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EN

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⁽¹⁾ Text with relevance for the EEA and for Switzerland

⁽²⁾ Text with EEA relevance

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2015/751 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
on interchange fees for card-based payment transactions

(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(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⁾,

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

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

Whereas:

- (1) 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 and completion of an integrated market for electronic payments, with no distinction between national and cross-border payments, is necessary for the proper functioning of the internal market.
- (2) Directive 2007/64/EC of the European Parliament and of the Council ⁽⁴⁾ has provided a legal foundation for the creation of a Union-wide internal market for payments as it substantially facilitated the activity of payment service providers, creating uniform rules with respect to the provision of payment services.
- (3) Regulation (EC) No 924/2009 of the European Parliament and of the Council ⁽⁵⁾ established the principle that charges paid by users for a cross-border payment in euro are the same as for the corresponding payment within a Member State including card-based payment transactions covered by this Regulation.
- (4) Regulation (EU) No 260/2012 of the European Parliament and of the Council ⁽⁶⁾ provided the rules for the functioning of credit transfers and direct debits in euro in the internal market but excluded card-based payment transactions from its scope.

⁽¹⁾ OJ C 193, 24.6.2014, p. 2.

⁽²⁾ OJ C 170, 5.6.2014, p. 78.

⁽³⁾ Position of the European Parliament of 10 March 2015 (not yet published in the Official Journal) and Decision of the Council of 20 April 2015.

⁽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).

⁽⁵⁾ Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).

⁽⁶⁾ 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).

- (5) Directive 2011/83/EU of the European Parliament and of the Council ⁽¹⁾ aims to harmonise certain rules on contracts concluded between consumers and traders, including rules on fees for the use of means of payment, on the basis of which Member States prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.
- (6) Secure, efficient, competitive and innovative electronic payments are crucial if consumers, merchants and companies are to enjoy the full benefits of the internal market, especially as the world moves towards e-commerce.
- (7) Some Member States have issued or are preparing legislation to regulate directly or indirectly interchange fees and covering a number of issues, including caps on interchange fees at various levels, merchant fees, the 'Honour All Cards' rule and steering measures. The existing administrative decisions in some Member States vary significantly. To make the levels of interchange fees more consistent, a further introduction of regulatory measures at national level aimed at addressing the levels of, or discrepancies between, those fees is anticipated. Such national measures would be likely to lead to significant barriers to the completion of the internal market in the area of card-based payments and internet and mobile payments based on cards and would therefore hinder the freedom to provide services.
- (8) Payment cards are the most frequently used electronic payment instrument for retail purchases. However, integration of the Union payment card market is far from complete as many payment solutions cannot develop beyond their national borders and new pan-Union players are prevented from entering the market. There is a need to remove obstacles to the efficient functioning of the card market, including in the area of card-based payments and internet and mobile payments based on cards.
- (9) To enable the internal market to function effectively, the use of electronic payments should be promoted and facilitated to the benefit of merchants and consumers. Cards and other electronic payments can be used in a more versatile manner, including possibilities to pay online in order to take advantage of the internal market and e-commerce, whilst electronic payments also provide merchants with potentially secure payments. Card-based payment transactions instead of payments in cash could therefore be beneficial for merchants and consumers, provided that the fees for the use of the payment card schemes are set at an economically efficient level, whilst contributing to fair competition, innovation and market entry of new operators.
- (10) Interchange fees are usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain payment card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services. Competition between payment card schemes to convince payment service providers to issue their cards leads to higher rather than lower interchange fees on the market, in contrast with the usual price-disciplining effect of competition in a market economy. In addition to a consistent application of the competition rules to interchange fees, regulating such fees would improve the functioning of the internal market and contribute to reducing transaction costs for consumers.
- (11) The existing wide variety of interchange fees and their level prevent the emergence of new pan-Union players on the basis of business models with lower or no interchange fees, to the detriment of potential economies of scale and scope and their resulting efficiencies. This has a negative impact on merchants and consumers and prevents innovation. As pan-Union players would, as a minimum, have to offer issuing banks the highest level of interchange fee prevailing in the market they want to enter, it also results in persisting market fragmentation. Existing domestic schemes with lower or no interchange fees may also be forced to exit the market because of the pressure from banks to obtain higher interchange fees revenues. As a result, consumers and merchants face restricted choice, higher prices and lower quality of payment services, while their ability to use pan-Union payment solutions is also restricted. In addition, merchants cannot overcome the fee differences by making use of card acceptance services offered by banks in other Member States. Specific rules applied by the payment card schemes require the application of the interchange fee of the 'point of sale' (country of the merchant) for each payment transaction, on the basis of their territorial licensing policies. This requirement prevents acquirers from

⁽¹⁾ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

successfully offering their services on a cross-border basis. It can also prevent merchants from reducing their payment costs to the benefit of consumers.

- (12) The application of existing legislation by the Commission and national competition authorities has not been able to redress this situation.
- (13) Therefore, to avoid fragmentation of the internal market and significant distortions of competition through diverging laws and administrative decisions, there is a need, in line with Article 114 of the Treaty on the Functioning of the European Union, to take measures to address the problem of high and divergent interchange fees, to allow payment service providers to provide their services on a cross-border basis and for consumers and merchants to use cross-border services.
- (14) The application of this Regulation should be without prejudice to the application of Union and national competition rules. It should not prevent Member States from maintaining or introducing lower caps or measures of equivalent object or effect through national legislation.
- (15) In order to facilitate the smooth functioning of an internal market for card-based payments and internet and mobile payments based on cards, to the benefit of consumers and merchants, this Regulation should apply to cross-border and domestic issuing and acquiring of card-based payment transactions. If merchants can choose an acquirer outside their own Member State ('cross-border acquiring'), which will be facilitated by the imposition of the same maximum level of both domestic and cross-border interchange fees for acquired transactions and the prohibition of territorial licensing, it should be possible to provide the necessary legal clarity and to prevent distortions of competition between payment card schemes.
- (16) As a consequence of unilateral undertakings and commitments accepted in the framework of competition proceedings, many cross-border card-based payment transactions in the Union are already carried out respecting the maximum interchange fees. In order to provide for fair competition in the market for acquiring services, the provisions relating to cross-border and to domestic transactions should apply simultaneously and within a reasonable period after the entry into force of this Regulation, taking account of the difficulty and complexity of the migration of payment card schemes, which this Regulation necessitates.
- (17) There are two main types of credit cards available on the market. With deferred debit cards, the total amount of transactions is debited from the cardholder account at a pre-agreed specific date, usually once a month, without interest to be paid. With other credit cards, the cardholder can use a credit facility in order to reimburse part of the amounts due at a later date than specified, together with interest or other costs.
- (18) All debit and credit card-based payment transactions should be subject to a maximum interchange fee rate.
- (19) The impact assessment shows that a prohibition of interchange fees for debit card transactions would be beneficial for card acceptance, card usage, the development of the single market and generate more benefits to merchants and consumers than a cap set at any higher level. Moreover, it would avoid negative effects resulting from a higher cap in those national schemes that have very low or zero interchange fees for debit transactions due to cross-border expansion or new market entrants increasing fee levels to the level of the cap. A ban on interchange fees for debit card transactions also addresses the threat of exporting the interchange fee model to new, innovative payment services such as mobile and online systems.
- (20) The caps in this Regulation are based on the so-called 'Merchant Indifference Test' developed in economic literature, which identifies the fee level a merchant would be willing to pay if the merchant were to compare the cost of the customer's use of a payment card with those of non-card (cash) payments (taking into account the fee for service paid to acquiring banks, i.e. the merchant service charge and the interchange fee). It thereby stimulates the use of efficient payment instruments through the promotion of those cards that provide higher transactional benefits, while at the same time preventing disproportionate merchant fees, which would impose hidden costs on other consumers. Excessive merchant fees might otherwise arise due to the collective interchange fee arrangements, as merchants are reluctant to turn down costly payment instruments for fear of losing business. Experience has shown that those levels are proportionate, as they do not call into question the operation of international card schemes and payment service providers. They also provide benefits for merchants and consumers and provide legal certainty.

