits to the manufacturer, except where, under national law, and for defence or security reasons, certain restrictions apply to such visits. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

5. Conformity marking and declaration of conformity

- 5.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product that is in conformity with the type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.

- 5.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

6. The manufacturer shall keep at the disposal of the competent authorities, for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned:
- the documentation referred to in point 3.1;
 - the change referred to in point 3.5, as approved;
 - the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.
7. Each notified body shall inform its notifying authorities of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended or withdrawn, and, upon request, of quality system approvals which it has issued.

8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

IV. MODULE F: CONFORMITY TO TYPE BASED ON PRODUCT VERIFICATION

1. Conformity to type based on product verification is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 5.1 and 6, and ensures and declares on its sole responsibility that the products concerned, which have been subject to the provisions of point 3, are in conformity with the type described in the EC type-examination certificate and that they satisfy the requirements of the international instruments that apply to them.
2. Manufacturing
- The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured products with the approved type described in the EC type-examination certificate and with the requirements of the international instruments that apply to them.
3. Verification
- A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in order to check the conformity of the products with the approved type described in the EC type-examination certificate and with the appropriate requirements of the international instruments.

The examinations and tests to check the conformity of the products with the appropriate requirements shall be carried out, at the choice of the manufacturer, either by examination and testing of every product as specified in point 4 or by examination and testing of the products on a statistical basis as specified in point 5.

4. Verification of conformity by examination and testing of every product

- 4.1. All products shall be individually examined and tested in accordance with this Directive, in order to verify conformity with the approved type described in the EC type-examination certificate and with the appropriate requirements of the international instruments.
- 4.2. The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved product or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity available for inspection by the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

5. Statistical verification of conformity

- 5.1. The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure the homogeneity of each lot produced, and shall present its products for verification in the form of homogeneous lots.
- 5.2. A random sample shall be taken from each lot. All products in a sample shall be individually examined and tested in accordance with this Directive, in order to ensure their conformity with the applicable requirements of the international instruments and to determine whether the lot is accepted or rejected.
- 5.3. If a lot is accepted, all products of the lot shall be considered approved, except for those products from the sample that have been found not to satisfy the tests.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved product or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

- 5.4. If a lot is rejected, the notified body or the competent authority shall take appropriate measures to prevent that lot being placed on the market. In the event of the frequent rejection of lots, the notified body may suspend the statistical verification and take appropriate measures.

6. Conformity marking and declaration of conformity

- 6.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3, the latter's identification number to each individual product that is in conformity with the approved type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.
- 6.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

7. If the notified body agrees and under its responsibility, the manufacturer may affix the notified body's identification number to the products during the manufacturing process.

8. Authorised representative

The manufacturer's obligations may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate. An authorised representative may not fulfil the manufacturer's obligations set out in points 2 and 5.1.

V. MODULE G: CONFORMITY BASED ON UNIT VERIFICATION

1. Conformity based on unit verification is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 5 and ensures and declares on its sole responsibility that the product concerned, which has been subject to the provisions of point 4, is in conformity with the requirements of the international instruments that apply to it.

2. Technical documentation

The manufacturer shall draw up the technical documentation and make it available to the notified body referred to in point 4. The documentation shall make it possible to assess the product's conformity with the relevant requirements, and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and shall cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements:

- a general description of the product;
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product;
- a list of the requirements and testing standards which are applicable to the marine equipment concerned in accordance with this Directive, together with a description of the solutions adopted to meet those requirements;
- results of design calculations made, examinations carried out; and
- test reports.

The manufacturer shall keep the technical documentation at the disposal of the relevant national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured product with the applicable requirements of the international instruments.

4. Verification

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in accordance with this Directive, in order to check the conformity of the product with the applicable requirements of the international instruments.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out and shall affix its identification number to the approved product, or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

5. Conformity marking and declaration of conformity

5.1. The manufacturer shall affix the wheel mark referred to in Article 9 and, under the responsibility of the notified body referred to in point 4, the latter's identification number to each product that satisfies the applicable requirements of the international instruments.

5.2. The manufacturer shall draw up a written declaration of conformity and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the product for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

6. Authorised representative

The manufacturer's obligations set out in points 2 and 5 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

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ANNEX III

REQUIREMENTS TO BE MET BY CONFORMITY ASSESSMENT BODIES IN ORDER TO BECOME NOTIFIED BODIES

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in points 2 to 11.
2. A conformity assessment body shall be established under national law and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the marine equipment which it assesses.
4. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of marine equipment which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered a conformity assessment body.
5. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the marine equipment which is assessed, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.
6. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of that marine equipment, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall apply, in particular, to consultancy services.
7. Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.
8. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly of a financial nature, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.
9. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under this Directive and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.
10. At all times and for each conformity assessment procedure and each kind, category or sub-category of marine equipment in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:
 - (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
 - (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency of those procedures and the possibility of reproducing them. It shall have in place appropriate policies and procedures that distinguish between tasks that it carries out as a notified body and other activities;
 - (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the marine equipment technology in question and the mass or serial nature of the production process.

11. A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner, and shall have access to all necessary equipment and facilities.
 12. The personnel responsible for carrying out conformity assessment activities shall have the following:
 - (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
 - (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
 - (c) appropriate knowledge and understanding of the applicable requirements and testing standards and of the relevant provisions of Union legislation on harmonisation and of the regulations implementing that legislation;
 - (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.
 13. The impartiality of the conformity assessment bodies, of their top-level management and of the assessment personnel shall be guaranteed.
 14. The remuneration of the top-level management and of the assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.
 15. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.
 16. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under this Directive or pursuant to any provision of national law giving effect to it, except in relation to the competent authorities of the Member States in which its activities are carried out. Proprietary rights shall be protected.
 17. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under this Directive, and shall apply as general guidance the administrative decisions and documents produced as a result of the work of that group.
 18. Conformity assessment bodies shall meet the requirements of standard EN ISO/IEC 17065:2012.
 19. Conformity assessment bodies shall ensure that testing laboratories used for conformity assessment purposes meet the requirements of standard EN ISO/IEC 17025:2005.
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ANNEX IV

NOTIFICATION PROCEDURE

1. Application for notification
 - 1.1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
 - 1.2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the marine equipment for which that body claims to be competent, as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Annex III.
 - 1.3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Annex III.
 2. Notification procedure
 - 2.1. Notifying authorities may notify only conformity assessment bodies which have satisfied the requirements laid down in Annex III.
 - 2.2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.
 - 2.3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and marine equipment concerned and the relevant attestation of competence.
 - 2.4. Where a notification is not based on an accreditation certificate as referred to in section 1, the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Annex III.
 - 2.5. The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of a notification where an accreditation certificate is used or within two months of a notification where accreditation is not used.
 - 2.6. Only a body referred to in point 2.5 shall be considered a notified body for the purposes of this Directive.
 - 2.7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.
 3. Identification numbers and lists of notified bodies
 - 3.1. The Commission shall assign an identification number to a notified body.
 - 3.2. It shall assign a single such number even where the notified body is recognised as notified under several legislative acts of the Union.
 - 3.3. The Commission shall make publicly available the list of the bodies notified under this Directive, including the identification numbers that have been allocated to them and the activities for which they have been notified.
 - 3.4. The Commission shall ensure that that list is kept up to date.
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ANNEX V

REQUIREMENTS TO BE MET BY NOTIFYING AUTHORITIES

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
 2. A notifying authority shall be organised and operated in such a way as to safeguard the objectivity and impartiality of its activities.
 3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
 4. A notifying authority shall not offer or provide, on a commercial or competitive basis, any activities that conformity assessment bodies perform or any consultancy services.
 5. A notifying authority shall safeguard the confidentiality of the information it obtains.
 6. A notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.
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DIRECTIVE 2014/91/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 23 July 2014****amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions****(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 53(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 Central Bank ⁽¹⁾,

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

Whereas:

- (1) Directive 2009/65/EC of the European Parliament and of the Council ⁽³⁾ should be amended in order to take into account market developments and the experiences of market participants and supervisors gathered so far, in particular to address discrepancies between national provisions in respect of the duties and liability of depositaries, remuneration policy and sanctions.
- (2) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and on the control of risk-taking behaviour by individuals, there should be an express obligation for management companies of undertakings for collective investment in transferable securities (UCITS) to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS that they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should include any employee and other member of staff at fund or sub-fund level who are decision takers, fund managers and persons who take real investment decisions, persons who have the power to exercise influence on such employees or members of staff, including investment advisors and analysts, senior management and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and decision takers. Those rules should also apply to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC. Those remuneration policies and practices should apply, in a proportionate manner, to any third party which takes investment decisions that affect the risk profile of the UCITS because of functions which have been delegated in accordance with Article 13 of Directive 2009/65/EC.
- (3) Provided that management companies of UCITS and investment companies apply all the principles governing remuneration policies, they should be able to apply those policies in different ways according to their size, the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities.

⁽¹⁾ OJ C 96, 4.4.2013, p. 18.

⁽²⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽³⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

- (4) While some actions are to be taken by the management body, it should be ensured that where, according to national law, the management company or investment company has in place different bodies with specific functions assigned, the requirements directed at the management body or at the management body in its supervisory function should also, or should instead, apply to those bodies, such as the General Meeting.
- (5) When applying the principles regarding sound remuneration policies and practices established by this Directive, Member States should take into account the principles set out in Commission Recommendation 2009/384/EC ⁽¹⁾, the work of the Financial Stability Board and G-20 commitments to mitigate risk in the financial services sector.
- (6) Guaranteed variable remuneration should be exceptional because it is not consistent with sound risk management or the pay-for-performance principle and should be limited to the first year of engagement.
- (7) The principles regarding sound remuneration policies should also apply to payments made from UCITS to management companies or investment companies.
- (8) The Commission is invited to analyse what the common costs and expenses of retail investment products in the Member States are, and whether further harmonisation of those costs and expenses is needed, and to submit its findings to the European Parliament and to the Council.
- (9) In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽²⁾, should ensure the existence of guidelines on sound remuneration policies and practices in the asset management sector. The European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾, should assist ESMA in the elaboration of such guidelines. In order to prevent circumvention of the provisions on remuneration, those guidelines should also provide further guidance on the persons to whom remuneration policies and practices apply and on the adaptation of the remuneration principles to the size of the management company or the investment company, the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities. ESMA's guidelines on remuneration policies and practices should, where appropriate, be aligned, to the extent possible, with those for funds regulated under Directive 2011/61/EU of the European Parliament and of the Council ⁽⁴⁾.
- (10) The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union (the Charter), to general principles of national contract and labour law, applicable legislation regarding shareholders' rights and involvement and the general responsibilities of the administrative and supervisory bodies of the companies concerned, as well as to the right, where applicable, of the social partners to conclude and enforce collective agreements, in accordance with national law and practice.
- (11) In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States, additional rules should be adopted laying down the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in the event that the assets of the UCITS are lost in custody or in the case of depositaries' improper performance of their oversight duties. Such improper performance may result in the loss of assets but also in a loss of the value of assets, if, for example, a depositary fails to act on investments that are not compliant with fund rules.

⁽¹⁾ Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

⁽²⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁴⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (12) It is necessary to clarify that a UCITS should appoint a single depositary having general oversight over the assets of the UCITS. Requiring that there be a single depositary should ensure that the depositary has an overview of all the assets of the UCITS and both fund managers and investors have a single point of reference in the event that problems occur in relation to the safekeeping of assets or the performance of oversight functions. The safekeeping of assets includes holding assets in custody or, where assets are of such a nature that they cannot be held in custody, verification of the ownership of those assets as well as record-keeping for those assets.
- (13) In performing its tasks, a depositary should act honestly, fairly, professionally, independently and in the interest of the UCITS and of the investors of the UCITS.
- (14) In order to ensure a harmonised approach to the performance of depositaries' duties in all Member States irrespective of the legal form taken by the UCITS, it is necessary to introduce a uniform list of oversight duties that are incumbent on depositaries in relation to UCITS with a corporate form (an investment company) and UCITS in a contractual form.
- (15) The depositary should be responsible for the proper monitoring of the cash flows of the UCITS, and, in particular, for ensuring that investor money and cash belonging to the UCITS is booked correctly on accounts opened in the name of the UCITS, in the name of the management company acting on behalf of the UCITS, or in the name of the depositary acting on behalf of the UCITS, at an entity referred to in point (a), (b) or (c) of Article 18(1) of Commission Directive 2006/73/EC ⁽¹⁾. Therefore, detailed provisions should be adopted on cash flow monitoring so as to ensure effective and consistent levels of investor protection. When ensuring investor money is booked in cash accounts, the depositary should take into account the principles set out in Article 16 of that Directive.
- (16) In order to prevent fraudulent cash transfers, no cash account associated with the transactions of the UCITS should be opened without the depositary's knowledge.
- (17) Any asset held in custody for a UCITS should be distinguished from the depositary's own assets, and should at all times be identified as belonging to that UCITS. Such a requirement should confer an additional layer of protection for investors in the event that the depositary defaults.
- (18) In addition to the existing duty of safekeeping of assets belonging to a UCITS, assets that are capable of being held in custody should be differentiated from those that are not, to which record-keeping and ownership verification requirements apply instead. The group of assets that can be held in custody should be clearly differentiated, since the duty to return lost assets should apply only to that specific category of assets.
- (19) The assets held in custody by the depositary should not be reused by the depositary, or by a third party to which the custody function has been delegated, for their own account. Certain conditions should apply to the reuse of assets for the account of the UCITS.
- (20) It is necessary to lay down the conditions for the delegation of the depositary's safekeeping duties to a third party. Delegation and sub-delegation should be objectively justified and subject to strict requirements in relation to the suitability of the third party entrusted with the delegated function, and in relation to the due skill, care and diligence that the depositary should employ to select, appoint and review that third party. For the purpose of achieving uniform market conditions and an equally high level of investor protection, such conditions should be aligned with those applicable under Directive 2011/61/EU. Provisions should be adopted to ensure that third parties to which safekeeping functions have been delegated have the necessary means to perform their duties and that they segregate the assets of the UCITS.