- (21) Nevertheless, as shown in the impact assessment, in certain Member States interchange fees have developed so as to allow consumers to benefit from efficient debit card markets in terms of card acceptance and card usage with lower interchange fees than the merchant indifference level. Member States should therefore be able to establish lower interchange fees for domestic debit card transactions.
- (22) In addition, to ensure that debit card fees are set at an economically efficient level, taking into account the structure of domestic debit card markets, the possibility to express interchange fee caps as a flat rate should be maintained. A flat rate may also promote the use of card-based payments of small value amounts ('micropayments'). It should also be possible to apply such a flat rate in combination with a percentage rate, provided that the sum of such interchange fees does not exceed the specified percentage of the total annual transaction value at domestic level within each payment card scheme. Furthermore it should be possible to define a lower per transaction percentage interchange fee cap, and to impose a fixed maximum fee amount as a limit to the fee amount resulting from the applicable per transaction percentage rate.
- (23) Furthermore, taking into account that this Regulation undertakes harmonisation for the first time of interchange fees in a context where existing debit card schemes and interchange fees are very different, it is necessary to provide for flexibility for domestic payment cards markets. Therefore, during a reasonable transition period, in relation to domestic debit card transactions, Member States should be able to apply to all domestic debit card transactions within each payment card scheme a weighted average interchange fee of no more than the 0,2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme. In relation to the interchange fee cap calculated on the annual average transaction value within one payment card scheme, it is sufficient that a payment service provider participates in a payment card scheme (or some other type of agreements among payment service providers) in which, for all domestic debit card transactions, a weighted average interchange fee of no more than the 0,2 % is applied. Here, too, a flat fee or a percentage fee or a combination of the two can be applied provided that the weighted average maximum cap is respected.
- (24) In order to define the relevant interchange fee caps for domestic debit card transactions, it is appropriate to allow national competent authorities entitled to ensure compliance with this Regulation to collect information regarding the volume and value of all debit card transactions within a payment card scheme or of the debit card transactions pertaining to one or more payment service providers. As a consequence, payment card schemes and payment service providers should be obliged to provide relevant data to national competent authorities as specified by those authorities and in accordance with the time limits set by them. Reporting obligations should extend to payment service providers such as issuers or acquirers and not only to payment card schemes, in order to ensure that any relevant information is made available to the competent authorities which should, in any case, be able to require that such information is collected through the payment card scheme. Moreover, it is important that Member States ensure an adequate level of disclosure of the relevant information concerning the applicable interchange fee caps. In light of the fact that payment card schemes are generally not payment service providers subject to prudential supervision, competent authorities may require that the information sent by these entities is certified by an independent auditor.
- (25) Some payment instruments at domestic level enable the payer to initiate card-based payment transactions that are not distinguishable as debit or credit card transactions by the payment card scheme. The choices made by the cardholder are unknown to the payment card scheme and to the acquirer; as a consequence, the payment card scheme does not have the possibility of applying the different caps imposed by this Regulation for debit and credit card transactions, which are distinguishable on the basis of the timing agreed for the debiting of the payment transactions. Taking into account the need to preserve the functionality of the existing business models while avoiding unjustified or excessive costs of legal compliance and, at the same time, considering the importance of ensuring an adequate level playing field between the different categories of payment cards, it is appropriate to apply the same rule provided by this Regulation for the debit card transactions to such domestic 'universal cards' payment transactions. Nevertheless, a longer time period for adaptation should be left to those payment instruments. Therefore, by way of exception and during a transition period of 18 months after the entry into force of this Regulation, Member States should be able to define a maximum share of domestic 'universal cards' payment transactions which are considered as being equivalent to credit card transactions. For example, the credit card cap could be applied to the defined share of the total value of the transactions for merchants or acquirers. The mathematical result of the provisions would then be equivalent to the application of a single interchange fee cap on domestic payment transactions carried out with universal cards.

- (26) This Regulation should cover all transactions where the payer's payment service provider and the payee's payment service provider are located in the Union.
- (27) In accordance with the principle of technological neutrality set out in the Digital Agenda for Europe, this Regulation should apply to card-based payment transactions regardless of the environment in which this transaction takes place, including through retail payment instruments and services which can be off-line, on-line or mobile.
- (28) Card-based payment transactions are generally carried out on the basis of two main business models, so-called 'three party payment card schemes' (cardholder — acquiring and issuing scheme — merchant) and 'four party payment card schemes' (cardholder — issuing bank — acquiring bank — merchant). Many four party payment card schemes use an explicit interchange fee, which is mostly multilateral. To acknowledge the existence of implicit interchange fees and contribute to the creation of a level playing field, three party payment card schemes using payment service providers as issuers or acquirers should be considered as four party payment card schemes and should follow the same rules, whilst transparency and other measures related to business rules should apply to all providers. However, taking into account the specificities which exist for such three party schemes, it is appropriate to allow for a transitional period during which Member States may decide not to apply the rules concerning the interchange fee cap if such schemes have a very limited market share in the Member State concerned.
- (29) The issuing service is based on a contractual relationship between the issuer of the payment instrument and the payer, irrespective of whether the issuer is holding the funds on behalf of the payer. The issuer makes payment cards available to the payer, authorises transactions at terminals or their equivalent and may guarantee payment to the acquirer for transactions that are in conformity with the rules of the relevant scheme. Therefore, the mere distribution of payment cards or technical services, such as the mere processing and storage of data, does not constitute issuing.
- (30) The acquiring service constitutes a chain of operations from the initiation of a card-based payment transaction to the transfer of the funds to the payment account of the payee. Depending on the Member State and the business model in place, the acquiring service is organised differently. Therefore the payment service provider paying the interchange fee does not always contract directly with the payee. Intermediaries providing part of the acquiring services but without direct contractual relationship with payees should nevertheless be covered in the definition of acquirer under this Regulation. The acquiring service is provided irrespective of whether the acquirer is holding the funds on behalf of the payee. Technical services, such as the mere processing and storage of data or the operation of terminals, do not constitute acquiring.
- (31) It is important to ensure that the provisions concerning the interchange fees to be paid or received by payment service providers are not circumvented by alternative flows of fees to issuers. To avoid this, the 'net compensation' of fees paid or received by the issuer, including possible authorisation charges, from or to a payment card scheme, an acquirer or any other intermediary should be considered as the interchange fee. When calculating the interchange fee, for the purpose of checking whether circumvention is taking place the total amount of payments or incentives received by an issuer from a payment card scheme with respect to the regulated transactions less the fees paid by the issuer to the payment card scheme should be taken into account. Payments, incentives and fees considered could be direct (i.e. volume-based or transaction-specific) or indirect (including marketing incentives, bonuses, rebates for meeting certain transaction volumes). In checking whether circumvention of the provisions of this Regulation is taking place, issuers' profits resulting from special programmes carried out jointly by issuers and payment card schemes and revenue from processing, licensing and other fees providing revenue to payment card schemes should, in particular, be taken into account. As appropriate, and if corroborated by further objective elements, the issuance of payment cards in third countries could also be taken into account when assessing potential circumvention of this Regulation.
- (32) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. At the same time, a series of incentivising practices applied by issuers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments, thereby generating high fees for issuers. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards). In order to enhance effective market functioning in the non-regulated parts of the sector and to limit the transfer of business from the regulated to the non-regulated parts of the sector, it is necessary to adopt a series of measures, including the separation of scheme and infrastructure, the steering of the payer by the payee and the selective acceptance of payment instruments by the payee.

- (33) A separation of scheme and infrastructure should allow all processors to compete for customers of the schemes. As the cost of processing is a significant part of the total cost of card acceptance, it is important for this part of the value chain to be opened to effective competition. On the basis of the separation of scheme and infrastructure, card schemes and processing entities should be independent in terms of accounting, organisation and decision-making process. They should not discriminate, for instance by providing each other with preferential treatment or privileged information which is not available to their competitors on their respective market segment, imposing excessive information requirements on their competitor in their respective market segment, cross-subsidising their respective activities or having shared governance arrangements. Such discriminatory practices contribute to market fragmentation, negatively impact market entry by new players and prevent pan-Union players from emerging, hence hindering the completion of the internal market in the area of card-based payments and internet and mobile payments based on cards, to the detriment of merchants, companies and consumers.
- (34) Scheme rules applied by payment card schemes and practices applied by payment service providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by 'blending' fees or prohibiting merchants from choosing a cheaper card brand on co-badged cards or steering consumers to the use of such cheaper cards. Even if merchants are aware of the different costs, the scheme rules often prevent them from acting to reduce the fees.
- (35) Payment instruments entail different costs to the payee, with certain instruments being more expensive than others. Except where a particular payment instrument is imposed by law for certain categories of payments or cannot be refused due to its legal tender status, the payee should be free, in accordance with Directive 2007/64/EC, to steer payers towards the use of a specific payment instrument. Card schemes and payment service providers impose several restrictions on payees in this respect, examples of which include restrictions on the refusal by the payee of specific payment instruments for low amounts, on the provision of information to the payer on the fees incurred by the payee for specific payment instruments or limitation imposed on the payee of the number of tills in his or her shop which accept specific payment instruments. Those restrictions should be abolished.
- (36) In situations where the payee steers the payer towards the use of a specific payment instrument, no charges should be requested by the payee from the payer for the use of payment instruments of which interchange fees are regulated within the scope of this Regulation, as in such situations the advantages of surcharging become limited while creating complexity in the market.
- (37) The 'Honour all Cards' rule is a twofold obligation imposed by issuers and payment card schemes for payees to accept all the cards of the same brand, irrespective of the different costs of these cards (the 'Honour all Products' element) and irrespective of the individual issuing bank which has issued the card (the 'Honour all Issuers' element). It is in the interest of the consumer that for the same category of cards the payees cannot discriminate between issuers or cardholders, and payment card schemes and payment service providers can impose such an obligation on them. Therefore the 'Honour all Issuers' element of the 'Honour all Cards' rule is a justifiable rule within a payment card scheme, since it prevents payees from discriminating between individual banks which have issued a card. The 'Honour all Products' element is essentially a tying practice that has the effect of tying acceptance of low fee cards to the acceptance of high fee cards. A removal of the 'Honour all Products' element of the 'Honour all Cards' rule would allow merchants to limit the choice of payment cards they offer to low(er) cost payment cards only, which would also benefit consumers through reduced merchants' costs. Merchants accepting debit cards would then not be forced to accept credit cards, and those accepting credit cards would not be forced to accept commercial cards. However, to protect the consumer and the consumer's ability to use the payment cards as often as possible, merchants should be obliged to accept cards that are subject to the same regulated interchange fee only if issued within the same brand and of the same category (prepaid card, debit card or credit card). Such a limitation would also result in a more competitive environment for cards with interchange fees not regulated under this Regulation, as merchants would gain more negotiating power as regards the conditions under which they accept such cards. Those restrictions should be limited and considered acceptable only to enhance consumers' protection, giving to the consumers an adequate level of certainty about the fact that their payment cards will be accepted by the merchants.