⁽¹⁾ Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

- (21) When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council⁽¹⁾, or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in Section A of the Annex to that Regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions.
- (22) A third party to which the safekeeping of assets is delegated should be able to maintain an omnibus account, as a common segregated account for multiple UCITS.
- (23) Where custody is delegated to a third party, it is also necessary to ensure that the third party is subject to specific requirements on effective prudential regulation and supervision. In addition, in order to ensure that the financial instruments are in the possession of the third party to which custody was delegated, periodic external audits should be performed.
- (24) In order to ensure consistently high levels of investor protection, provisions on conduct and on the management of conflicts of interest should be adopted and should apply in all situations, including in the case of a delegation of safekeeping duties. Those rules should in particular ensure a clear separation of tasks and functions between the depository, the UCITS and the management company or the investment company.
- (25) In order to ensure a high level of investor protection and to guarantee an appropriate level of prudential regulation and ongoing control, it is necessary to establish an exhaustive list of entities that are eligible to act as depositories. Those entities should be limited to national central banks, credit institutions, and other legal entities authorised under the law of Member States to carry out depository activities under this Directive, which are subject to prudential supervision and capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽²⁾, have own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council⁽³⁾ and have their registered office or a branch in the UCITS home Member State.
- (26) It is necessary to specify and clarify the UCITS depository's liability in case of the loss of a financial instrument that is held in custody. The depository should be liable, where a financial instrument held in custody has been lost, to return a financial instrument of an identical type or the corresponding amount to the UCITS. No discharge of liability in the case of loss of assets should be envisaged, except where the depository is able to prove that the loss is due to an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. In that context, a depository should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability.
- (27) Where the depository delegates custody tasks and the financial instruments held in custody by a third party are lost, the depository should be liable. In the case of loss of an instrument held in custody, a depository should return a financial instrument of an identical type or the corresponding amount, even if the loss occurred with a third party to which the custody has been delegated. The depository should be discharged of that liability only where it is able to prove that the loss resulted from an external event beyond its reasonable control and with consequences that were unavoidable despite all reasonable efforts to the contrary. In that context, a depository should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability. No discharge of liability, be it regulatory or contractual, should be possible in the case of loss of assets by the depository or a third party to which the custody has been delegated.

⁽¹⁾ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (see page 1 of this Official Journal).

⁽²⁾ 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).

⁽³⁾ 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).

- (28) Every investor in a UCITS should be able to invoke claims relating to the liability of its depositary directly or indirectly through the management company or the investment company. Redress against the depositary should not depend on the legal form of the UCITS (corporate or contractual) or the legal nature of the relationship between the depositary, the management company and the unit-holders. The right of unit-holders to invoke depositary liability should not lead to a duplication of redress or to unequal treatment of the unit-holders.
- (29) Without prejudice to this Directive, a depositary should not be prevented from making arrangements to cover damages and losses to the UCITS or to the unit-holders of the UCITS. In particular, such arrangements should not constitute a discharge of the depositary's liability, result in a transfer or any change to the depositary's liability nor should they impinge on investors' rights, including redress rights.
- (30) On 12 July 2010, the Commission proposed amendments to Directive 97/9/EC of the European Parliament and of the Council ⁽¹⁾ in order to provide a high level of protection for UCITS investors where a depositary cannot meet its obligations. That proposal is supplemented by a clarification of the obligations and scope of the liability of the depositary and the third party to which the safekeeping functions have been delegated in this Directive.
- (31) The Commission is invited to analyse in which situations the failure of a UCITS depositary or a third party to which the safekeeping functions have been delegated could lead to losses to UCITS unit-holders which are not recoverable under this Directive, to analyse further what kind of measures could be adequate to ensure a high level of investor protection, whatever the chain of intermediation between the investor and the transferable securities affected by the failure, and to submit its findings to the European Parliament and to the Council.
- (32) It is necessary to ensure that the same requirements apply to depositaries irrespective of the legal form of the UCITS. Consistency of requirements should enhance legal certainty, increase investor protection and contribute to the creation of uniform market conditions. The Commission has not received any notification that the derogation from the general obligation to entrust assets to a depositary has been used by an investment company. Therefore, the requirements laid down in Directive 2009/65/EC regarding the depositary of an investment company should be considered to be redundant.
- (33) While this Directive specifies a minimum set of powers that competent authorities should have, those powers are to be exercised within a complete system of national law which guarantees respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect for private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, including, where appropriate, prior authorisation from the judicial authorities of a Member State concerned. Member States should allow competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.
- (34) Existing recordings of telephone conversations and data traffic records from a UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, as well as existing telephone and data traffic records from telecommunications operators, constitute crucial, and sometimes the only, evidence to detect and prove the existence of infringements of the national law transposing this Directive, as well as to verify compliance by the UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive with investor protection requirements and other requirements laid down in this Directive and the implementing measures adopted pursuant hereto. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by a UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive.

⁽¹⁾ Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

Access to telephone records and data is necessary for the detection of, and imposition of sanctions for, infringements of the requirements of this Directive or its implementing measures. In order to introduce a level playing field in the Union in relation to access to telephone and existing data traffic records held by a telecommunications operator or the existing recordings of telephone conversations and data traffic held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, competent authorities should, in accordance with national law, be able to require existing telephone and existing data traffic records held by a telecommunications operator, in so far as permitted under national law, and existing recordings of telephone conversations as well as data traffic held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, in those cases where a reasonable suspicion exists that such records relating to the subject-matter of the inspection or investigation may be relevant to prove infringements of the requirements laid down in this Directive or its implementing measures. Access to telephone and data traffic records held by a telecommunications operator should not encompass the content of voice communications by telephone.

- (35) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigatory and sanctions regimes. To that end, competent authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent penalties regimes for the infringements of this Directive. A review of existing powers to impose sanctions and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities was carried out in Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector. Competent authorities should be empowered to impose pecuniary penalties which are sufficiently high to be effective, dissuasive and proportionate, in order to offset expected benefits from behaviour which infringes the requirements laid down in this Directive.
- (36) Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringements, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Directive where they are subject to national criminal law. In accordance with national law, Member States should not be obliged to impose both administrative and criminal sanctions for the same offence, but they could do so if their national law so permits. However, the maintenance of criminal rather than administrative sanctions for infringements of this Directive should not reduce or otherwise affect the ability of competent authorities, for the purposes of this Directive, to cooperate with competent authorities in other Member States or to access or exchange information with those competent authorities in a timely manner, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution. Member States should be able to decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law. The option for Member States to impose criminal sanctions rather than, or in addition to, administrative sanctions should not be used to circumvent the sanctions regime in this Directive.
- (37) In order to ensure a consistent application across Member States, when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, Member States should be required to ensure that their competent authorities take into account all relevant circumstances.
- (38) In order to strengthen their dissuasive effect on the public at large and to inform them about infringements which may be detrimental to investor protection, sanctions should be published, save in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.
- (39) In order to enable ESMA to strengthen consistency in supervisory outcomes further in accordance with Regulation (EU) No 1095/2010, all publicly disclosed sanctions should be simultaneously reported to ESMA, which should also publish an annual report on all sanctions imposed.
- (40) Competent authorities should be entrusted with the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual infringements. Information on potential and actual infringements should also contribute to the effective performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010. Communication channels for the reporting of those potential and actual infringements should

therefore also be established by ESMA. Information on potential and actual infringements communicated to ESMA should be used only for the performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010.

- (41) This Directive respects the fundamental rights and observes the principles recognised in the Charter as enshrined in the TFEU.
- (42) In order to ensure that the objectives of this Directive are attained, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, the Commission should be empowered to adopt delegated acts to specify the particulars that need to be included in the standard agreement between the depositary and the management company or the investment company, the conditions for performing depositary functions, including the type of financial instruments that should be included in the scope of the depositary's custody duties, the conditions subject to which the depositary may exercise its custody duties over financial instruments registered with a central depository and the conditions subject to which the depositary should safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, the due diligence duties of depositaries, the segregation obligation, the conditions subject to and circumstances in which financial instruments held in custody should be considered to be lost, and what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. The level of investor protection provided by those delegated acts should be at least as high as that provided by delegated acts adopted under Directive 2011/61/EU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (43) As part of its overall review of the functioning of Directive 2009/65/EC, the Commission, taking into account Regulation (EU) No 648/2012 of the European Parliament and of the Council⁽¹⁾, will review counterparty exposure limits applicable to derivatives transactions, taking into account the need to establish appropriate categorisations for such limits so that derivatives with similar risk characteristics are treated in the same way.
- (44) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁽²⁾ Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (45) Since the objectives of this Directive, namely to improve investor confidence in UCITS by enhancing requirements concerning the duties and the liability of depositaries, the remuneration policies of management companies and investment companies, and by introducing common standards for the sanctions applying to the main infringements of this Directive, cannot be sufficiently achieved by the Member States, but can rather, by reason of their 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 TEU. 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.
- (46) The European Data Protection Supervisor has been consulted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽³⁾ and delivered an opinion on 23 November 2012⁽⁴⁾.
- (47) Directive 2009/65/EC should therefore be amended accordingly,

⁽¹⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽²⁾ OJ C 369, 17.12.2011, p. 14.

⁽³⁾ 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).

⁽⁴⁾ OJ C 100, 6.4.2013, p. 12.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2009/65/EC is amended as follows:

(1) in Article 2(1), the following points are added:

(s) 'management body' means the body with ultimate decision-making authority in a management company, investment company or depositary, comprising the supervisory and the managerial functions, or only the managerial function if the two functions are separated. Where, according to national law, the management company, investment company or depositary has in place different bodies with specific functions, the requirements laid down in this Directive directed at the management body or at the management body in its supervisory function shall also, or shall instead, apply to those members of other bodies of the management company, investment company or depositary to whom the applicable national law assigns the respective responsibility;

(t) 'financial instrument' means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council (*).

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).;

(2) the following articles are inserted:

'Article 14a

1. Member States shall require management companies to establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

2. The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

3. The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

4. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue guidelines addressed to competent authorities or to financial market participants concerning the persons referred to in paragraph 3 of this Article and the application of the principles referred to in Article 14b. Those guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC (*), the size of the management company and the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities. In the process of the development of those guidelines, ESMA shall cooperate closely with the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (**), in order to ensure consistency with requirements developed for other financial services sectors, in particular credit institutions and investment firms.

Article 14b

1. When establishing and applying the remuneration policies referred to in Article 14a, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;
- (c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- (f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;
- (g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
- (h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;
- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;

- (k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall apply to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;

- (n) a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;

- (o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.

If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (m), subject to a five-year retention period;

- (q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

- (r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.

2. In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive.

ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set out in Directive 2011/61/EU of the European Parliament and of the Council (***) and in Directive 2013/36/EU of the European Parliament and of the Council (****), are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles.

3. The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

4. Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.

(*) Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

(**) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(***) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 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).;

- (3) in Article 20(1), point (a) is replaced by the following:

‘(a) the written contract with the depositary referred to in Article 22(2);’

(4) Article 22 is replaced by the following:

'Article 22

1. An investment company and, for each of the common funds that it manages, a management company shall ensure that a single depositary is appointed in accordance with this Chapter.

2. The appointment of the depositary shall be evidenced by a written contract.

That contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the UCITS for which it has been appointed as depositary, as laid down in this Directive and in other relevant laws, regulations and administrative provisions.

3. The depositary shall:

(a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with the applicable national law and the fund rules or instruments of incorporation;

(b) ensure that the value of the units of the UCITS is calculated in accordance with the applicable national law and the fund rules or the instruments of incorporation;

(c) carry out the instructions of the management company or an investment company, unless they conflict with the applicable national law, or with the fund rules or the instruments of incorporation;

(d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;

(e) ensure that the income of the UCITS is applied in accordance with the applicable national law and the fund rules or the instruments of incorporation.

4. The depositary shall ensure that the cash flows of the UCITS are properly monitored, and, in particular, that all payments made by, or on behalf of, investors upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are:

(a) opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the depositary acting on behalf of the UCITS;

(b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Commission Directive 2006/73/EC (*); and

(c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in point (b) of the first subparagraph and none of the own cash of the depositary shall be booked on such accounts.

5. The assets of the UCITS shall be entrusted to the depositary for safekeeping as follows:
- (a) for financial instruments that may be held in custody, the depositary shall:
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;
 - (b) for other assets, the depositary shall:
 - (i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence;
 - (ii) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.
6. The depositary shall provide the management company or the investment company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.
7. The assets held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets held in custody by the depositary are allowed to be reused only where:

- (a) the reuse of the assets is executed for the account of the UCITS;
- (b) the depositary is carrying out the instructions of the management company on behalf of the UCITS;
- (c) the reuse is for the benefit of the UCITS and in the interest of the unit holders; and
- (d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

8. Member States shall ensure that in the event of insolvency of the depositary and/or of any third party located in the Union to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

(*) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).;

(5) the following article is inserted:

Article 22a

1. The depositary shall not delegate to third parties the functions referred to in Article 22(3) and (4).
2. The depositary may delegate to third parties the functions referred to in Article 22(5) only where:
 - (a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Directive;
 - (b) the depositary can demonstrate that there is an objective reason for the delegation;
 - (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.
3. The functions referred to in Article 22(5) may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:
 - (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it;
 - (b) for custody tasks referred to in point (a) of Article 22(5), is subject to:
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;
 - (ii) an external periodic audit to ensure that the financial instruments are in its possession;
 - (c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
 - (d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
 - (e) complies with the general obligations and prohibitions laid down in Article 22(2), (5) and (7) and in Article 25.

Notwithstanding point (b)(i) of the first subparagraph, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

- (a) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- (b) the investment company, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article 24(2) shall apply *mutatis mutandis* to the relevant parties.

4. For the purposes of this Article, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the Council (*) by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

(*) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).;

(6) Article 23 is amended as follows:

(a) paragraphs 2, 3 and 4 are replaced by the following:

2. The depositary shall be:

- (a) a national central bank;
- (b) a credit institution authorised in accordance with Directive 2013/36/EU; or
- (c) another legal entity, authorised by the competent authority under the law of the Member State to carry out depositary activities under this Directive, which is subject to capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council (*) and which has own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU.

A legal entity as referred to in point (c) of the first subparagraph shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:

- (a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;
- (b) it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under this Directive;

- (c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;
- (d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- (e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in this Directive;
- (f) it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities;
- (g) all members of its management body and senior management, shall, at all times, be of sufficiently good repute, possess sufficient knowledge, skills and experience;
- (h) its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;
- (i) each member of its management body and senior management shall act with honesty and integrity.

3. Member States shall determine which of the categories of institutions referred to in the first subparagraph of paragraph 2 shall be eligible to be depositaries.

4. Investment companies or management companies acting on behalf of the UCITS that they manage, which, before 18 March 2016, appointed as a depositary an institution that does not meet the requirements laid down in paragraph 2, shall appoint a depositary that meets those requirements before 18 March 2018.

(*) 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).;

(b) paragraphs 5 and 6 are deleted.

(7) Article 24 is replaced by the following:

'Article 24

1. Member States shall ensure that the depositary is liable to the UCITS and to the unit-holders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 22(5) has been delegated.

In the case of a loss of a financial instrument held in custody, Member States shall ensure that the depositary returns a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

Member States shall ensure that the depositary is also liable to the UCITS, and to the investors of the UCITS, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Directive.

2. The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation as referred to in Article 22a.

3. The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

4. Any agreement that contravenes paragraph 3 shall be void.

5. Unit-holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company or the investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.;

(8) Article 25 is replaced by the following:

'Article 25

1. No company shall act as both management company and depositary. No company shall act as both investment company and depositary.

2. In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the UCITS and the investors of the UCITS. In carrying out their respective functions, the investment company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the investors of the UCITS.

A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.;

(9) Article 26 is replaced by the following:

'Article 26

1. The law or the fund rules of the common fund shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.

2. The law or the instruments of incorporation of the investment company shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.;

(10) the following articles are inserted:

'Article 26a

The depositary shall make available to its competent authorities, on request, all information which it has obtained while performing its duties and that may be necessary for its competent authorities or for the competent authorities of the UCITS or of the management company.

If the competent authorities of the UCITS or of the management company are different from those of the depositary, the competent authorities of the depositary shall without delay share the information received with the competent authorities of the UCITS and of the management company.

Article 26b

The Commission shall be empowered to adopt delegated acts in accordance with Article 112a specifying:

- (a) the particulars that need to be included in the written contract referred to in Article 22(2);
 - (b) the conditions for performing the depositary functions pursuant to Article 22(3), (4) and (5), including:
 - (i) the types of financial instrument to be included in the scope of the custody duties of the depositary in accordance with point (a) of Article 22(5);
 - (ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central depositary;
 - (iii) the conditions subject to which the depositary is to safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with point (b) of Article 22(5);
 - (c) the due diligence duties of depositaries pursuant to point (c) of Article 22a(2);
 - (d) the segregation obligation pursuant to point (c) of Article 22a(3);
 - (e) the steps to be taken by the third party pursuant to point (d) of Article 22a(3);
 - (f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered to be lost for the purpose of Article 24;
 - (g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, pursuant to Article 24(1);
 - (h) the conditions for fulfilling the independence requirement referred to in Article 25(2).;
- (11) in Article 30, the first paragraph is replaced by the following:
- ‘Articles 13 to 14b shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to this Directive.’;
- (12) Section 3 of Chapter V is deleted;

(13) Article 69 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

'The prospectus shall include either:

- (a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or
- (b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.;

(b) in paragraph 3, the following subparagraph is added:

'The annual report shall also include:

- (a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;
- (b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Article 14a(3);
- (c) a description of how the remuneration and the benefits have been calculated;
- (d) the outcome of the reviews referred to in points (c) and (d) of Article 14b(1) including any irregularities that have occurred;
- (e) material changes to the adopted remuneration policy.;

(14) Article 78 is amended as follows:

(a) in paragraph 3, point (a) is replaced by the following:

'(a) identification of the UCITS and of the competent authority of the UCITS.;

(b) in paragraph 4, the following subparagraph is added:

'Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.;

(15) in Article 98(2), point (d) is replaced by the following:

‘(d) require:

- (i) in so far as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Directive;
- (ii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive;’;

(16) Article 99 is replaced by the following:

‘Article 99

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 98 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing this Directive and shall take all measures necessary to ensure that they are implemented.

Where Member States decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law, they shall communicate to the Commission the relevant criminal law provisions.

Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

By 18 March 2016, Member States shall notify the laws, regulations and administrative provisions transposing this Article, including any relevant criminal law provisions, to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for infringements of the provisions referred to in that paragraph, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Directive and provide the same to other competent authorities and ESMA in order to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Directive.

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

3. As part of its overall review of the functioning of this Directive, the Commission shall review, not later than 18 September 2017, the application of the administrative and criminal sanctions, and in particular the need to further harmonise the administrative sanctions laid down for infringements of the requirements laid down in this Directive.

4. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, namely where:

- (a) communication of relevant information might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;

- (b) compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation;
- (c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
- (d) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

5. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in the event of an infringement of national provisions transposing this Directive, administrative penalties or other administrative measures may be applied, in accordance with national law, to the members of the management body and to other natural persons who are responsible, under national law, for the infringement.

6. In accordance with national law, Member States shall ensure that, in all cases referred to in paragraph 1, the administrative penalties and other administrative measures that may be applied include at least the following:

- (a) a public statement which identifies the person responsible and the nature of the infringement;
- (b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;
- (c) in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company;
- (d) a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or in other such companies;
- (e) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014, or 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council (*), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (f) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014;
- (g) as an alternative to points (e) and (f), maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f).

7. Member States may empower competent authorities, under national law, to impose types of penalty in addition to those referred to in paragraph 6 or to impose pecuniary penalties exceeding the amounts referred to in points (e), (f) and (g) of paragraph 6.

(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).;

(17) the following articles are inserted:

Article 99a

Member States shall ensure that their laws, regulations or administrative provisions transposing this Directive provide for penalties, in particular when:

- (a) the activities of UCITS are pursued without obtaining authorisation, thus infringing Article 5;
- (b) the business of a management company is carried out without obtaining prior authorisation, thus infringing Article 6;
- (c) the business of an investment company is carried out without obtaining prior authorisation, thus infringing Article 27;
- (d) a qualifying holding in a management company is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the management company would become its subsidiary ('the proposed acquisition'), without notifying in writing the competent authorities of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, thus infringing Article 11(1);
- (e) a qualifying holding in a management company is disposed of, directly or indirectly, or reduced so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the management company would cease to be a subsidiary, without notifying in writing the competent authorities, thus infringing Article 11(1);
- (f) a management company has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 7(5);
- (g) an investment company has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 29(4);
- (h) a management company, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1) of Directive 2014/65/EU fails to inform the competent authorities of those acquisitions or disposals, thus infringing Article 11(1) of this Directive;
- (i) a management company fails to inform the competent authority, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, thus infringing Article 11(1);

- (j) a management company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing point (a) of Article 12(1);
- (k) a management company fails to comply with structural and organisational requirements imposed in accordance with the national provisions transposing point (b) of Article 12(1);
- (l) an investment company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing Article 31;
- (m) a management company or an investment company fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the national provisions transposing Articles 13 and 30;
- (n) a management company or an investment company fails to comply with rules of conduct imposed in accordance with the national provisions transposing Articles 14 and 30;
- (o) a depositary fails to perform its tasks in accordance with national provisions transposing Article 22(3) to (7);
- (p) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations concerning the investment policies of UCITS laid down in national provisions transposing Chapter VII;
- (q) a management company or an investment company fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in national provisions transposing Article 51(1);
- (r) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the national provisions transposing Articles 68 to 82;
- (s) a management company or an investment company marketing units of UCITS that it manages in a Member State other than the UCITS home Member State fails to comply with the notification requirement laid down in Article 93(1).

Article 99b

1. Member States shall ensure that competent authorities publish any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the national provisions transposing this Directive on their official websites without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

However, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, Member States shall ensure that competent authorities do one of the following:

- (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

- (b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures effective protection of the personal data concerned; or
- (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
 - (i) that the stability of the financial markets would not be put in jeopardy;
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

2. Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (c) of the second subparagraph of paragraph 1 including any appeal in relation thereto and the outcome of such an appeal. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

3. Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish immediately on their official website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years from its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 99c

1. Member States shall ensure that when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, the competent authorities ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;

- (e) the level of cooperation with the competent authority of the person responsible for the infringement;
- (f) previous infringements by the person responsible for the infringement;
- (g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

2. In the exercise of their powers to impose penalties under Article 99, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative penalties produce the results pursued by this Directive. They shall also coordinate their actions in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative penalties and measures to cross-border cases in accordance with Article 101.

Article 99d

1. Member States shall establish effective and reliable mechanisms to encourage the reporting of potential or actual infringements of national provisions transposing this Directive to competent authorities, including secure communication channels for reporting such infringements.

2. The mechanisms referred to in paragraph 1 shall include at least:

- (a) specific procedures for the receipt of reports on infringements and their follow-up;
- (b) appropriate protection for employees of investment companies, management companies and depositaries, who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;
- (c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with Directive 95/46/EC of the European Parliament and of the Council (*);
- (d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

3. ESMA shall provide one or more secure communication channels for reporting infringements of the national provisions transposing this Directive. ESMA shall ensure that those communication channels comply with points (a) to (d) of paragraph 2.

4. Member States shall ensure that the reporting by employees of investment companies, management companies and depositaries referred to in paragraphs 1 and 3 shall not be considered to be an infringement of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and shall not subject the person reporting to liability of any kind relating to such reporting.

5. Member States shall require management companies, investment companies and depositaries to have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel.

Article 99e

1. Competent authorities shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99. ESMA shall publish that information in an annual report.

2. Where the competent authority has disclosed administrative penalties or measures to the public, it shall simultaneously report those administrative penalties or measures to ESMA. Where a published penalty or measure relates to a management company or investment company, ESMA shall add a reference to the published penalty or measure in the list of management companies published under Article 6(1).

3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for submitting information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 18 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(*) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).;

(18) the following Article is inserted:

‘Article 104a

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Directive.

2. Regulation (EC) No 45/2001 of the European Parliament and of the Council (*) shall apply to the processing of personal data carried out by ESMA pursuant to this Directive.

(*) 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).;

(19) in Article 12(3), Article 14(2), Article 43(5), Article 51(4), Article 60(6), Article 61(3), Article 62(4), Article 64(4), Article 75(4), Article 78(7), Article 81(2), Article 95(1) and Article 111, the words: ‘in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b’ are replaced by the words: ‘in accordance with Article 112a’;

(20) in Article 50a, the words: ‘in accordance with Article 112a and subject to conditions of Articles 112b and 112c’ are replaced by the words: ‘in accordance with Article 112a’;

(21) in the third subparagraph of Article 52(4), the reference to ‘Article 112(1)’ is replaced by a reference to ‘Article 112’;

(22) Article 112 is replaced by the following:

‘Article 112

The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC (*).

(*) Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45);

(23) Article 112a is replaced by the following:

'Article 112a

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 the delegated acts referred to in Articles 12, 14, 43, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of four years from 4 January 2011.

The power to adopt the delegated acts referred to in Article 26b shall be conferred on the Commission for a period of four years from 17 September 2014.

The power to adopt the delegated acts referred to in Article 50a shall be conferred on the Commission for a period of four years from 21 July 2011.

The power to adopt the delegated acts referred to in Article 51 is conferred on the Commission for a period of four years from 20 June 2013.

The Commission shall draw up a report in respect of delegated power not later than six months before the end of the four-year periods. 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 Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or of the Council.;

(24) Article 112b is deleted;

(25) in Schedule A of Annex I, point 2 is replaced by the following;

'2. Information concerning the depositary:

2.1. the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

- 2.2. a description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;
- 2.3. a statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request.

Article 2

1. Member States shall adopt and publish, by 18 March 2016 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply the laws, regulations and administrative provisions referred to in the first subparagraph from 18 March 2016. 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. Member States shall determine how such a reference is to be made.

2. 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 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 Brussels, 23 July 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

S. GOZI

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
(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) In accordance with Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning of the internal market is essential for its completion. Union action with respect to the internal market in the retail financial services sector has already substantially contributed to developing cross-border activity of payment service providers, improving consumer choice and increasing the quality and transparency of the offers.
- (2) In this respect, Directive 2007/64/EC of the European Parliament and of the Council ⁽⁴⁾ established basic transparency requirements for fees charged by payment service providers in relation to services offered on payment accounts. This has substantially facilitated the activity of payment service providers, creating uniform rules with respect to the provision of payment services and the information to be provided, reduced the administrative burden and generated cost savings for payment service providers.
- (3) The smooth functioning of the internal market and the development of a modern, socially inclusive economy increasingly depends on the universal provision of payment services. Any new legislation in this regard must be part of a smart economic strategy for the Union, which must effectively take into account the needs of more vulnerable consumers.

⁽¹⁾ OJ C 51, 22.2.2014, p. 3.

⁽²⁾ OJ C 341, 21.11.2013, p. 40.