- (38) A clear distinction between consumer and commercial cards should be ensured by the payment service providers both on a technical and on a commercial basis. It is therefore important to define a commercial card as a payment instrument used only for business expenses charged directly to the account of the undertaking or public sector entity or the self-employed natural person.
- (39) Payees and payers should have the means to identify the different categories of cards. Therefore, the various brands and categories should be identifiable electronically and for newly issued card-based payment instruments visibly on the device. In addition, the payer should be informed about the acceptance of the payer's payment instrument(s) at a given point of sale. It is necessary that any limitation on the use of a given brand be announced by the payee to the payer at the same time and under the same conditions as the information that a given brand is accepted.
- (40) In order to ensure that competition between brands is effective, it is important that the choice of payment application be made by users, not imposed by the upstream market, comprising payment card schemes, payment service providers or processors. Such an arrangement should not prevent payers and payees from setting a default choice of application, where technically feasible, provided that that choice can be changed for each transaction.
- (41) In order to ensure that redress is possible where this Regulation has been incorrectly applied, or where disputes occur between payment services users and payment service providers, Member States should establish adequate and effective out-of-court complaint and redress procedures or take equivalent measures. Member States should lay down rules on the penalties applicable to infringements of this Regulation and should ensure that those penalties are effective, proportionate and dissuasive and that they are applied.
- (42) The Commission should present a report studying various effects of this Regulation on the functioning of the market. It is necessary that the Commission has the possibility to collect the information required to establish this report and that the competent authorities cooperate closely with the Commission for the collection of data.
- (43) Since the objectives of this Regulation to lay down uniform requirements for card-based payment transactions and internet and mobile payments based on cards cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale, 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.
- (44) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to an effective remedy or to a fair trial, the freedom to conduct a business, consumer protection and has to be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation lays down uniform technical and business requirements for card-based payment transactions carried out within the Union, where both the payer's payment service provider and the payee's payment service provider are located therein.
2. This Regulation does not apply to services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:
 - (a) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
 - (b) instruments which can be used only to acquire a very limited range of goods or services;
 - (c) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer.

3. Chapter II does not apply to the following:
 - (a) transactions with commercial cards;
 - (b) cash withdrawals at automatic teller machines or at the counter of a payment service provider; and
 - (c) transactions with payment cards issued by three party payment card schemes.
4. Article 7 does not apply to three party payment card schemes.
5. When a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme. However, until 9 December 2018 in relation to domestic payment transactions, such a three party payment card scheme may be exempted from the obligations under Chapter II, provided that the card-based payment transactions made in a Member State under such a three party payment card scheme do not exceed on a yearly basis 3 % of the value of all card-based payment transactions made in that Member State.

Article 2

Definitions

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

- (1) 'acquirer' means a payment service provider contracting with a payee to accept and process card-based payment transactions, which result in a transfer of funds to the payee;
- (2) 'issuer' means a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's card-based payment transactions;
- (3) 'consumer' means a natural person who, in payment service contracts covered by this Regulation, is acting for purposes other than the trade, business or profession of that person;
- (4) 'debit card transaction' means a card-based payment transaction, including those with prepaid cards that is not a credit card transaction;
- (5) 'credit card transaction' means a card-based payment transaction where the amount of the transaction is debited in full or in part at a pre agreed specific calendar month date to the payer, in line with a prearranged credit facility, with or without interest;
- (6) 'commercial card' means any card-based payment instrument issued to undertakings or public sector entities or self-employed natural persons which is limited in use for business expenses where the payments made with such cards are charged directly to the account of the undertaking or public sector entity or self-employed natural person;
- (7) 'card-based payment transaction' means a service based on a payment card scheme's infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction. Card-based payment transactions exclude transactions based on other kinds of payment services;
- (8) 'cross-border payment transaction' means a card-based payment transaction where the issuer and the acquirer are located in different Member States or where the card-based payment instrument is issued by an issuer located in a Member State different from that of the point of sale;
- (9) 'domestic payment transaction' means any card-based payment transaction which is not a cross-border payment transaction;
- (10) 'interchange fee' means a fee paid for each transaction directly or indirectly (i.e. through a third party) between the issuer and the acquirer involved in a card-based payment transaction. The net compensation or other agreed remuneration is considered to be part of the interchange fee;
- (11) 'net compensation' means the total net amount of payments, rebates or incentives received by an issuer from the payment card scheme, the acquirer or any other intermediary in relation to card-based payment transactions or related activities;

- (12) 'merchant service charge' means a fee paid by the payee to the acquirer in relation to card-based payment transactions;
- (13) 'payee' means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction;
- (14) '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 payment account, a natural or legal person who gives a payment order;
- (15) 'payment card' means a category of payment instrument that enables the payer to initiate a debit or credit card transaction;
- (16) 'payment card scheme' means a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions and which is separated from any infrastructure or payment system that supports its operation, and includes any specific decision-making body, organisation or entity accountable for the functioning of the scheme;
- (17) 'four party payment card scheme' means a payment card scheme in which card-based payment transactions are made from the payment account of a payer to the payment account of a payee through the intermediation of the scheme, an issuer (on the payer's side) and an acquirer (on the payee's side);
- (18) 'three party payment card scheme' means a payment card scheme in which the scheme itself provides acquiring and issuing services and card-based payment transactions are made from the payment account of a payer to the payment account of a payee within the scheme. When a three party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four party payment card scheme;
- (19) 'payment instrument' means any personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;
- (20) 'card-based payment instrument' means any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012;
- (21) 'payment application' means computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;
- (22) 'payment account' means an account held in the name of one or more payment service users which is used for the execution of payment transactions, including through a specific account for 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) 'payment order' means any instruction by a payer to its payment service provider requesting the execution of a payment transaction;
- (24) 'payment service provider' means any natural or legal person authorised to provide the payment services listed in the Annex to Directive 2007/64/EC or recognised as an electronic money issuer in accordance with Article 1(1) of Directive 2009/110/EC. A payment service provider can be an issuer or an acquirer or both;
- (25) 'payment service user' means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both;
- (26) 'payment transaction' means an action, initiated by the payer or on its behalf or by the payee of transferring funds, irrespective of any underlying obligations between the payer and the payee;
- (27) 'processing' means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer;
- (28) 'processing entity' means any natural or legal person providing payment transaction processing services;

⁽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).

- (29) 'point of sale' means the address of the physical premises of the merchant at which the payment transaction is initiated. However:
- (a) in the case of distance sales or distance contracts (i.e. e-commerce) as defined in point 7 of Article 2 of Directive 2011/83/EU, the point of sale shall be the address of the fixed place of business at which the merchant conducts its business regardless of website or server locations through which the payment transaction is initiated;
 - (b) in the event that the merchant does not have a fixed place of business, the point of sale shall be the address for which the merchant holds a valid business licence through which the payment transaction is initiated;
 - (c) in the event that the merchant does not have a fixed place of business nor a valid business licence, the point of sale shall be the address for correspondence for the payment of its taxes relating to its sales activity through which the payment transaction is initiated;
- (30) 'payment brand' means any material or digital name, term, sign, symbol or combination thereof, capable of denoting under which payment card scheme card-based payment transactions are carried out;
- (31) 'co-badging' means the inclusion of two or more payment brands or payment applications of the same brand on the same card-based payment instrument;
- (32) 'co-branding' means the inclusion of at least one payment brand and at least one non-payment brand on the same card-based payment instrument;
- (33) 'debit card' means a category of payment instrument that enables the payer to initiate a debit card transaction excluding those with prepaid cards;
- (34) 'credit card' means a category of payment instrument that enables the payer to initiate a credit card transaction;
- (35) 'prepaid card' means a category of payment instrument on which electronic money, as defined in point 2 of Article 2 of Directive 2009/110/EC, is stored.

CHAPTER II

INTERCHANGE FEES

Article 3

Interchange fees for consumer debit card transactions

1. Payment service providers shall not offer or request a per transaction interchange fee of more than 0,2 % of the value of the transaction for any debit card transaction.
2. For domestic debit card transactions Member States may either:
 - (a) define a per transaction percentage interchange fee cap lower than the one provided for in paragraph 1 and may impose a fixed maximum fee amount as a limit on the fee amount resulting from the applicable percentage rate; or
 - (b) allow payment service providers to apply a per transaction interchange fee of no more than EUR 0,05, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 8 June 2015, which shall be revised every five years or whenever there is a significant variation in exchange rates. This per transaction interchange fee may also be combined with a maximum percentage rate of no more than 0,2 %, provided always that the sum of interchange fees of the payment card scheme does not exceed 0,2 % of the total annual transaction value of the domestic debit card transactions within each payment card scheme.
3. Until 9 December 2020, in relation to domestic debit card transactions, Member States may allow payment service providers to apply a weighted average interchange fee of no more than the equivalent of 0,2 % of the annual average transaction value of all domestic debit card transactions within each payment card scheme. Member States may define a lower weighted average interchange fee cap applicable to all domestic debit card transactions.
4. The annual transaction values referred to in paragraphs 2 and 3 shall be calculated on a yearly basis, commencing on 1 January and ending on 31 December and shall be applied starting from 1 April of the following year. The reference period for the first calculation of such value shall commence 15 calendar months before the date of application of paragraphs 2 and 3 and shall end three calendar months before that date.