⁽³⁾ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

⁽⁴⁾ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

- (4) However, as indicated by the European Parliament in its resolution of 4 July 2012 with recommendations to the Commission on Access to Basic Banking Services, more must be done to improve and develop the internal market for retail banking. Currently, the lack of transparency and comparability of fees as well as the difficulties in switching payment accounts still create barriers to the deployment of a fully integrated market contributing to low competition in the retail banking sector. Those problems must be tackled and high-quality standards must be achieved.
- (5) The current conditions of the internal market could deter payment service providers from exercising their freedom to establish or to provide services within the Union because of the difficulty in attracting customers when entering a new market. Entering new markets often entails large investment. Such investment is only justified if the provider foresees sufficient opportunities and a corresponding demand from consumers. The low level of mobility of consumers with respect to retail financial services is to a large extent due to the lack of transparency and comparability as regards the fees and services on offer, as well as difficulties in relation to the switching of payment accounts. Those factors also stifle demand. This is particularly true in the cross-border context.
- (6) Moreover, significant barriers to the completion of the internal market in the area of payment accounts may be created by the fragmentation of existing national regulatory frameworks. Existing provisions at national level with respect to payment accounts, and particularly with respect to the comparability of fees and payment account switching, diverge. For switching, the lack of uniform binding measures at Union level has led to divergent practices and measures at national level. Those differences are even more marked in the area of comparability of fees, where no measures, even of a self-regulatory nature, exist at Union level. Should those differences become more significant in the future, as payment service providers tend to tailor their practices to national markets, this would raise the cost of operating across borders relative to the costs faced by domestic providers and would therefore make the pursuit of business on a cross-border basis less attractive. Cross-border activity in the internal market is hampered by obstacles to consumers opening a payment account abroad. Existing restrictive eligibility criteria may prevent Union citizens from moving freely within the Union. Providing all consumers with access to a payment account will permit their participation in the internal market and allow them to reap the benefits of the internal market.
- (7) Moreover, since some prospective customers do not open payment accounts, either because they are denied them or because they are not offered adequate products, the potential demand for payment account services in the Union is currently not fully exploited. Wider consumer participation in the internal market would further incentivise payment service providers to enter new markets. Also, creating the conditions to allow all consumers to access a payment account is a necessary means of fostering their participation in the internal market and of allowing them to reap the benefits the internal market has brought about.
- (8) Transparency and comparability of fees were considered at Union level in a self-regulatory initiative, initiated by the banking industry. However, no final agreement was reached on that initiative. As regards switching, the common principles established in 2008 by the European Banking Industry Committee provide a model mechanism for switching between payment accounts offered by banks located in the same Member State. However, given their non-binding nature, those common principles have been applied in an inconsistent manner throughout the Union and with ineffective results. Moreover, the common principles address payment account switching at national level only and do not address cross-border switching. Finally, as regards access to a basic payment account, Commission Recommendation 2011/442/EU⁽¹⁾ invited Member States to take the necessary measures to ensure its application at the latest six months after its publication. To date, only a few Member States comply with the main principles of that Recommendation.

⁽¹⁾ Commission Recommendation 2011/442/EU of 18 July 2011 on access to a basic payment account (OJ L 190, 21.7.2011, p. 87).

- (9) In order to support effective and smooth financial mobility in the long term, it is vital to establish a uniform set of rules to tackle the issue of low customer mobility, and in particular to improve comparison of payment account services and fees and to incentivise payment account switching, as well as to avoid discrimination on the basis of residency against consumers who intend to open and use a payment account on a cross-border basis. Moreover, it is essential to adopt adequate measures to foster consumers' participation in the payment accounts market. Those measures will incentivise entry for payment service providers in the internal market and ensure a level playing field, thereby strengthening competition and the efficient allocation of resources within the Union's financial retail market to the benefit of businesses and consumers. Also, transparent fee information and switching possibilities, combined with the right of access to a payment account with basic features, will allow Union citizens to move and shop around more easily within the Union, thereby benefitting from a fully functioning internal market in the area of retail financial services, and will contribute to the further development of the internal market.
- (10) It is also vital to ensure that this Directive does not hamper innovation in the area of retail financial services. Each year, new technologies become available, which may render the current model of payment accounts out of date, such as mobile banking services and stored value payment cards.
- (11) This Directive should not preclude Member States from retaining or adopting more stringent provisions in order to protect consumers, provided that such provisions are consistent with their obligations under Union law and this Directive.
- (12) The provisions of this Directive concerning the comparability of fees and payment account switching should apply to all payment service providers, as defined in Directive 2007/64/EC. The provisions of this Directive concerning access to payment accounts with basic features should apply only to credit institutions. All provisions of this Directive should concern payment accounts through which consumers are able to carry out the following transactions: place funds, withdraw cash and execute and receive payment transactions to and from third parties, including the execution of credit transfers. As a consequence, accounts with more limited functions should be excluded. For example, accounts such as savings accounts, credit card accounts where funds are usually paid in for the sole purpose of repaying a credit card debt, current account mortgages or e-money accounts should in principle be excluded from the scope of this Directive. However, should those accounts be used for day-to-day payment transactions and should they comprise all of the functions listed above, they will fall within the scope of this Directive. Accounts held by businesses, even small or micro enterprises, unless held in a personal capacity, should fall outside the scope of this Directive. Member States should be able to choose to extend the application of this Directive to other payment service providers and other payment accounts, for example those which offer more limited payment functions.
- (13) Since a payment account with basic features is a type of payment account for the purposes of this Directive, the provisions in respect of transparency and switching should also apply to such accounts.
- (14) The definitions contained in this Directive should be aligned as far as possible with those contained in other Union legislative acts, and in particular with those contained in Directive 2007/64/EC and in Regulation (EU) No 260/2012 of the European Parliament and of the Council ⁽¹⁾.
- (15) It is vital for consumers to be able to understand fees so that they can compare offers from different payment service providers and make informed decisions as to which payment account is most suitable for their needs. Comparison between fees cannot be made where payment service providers use different terminology for the same services and provide information in different formats. Standardised terminology, coupled with targeted fee information presented in a consistent format covering the most representative services linked to payment accounts, can help consumers to both understand and compare fees.

⁽¹⁾ Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).

- (16) Consumers would benefit most from information that is concise, standardised and easy to compare between different payment service providers. The tools made available to consumers to compare payment account offers would not have a positive impact if the time invested in going through lengthy lists of fees for different offers outweighed the benefit of choosing the offer that represents the best value. Those tools should be multifold and consumer testing should be conducted. At this stage, fee terminology should only be standardised for the most representative terms and definitions within Member States in order to avoid the risk of excessive information and to facilitate swift implementation.
- (17) The fee terminology should be determined by Member States, allowing for consideration of the specificities of local markets. To be considered representative, services should be subject to a fee at a minimum of one payment service provider in a Member State. In addition, where the services are common to a majority of Member States, the terminology used to define such services should be standardised at Union level, thus allowing for better comparison of payment account offers across the Union. In order to ensure sufficient homogeneity of the national lists, the European Supervisory Authority (European Banking Authority) ('EBA') established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾ should issue guidelines to assist Member States to determine the services which are most commonly used and which generate the highest cost to consumers at national level. To that end, Member States should by 18 December 2014 indicate to the Commission and EBA the appropriate authorities to which those guidelines should be addressed.
- (18) Once Member States have determined a provisional list of the most representative services subject to a fee at national level together with terms and definitions, EBA should review them to identify, by means of draft regulatory technical standards, the services that are common to the majority of Member States and propose standardised Union-level terms and definitions for them in all the official languages of the institutions of the Union. EBA should ensure that only one term is used for each service in any official language of each Member State which is also an official language of the institutions of the Union. This means that different terms can be used for the same service in different Member States sharing the same official language of the institutions of the Union, thereby taking into account national specificities. Member States should then integrate any applicable Union-level terms into their provisional lists and publish their final lists based on this.
- (19) In order to help consumers compare payment account fees throughout the internal market easily, payment service providers should provide consumers with a fee information document that states the fees for all services contained in the list of the most representative services linked to a payment account at national level. The fee information document should where applicable use the standardised terms and definitions established at Union level. This would also contribute to establishing a level playing field between payment service providers competing in the payment account market. The fee information document should not contain any other fees. Where a payment service provider does not offer a service appearing in the list of the most representative services linked to a payment account, it should indicate this by, for example, marking the service as 'not offered' or 'not applicable'. Member States should be able to require key indicators such as a comprehensive cost indicator summarising the overall annual cost of the payment account for consumers to be provided with the fee information document. In order to help consumers understand the fees they have to pay for their payment account, a glossary providing clear, non-technical and unambiguous explanations for at least the fees and services contained in the fee information document should be made available to them. The glossary should serve as a useful tool to encourage a better understanding of the meaning of fees, contributing towards empowering consumers to choose from a wider choice of payment account offers. An obligation should also be introduced requiring payment service providers to inform consumers, free of charge and at least annually, of all the fees charged on their payment account including, if applicable, the overdraft interest rate and the credit interest rate.

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

This is without prejudice to the provisions on overdrafts set out in Directive 2008/48/EC of the European Parliament and the Council ⁽¹⁾. *Ex post* information should be provided in a dedicated document called a 'statement of fees'. It should provide an overview of interest earned and all the fees incurred in relation to the use of the payment account to enable a consumer to understand what fee expenditures relate to and to assess the need to either modify consumption patterns or move to another provider. That benefit would be maximised by the *ex post* fee information presenting the most representative services in the same order as the *ex ante* fee information.

- (20) To satisfy the needs of consumers, it is necessary to ensure that fee information on payment accounts is accurate, clear and comparable. EBA should therefore, after consulting national authorities and after consumer testing, develop draft implementing technical standards regarding a standardised presentation format for the fee information document and the statement of fees and the common symbols, in order to ensure that they are understandable and comparable for consumers. The same format, order of items and headings should be followed for every fee information document and statement of fees in each Member State, allowing consumers to compare the two documents, thereby maximising understanding and use of the information. The fee information document and statement of fees should be clearly distinguishable from other communications. Furthermore, when developing those formats, EBA should also take into account the fact that Member States may choose to provide the fee information document and the statement of fees together with information required pursuant to other Union or national legislative acts on payment accounts and related services.
- (21) In order to ensure consistent use of applicable Union-level terminology across the Union, Member States should establish an obligation requiring payment service providers to use the applicable Union-level terminology together with the remaining national standardised terminology identified in the final list when communicating with consumers, including in the fee information document and the statement of fees. Payment service providers should be able to use brand names in their contractual, commercial and marketing information to consumers, as long as they clearly identify the applicable corresponding standardised term. Where they choose to use brand names in the fee information document or statement of fees, this should be in addition to the standardised terms as a secondary designation, such as in brackets or in a smaller font size.
- (22) Comparison websites that are independent are an effective means for consumers to assess the merits of different payment account offers in one place. Such websites can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive, by enabling users to obtain more detailed information where this is of interest to them. They should aim at including the broadest possible range of offers, so as to give a representative overview, while also covering a significant part of the market. They can also reduce search costs as consumers will not need to collect information separately from payment service providers. It is crucial that the information given on such websites be trustworthy, impartial and transparent and that consumers be informed of the availability of such websites. In this regard, Member States should inform the public of such websites.
- (23) In order to obtain impartial information on fees charged and interest rates applied in relation to payment accounts, consumers should be able to use publicly accessible comparison websites that are operationally independent from payment service providers, which means that no payment service provider should be given favourable treatment in search results. Member States should therefore ensure that consumers have free access to at least one such website in their respective territories. Such comparison websites may be operated by, or on behalf of, the competent authorities, other public authorities and/or private operators. The function of comparing fees connected to payment accounts may also be fulfilled by existing websites comparing a broad range of financial or non-financial products. Such websites should be operated in accordance with specified quality criteria including the requirement to provide details of their owners, to provide accurate and up-to-date information, to state the time of the last update, to set out clear, objective criteria on which the comparison will be based and to include a broad range of payment account offers covering a significant part of the market. Member States should be able to

⁽¹⁾ Directive 2008/48/EC of the European Parliament and 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).

determine how often comparison websites are to review and update the information they provide to consumers, taking into account the frequency with which payment service providers generally update their fee information. Member States should also determine what constitutes a broad range of payment account offers covering a significant part of the market, by assessing, for example, how many payment service providers exist and therefore whether a simple majority or less would be sufficient and/or market share and/or their geographic location. A comparison website should compare the fees payable for services contained in the list of most representative services linked to payment accounts, integrating Union-level terminology.

It is appropriate that Member States should be able to require such websites to compare other information, for example information on determinants of the level of services provided by payment service providers, such as the number and location of branches or automated teller machines. Where there is only one website in a Member State and that website ceases to operate or ceases to comply with the quality criteria, the Member State should ensure that consumers have access within a reasonable time to another comparison website at national level.

- (24) It is current practice for payment service providers to offer a payment account in a package with products or services other than services linked to a payment account, such as insurance products or financial advice. That practice can be a means for payment service providers to diversify their offers and to compete against each other, and in the end it can be beneficial for consumers. However, the Commission's 2009 study on tying practices in the financial sector, as well as relevant consultations and consumer complaints, have shown that payment service providers may offer payment accounts packaged with products not requested by consumers which are not essential for payment accounts, such as household insurance. Moreover, it has been observed that those practices may reduce transparency and comparability of prices, limit purchasing options for consumers and negatively impact upon their mobility. Therefore, Member States should ensure that when payment service providers offer packaged payment accounts consumers are provided with information on whether it is possible to purchase the payment account separately and if so, provide separate information regarding the applicable costs and fees associated with each of the other products or services included in the package that can be purchased separately.
- (25) The process for switching payment accounts should be harmonised across the Union. At present, existing measures at national level are extremely diverse and do not guarantee an adequate level of consumer protection in all Member States. The provision of legislative measures establishing the main principles to be followed by payment service providers when providing such a service in each Member State would improve the functioning of the internal market for both consumers and payment service providers. On the one hand, it would guarantee a level playing field for consumers who may be interested in opening a payment account in a different Member State, as it would ensure that an equivalent level of protection is offered. On the other hand, it would reduce the differences between the regulatory measures in place at national level and would therefore reduce the administrative burden for payment service providers which intend to offer their services on a cross-border basis. As a consequence, the measures on switching would facilitate the provision of services related to payment accounts within the internal market.
- (26) Switching should not imply the transfer of the contract from the transferring payment service provider to the receiving payment service provider.
- (27) Consumers only have an incentive to switch payment accounts if the process does not entail an excessive administrative and financial burden. Therefore, payment service providers should offer to consumers a clear, quick and safe procedure to switch payment accounts, including payment accounts with basic features. Such a procedure should be guaranteed when consumers want to switch from one payment service provider to another, and also when consumers want to switch between different payment accounts within the same payment service provider. This would allow consumers to benefit from the most convenient offers on the market and to easily change from their existing payment account to other potentially more suitable ones, irrespective of whether this occurs within the same payment service provider or between different payment service providers. Any fees charged by payment service providers in relation to the switching service should be reasonable and in line with the actual cost incurred by payment service providers.