5. The competent authorities referred to in Article 13 shall, upon their written request, require payment card schemes and/or payment service providers to provide all information necessary to verify the correct application of paragraphs 3 and 4 of this Article. Such information shall be sent to the competent authority before 1 March of the year following the reference period referred to in the first sentence of paragraph 4. Any other information enabling the competent authorities to verify compliance with the provisions of this Chapter shall be sent to the competent authorities upon their written request and within the deadline set by them. The competent authorities may require that such information is certified by an independent auditor.

Article 4

Interchange fees for consumer credit card transactions

Payment service providers shall not offer or request a per transaction interchange fee of more than 0,3 % of the value of the transaction for any credit card transaction. For domestic credit card transactions Member States may define a lower per transaction interchange fee cap.

Article 5

Prohibition of circumvention

For the purposes of the application of the caps referred to in Articles 3 and 4, any agreed remuneration, including net compensation, with an equivalent object or effect of the interchange fee, received by an issuer from the payment card scheme, acquirer or any other intermediary in relation to payment transactions or related activities shall be treated as part of the interchange fee.

CHAPTER III

BUSINESS RULES

Article 6

Licensing

1. Any territorial restrictions within the Union or rules with an equivalent effect in licensing agreements or in payment card scheme rules for issuing payment cards or acquiring card-based payment transactions shall be prohibited.
2. Any requirement or obligation to obtain a country specific licence or authorisation to operate on a cross-border basis or rule with an equivalent effect in licensing agreements or in payment card scheme rules for issuing payment cards or acquiring card-based payment transactions shall be prohibited.

Article 7

Separation of payment card scheme and processing entities

1. Payment card schemes and processing entities:
 - (a) shall be independent in terms of accounting, organisation and decision-making processes;
 - (b) shall not present prices for payment card scheme and processing activities in a bundled manner and shall not cross-subsidise such activities;
 - (c) shall not discriminate in any way between their subsidiaries or shareholders on the one hand and users of payment card schemes and other contractual partners on the other hand and shall not in particular make the provision of any service they offer conditional in any way on the acceptance by their contractual partner of any other service they offer.
2. The competent authority of the Member State where the registered office of the scheme is located may require a payment card scheme to provide an independent report confirming its compliance with paragraph 1.
3. Payment card schemes shall allow for the possibility that authorisation and clearing messages of single card-based payment transactions be separated and processed by different processing entities.
4. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.

5. Processing entities within the Union shall ensure that their system is technically interoperable with other systems of processing entities within the Union through the use of standards developed by international or European standardisation bodies. In addition, payment card schemes shall not adopt or apply business rules that restrict interoperability among processing entities within the Union.

6. The European Banking Authority (EBA) may, after consulting an advisory panel as referred to in Article 41 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾, develop draft regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of point (a) of paragraph 1 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 9 December 2015.

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

Article 8

Co-badging and choice of payment brand or payment application

1. Any payment card scheme rules and rules in licensing agreements or measures of equivalent effect that hinder or prevent an issuer from co-badging two or more different payment brands or payment applications on a card-based payment instrument shall be prohibited.

2. When entering into a contractual agreement with a payment service provider, the consumer may require two or more different payment brands on a card-based payment instrument provided that such a service is offered by the payment service provider. In good time before the contract is signed, the payment service provider shall provide the consumer with clear and objective information on all the payment brands available and their characteristics, including their functionality, cost and security.

3. Any difference in treatment of issuers or acquirers in scheme rules and rules in licensing agreements concerning co-badging of different payment brands or payment applications on a card-based payment instrument shall be objectively justified and non-discriminatory.

4. Payment card schemes shall not impose reporting requirements, obligations to pay fees or similar obligations with the same object or effect on card issuing and acquiring payment service providers for transactions carried out with any device on which their payment brand is present in relation to transactions for which their scheme is not used.

5. Any routing principles or equivalent measures aimed at directing transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of two or more different payment brands and payment applications on a card-based payment instrument shall be non-discriminatory and shall be applied in a non-discriminatory manner.

6. Payment card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.

Payees shall retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular payment brand or payment application but payees shall not prevent the payer from overriding such an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee.

Article 9

Unblending

1. Each acquirer shall offer and charge its payee merchant service charges individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges.

⁽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).

2. Acquirers shall include in their agreements with payees individually specified information on the amount of the merchant service charges, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the payee subsequently makes a different request in writing.

Article 10

‘Honour All Cards’ rule

1. Payment card schemes and payment service providers shall not apply any rule that obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme.

2. Paragraph 1 shall not apply to consumer card-based payment instruments of the same brand and of the same category of prepaid card, debit card or credit card subject to interchange fees under Chapter II of this Regulation.

3. Paragraph 1 is without prejudice to the possibility for payment card schemes and payment service providers to provide that cards may not be refused on the basis of the identity of the issuer or of the cardholder.

4. Payees that decide not to accept all cards or other payment instruments of a payment card scheme shall inform consumers of this, in a clear and unequivocal manner, at the same time as they inform consumers of the acceptance of other cards and payment instruments of the payment card scheme. Such information shall be displayed prominently at the entrance of the shop and at the till.

In the case of distance sales, this information shall be displayed on the payee’s website or other applicable electronic or mobile medium. The information shall be provided to the payer in good time before the payer enters into a purchase agreement with the payee.

5. Issuers shall ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify which brands and categories of prepaid cards, debit cards, credit cards or commercial cards are chosen by the payer.

Article 11

Steering rules

1. Any rule in licensing agreements, in scheme rules applied by payment card schemes and in agreements entered into between card acquirers and payees preventing payees from steering consumers to the use of any payment instrument preferred by the payee shall be prohibited. This prohibition shall also cover any rule prohibiting payees from treating card-based payment instruments of a given payment card scheme more or less favourably than others.

2. Any rule in licensing agreements, in scheme rules applied by payment card schemes and in agreements entered into between card acquirers and payees preventing payees from informing payers about interchange fees and merchant service charges shall be prohibited.

3. Paragraphs 1 and 2 of this Article are without prejudice to the rules on charges, reductions or other steering mechanisms set out in Directive 2007/64/EC and Directive 2011/83/EU.

Article 12

Information to the payee on individual card-based payment transactions

1. After the execution of an individual card-based payment transaction, the payee’s payment service provider shall provide the payee with the following information:

- (a) the reference enabling the payee to identify the card-based payment transaction;
- (b) the amount of the payment transaction in the currency in which the payee’s payment account is credited;
- (c) the amount of any charges for the card-based payment transaction, indicating separately the merchant service charge and the amount of the interchange fee.

With the payee’s prior and explicit consent, the information referred to in the first subparagraph may be aggregated by brand, application, payment instrument categories and rates of interchange fees applicable to the transaction.

2. Contracts between acquirers and payees may include a provision that the information referred to in the first subparagraph of paragraph 1 shall be provided or made available periodically, at least once a month, and in an agreed manner which allows payees to store and reproduce information unchanged.

CHAPTER IV

FINAL PROVISIONS

Article 13

Competent authorities

1. Member States shall designate competent authorities that are empowered to ensure enforcement of this Regulation and that are granted investigation and enforcement powers.
2. Member States may designate existing bodies to act as competent authorities.
3. Member States may designate one or more competent authorities.
4. Member States shall notify the Commission of those competent authorities by 9 June 2016. They shall notify the Commission without delay of any subsequent change concerning those authorities.
5. The designated competent authorities referred to in paragraph 1 shall have adequate resources for the performance of their duties.
6. Member States shall require the competent authorities to monitor effectively compliance with this Regulation, including to counter attempts by the payment service providers to circumvent this Regulation, and take all necessary measures to ensure such compliance.

Article 14

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied.
2. Member States shall notify those provisions to the Commission by 9 June 2016 and shall notify without delay of any subsequent amendment affecting them.

Article 15

Settlement, out of court complaints and redress procedures

1. Member States shall ensure and promote adequate and effective out-of-court complaint and redress procedures or take equivalent measures for the settlement of disputes arising under this Regulation between payees and their payment service providers. For those purposes, Member States shall designate existing bodies, where appropriate, or establish new bodies. The bodies shall be independent from the parties.
2. Member States shall notify the Commission of those bodies by 9 June 2017. They shall notify the Commission without delay of any subsequent change concerning those bodies.

Article 16

Universal cards

1. For the purposes of this Regulation, in relation to domestic payment transactions that are not distinguishable as debit or credit card transactions by the payment card scheme, the provisions on debit cards or debit card transactions are applied.
2. By derogation from paragraph 1, until 9 December 2016, Member States may define a share of no more than 30 % of the domestic payment transactions referred to in paragraph 1 of this Article that are considered to be equivalent to credit card transactions to which the interchange fee cap set in Article 4 shall apply.

*Article 17***Review clause**

By 9 June 2019, the Commission shall submit a report on the application of this Regulation to the European Parliament and to the Council. The Commission's report shall look in particular at the appropriateness of the levels of interchange fees and at steering mechanisms such as charges, taking into account the use and cost of the various means of payments and the level of entry of new players, new technology and innovative business models on the market. The assessment shall, in particular, consider:

- (a) the development of fees for payers;
- (b) the level of competition among payment card providers and payment card schemes;
- (c) the effects on costs for the payer and the payee;
- (d) the levels of merchant pass-through of the reduction in interchange fee levels;
- (e) the technical requirements and their implications for all the parties involved;
- (f) the effects of co-badging on user-friendliness, in particular for the elderly and other vulnerable users;
- (g) the effect on the market of the exclusion of commercial cards from Chapter II, comparing the situation in those Member States where surcharging is prohibited with those where it is permitted;
- (h) the effect on the market of the special provisions for interchange fees for domestic debit card transactions;
- (i) the development of cross-border acquiring and its effect on the single market, comparing the situation for cards with capped fees and cards which are not capped, to consider the possibility of clarifying which interchange fee applies to cross-border acquiring;
- (j) the application in practice of the rules on separation of payment card scheme and processing, and the need to reconsider legal unbundling;
- (k) the possible need, depending on the effect of Article 3(1) on the actual value of interchange fees for medium and high value debit card transactions, to revise that paragraph by providing that the cap should be limited to the lower amount of EUR 0,07 or 0,2 % of the value of the transaction.

The report by the Commission shall, if appropriate, be accompanied by a legislative proposal that may include a proposed amendment of the maximum cap for interchange fees.

*Article 18***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. It shall apply from 8 June 2015, with the exception of Articles 3, 4, 6 and 12, which shall apply from 9 December 2015, and of Articles 7, 8, 9 and 10, which shall apply from 9 June 2016

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

Done at Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

REGULATION (EU) 2015/752 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 29 April 2015****on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part****(codification)**

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,

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

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

Whereas:

- (1) Council Regulation (EC) No 140/2008 ⁽³⁾ has been substantially amended ⁽⁴⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part ⁽⁵⁾ ('SAA'), was signed on 15 October 2007 and entered into force on 1 May 2010.
- (3) It is necessary to lay down the procedures for applying certain provisions of the SAA.
- (4) The SAA stipulates that fishery products originating in Montenegro may be imported into the Union at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the management of those tariff quotas.
- (5) Where trade defence measures become necessary, they should be adopted in accordance with the general provisions laid down in Regulation (EU) 2015/478 of the European Parliament and of the Council ⁽⁶⁾, Regulation (EU) 2015/479 of the European Parliament and of the Council ⁽⁷⁾, Council Regulation (EC) No 1225/2009 ⁽⁸⁾ or, as the case may be, Council Regulation (EC) No 597/2009 ⁽⁹⁾.
- (6) Where a Member State provides the Commission with information on a possible fraud or failure to provide administrative cooperation, the relevant Union legislation shall apply, in particular Council Regulation (EC) No 515/97 ⁽¹⁰⁾.

⁽¹⁾ Opinion of 10 December 2014 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 11 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

⁽³⁾ Council Regulation (EC) No 140/2008 of 19 November 2007 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Montenegro, of the other part (OJ L 43, 19.2.2008, p. 1).

⁽⁴⁾ See Annex I.

⁽⁵⁾ OJ L 108, 29.4.2010, p. 3.

⁽⁶⁾ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ L 83, 27.3.2015, p. 16).

⁽⁷⁾ Regulation (EU) 2015/479 of the European Parliament and of the Council of 11 March 2015 on common rules for exports (OJ L 83, 27.3.2015, p. 34).

⁽⁸⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁽⁹⁾ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93).

⁽¹⁰⁾ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

- (7) For the purposes of implementing the relevant provisions of this Regulation the Commission should be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁾.
- (8) The implementation of the bilateral safeguard clauses of the SAA requires uniform conditions for the adoption of safeguard and other measures. Those measures should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾.
- (9) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to exceptional and critical circumstances arising within the meaning of point (b) of Article 41(5) and Article 42(4) of the SAA, imperative grounds of urgency so require,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down certain procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part ('SAA').

Article 2

Concessions for fish and fishery products

Detailed rules on the implementation of Article 29 of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the examination procedure referred to in Article 9(3) of this Regulation.

Article 3

Tariff reductions

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.
2. Where the result of calculating the rate of preferential duty pursuant to paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:
 - (a) 1 % or less in the case of *ad valorem* duties; or
 - (b) EUR 1 or less per individual amount in the case of specific duties.

Article 4

Technical adaptations

Amendments and technical adaptations to the provisions adopted pursuant to this Regulation which are necessary following changes to the Combined Nomenclature codes and to the TARIC subdivisions, or arising from the conclusion of new or modified agreements, protocols, exchanges of letters or other acts between the Union and Montenegro, shall be adopted in accordance with the examination procedure referred to in Article 9(3).

⁽¹⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁽²⁾ 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).

*Article 5***General safeguard clause**

Where the Union needs to take a measure as provided for in Article 41 of the SAA, that measure shall be adopted in accordance with the examination procedure referred to in Article 9(3) of this Regulation, unless otherwise specified in Article 41 of the SAA.

*Article 6***Shortage clause**

Where the Union needs to take a measure as provided for in Article 42 of the SAA, that measure shall be adopted in accordance with the examination procedure referred to in Article 9(3) of this Regulation.

*Article 7***Exceptional and critical circumstances**

Where exceptional and critical circumstances arise within the meaning of point (b) of Article 41(5) and Article 42(4) of the SAA, the Commission may take immediate measures as provided for in Articles 41 and 42 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

The Commission shall take the measures referred to in the first paragraph in accordance with the examination procedure referred to in Article 9(3) of this Regulation. In cases of urgency, Article 9(4) of this Regulation shall apply.

*Article 8***Safeguard clause for agricultural and fishery products**

1. Notwithstanding the procedures provided for in Articles 5 and 6 of this Regulation, where the Union needs to take a safeguard measure, as provided for in Article 41 of the SAA, concerning agricultural and fishery products, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures after, where applicable, having had recourse to the referral procedure provided for in Article 41 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon:

- (a) within three working days of the receipt of a request, where the referral procedure provided for in Article 41 of the SAA does not apply; or
- (b) within three days of the end of the 30-day period referred to in point (a) of Article 41(5) of the SAA, where the referral procedure provided for in Article 41 of the SAA applies.

The Commission shall notify the Council of the measures upon which it has decided.

2. The Commission shall take such measures in accordance with the examination procedure referred to in Article 9(3). In cases of urgency, Article 9(4) shall apply.

*Article 9***Committee procedure**

1. For the purpose of Article 4 of this Regulation, the Commission shall be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. For the purpose of Articles 5 to 8 of this Regulation, the Commission shall be assisted by the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 10

Dumping and subsidy

In the event of a practice which is liable to warrant application by the Union of the measures provided for in Article 40(2) of the SAA, the introduction of anti-dumping and/or countervailing measures shall be decided upon in accordance with the provisions laid down in Regulation (EC) No 1225/2009 and/or Regulation (EC) No 597/2009, respectively.

Article 11

Competition

1. In the event of a practice which may justify application by the Union of the measures provided for in Article 73 of the SAA, the Commission shall, after examining the case, on its own initiative or on the request of a Member State, decide whether such practice is compatible with the SAA.

The measures provided for in Article 73(10) of the SAA shall be adopted, in the cases of aid, in accordance with the procedures laid down in Regulation (EC) No 597/2009 and, in other cases, in accordance with the procedure laid down in Article 207 of the Treaty.

2. In the event of a practice which may cause measures to be applied to the Union by Montenegro on the basis of Article 73 of the SAA, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the SAA. Where necessary, the Commission shall take appropriate decisions on the basis of criteria which result from the application of Articles 101, 102 and 107 of the Treaty.

Article 12

Fraud or failure to provide administrative cooperation

Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 46 of the SAA are fulfilled, it shall, without undue delay:

- (a) inform the Council; and
- (b) notify the Stabilisation and Association Committee of its finding together with the objective information, and enter into consultations within the Stabilisation and Association Committee.

Any publication under Article 46(5) of the SAA shall be effected by the Commission in the *Official Journal of the European Union*.

The Commission may decide, in accordance with the examination procedure set out in Article 9(3) of this Regulation, to suspend temporarily the relevant preferential treatment of the products as provided for in Article 46(4) of the SAA.

Article 13

Notification

The Commission, acting on behalf of the Union, shall be responsible for notification to the Stabilisation and Association Council and the Stabilisation and Association Committee, as required by the SAA.

*Article 14***Repeal**

Regulation (EC) No 140/2008 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 15***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 Strasbourg, 29 April 2015.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
Z. KALNIŅA-LUKAŠEVICA

ANNEX I

Repealed Regulation with the amendment thereto

Council Regulation (EC) No 140/2008
(OJ L 43, 19.2.2008, p. 1).

Regulation (EU) No 37/2014 of the European Parliament and
of the Council
(OJ L 18, 21.1.2014, p. 1).

Only point 15 of the Annex

ANNEX II

Correlation Table

Regulation (EC) No 140/2008	This Regulation
Articles 1 to 8	Articles 1 to 8
Article 8a	Article 9
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 13	Article 13
—	Article 14
Article 14	Article 15
—	Annex I
—	Annex II

REGULATION (EU) 2015/753 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
on the import into the Union of agricultural products originating in Turkey
(codification)

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,

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

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

Whereas:

- (1) Council Regulation (EC) No 779/98 ⁽³⁾ has been substantially amended ⁽⁴⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) Decision No 1/98 of the EC-Turkey Association Council ⁽⁵⁾ establishes the system of preferences applicable to imports into the Union of agricultural products originating in Turkey.
- (3) In the case of products for which Union regulations require a certain import price to be observed, the application of the preferential tariff system is subject to the observance of that price.
- (4) In order to ensure uniform conditions for the implementation of this Regulation, 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 ⁽⁶⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

The Commission shall, by means of implementing acts, adopt rules necessary for the application of the import regime for the products listed in Annex I to the Treaty on the Functioning of the European Union which originate in Turkey and which are imported into the Union under the conditions laid down in Decision No 1/98 of the EC-Turkey Association Council. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 3(2) of this Regulation.