- (28) Member States should be allowed, with regard to switching where both payment service providers are located in their territory, to establish or maintain arrangements that differ from those provided for in this Directive if this is clearly in the interests of the consumer.
- (29) The switching process should be as straightforward as possible for the consumer. Accordingly, Member States should ensure that the receiving payment service provider is responsible for initiating and managing the process on behalf of the consumer. Member States should be able to use additional means, such as a technical solution, when establishing the switching service. Such additional means may exceed the requirements of this Directive; for example, the switching service may be provided in a shorter time-frame or payment service providers may be required to ensure, upon a consumer's request, the automated or manual routing of credit transfers received on the former payment account to the new payment account for a set limited period starting from receipt of the authorisation to switch. Such additional means may also be used by payment service providers on a voluntary basis even where this is not required by a Member State.
- (30) Consumers should be allowed to ask the receiving payment service provider to switch all or part of the incoming credit transfers, standing orders for credit transfers or direct debit mandates, ideally within a single meeting with the receiving payment service provider. To that end, consumers should be able to sign one authorisation giving consent to each of the abovementioned tasks. Member States could require that the authorisation from the consumer be in writing, but could also choose to accept equivalent means where appropriate, for example where an automated system for switching is in place. Before giving the authorisation, the consumer should be informed of all the steps of the procedure necessary to complete the switching. For example, the authorisation could include all the tasks that form part of the switching service and could allow for the possibility of the consumer choosing only some of those tasks.
- (31) The cooperation of the transferring payment service provider is necessary in order for the switching to be successful. The receiving payment service provider should be provided by the transferring payment service provider with all the information necessary to reinstate the payments on the other payment account. However, such information should not exceed what is necessary in order to carry out the switching.
- (32) In order to facilitate cross-border account-opening, the consumer should be allowed to ask the new payment service provider to set up on the new payment account all or part of standing orders for credit transfers, accept direct debits from the date specified by the consumer, and provide the consumer with information giving details of the new payment account, preferably within a single meeting with the new payment service provider.
- (33) Consumers should not be subject to financial losses, including charges and interest, caused by any mistakes made by either of the payment service providers involved in the switching process. In particular, consumers should not bear any financial loss deriving from the payment of additional fees, interest or other charges as well as fines, penalties or any other type of financial detriment due to delay in the execution of the payment.
- (34) Member States should guarantee that consumers who intend to open a payment account are not discriminated against on the basis of their nationality or place of residence. While it is important for credit institutions to ensure that their customers are not using the financial system for illegal purposes such as fraud, money laundering or terrorism financing, they should not impose barriers to consumers who want to benefit from the advantages of the internal market by opening and using payment accounts on a cross-border basis. Therefore, the provisions of Directive 2005/60/EC of the European Parliament and of the Council ⁽¹⁾ should not be used as a pretext for rejecting commercially less attractive consumers.

⁽¹⁾ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

- (35) Consumers who are legally resident in the Union should not be discriminated against by reason of their nationality or place of residence, or on any other ground referred to in Article 21 of the Charter of Fundamental Rights of the European Union (the 'Charter') when applying for, or accessing, a payment account within the Union. Furthermore, access to payment accounts with basic features should be ensured by Member States irrespective of the consumers' financial circumstances, such as their employment status, level of income, credit history or personal bankruptcy.
- (36) Consumers who are legally resident in the Union and who do not hold a payment account in a certain Member State should be in a position to open and use a payment account with basic features in that Member State. The concept of 'legally resident in the Union' should cover both Union citizens and third country nationals who already benefit from rights conferred upon them by Union acts such as Council Regulation (EEC) No 1408/71 ⁽¹⁾, Council Directive 2003/109/EC ⁽²⁾, Council Regulation (EC) No 859/2003 ⁽³⁾ and Directive 2004/38/EC of the European Parliament and of the Council ⁽⁴⁾. It should also include people seeking asylum under the Geneva Convention of 28 July 1951 Relating to the Status of Refugees, the Protocol thereto of 31 January 1967 and other relevant international treaties. Furthermore, Member States should be able to extend the concept of 'legally resident in the Union' to other third country nationals that are present on their territory.
- (37) Member States should be able, in full respect of the fundamental freedoms guaranteed by the Treaties, to require consumers who wish to open a payment account with basic features in their territory to show a genuine interest in doing so. Without prejudice to the requirements adopted in conformity with Directive 2005/60/EC to prevent money laundering, physical attendance at the premises of the credit institutions should not be required in order to show such a genuine interest.
- (38) Member States should ensure that the number of credit institutions offering payment accounts with basic features is sufficient to ensure the reach of all consumers, to avoid any kind of discrimination against them and to prevent distortions of competition. When determining the sufficient number of credit institutions, the factors to be taken into account should include the coverage of the network of the credit institutions, the size of the territory of the Member State, the distribution of consumers on the territory, the market share of the credit institutions and whether payment accounts with basic features represent only a small part of the payment accounts provided by the credit institution. In principle, payment accounts with basic features should be offered by as many credit institutions as possible, with a view to guaranteeing that consumers can open such accounts at premises of a credit institution that is within close reach of their place of residence and that consumers are in no way discriminated against when accessing such accounts and can use them effectively. In particular, Member States should ensure that there is no visible discrimination illustrated by, for example, a different appearance of the card, a different account number or a different card number. However, it should be possible for a Member State to envisage that payment accounts with basic features are offered by a smaller number of credit institutions, but this should be justified on the basis that, for example, those credit institutions have such a widespread presence on the territory of that Member State that they could serve all consumers without forcing them to travel too far away from their home to reach them. Moreover, consumers accessing payment accounts with basic features should not be stigmatised in any way, and that objective can be better achieved if a larger number of credit institutions are designated.
- (39) Member States should be able to put in place mechanisms to assist consumers with no fixed address, asylum seekers and consumers who are not granted a residence permit, but whose expulsion is impossible for legal or factual reasons, to fully benefit from this Directive.

⁽¹⁾ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

⁽²⁾ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

⁽³⁾ Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

⁽⁴⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (40) When allowing credit institutions to provide, at the request of a consumer, an overdraft facility in relation to a payment account with basic features, Member States should be able to define a maximum amount and a maximum duration of any such overdraft. Member States should also ensure that information concerning any related fees is communicated to consumers in a transparent manner. Finally, credit institutions should comply with Directive 2008/48/EC when offering overdraft facilities in conjunction with a payment account with basic features.
- (41) In order for users of payment accounts with basic features to be served in an appropriate way, Member States should require credit institutions to ensure that relevant staff are adequately trained and that potential conflicts of interest do not affect those customers negatively.
- (42) Member States should be able to permit credit institutions to refuse the opening of a payment account with basic features for consumers who already hold an active and at least equivalent payment account in the same Member State. In order to verify whether or not a consumer already holds a payment account, credit institutions should be able to rely on a declaration of honour provided by the consumer.
- (43) Member States should ensure that credit institutions process applications for a payment account with basic features within the deadlines laid down in this Directive and that, in the event of refusal of such an application, the credit institutions inform the consumer of the specific reasons for the refusal unless such disclosure would be contrary to national security, public policy or Directive 2005/60/EC.
- (44) Consumers should be guaranteed access to a range of basic payment services. Services linked to payment accounts with basic features should include the facility to place funds and withdraw cash. Consumers should be able to undertake essential payment transactions such as receiving income or benefits, paying bills or taxes and purchasing goods and services, including via direct debit, credit transfer and the use of a payment card. Such services should allow the purchase of goods and services online and should give consumers the opportunity to initiate payment orders via the credit institution's online facility, where available. However, a payment account with basic features should not be restricted to online usage as this would create an obstacle for consumers without internet access. Member States should ensure, with respect to the services related to opening, operating and closing the payment account as well as placing funds and withdrawing cash and undertaking payment transactions with payment cards, with the exclusion of credit cards, that there are no limits to the number of operations which will be available to the consumer under the specific pricing rules laid down in this Directive. With respect to the execution of credit transfers and direct debits, as well as transactions made by means of a credit card, linked to the payment account with basic features, Member States should be able to determine a minimum number of operations, which will be available to the consumer under the specific pricing rules laid down in this Directive, provided that the services to which those operations relate are for the personal use of the consumer. In determining what should be considered as personal use, Member States should take into account existing consumer behaviour and common commercial practice. The fees charged for operations above the minimum number of operations should never be higher than those charged under the usual pricing policy of the credit institution.
- (45) In the process of identifying the services to be offered with a payment account with basic features and the minimum number of operations to be included, national specificities should be taken into account. In particular, certain services may be considered essential in guaranteeing full use of a payment account in a certain Member State, due to their widespread use at the national level. For example, in some Member States consumers still widely use cheques, while that means of payment is very rarely used in other Member States. This Directive should therefore allow Member States to identify additional services that are considered essential at national level and which should be provided with a payment account with basic features in the Member State concerned. Also, Member States should ensure that the fees charged by credit institutions for the offer of such additional services in relation to a payment account with basic features are reasonable.

- (46) In order to ensure that payment accounts with basic features are available to the widest possible range of consumers, they should be offered free of charge or for a reasonable fee. To encourage unbanked vulnerable consumers to participate in the retail banking market, Member States should be able to provide that payment accounts with basic features are to be offered to those consumers on particularly advantageous terms, such as free of charge. Member States should be free to define the mechanism to identify those consumers that can benefit from payment accounts with basic features on more advantageous terms, provided that the mechanism ensures that vulnerable consumers can access a payment account with basic features. In any event, such an approach should be without prejudice to the right of all consumers, including non-vulnerable ones, to access payment accounts with basic features at least at a reasonable fee. Furthermore, any additional charges to the consumer for non-compliance with the terms laid down in the contract should be reasonable. Member States should establish what constitutes a reasonable charge according to national circumstances.
- (47) Credit institutions should refuse to open or should terminate a contract for a payment account with basic features only in specific circumstances, such as non-compliance with the legislation on money laundering and terrorist financing or on the prevention and investigation of crimes. Even in those cases, a refusal can only be justified where the consumer does not comply with that legislation and not because the procedure to check compliance with the legislation is too burdensome or costly. However, there could be cases where a consumer abuses his right to open and use a payment account with basic features. For example, a Member State should be able to permit credit institutions to take measures against consumers who have committed a crime, such as a serious fraud against a credit institution, with a view to avoiding a recurrence of such a crime. Such measures may include, for example, limiting access by that consumer to a payment account with basic features for a certain period of time. Besides, there may be cases in which the previous refusal of an application for a payment account may be necessary in order to identify consumers who could benefit from a payment account on more advantageous terms. In such a case, the credit institution should inform the consumer that he may use a specific mechanism in the event of refusal of an application for a payment account for which a fee is charged as provided for in this Directive to obtain access to a payment account with basic features that is free of charge. Both such additional cases should, however, be limited, specific and based on precisely identified provisions of national law. When identifying additional cases in which credit institutions can refuse to offer payment accounts to consumers, Member States should be able to include, inter alia, grounds of public security or public policy.
- (48) Clear and comprehensible information on the right to open and use a payment account with basic features should be provided by Member States and credit institutions to consumers. Member States should ensure that communication measures are well-targeted and, in particular, that they reach out to unbanked, vulnerable and mobile consumers. Credit institutions should actively make available to consumers accessible information and adequate assistance about the specific features of the payment account with basic features on offer, their associated fees and their conditions of use, and also the steps consumers should take to exercise their right to open a payment account with basic features. In particular, consumers should be informed that the purchase of additional services is not compulsory in order to access a payment account with basic features.
- (49) Member States should promote measures that support the education of the most vulnerable consumers, providing them with guidance and assistance in the responsible management of their finances. Information also needs to be provided regarding the guidance that consumer organisations and national authorities may provide to consumers. Furthermore, Member States should encourage initiatives by credit institutions seeking to combine the provision of a payment account with basic features and independent financial education services.
- (50) In order to facilitate the ability of payment service providers to provide their services on a cross-border basis, for the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities responsible for the enforcement of this Directive should be those acting under the auspices of EBA, as set out in Regulation (EU) No 1093/2010, or other national authorities provided that they cooperate with the authorities acting under the auspices of EBA in order to carry out their duties under this Directive.