Article 2

1. In the case of products for which Union regulations require a certain import price to be observed, the application of the preferential tariff system shall be subject to the observance of that price.
2. In the case of fishery products for which a reference price is set, the application of the preferential tariff shall be subject to the observance of that price.

⁽¹⁾ Opinion of 10 December 2014 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 11 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

⁽³⁾ Council Regulation (EC) No 779/98 of 7 April 1998 on the import into the Community of agricultural products originating in Turkey, repealing Regulation (EEC) No 4115/86 and amending Regulation (EC) No 3010/95 (OJ L 113, 15.4.1998, p. 1).

⁽⁴⁾ See Annex I.

⁽⁵⁾ Decision No 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products (OJ L 86, 20.3.1998, p. 1).

⁽⁶⁾ 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).

Article 3

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of Regulation (EU) No 1308/2013 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 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the Committee so decides or at least a quarter of committee members so request.

Article 4

Regulation (EC) No 779/98 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 5

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 Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

⁽¹⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

ANNEX I

Repealed Regulation with the amendment thereto

Council Regulation (EC) No 779/98
(OJ L 113, 15.4.1998, p. 1).

Regulation (EU) No 255/2014 of the European Parliament
and of the Council
(OJ L 84, 20.3.2014, p. 57).

Article 2 only

ANNEX II

Correlation Table

Regulation (EC) No 779/98	This Regulation
Article 1	Article 1
Article 2, first paragraph	Article 2(1)
Article 2, second paragraph	Article 2(2)
Article 2a	Article 3
Article 3	—
Article 4	—
—	Article 4
Article 5	Article 5
—	Annex I
—	Annex II

REGULATION (EU) 2015/754 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 29 April 2015****opening and providing for the administration of certain Union tariff quotas for high-quality beef,
and for pigmeat, poultrymeat, wheat and meslin, and brans, sharps and other residues****(codification)**

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,

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

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

Whereas:

- (1) Council Regulation (EC) No 774/94 ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) The Union negotiated tariff concessions under Article XXVIII of the General Agreement on Tariffs and Trade (GATT) and under the Uruguay Round of multilateral trade negotiations. Those negotiations led to agreements which were approved by Council Decision 94/87/EC ⁽⁵⁾ and Council Decision 94/800/EC ⁽⁶⁾.
- (3) Those agreements provide for the opening, under certain conditions, of annual tariff quotas for high-quality beef falling within CN codes 0201 30 00, 0202 30 90, 0206 10 95 and 0206 29 91, pigmeat falling within CN codes 0203 19 13 and 0203 29 15, poultrymeat falling within CN codes 0207 14 10, 0207 14 50, 0207 14 70, 0207 27 10, 0207 27 20 and 0207 27 80, wheat and meslin falling within CN codes 1001 11 00, 1001 19 00 and 1001 99 00, and brans, sharps and other residues falling within CN codes 2302 30 10, 2302 30 90, 2302 40 10 and 2302 40 90.
- (4) Those agreements cover an undetermined period. In the interests of rationalisation and efficiency, the quotas should therefore be opened on a multiannual basis.
- (5) A system guaranteeing the nature, provenance and origin of the products may prove to be appropriate. To that end, imports within the framework of the agreed tariff concessions should be subject, where appropriate, to the presentation of a certificate of authenticity.
- (6) It may be appropriate to spread out those imports over the year on the basis of the needs of the Union market. To that end, a system for using up quotas based on the presentation of an import licence may prove appropriate.
- (7) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the adoption of amendments to this Regulation, should the volumes and other conditions of quota arrangements be adjusted, in particular as a result of a Council decision concluding an agreement with one or more third countries. It is of

⁽¹⁾ Opinion of 10 December 2014 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 11 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

⁽³⁾ Council Regulation (EC) No 774/94 of 29 March 1994 opening and providing for the administration of certain Community tariff quotas for high-quality beef, and for pigmeat, poultrymeat, wheat and meslin, and brans, sharps and other residues (OJ L 91, 8.4.1994, p. 1).

⁽⁴⁾ See Annex I.

⁽⁵⁾ Council Decision 94/87/EC of 20 December 1993 concerning the conclusion of Agreements in the form of Agreed Minutes on certain oil seeds between the European Community and Argentina, Brazil, Canada, Poland, Sweden and Uruguay, respectively, pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) (OJ L 47, 18.2.1994, p. 1).

⁽⁶⁾ Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

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.

- (8) In order to ensure uniform conditions for the implementation of this Regulation in respect of the rules necessary for the administration of the quota arrangements referred to in this Regulation, 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⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

An annual Union tariff quota of a total of 20 000 tonnes, expressed in product weight, is hereby opened for high-quality fresh, chilled or frozen beef covered by CN codes 0201 and 0202 and for the products covered by CN codes 0206 10 95 and 0206 29 91.

The Common Customs Tariff duty applicable to that quota shall be 20 %.

Article 2

An annual Union tariff quota of a total of 7 000 tonnes is hereby opened for fresh, chilled or frozen pigmeat covered by CN codes 0203 19 13 and 0203 29 15.

The Common Customs Tariff duty applicable to that quota shall be 0 %.

Article 3

An annual Union tariff quota of a total of 15 500 tonnes is hereby opened for poultrymeat covered by CN codes 0207 14 10, 0207 14 50 and 0207 14 70.

The Common Customs Tariff duty applicable to that quota shall be 0 %.

Article 4

An annual Union tariff quota of a total of 2 500 tonnes is hereby opened for turkey meat covered by CN codes 0207 27 10, 0207 27 20 and 0207 27 80.

The Common Customs Tariff duty applicable to that quota shall be 0 %.

Article 5

An annual Union tariff quota of a total of 300 000 tonnes is hereby opened for quality wheat covered by CN codes 1001 11 00, 1001 19 00 and 1001 99 00.

The Common Customs Tariff duty applicable to that quota shall be 0 %.

Article 6

An annual Union tariff quota of a total of 475 000 tonnes is hereby opened for brans, sharps and other residues of wheat and cereals other than maize and rice covered by CN codes 2302 30 10, 2302 30 90, 2302 40 10 and 2302 40 90.

The Common Customs Tariff duty applicable to that quota shall be EUR 30,60 per tonne in the case of products covered by CN codes 2302 30 10 and 2302 40 10 and EUR 62,25 per tonne in the case of products covered by CN codes 2302 30 90 and 2302 40 90.

⁽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).

Article 7

In order to comply with international commitments and where the volumes and other conditions of the quota arrangements referred to in this Regulation are adjusted by the European Parliament and the Council or by the Council, in particular by a Council decision concluding an agreement with one or more third countries, the Commission shall be empowered to adopt delegated acts in accordance with Article 9 concerning the resulting amendments to this Regulation.

Article 8

The Commission shall, by means of implementing acts, adopt rules necessary for the administration of the quota arrangements referred to in this Regulation and, as appropriate, lay down provisions:

- (a) guaranteeing the nature, provenance and origin of the product;
- (b) relating to the recognition of the document allowing the guarantees referred to in point (a) to be verified; and
- (c) on the issue of import licences and their period of validity.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

Article 9

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 7 shall be conferred on the Commission for a period of five years from 9 April 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 Article 7 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 7 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 10

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of Regulation (EU) No 1308/2013 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 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the Committee so decides or at least a quarter of committee members so request.

⁽¹⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

Article 11

Regulation (EC) No 774/94 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 12

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 Strasbourg, 29 April 2015.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
Z. KALNIŅA-LUKAŠEVICA

ANNEX I

Repealed Regulation with list of the successive amendments thereto

Council Regulation (EC) No 774/94
(OJ L 91, 8.4.1994, p. 1).

Commission Regulation (EC) No 2198/95
(OJ L 221, 19.9.1995, p. 3).

Regulation (EU) No 252/2014 of the European Parliament and of the Council
(OJ L 84, 20.3.2014, p. 35).

ANNEX II

Correlation Table

Regulation (EC) No 774/94	This Regulation
Article 1(1)	Article 1, first paragraph
Article 1(2)	Article 1, second paragraph
Article 2(1)	Article 2, first paragraph
Article 2(2)	Article 2, second paragraph
Article 3(1)	Article 3, first paragraph
Article 3(2)	Article 3, second paragraph
Article 4(1)	Article 4, first paragraph
Article 4(2)	Article 4, second paragraph
Article 5(1)	Article 5, first paragraph
Article 5(2)	Article 5, second paragraph
Article 6(1)	Article 6, first paragraph
Article 6(2)	Article 6, second paragraph
Article 7	Article 8
Article 8	Article 7
Article 8a	Article 9
Article 8b	Article 10
Article 9	—
Article 10	Article 12
—	Article 11
—	Annex I
—	Annex II

REGULATION (EU) 2015/755 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
on common rules for imports from certain third countries
(recast)

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,

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

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

Whereas:

- (1) Council Regulation (EC) No 625/2009 ⁽³⁾ has been substantially amended ⁽⁴⁾. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.
- (2) The common commercial policy should be based on uniform principles.
- (3) Uniformity in the rules for imports should be assured by laying down, as far as possible given the particular features of the economic system in the third countries in question, provisions similar to those applied under the common rules for other third countries.
- (4) The common rules applicable to imports also apply to coal and steel products, without prejudice to any measures implementing an agreement relating specifically to such products.
- (5) The liberalisation of imports, namely the absence of any quantitative restrictions, should therefore form the starting point for the Union rules.
- (6) In the case of some products, the Commission should examine import terms and conditions, import trends, the various aspects of the economic and commercial situation, and the measures, if any, to be taken.
- (7) For those products, it may become apparent that there should be Union surveillance over certain of these imports.
- (8) It is for the Commission to adopt the safeguard measures required by the interests of the Union with due regard for existing international obligations.
- (9) Surveillance or safeguard measures confined to one or more regions of the Union may prove more suitable than measures applying to the whole Union. However, such measures should be authorised only exceptionally and where no alternative exists. It is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market.
- (10) If Union surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of a surveillance document meeting uniform criteria. That document should, on simple application by the importer, be issued by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import. The surveillance document should therefore be valid only during such period as the import rules remain unchanged.

⁽¹⁾ Opinion of 10 December 2014 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 11 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

⁽³⁾ Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (OJ L 185, 17.7.2009, p. 1).

⁽⁴⁾ See Annex III.

- (11) In the interests of good administrative management and in order to assist Union operators, the content and layout of the surveillance document should be aligned as far as possible with the common import licence forms provided for in Commission Regulation (EC) No 738/94 ⁽¹⁾, Commission Regulation (EC) No 3168/94 ⁽²⁾, and Commission Regulation (EC) No 3169/94 ⁽³⁾, bearing in mind the technical characteristics of the surveillance document.
- (12) It is in the interests of the Union that the Member States and the Commission should make as full as possible an exchange of information resulting from Union surveillance.
- (13) It is necessary to adopt precise criteria for assessing possible injury and to introduce an investigation while still allowing the Commission to introduce appropriate measures in urgent cases.
- (14) To that end, detailed provisions should be laid down on the opening of investigations, on the checks and inspections required, on the hearing of those concerned, the treatment of information obtained and the criteria for assessing injury.
- (15) The provisions on investigations laid down in this Regulation are without prejudice to Union or national rules concerning professional secrecy.
- (16) It is also necessary to set time limits for the initiation of investigations and for determinations as to whether, or not, measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.
- (17) In the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simple and identical regardless of the place where the goods clear customs. It is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to this Regulation.
- (18) Surveillance documents issued in connection with Union surveillance measures should be valid throughout the Union, irrespective of the Member State of issue.
- (19) The textile products falling under Council Regulation (EC) No 517/94 ⁽⁴⁾ are subject to specific treatment at Union and international levels. They should therefore be completely excluded from the scope of this Regulation.
- (20) The power to amend the list of third countries in Annex I to Regulation (EC) No 625/2009 was included in Council Regulation (EC) No 427/2003 ⁽⁵⁾. Since the provisions of Title I of Regulation (EC) No 427/2003 on the transitional product-specific safeguard mechanism expired on 11 December 2013 and the provisions of Title II of that Regulation are now obsolete, it is appropriate, in the interest of coherence, clarity and rationality, to incorporate Articles 14a and 14b of that Regulation into this Regulation. Regulation (EC) No 427/2003 should therefore be repealed.
- (21) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) for the purpose of amending Annex I to this Regulation, in order to remove countries from the list of third countries contained in that Annex when they become members of the World Trade Organization (WTO).

⁽¹⁾ Commission Regulation (EC) No 738/94 of 30 March 1994 laying down certain rules for the implementation of Council Regulation (EC) No 520/94 establishing a Community procedure for administering quantitative quotas (OJ L 87, 31.3.1994, p. 47).

⁽²⁾ Commission Regulation (EC) No 3168/94 of 21 December 1994 establishing in the field of application of Council Regulation (EC) No 517/94 on common rules for imports of textile products from third countries not covered by bilateral agreements, protocols or other arrangements or by other specific Community import rules a Community import licence (OJ L 335, 23.12.1994, p. 23).

⁽³⁾ Commission Regulation (EC) No 3169/94 of 21 December 1994 amending Annex III to Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries and establishing in the field of application of the Regulation a Community import licence (OJ L 335, 23.12.1994, p. 33).

⁽⁴⁾ Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (OJ L 67, 10.3.1994, p. 1).

⁽⁵⁾ Council Regulation (EC) No 427/2003 of 3 March 2003 on a transitional product-specific safeguard mechanism for imports originating in the People's Republic of China and amending Regulation (EC) No 519/94 on common rules for imports from certain third countries (OJ L 65, 8.3.2003, p. 1).

- (22) The implementation of this Regulation requires uniform conditions for adopting provisional and definitive safeguard measures, and for the imposition of prior surveillance measures. Those measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (23) The advisory procedure should be used for the adoption of surveillance and provisional measures given the effects of such measures and their sequential logic in relation to the adoption of definitive safeguard measures. Where a delay in the imposition of measures would cause damage which would be difficult to repair, it is necessary to allow the Commission to adopt immediately applicable provisional measures.
- (24) When Regulation (EC) No 625/2009 was amended, the second subparagraph of Article 18(2) was erroneously deleted. That provision should be reinserted.
- (25) As Armenia, Russia, Tajikistan and Vietnam have become members of the WTO, those third countries need to be deleted from Annex I to Regulation (EC) No 625/2009 by means of a Commission delegated act. In the interest of clarity and rationality, they are not included in the list of third countries now set out in Annex I to this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PRINCIPLES

Article 1

1. This Regulation applies to imports of products originating in the third countries referred to in Annex I, with the exception of textile products covered by Regulation (EC) No 517/94.
2. Imports into the Union of the products referred to in paragraph 1 shall take place freely and accordingly shall not be subject to any quantitative restrictions, without prejudice to the safeguard measures which may be taken under Chapter V.

CHAPTER II

UNION INFORMATION AND CONSULTATION PROCEDURE

Article 2

The Commission shall be informed by the Member States if trends in imports appear to call for surveillance or safeguard measures. This information shall contain the available evidence on the basis of the criteria laid down in Article 6. The Commission shall pass on this information to all Member States forthwith.

CHAPTER III

UNION INVESTIGATION PROCEDURE

Article 3

1. Where it is apparent to the Commission that there is sufficient evidence to justify an investigation, the Commission shall initiate an investigation within one month of the date of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*. That notice shall:
 - (a) give a summary of the information received, and require that all relevant information is to be communicated to the Commission;
 - (b) state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the investigation;
 - (c) state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4.

The Commission shall commence the investigation, acting in cooperation with the Member States.

The Commission shall provide information to the Member States concerning its analysis of the information normally within 21 days of the date on which the information is provided to the Commission.

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

2. The Commission shall seek all information it deems necessary and, where it considers it appropriate, endeavour to check that information with importers, traders, agents, producers, trade associations and organisations.

The Commission shall be assisted in this task by staff of the Member State on whose territory those checks are being carried out, provided that that Member State so wishes.

Interested parties which have made themselves known in accordance with the first subparagraph of paragraph 1, as well as the representatives of the exporting country, may inspect all information made available to the Commission within the framework of the investigation, as distinct from internal documents prepared by the authorities of the Union or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 5 and that it is used by the Commission in the investigation. To that end, they shall address a written request to the Commission indicating the information required.

3. Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have applied in writing within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are actually likely to be affected by the outcome of the investigations and that there are special reasons for them to be heard orally.

5. Where information is not supplied within the time limits set by this Regulation or by the Commission pursuant to this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard that information and may make use of facts available.

6. Where it appears to the Commission that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of the date of receipt of the information from the Member States.

Article 4

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee referred to in Article 22(1) ('the Committee').

2. Where the Commission considers, within nine months of the initiation of the investigation, that no Union surveillance or safeguard measures are necessary, the investigation shall be terminated within a month. The Commission shall terminate the investigation in accordance with the advisory procedure referred to in Article 22(2). A decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefore, shall be published in the *Official Journal of the European Union*.

3. If the Commission considers that Union surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Chapters IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, that time limit may be extended by a further maximum period of two months. The Commission shall then publish a notice in the *Official Journal of the European Union* setting forth the duration of the extension and a summary of the reasons therefor.

4. The provisions of this Chapter shall not preclude the taking, at any time, of surveillance measures in accordance with Articles 7 to 12 or, where a critical situation, in which any delay would cause injury which would be difficult to remedy, calls for immediate intervention, safeguard measures in accordance with Articles 13, 14 and 15.

The Commission shall immediately take the investigation measures it considers to be still necessary. The results of the investigation shall be used to re-examine the measures taken.

Article 5

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. The Commission and the Member States, including the officials of either, shall not reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

3. Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorise its disclosure in general terms or in the form of a summary, the information concerned may be disregarded.

4. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5. Paragraphs 1 to 4 shall not preclude reference by the Union authorities to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. These authorities shall, however, take into account the legitimate interests of the legal and natural persons concerned that their business secrets should not be divulged.

Article 6

1. Examination of the trend in imports, of the conditions in which they take place and of the serious injury or threat of serious injury to Union producers resulting from such imports shall cover in particular the following factors:

- (a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Union;
- (b) the price of the imports, in particular where there has been significant price undercutting as compared with the price of a like product in the Union;
- (c) the consequent impact on the Union producers of similar or directly competitive products as indicated by trends in certain economic factors such as:
 - production,
 - capacity utilisation,
 - stocks,
 - sales,
 - market share,
 - prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
 - profits,
 - return on capital employed,
 - cash flow,
 - employment.