- (51) Member States should designate competent authorities empowered to ensure enforcement of this Directive, and ensure that they are granted investigation and enforcement powers and adequate resources necessary for the performance of their duties. Competent authorities could act for certain aspects of this Directive by application to courts competent to grant a legal decision, including, where appropriate, by appeal. This could enable Member States, in particular where provisions of this Directive were transposed into civil law, to leave the enforcement of those provisions to the relevant bodies and to the courts. Member States should be able to designate different competent authorities in order to enforce the wide-ranging obligations laid down in this Directive. For instance, for some provisions, Member States could designate competent authorities responsible for the enforcement of consumer protection, while for others, they could decide to designate prudential supervisors. The option to designate different competent authorities should not affect the obligations for ongoing supervision and cooperation between the competent authorities, as provided for in this Directive.
- (52) Consumers should have access to effective and efficient alternative dispute resolution procedures for the settlement of disputes arising out of rights and obligations established under this Directive. Such access is already ensured by Directive 2013/11/EU of the European Parliament and of the Council ⁽¹⁾ in so far as relevant contractual disputes are concerned. However, consumers should also have access to alternative dispute resolution procedures in the event of pre-contractual disputes concerning rights and obligations established by this Directive, for example when they are denied access to a payment account with basic features. This Directive therefore provides that consumers should have access to alternative dispute resolution procedures for the settlement of disputes concerning rights and obligations established by this Directive, without distinguishing between contractual and pre-contractual disputes. Such alternative dispute resolution procedures and the entities offering them should comply with the quality requirements established by Directive 2013/11/EU. Compliance with this Directive requires the processing of consumers' personal data. Such processing is subject to Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾. This Directive should therefore comply with the rules laid down in Directive 95/46/EC.
- (53) On a biennial basis, and for the first time within four years from the entry into force of this Directive, Member States should obtain reliable annual statistics on the functioning of the measures introduced by this Directive. They should use any relevant sources of information and communicate that information to the Commission. The Commission should provide a report on the basis of the information received from the Member States for the first time after four years from the entry into force of this Directive and thereafter biennially.
- (54) A review of this Directive should be carried out five years after its entry into force in order to take account of market developments, such as the emergence of new types of payment accounts and payment services, as well as developments in other areas of Union law and the experiences of Member States. The report based on the review should include a list of infringement proceedings initiated by the Commission in relation to this Directive. It should also include an assessment of the average fee levels in Member States for payment accounts falling within the scope of this Directive, of the question whether the measures introduced have improved consumer understanding of payment account fees, the comparability of payment accounts and the ease of switching payment accounts and of the number of account holders who have switched payment accounts since the transposition of this Directive.

It should also analyse the number of providers offering payment accounts with basic features and the number of such accounts that have been opened, including by previously unbanked consumers, examples of best practices among Member States for reducing consumer exclusion from access to payment services, and the average annual fees levied for payment accounts with basic features. It should also assess the costs and benefits of implementing Union-wide portability of payment accounts, the feasibility of a framework for ensuring automated redirection of payments from one payment account to another within the same Member State combined with automated notifications to payees or payers when their transfers are redirected, and of extending the switching services to

⁽¹⁾ 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).

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

cases where the receiving and transferring payment service provider are located in different Member States. It should also include an assessment of the effectiveness of existing measures and the need for additional measures to increase financial inclusion and to assist vulnerable members of society in relation to over-indebtedness. Also, it should assess whether the provisions on the information to be provided by payment service providers when offering packaged products are sufficient or whether additional measures are needed. It should also assess the need for additional measures with regard to comparison websites and the need for an accreditation of comparison websites. The Commission should submit that report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

- (55) This Directive respects fundamental rights and observes the principles recognised by the Charter in accordance with Article 6(1) of the Treaty on European Union (TEU).
- (56) Since the objectives of this Directive, namely to facilitate the transparency and comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, cannot be sufficiently achieved by the Member States but can rather, due to the need to overcome market fragmentation and ensure a level-playing field in the Union, 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 TEU. 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.
- (57) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (58) The European Data Protection Supervisor has been consulted,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive lays down rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held within the Union, rules concerning the switching of payment accounts within a Member State and rules to facilitate cross-border payment account-opening for consumers.
2. This Directive also defines a framework for the rules and conditions according to which Member States are required to guarantee a right for consumers to open and use payment accounts with basic features in the Union.
3. Chapters II and III apply to payment service providers.
4. Chapter IV applies to credit institutions.

Member States may decide to apply Chapter IV to payment service providers other than credit institutions.

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

5. Member States may decide not to apply all or part of this Directive to the entities referred to in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾.

6. This Directive applies to payment accounts through which consumers are able at least to:

- (a) place funds in a payment account;
- (b) withdraw cash from a payment account;
- (c) execute and receive payment transactions, including credit transfers, to and from a third party.

Member States may decide to apply all or part of this Directive to payment accounts other than those referred to in the first subparagraph.

7. The opening and use of a payment account with basic features pursuant to this Directive shall be in conformity with Directive 2005/60/EC.

Article 2

Definitions

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

- (1) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
- (2) 'legally resident in the Union' means where a natural person has the right to reside in a Member State by virtue of Union or national law, including consumers with no fixed address and persons seeking asylum under the Geneva Convention of 28 July 1951 Relating to the Status of Refugees, the Protocol thereto of 31 January 1967 and other relevant international treaties;
- (3) 'payment account' means an account held in the name of one or more consumers which is used for the execution of payment transactions;
- (4) 'payment service' means a payment service as defined in point (3) of Article 4 of Directive 2007/64/EC;
- (5) 'payment transaction' means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;
- (6) 'services linked to the payment account' means all services related to the opening, operating and closing of a payment account, including payment services and payment transactions falling within the scope of point (g) of Article 3 of Directive 2007/64/EC and overdraft facilities and overrunning;
- (7) 'payment service provider' means a payment service provider as defined in point (9) of Article 4 of Directive 2007/64/EC;

⁽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).

- (8) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾;
- (9) 'payment instrument' means a payment instrument as defined in point (23) of Article 4 of Directive 2007/64/EC;
- (10) 'transferring payment service provider' means the payment service provider from which the information required to perform the switching is transferred;
- (11) 'receiving payment service provider' means the payment service provider to which the information required to perform the switching is transferred;
- (12) 'payment order' means any instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction;
- (13) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer's payment account, a natural or legal person who makes a payment order to a payee's payment account;
- (14) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (15) 'fees' means all charges and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account;
- (16) 'credit interest rate' means any rate at which interest is paid to the consumer in respect of funds held in a payment account;
- (17) 'durable medium' means any instrument which enables the consumer to store information addressed personally to that consumer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (18) 'switching' or 'switching service' means, upon a consumer's request, transferring from one payment service provider to another either the information about all or some standing orders for credit transfers, recurring direct debits and recurring incoming credit transfers executed on a payment account, or any positive payment account balance from one payment account to the other, or both, with or without closing the former payment account;
- (19) 'direct debit' means a national or cross-border payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent;
- (20) 'credit transfer' means a national or cross-border payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer;

⁽¹⁾ 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).

- (21) 'standing order' means an instruction given by the payer to the payment service provider which holds the payer's payment account to execute credit transfers at regular intervals or on predetermined dates;
- (22) 'funds' means banknotes and coins, scriptural money, and electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council ⁽¹⁾;
- (23) 'framework contract' means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account;
- (24) 'business day' means a day on which the relevant payment service provider is open for business as required for the execution of a payment transaction;
- (25) 'overdraft facility' means an explicit credit agreement whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer's payment account;
- (26) 'overrunning' means a tacitly accepted overdraft whereby a payment service provider makes available to a consumer funds which exceed the current balance in the consumer's payment account or the agreed overdraft facility;
- (27) 'competent authority' means an authority designated as competent by a Member State in accordance with Article 21.

CHAPTER II

COMPARABILITY OF FEES CONNECTED WITH PAYMENT ACCOUNTS

Article 3

List of the most representative services linked to a payment account and subject to a fee at national level and standardised terminology

1. Member States shall establish a provisional list of at least 10 and no more than 20 of the most representative services linked to a payment account and subject to a fee, offered by at least one payment service provider at national level. The list shall contain terms and definitions for each of the services identified. In any official language of a Member State, only one term shall be used for each service.
2. For the purposes of paragraph 1, the Member States shall have regard to the services that:
 - (a) are most commonly used by consumers in relation to their payment account;
 - (b) generate the highest cost for consumers, both overall as well as per unit.

In order to ensure the sound application of the criteria set out in the first subparagraph of this paragraph, EBA shall issue guidelines pursuant to Article 16 of Regulation (EU) No 1093/2010 by 18 March 2015.

⁽¹⁾ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

3. Member States shall notify to the Commission and to EBA the provisional lists referred to in paragraph 1 by 18 September 2015. On request, Member States shall provide the Commission with supplementary information concerning the data on the basis of which they have compiled those lists with regard to the criteria set out in paragraph 2.

4. On the basis of the provisional lists notified pursuant to paragraph 3, EBA shall develop draft regulatory technical standards setting out the Union standardised terminology for those services that are common to at least a majority of Member States. The Union standardised terminology shall include common terms and definitions for the common services and shall be made available in the official languages of the institutions of the Union. In any official language of a Member State, only one term shall be used for each service.

EBA shall submit those draft regulatory technical standards to the Commission by 18 September 2016

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

5. Member States shall integrate the Union standardised terminology established under paragraph 4 into the provisional list referred to in paragraph 1 and shall publish the resulting final list of the most representative services linked to a payment account without delay and at the latest within three months after the delegated act referred to in paragraph 4 has entered into force.

6. Every four years, following publication of the final list referred to in paragraph 5, Member States shall assess and, where appropriate, update the list of the most representative services established pursuant to paragraphs 1 and 2. They shall notify to the Commission and to EBA the outcome of their assessment and, where applicable, of the updated list of the most representative services. EBA shall review and, where necessary, update the Union standardised terminology, in accordance with the process set out in paragraph 4. Upon the Union standardised terminology being updated, Member States shall update and publish their final list as referred to in paragraph 5 and shall ensure that payment service providers use the updated terms and definitions.

Article 4

Fee information document and glossary

1. Without prejudice to Article 42(3) of Directive 2007/64/EC and Chapter II of Directive 2008/48/EC, Member States shall ensure that, in good time before entering into a contract for a payment account with a consumer, payment service providers provide the consumer with a fee information document on paper or another durable medium containing the standardised terms in the final list of the most representative services linked to a payment account referred to in Article 3(5) of this Directive and, where such services are offered by a payment service provider, the corresponding fees for each service.

2. The fee information document shall:

(a) be a short and stand-alone document;

(b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

(c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;

(d) be written in the official language of the Member State where the payment account is offered or, if agreed by the consumer and the payment service provider, in another language;

- (e) be accurate, not misleading and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency of the Union;
- (f) contain the title 'fee information document' at the top of the first page next to a common symbol to distinguish the document from other documentation; and
- (g) include a statement that it contains fees for the most representative services related to the payment account and that complete pre-contractual and contractual information on all the services is provided in other documents.

Member States may determine that, for the purposes of paragraph 1, the fee information document shall be provided together with information required pursuant to other Union or national legislative acts on payment accounts and related services on the condition that all the requirements of the first subparagraph of this paragraph are met.

3. Where one or more services are offered as part of a package of services linked to a payment account, the fee information document shall disclose the fee for the entire package, the services included in the package and their quantity, and the additional fee for any service that exceeds the quantity covered by the package fee.

4. Member States shall establish an obligation for payment service providers to make available to consumers a glossary of at least the standardised terms set out in the final list referred to in Article 3(5) and the related definitions.

Member States shall ensure that the glossary provided pursuant to the first subparagraph, including other definitions, if any, is drafted in clear, unambiguous and non-technical language and that it is not misleading.

5. The fee information document and the glossary shall be made available to consumers at any time by payment service providers. They shall be provided in an easily accessible manner, including to non-customers, in electronic form on their websites where available and in the premises of payment service providers accessible to consumers. They shall also be provided on paper or another durable medium free of charge upon request by a consumer.

6. EBA, after consulting national authorities and after consumer testing, shall develop draft implementing technical standards regarding a standardised presentation format of the fee information document and its common symbol.

EBA shall submit those draft implementing technical standards to the Commission by 18 September 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

7. Following the updating of the Union standardised terminology pursuant to Article 3(6), EBA shall, where necessary, review and update the standardised presentation format of the fee information document and its common symbol, following the procedure set out in paragraph 6 of this Article.

Article 5

Statement of fees

1. Without prejudice to Articles 47 and 48 of Directive 2007/64/EC and Article 12 of Directive 2008/48/EC, Member States shall ensure that payment service providers provide the consumer, at least annually and free of charge, with a statement of all fees incurred, as well as, where applicable, information regarding the interest rates referred to in points (c) and (d) of paragraph 2 of this Article, for services linked to a payment account. Where applicable, payment service providers shall use the standardised terms set out in the final list referred to in Article 3(5) of this Directive.

The communication channel used to provide the statement of fees shall be agreed with the consumer. The statement of fees shall be provided on paper at least upon the request of the consumer.

2. The statement of fees shall specify at least the following information:
 - (a) the unit fee charged for each service and the number of times the service was used during the relevant period, and where the services are combined in a package, the fee charged for the package as a whole, the number of times the package fee was charged during the relevant period and the additional fee charged for any service exceeding the quantity covered by the package fee;
 - (b) the total amount of fees incurred during the relevant period for each service, each package of services provided and services exceeding the quantity covered by the package fee;
 - (c) the overdraft interest rate applied to the payment account and the total amount of interest charged relating to the overdraft during the relevant period, where applicable;
 - (d) the credit interest rate applied to the payment account and the total amount of interest earned during the relevant period, where applicable;
 - (e) the total amount of fees charged for all services provided during the relevant period.
3. The statement of fees shall:
 - (a) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
 - (b) be accurate, not misleading and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency;
 - (c) contain the title 'statement of fees' at the top of the first page of the statement next to a common symbol to distinguish the document from other documentation; and
 - (d) be written in the official language of the Member State where the payment account is offered or, if agreed by the consumer and the payment service provider, in another language.

Member States may determine that the statement of fees shall be provided together with information required pursuant to other Union or national legislative acts on payment accounts and related services as long as all the requirements of the first subparagraph are met.

4. EBA, after consulting national authorities and after consumer testing, shall develop implementing technical standards regarding a standardised presentation format of the statement of fees and its common symbol.

EBA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 18 September 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

5. Following the updating of the Union standardised terminology pursuant to Article 3(6), EBA shall, where necessary, review and update the standardised presentation format of the statement of fees and its common symbol, following the procedure set out in paragraph 4 of this Article.

Article 6

Information for consumers

1. Member States shall ensure that in their contractual, commercial and marketing information to consumers, payment service providers use, where applicable, the standardised terms set out in the final list referred to in Article 3(5). Payment service providers may use brand names in the fee information document and in the statement of fees, provided such brand names are used in addition to the standardised terms set out in the final list referred to in Article 3(5) as a secondary designation of those services.

2. Payment service providers may use brand names to designate their services in their contractual, commercial and marketing information to consumers, provided that they clearly identify, where applicable, the corresponding standardised terms set out in the final list referred to in Article 3(5).

Article 7

Comparison websites

1. Member States shall ensure that consumers have access, free of charge, to at least one website comparing fees charged by payment service providers for at least the services included in the final list referred to in Article 3(5) at national level.

Comparison websites may be operated either by a private operator or by a public authority.

2. Member States may require the comparison websites referred to in paragraph 1 to include further comparative determinants relating to the level of service offered by the payment service provider.

3. The comparison websites established in accordance with paragraph 1 shall:

(a) be operationally independent by ensuring that payment service providers are given equal treatment in search results;

(b) clearly disclose their owners;

(c) set out clear, objective criteria on which the comparison will be based;

(d) use plain and unambiguous language and, where applicable, the standardised terms set out in the final list referred to in Article 3(5);

(e) provide accurate and up-to-date information and state the time of the last update;

(f) include a broad range of payment account offers covering a significant part of the market and, where the information presented is not a complete overview of the market, a clear statement to that effect, before displaying results; and

(g) provide an effective procedure to report incorrect information on published fees.

4. Member States shall ensure that information is made available online about the availability of websites that comply with this Article.

*Article 8***Payment accounts packaged with another product or service**

Member States shall ensure that, when a payment account is offered as part of a package together with another product or service which is not linked to a payment account, the payment service provider informs the consumer whether it is possible to purchase the payment account separately and, if so, provides separate information regarding the costs and fees associated with each of the other products and services offered in that package that can be purchased separately.

CHAPTER III

SWITCHING*Article 9***Provision of the switching service**

Member States shall ensure that payment service providers provide a switching service as described in Article 10 between payment accounts held in the same currency to any consumer who opens or holds a payment account with a payment service provider located in the territory of the Member State concerned.

*Article 10***The switching service**

1. Member States shall ensure that the switching service is initiated by the receiving payment service provider at the request of the consumer. The switching service shall at least comply with paragraphs 2 to 6.

Member States may establish or maintain measures alternative to those referred to in paragraphs 2 to 6, provided that:

- (a) it is clearly in the interest of the consumer;
 - (b) there is no additional burden for the consumer; and
 - (c) the switching is completed within, as a maximum, the same overall time-frame as that indicated in paragraphs 2 to 6.
2. The receiving payment service provider shall perform the switching service upon receipt of the authorisation from the consumer. In the case of two or more holders of the account, authorisation shall be obtained from each of them.

The authorisation shall be drawn up in an official language of the Member State where the switching service is being initiated or in any other language agreed between the parties.

The authorisation shall allow the consumer to provide specific consent to the performance by the transferring payment service provider of each of the tasks referred to in paragraph 3 and to provide specific consent to the performance by the receiving payment service provider of each of the tasks referred to in paragraph 5.

The authorisation shall allow the consumer to specifically identify incoming credit transfers, standing orders for credit transfers and direct debit mandates that are to be switched. The authorisation shall also allow consumers to specify the date from which standing orders for credit transfers and direct debits are to be executed from the payment account opened or held with the receiving payment service provider. That date shall be at least six business days after the date on which the receiving payment service provider receives the documents transferred from the transferring payment service provider pursuant to paragraph 4. Member States may require the authorisation from the consumer to be in writing and that a copy of the authorisation be provided to the consumer.

3. Within two business days from receipt of the authorisation referred to in paragraph 2, the receiving payment service provider shall request the transferring payment service provider to carry out the following tasks, if provided for in the consumer's authorisation:

- (a) transmit to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, a list of the existing standing orders for credit transfers and available information on direct debit mandates that are being switched;
- (b) transmit to the receiving payment service provider and, if specifically requested by the consumer, to the consumer, the available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account in the previous 13 months;
- (c) where the transferring payment service provider does not provide a system for automated redirection of the incoming credit transfers and direct debits to the payment account held by the consumer with the receiving payment service provider, stop accepting direct debits and incoming credit transfers with effect from the date specified in the authorisation;
- (d) cancel standing orders with effect from the date specified in the authorisation;
- (e) transfer any remaining positive balance to the payment account opened or held with the receiving payment service provider on the date specified by the consumer; and
- (f) close the payment account held with the transferring payment service provider on the date specified by the consumer.

4. Upon receipt of a request from the receiving payment service provider, the transferring payment service provider shall carry out the following tasks, if provided for in the consumer's authorisation:

- (a) send the receiving payment service provider the information referred to in points (a) and (b) of paragraph 3 within five business days;
- (b) where the transferring payment service provider does not provide a system for automated redirection of the incoming credit transfers and direct debits to the payment account held or opened by the consumer with the receiving payment service provider, stop accepting incoming credit transfers and direct debits on the payment account with effect from the date specified in the authorisation. Member States may require the transferring payment service provider to inform the payer or the payee of the reason for not accepting the payment transaction;
- (c) cancel standing orders with effect from the date specified in the authorisation;
- (d) transfer any remaining positive balance from the payment account to the payment account opened or held with the receiving payment service provider on the date specified in the authorisation;
- (e) without prejudice to Article 45(1) and (6) of Directive 2007/64/EC, close the payment account on the date specified in the authorisation if the consumer has no outstanding obligations on that payment account and provided that the actions listed in points (a), (b) and (d) of this paragraph have been completed. The payment service provider shall immediately inform the consumer where such outstanding obligations prevent the consumer's payment account from being closed.

5. Within five business days of receipt of the information requested from the transferring payment service provider as referred to in paragraph 3, the receiving payment service provider shall, as and if provided for in the authorisation and to the extent that the information provided by the transferring payment service provider or the consumer enables the receiving payment service provider to do so, carry out the following tasks:

- (a) set up the standing orders for credit transfers requested by the consumer and execute them with effect from the date specified in the authorisation;
- (b) make any necessary preparations to accept direct debits and accept them with effect from the date specified in the authorisation;
- (c) where relevant, inform consumers of their rights pursuant to point (d) of Article 5(3) of Regulation (EU) No 260/2012;
- (d) inform payers specified in the authorisation and making recurring incoming credit transfers into a consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and transmit to the payers a copy of the consumer's authorisation. If the receiving payment service provider does not have all the information it needs to inform the payers, it shall ask the consumer or the transferring payment service provider to provide the missing information;
- (e) inform payees specified in the authorisation and using a direct debit to collect funds from the consumer's payment account of the details of the consumer's payment account with the receiving payment service provider and the date from which direct debits are to be collected from that payment account and transmit to the payees a copy of the consumer's authorisation. If the receiving payment service provider does not have all the information it needs to inform the payees, it shall ask the consumer or the transferring payment service provider to provide the missing information.

Where the consumer chooses to personally provide the information referred to in points (d) and (e) of the first subparagraph of this paragraph to the payers or payees rather than provide specific consent in accordance with paragraph 2 to the receiving payment service provider to do so, the receiving payment service provider shall provide the consumer with standard letters providing details of the payment account and the starting date specified in the authorisation within the deadline referred to in the first subparagraph of this paragraph.

6. Without prejudice to Article 55(2) of Directive 2007/64/EC, the transferring payment service provider shall not block payment instruments before the date specified in the consumer's authorisation, so that the provision of payment services to the consumer is not interrupted in the course of the provision of the switching service.

Article 11

Facilitation of cross-border account-opening for consumers

1. Member States shall ensure that where a consumer indicates to his payment service provider that he wishes to open a payment account with a payment service provider located in another Member State, the payment service provider with which the consumer holds a payment account shall on receipt of such request provide the following assistance to the consumer:

- (a) provide the consumer free of charge with a list of all the currently active standing orders for credit transfers and debtor-driven direct debit mandates, where available, and with available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account in the previous 13 months. That list shall not entail any obligation on the part of the new payment service provider to set up services that it does not provide;

- (b) transfer any positive balance remaining on the payment account held by the consumer to the payment account opened or held by the consumer with the new payment service provider, provided that the request includes full details allowing the new payment service provider and the consumer's payment account to be identified;
- (c) close the payment account held by the consumer.

2. Without prejudice to Articles 45(1) and 45(6) of Directive 2007/64/EC and if the consumer has no outstanding obligations on a payment account, the payment service provider with which the consumer holds that payment account shall conclude the steps set out in points (a), (b) and (c) of paragraph 1 of this Article on the date specified by the consumer, which shall be at least six business days after that payment service provider receives the consumer's request unless otherwise agreed between the parties. The payment service provider shall immediately inform the consumer where outstanding obligations prevent his payment account from being closed.

Article 12

Fees connected with the switching service

1. Member States shall ensure that consumers are able to access free of charge their personal information regarding existing standing orders and direct debits held by either the transferring or the receiving payment service provider.
2. Member States shall ensure that the transferring payment service provider provides the information requested by the receiving payment service provider pursuant to point (a) of Article 10(4) without charging the consumer or the receiving payment service provider.
3. Member States shall ensure that fees, if any, applied by the transferring payment service provider to the consumer for the termination of the payment account held with it are determined in accordance with Article 45(2), (4) and (6) of Directive 2007/64/EC.
4. Member States shall ensure that fees, if any, applied by the transferring or the receiving payment service provider to the consumer for any service provided under Article 10, other than those referred to in paragraphs 1, 2 and 3 of this Article, are reasonable and in line with the actual costs of that payment service provider.

Article 13

Financial loss for consumers

1. Member States shall ensure that any financial loss, including charges and interest, incurred by the consumer and resulting directly from the non-compliance of a payment service provider involved in the switching process with its obligations under Article 10 is refunded by that payment service provider without delay.
2. Liability under paragraph 1 shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the payment service provider pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a payment service provider is bound by other legal obligations covered by Union or national legislative acts.
3. Member States shall ensure that liability under paragraphs 1 and 2 is established in accordance with the legal requirements applicable at national level.

*Article 14***Information about the switching service**

1. Member States shall ensure that payment service providers make available to consumers the following information about the switching service:

- (a) the roles of the transferring and receiving payment service provider for each step of the switching process, as indicated in Article 10;
- (b) the time-frame for completion of the respective steps;
- (c) the fees, if any, charged for the switching process;
- (d) any information that the consumer will be asked to provide; and
- (e) the alternative dispute resolution procedures referred to in Article 24.

Member States may require that payment service providers also make available other information, including, where applicable, the information necessary for the identification of the deposit guarantee scheme within the Union of which the payment service provider is a member.

2. The information referred to in paragraph 1 shall be made available free of charge on paper or another durable medium at all premises of the payment service provider accessible to consumers, shall be available in electronic form on its website at all times, and shall be provided to consumers on request.

CHAPTER IV

ACCESS TO PAYMENT ACCOUNTS*Article 15***Non-discrimination**

Member States shall ensure that credit institutions do not discriminate against consumers legally resident in the Union by reason of their nationality or place of residence or by reason of any other ground as referred to in Article 21 of the Charter, when those consumers apply for or access a payment account within the Union. The conditions applicable to holding a payment account with basic features shall be in no way discriminatory.

*Article 16***Right of access to a payment account with basic features**

1. Member States shall ensure that payment accounts with basic features are offered to consumers by all credit institutions or a sufficient number of credit institutions to guarantee access thereto for all consumers in their territory, and to prevent distortions of competition. Member States shall ensure that payment accounts with basic features are not only offered by credit institutions that provide payment accounts with solely online facilities.

2. Member States shall ensure that consumers legally resident in the Union, including consumers with no fixed address and asylum seekers, and consumers who are not granted a residence permit but whose expulsion is impossible for legal or factual reasons, have the right to open and use a payment account with basic features with credit institutions located in their territory. Such a right shall apply irrespective of the consumer's place of residence.

Member States may, in full respect of the fundamental freedoms guaranteed by the Treaties, require consumers who wish to open a payment account with basic features in their territory to show a genuine interest in doing so.

Member States shall ensure that the exercise of the right is not made too difficult or burdensome for the consumer.

3. Member States shall ensure that credit institutions offering payment accounts with basic features open the payment account with basic features or refuse a consumer's application for a payment account with basic features, in each case without undue delay and at the latest 10 business days after receiving a complete application.

4. Member States shall ensure that credit institutions refuse an application for a payment account with basic features where opening such an account would result in an infringement of the provisions on the prevention of money laundering and the countering of terrorist financing laid down in Directive 2005/60/EC.

5. Member States may permit credit institutions that offer payment accounts with basic features to refuse an application for such an account where a consumer already holds a payment account with a credit institution located in their territory which allows him to make use of the services listed in Article 17(1), save where a consumer declares that he has received notice that a payment account will be closed.

In such cases, before opening a payment account with basic features, the credit institution may verify whether the consumer holds or does not hold a payment account with a credit institution located in the same Member State which enables consumers to make use of the services listed in Article 17(1). Credit institutions may rely on a declaration of honour signed by consumers for that purpose.

6. Member States may identify limited and specific additional cases where credit institutions may be required or may choose to refuse an application for a payment account with basic features. Such cases shall be based on provisions of national law applicable in their territory and shall be aimed either at facilitating access by the consumer to a payment account with basic features free of charge under the mechanism of Article 25 or at avoiding abuses by consumers of their right to access a payment account with basic features.

7. Member States shall ensure that, in the cases referred to in paragraphs 4, 5 and 6, after taking its decision, the credit institution immediately informs the consumer of the refusal and of the specific reason for that refusal, in writing and free of charge, unless such disclosure would be contrary to objectives of national security, public policy or Directive 2005/60/EC. In the event of refusal, the credit institution shall advise the consumer of the procedure to submit a complaint against the refusal, and of the consumer's right to contact the relevant competent authority and designated alternative dispute resolution body and provide the relevant contact details.

8. Member States shall ensure that, in the cases referred to in paragraph 4, the credit institution adopts appropriate measures pursuant to Chapter III of Directive 2005/60/EC.

9. Member States shall ensure that access to a payment account with basic features is not made conditional on the purchase of additional services or of shares in the credit institution, unless the latter is conditional for all customers of the credit institution.

10. Member States shall be deemed to comply with the obligations laid down in Chapter IV where an existing binding framework ensures its full application in a sufficiently clear and precise manner so that the persons concerned can ascertain the full extent of their rights and rely on them before the national courts.

*Article 17***Characteristics of a payment account with basic features**

1. Member States shall ensure that a payment account with basic features includes the following services:
 - (a) services enabling all the operations required for the opening, operating and closing of a payment account;
 - (b) services enabling funds to be placed in a payment account;
 - (c) services enabling cash withdrawals within the Union from a payment account at the counter or at automated teller machines during or outside the credit institution's opening hours;
 - (d) execution of the following payment transactions within the Union:
 - (i) direct debits;
 - (ii) payment transactions through a payment card, including online payments;
 - (iii) credit transfers, including standing orders, at, where available, terminals and counters and via the online facilities of the credit institution.

The services listed in points (a) to (d) of the first subparagraph shall be offered by credit institutions to the extent that they already offer them to consumers holding payment accounts other than a payment account with basic features.

2. Member States may establish an obligation requiring credit institutions established in their territory to provide additional services, which are considered essential for consumers based on common practice at national level, with a payment account with basic features.

3. Member States shall ensure that payment accounts with basic features are offered by credit institutions established in their territory at least in the national currency of the Member State concerned.

4. Member States shall ensure that a payment account with basic features allows consumers to execute an unlimited number of operations in relation to the services referred to in paragraph 1.

5. With respect to the services referred to in points (a), (b), (c) and (d)(ii) of paragraph 1 of this Article excluding payment transactions through a credit card, Member States shall ensure that credit institutions do not charge any fees beyond the reasonable fees, if any, referred to in Article 18, irrespective of the number of operations executed on the payment account.

6. With respect to the services referred to in point (d)(i) of paragraph 1 of this Article, point d(ii) of paragraph 1 of this Article only as regards payment transactions through a credit card and point (d)(iii) of paragraph 1 of this Article, Member States may determine a minimum number of operations for which credit institutions can only charge the reasonable fees, if any, referred to in Article 18. Member States shall ensure that the minimum number of operations is sufficient to cover the personal use by the consumer, taking into account existing consumer behaviour and common commercial practices. The fees charged for operations above the minimum number of operations shall never be higher than those charged under the usual pricing policy of the credit institution.

7. Member States shall ensure that the consumer is able to manage and initiate payment transactions from the consumer's payment account with basic features in the credit institution's premises and/or via online facilities, where available.

8. Without prejudice to the requirements laid down in Directive 2008/48/EC, Member States may allow credit institutions to provide, upon the consumer's request, an overdraft facility in relation to a payment account with basic features. Member States may define a maximum amount and a maximum duration of any such overdraft. Access to, or use of, the payment account with basic features shall not be restricted by, or made conditional on, the purchase of such credit services.

Article 18

Associated fees

1. Member States shall ensure that the services referred to in Article 17 are offered by credit institutions free of charge or for a reasonable fee.

2. Member States shall ensure that the fees charged to the consumer for non-compliance with the consumer's commitments laid down in the framework contract are reasonable.

3. Member States shall ensure that the reasonable fees referred to in paragraphs 1 and 2 are established taking into account at least the following criteria:

(a) national income levels;

(b) average fees charged by credit institutions in the Member State concerned for services provided on payment accounts.

4. Without prejudice to the right referred to in Article 16(2) and the obligation contained in paragraph 1 of this Article, Member States may require credit institutions to implement various pricing schemes depending on the level of banking inclusion of the consumer, allowing for, in particular, more advantageous conditions for unbanked vulnerable consumers. In such cases, Member States shall ensure that consumers are provided with guidance, as well as adequate information, on the available options.

Article 19

Framework contracts and termination

1. Framework contracts providing access to a payment account with basic features shall be subject to Directive 2007/64/EC unless otherwise specified in paragraphs 2 and 4 of this Article.

2. The credit institution may unilaterally terminate a framework contract only where at least one of the following conditions is met:

(a) the consumer deliberately used the payment account for illegal purposes;

(b) there has been no transaction on the payment account for more than 24 consecutive months;

(c) the consumer provided incorrect information in order to obtain the payment account with basic features where the correct information would have resulted in the absence of such a right;

(d) the consumer is no longer legally resident in the Union;

(e) the consumer has subsequently opened a second payment account which allows him to make use of the services listed in Article 17(1) in the Member State where he already holds a payment account with basic features.

3. Member States may identify additional limited and specific cases where a framework contract for a payment account with basic features may be unilaterally terminated by the credit institution. Such cases shall be based on provisions of national law applicable in their territory and shall be aimed at avoiding abuses by consumers of their right to access a payment account with basic features.

4. Member States shall ensure that, where a credit institution terminates the contract for a payment account with basic features on one or more of the grounds mentioned in points (b),(d) and (e) of paragraph 2 and in paragraph 3, it informs the consumer of the grounds and the justification for the termination at least two months before the termination enters into force, in writing and free of charge, unless such disclosure would be contrary to objectives of national security or public policy. Where the credit institution terminates the contract in accordance with point (a) or (c) of paragraph 2, its termination shall take effect immediately.

5. The notification of termination shall advise the consumer of the procedure to submit a complaint against the termination, if any, and of the consumer's right to contact the competent authority and designated alternative dispute resolution body and provide the relevant contact details.

Article 20

General information on payment accounts with basic features

1. Member States shall ensure that adequate measures are in place to raise awareness among the public about the availability of payment accounts with basic features, their general pricing conditions, the procedures to be followed in order to exercise the right to access a payment account with basic features and the methods for having access to alternative dispute resolution procedures for the settlement of disputes. Member States shall ensure that communication measures are sufficient and well-targeted, in particular reaching out to unbanked, vulnerable and mobile consumers.

2. Member States shall ensure that credit institutions make available to consumers, free of charge, accessible information and assistance about the specific features of the payment account with basic features on offer, their associated fees and the conditions of use. Member States shall also ensure that the information makes clear that the purchase of additional services is not compulsory in order to access a payment account with basic features.

CHAPTER V

COMPETENT AUTHORITIES AND ALTERNATIVE DISPUTE RESOLUTION

Article 21

Competent authorities

1. Member States shall designate the national competent authorities empowered to ensure the application and enforcement of this Directive and shall ensure that they are granted investigation and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties.

The competent authorities shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be payment service providers, with the exception of national central banks.

2. Member States shall ensure that competent authorities and all persons who work or who have worked for competent authorities, as well as auditors and experts instructed by competent authorities, are bound by the obligation of professional secrecy. No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form, without prejudice to cases covered by criminal law or by this Directive. This shall not, however, prevent competent authorities from exchanging or transmitting confidential information in accordance with Union and national law.

3. Member States shall ensure that the authorities designated as competent for ensuring the application and enforcement of this Directive are either or both of the following:

- (a) competent authorities as defined in point (2) of Article 4 of Regulation (EU) No 1093/2010;
- (b) authorities other than the competent authorities referred to in point (a) provided that national laws, regulations or administrative provisions require those authorities to cooperate with the competent authorities referred to in point (a) whenever necessary in order to carry out their duties under this Directive, including for the purposes of cooperating with EBA as required under this Directive.

4. Member States shall notify the Commission and EBA of the competent authorities and of any changes thereto. The first such notification shall be made as soon as possible and at the latest by 18 September 2016.

5. The competent authorities shall exercise their powers in conformity with national law either:

- (a) directly under their own authority or under the supervision of the judicial authorities; or
- (b) by application to courts which are competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

6. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.

7. The Commission shall publish a list of the competent authorities in the *Official Journal of the European Union* at least once a year, and update it continuously on its website.

Article 22

Obligation to cooperate

1. Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive, making use of their powers, whether set out in this Directive or in national law.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly the exchange of information, each Member State shall designate one single competent authority as a contact point for the purposes of this Directive. The Member State shall communicate to the Commission and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph.

2. Member States shall take the necessary administrative and organisational measures to facilitate assistance provided for in paragraph 1.

3. Competent authorities of Member States having been designated as contact points for the purposes of this Directive in accordance with paragraph 1 shall without undue delay supply one another with the information required for the purposes of carrying out the duties of the competent authorities as set out in the measures adopted pursuant to this Directive.

Competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

The competent authority having been designated as the contact point may transmit the information received to the other competent authorities; however it shall not transmit the information to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances in which case it shall immediately inform the contact point that supplied the information.

4. A competent authority may refuse to act on a request for cooperation in carrying out an investigation or supervisory activity or to exchange information as provided for in paragraph 3 only where:

- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the Member State addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;
- (c) final judgement has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the event of such a refusal, the competent authority shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Article 23

Settlement of disagreements between competent authorities of different Member States

The competent authorities may refer the situation to EBA where a request for cooperation, in particular the exchange of information, has been rejected or has not been acted upon within a reasonable time, and may request EBA's assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. In such cases, EBA may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA in accordance with that Article shall be binding on the competent authorities concerned regardless of whether those competent authorities are members of EBA or not.

Article 24

Alternative dispute resolution

Member States shall ensure that consumers have access to effective and efficient alternative dispute resolution procedures for the settlement of disputes concerning rights and obligations established under this Directive. Such alternative dispute resolution procedures and the entities offering them shall comply with the quality requirements laid down by Directive 2013/11/EU.

*Article 25***Mechanism in the event of refusal of a payment account for which a fee is charged**

Without prejudice to Article 16, Member States may set up a specific mechanism to ensure that consumers who do not have a payment account in their territory and who have been denied access to a payment account for which a fee is charged by credit institutions will have effective access to a payment account with basic features, free of charge.

CHAPTER VI

SANCTIONS*Article 26***Sanctions**

1. Member States shall lay down rules on sanctions applicable to infringements of the national legislation transposing this Directive and shall take all necessary measures to ensure that they are implemented. Such sanctions shall be effective, proportionate and dissuasive.

2. Member States shall provide that the competent authority may disclose to the public any administrative sanction that will be imposed for infringement of the measures adopted in the transposition of this Directive, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

CHAPTER VII

FINAL PROVISIONS*Article 27***Evaluation**

1. Member States shall provide the Commission with information on the following for the first time by 18 September 2018 and every two years thereafter:

- (a) compliance by payment service providers with Articles 4, 5 and 6;
- (b) compliance by Member States with the requirements to ensure the existence of comparison websites pursuant to Article 7;
- (c) the number of payment accounts that have been switched and the proportion of applications for switching that have been refused;
- (d) the number of credit institutions offering payment accounts with basic features, the number of such accounts that have been opened and the proportion of applications for payment accounts with basic features that have been refused.

2. The Commission shall prepare a report for the first time by 18 September 2018 and every two years thereafter, on the basis of the information received from Member States.

*Article 28***Review**

1. By 18 September 2019, the Commission shall submit to the European Parliament and to the Council a report on the application of this Directive accompanied, if appropriate, by a legislative proposal.

That report shall include:

- (a) a list of all infringement proceedings initiated by the Commission in relation to this Directive;
- (b) an assessment of the average fee levels in Member States for payment accounts falling within the scope of this Directive;
- (c) an assessment of the feasibility of developing a framework for ensuring automated redirection of payments from one payment account to another within the same Member State combined with automated notifications to payees or payers when their transfers are redirected;
- (d) an assessment of the feasibility of extending the switching service provided for in Article 10 to cases where the receiving and transferring payment service providers are located in different Member States and of the feasibility of cross-border account-opening under Article 11;
- (e) an assessment of the number of account-holders who switched payment accounts since the transposition of this Directive based on the information provided by Member States pursuant to Article 27;
- (f) an assessment of the costs and benefits of an implementation of full Union-wide portability of payment account numbers;
- (g) an assessment of the number of credit institutions offering payment accounts with basic features;
- (h) an assessment of the number and, where anonymised information is made available, characteristics of the consumers who have opened payment accounts with basic features since the transposition of this Directive;
- (i) an assessment of the average annual fees levied for payment accounts with basic features at Member State level;
- (j) an assessment of the effectiveness of existing measures and the need for additional measures to increase financial inclusion and to assist vulnerable members of society in relation to over-indebtedness;
- (k) examples of best practices among Member States for reducing consumer exclusion from access to payment services.

2. The report shall assess, based also on the information received from Member States pursuant to Article 27, whether to amend and update the list of services that are part of a payment account with basic features, having regard to the evolution of means of payment and technology.

3. The report shall also assess whether additional measures in addition to those adopted pursuant to Articles 7 and 8 with respect to comparison websites and packaged offers are needed, and in particular the need for an accreditation of comparison websites.

Article 29

Transposition

1. By 18 September 2016, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate to the Commission the text of those measures.

2. They shall apply the measures referred to in paragraph 1 from 18 September 2016.

By way of derogation from the first subparagraph:

(a) Article 3 shall apply from 17 September 2014;

(b) Member States shall apply the measures necessary to comply with Article 4(1) to (5), Article 5(1), (2) and (3), Article 6(1) and (2) and Article 7 by nine months after the entry into force of the delegated act referred to in Article 3(4);

(c) Member States in which the equivalent of a fee information document at national level already exists may choose to integrate the common format and its common symbol at the latest 18 months after the entry into force of the delegated act referred to in Article 3(4);

(d) Member States in which the equivalent of a statement of fees at national level already exists may choose to integrate the common format and its common symbol at the latest 18 months after the entry into force of the delegated act referred to in Article 3(4).

3. 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 reference shall be laid down by Member States.

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

Article 30

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 31

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 23 July 2014.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

S. GOZI

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