2. In conducting the investigation, the Commission shall take account of the particular economic system of the countries referred to in Annex I.

3. Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

- (a) the rate of increase of the exports to the Union;
- (b) the export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Union.

CHAPTER IV

SURVEILLANCE

Article 7

1. Where the Union's interests so require, the Commission may, at the request of a Member State or on its own initiative:

- (a) decide to introduce retrospective Union surveillance of certain imports, in accordance with the procedure laid down by the Commission;
- (b) decide, for the purposes of monitoring the trend of these imports, to make certain imports subject to prior Union surveillance, in accordance with Article 8.

2. Decisions adopted pursuant to paragraph 1 shall be taken by the Commission in accordance with the advisory procedure referred to in Article 22(2).
3. The surveillance measures shall have a limited period of validity. Unless otherwise provided for, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

Article 8

1. Products under prior Union surveillance may be put into free circulation only on production of a surveillance document. That document shall be issued by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of an application by any Union importer, regardless of his place of business in the Union. That application shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. The surveillance document shall be made out on a form corresponding to the model in Annex II.

Except where the decision to impose surveillance provides otherwise, the importer's application for a surveillance document shall contain only the following:

- (a) the full name and address of the applicant (including telephone and fax numbers and any number identifying the applicant to the competent national authority), plus the applicant's VAT registration number if he is liable for VAT;
- (b) where appropriate, the full name and address of the declarant or of any representative appointed by the applicant (including telephone and fax numbers);
- (c) a description of the goods giving their:
 - trade name,
 - combined nomenclature code,
 - place of origin and place of consignment;
- (d) the quantity declared, in kilograms and, where appropriate, any other additional units (pairs, items, etc.);
- (e) the value of the goods, CIF at Union frontier, in euro;
- (f) the following statement, dated and signed by the applicant, with the applicant's name spelt out in capital letters:

'I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Union.'

3. The surveillance document shall be valid throughout the Union, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the surveillance document by less than 5 %, or that the total value or quantity of the products presented for import exceeds the value or quantity given in the surveillance document by less than 5 %, shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Surveillance documents may be used only for such time as arrangements for the liberalisation of imports remain in force in respect of the transactions concerned. Such surveillance documents may not in any event be used beyond the expiry of the period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance, and shall take account of the nature of the products and other special features of the transactions.

6. Where the decision taken under Article 7 so requires, the origin of products under Union surveillance must be proven by a certificate of origin. This paragraph shall not prejudice other provisions concerning the production of any such certificate.

7. Where the product under prior Union surveillance is subject to regional safeguard measures in a Member State, the import authorisation granted by that Member State may replace the surveillance document.

8. Surveillance document forms and extracts thereof shall be drawn up in duplicate, one copy, marked 'Holder's copy' and bearing the number 1, to be issued to the applicant, and the other, marked 'Copy for the competent authority' and bearing the number 2, to be kept by the authority issuing the document. For administrative purposes, the competent authority may add supplementary copies to form 2.

9. Forms shall be printed on white paper free of mechanical pulp, dressed for writing and weighing between 55 and 65 grams per square metre. Their size shall be 210 × 297 mm. The type space between the lines shall be 4,24 mm (one sixth of an inch). The layout of the forms shall be followed precisely. Both sides of copy No 1, which is the surveillance document itself, shall in addition have a yellow printed guilloche pattern background so as to reveal any falsification by mechanical or chemical means.

10. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an indication of the printer's name and address or a mark enabling the printer to be identified.

Article 9

Where the Union's interests so require, the Commission may, at the request of a Member State or on its own initiative, if the situation referred to in Article 13(1) is likely to arise:

- limit the period of validity of any surveillance document required,
- make the issue of that document subject to certain conditions and, as an exceptional measure, subject to the insertion of a revocation clause.

Article 10

Where the import of a product has not been made subject to prior Union surveillance, the Commission may introduce, by means of implementing acts in accordance with the advisory procedure referred to in Article 22(2) and in accordance with Article 15, surveillance confined to imports into one or more regions of the Union.

Article 11

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of a surveillance document. Such document shall be issued by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of an application by any Union importer, regardless of his place of business in the Union. That application shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proved otherwise. Surveillance documents may be used only for such time as arrangements for the liberalisation of imports remain in force in respect of the transactions concerned.

2. Article 8(2) shall apply.

Article 12

1. Member States shall communicate to the Commission within the first 10 days of each month in the case of Union or regional surveillance:

- (a) in the case of prior surveillance, details of the sums of money (calculated on the basis of CIF prices) and quantities of goods in respect of which surveillance documents were issued during the preceding period;
- (b) in every case, details of imports during the period preceding the period referred to in point (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States.

CHAPTER V

SAFEGUARD MEASURES

Article 13

1. Where a product is imported into the Union in such greatly increased quantities or on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competing products, the Commission, in order to safeguard the interests of the Union, may, acting at the request of a Member State or on its own initiative, alter the import rules for that product by providing that it may be put into free circulation only on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

2. The measures adopted shall be communicated forthwith to the Member States and shall take effect immediately.

3. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 15 they may be confined to one or more regions of the Union.

However, such measures shall not prevent the release for free circulation of products already on their way to the Union provided that the destination of such products cannot be changed and that those products which, under Articles 8 and 11, may be put into free circulation only on production of a surveillance document are in fact accompanied by such a document.

4. Where intervention by the Commission has been requested by a Member State, the Commission, acting in accordance with the examination procedure referred to in Article 22(3), or, in cases of urgency, in accordance with Article 22(4), shall take a decision within a maximum of five working days of the date of receipt of such a request.

Article 14

1. The Commission may, in particular in the situation referred to in Article 13(1), adopt appropriate safeguard measures acting in accordance with the examination procedure referred to in Article 22(3).

2. Article 13(3) shall apply.

Article 15

Where, on the basis, in particular, of the factors referred to in Article 6, it emerges that the conditions laid down for the adoption of measures under Chapter IV and Article 13 are met in one or more regions of the Union, the Commission, after having examined alternative solutions, may exceptionally authorise the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Union.

Those measures must be temporary and must disrupt the operation of the internal market as little as possible.

Those measures shall be adopted in accordance with the procedures laid down in Articles 7 and 13 respectively.

Article 16

1. While any surveillance or safeguard measure applied in accordance with Chapters IV and V is in operation, the Commission may, either at the request of a Member State or on its own initiative:

- (a) examine the effects of the measure;
- (b) ascertain whether the application of the measure is still necessary.

Where the Commission considers that the application of the measure is still necessary, it shall inform the Member States accordingly.

2. Where the Commission considers that any surveillance or safeguard measure referred to in Chapters IV and V should be revoked or amended, it shall, acting in accordance with the examination procedure referred to in Article 22(3), revoke or amend the measure.

Where such a decision concerns regional surveillance measures, it shall apply from the sixth day following that of its publication in the *Official Journal of the European Union*.

CHAPTER VI

FINAL PROVISIONS

Article 17

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Union and third countries.
2. Without prejudice to other Union provisions, this Regulation shall not preclude the adoption or application by Member States of:
 - (a) prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;
 - (b) special formalities concerning foreign exchange;
 - (c) formalities introduced pursuant to international agreements in accordance with the TFEU.

The Member States shall inform the Commission of the measures or formalities to be introduced or amended in accordance with the first subparagraph.

In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 18

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009 ⁽¹⁾.

Article 19

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organisation of agricultural markets or of Union or national administrative provisions derived therefrom or of the specific instruments adopted under Article 352 of the TFEU applicable to goods resulting from the processing of agricultural products. It shall operate by way of complement to those instruments.
2. In the case of products covered by the instruments referred to in paragraph 1 of this Article, Articles 7 to 12 and Article 16 shall not apply to those in respect of which the Union rules on trade with third countries require the production of a licence or other import document.

Articles 13, 15 and 16 shall not apply to those products in respect of which such rules make provision for the application of quantitative import restrictions.

Article 20

The Commission shall be empowered to adopt delegated acts in accordance with Article 21 concerning amendments of Annex I, in order to remove countries from the list of third countries contained in that Annex when they become members of the WTO.

Article 21

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 20 shall be conferred on the Commission for a period of five years from 20 February 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.

⁽¹⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

3. The delegation of power referred to in Article 20 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 power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or on 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 20 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 22

1. The Commission shall be assisted by the Committee on Safeguards established by Regulation (EU) 2015/478 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.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 23

Regulations (EC) No 427/2003 and (EC) No 625/2009 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

Article 24

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 Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

⁽¹⁾ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ L 83, 27.3.2015, p. 16).

ANNEX I

List of third countries

Azerbaijan

Belarus

Kazakhstan

North Korea

Turkmenistan

Uzbekistan

ANNEX II

EUROPEAN UNION		SURVEILLANCE DOCUMENT	
1	1. Consignee (name, full address, country, VAT number)	2. Issue number	
		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
	5. Declarant/representative as applicable (name and full address)	6. Country of origin (and geonomenclature code)	
		7. Country of consignment (and geonomenclature code)	
8. Last day of validity			
1	9. Description of goods		10. CN code and category
			11. Quantity in kilograms (net mass) or in additional sets
			12. Value in euro, CIF at Union frontier
13. Additional remarks			
14. Competent authority's endorsement			
Date:			
Signature: (Stamp)			

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto.

EUROPEAN UNION		SURVEILLANCE DOCUMENT	
2	1. Consignee (name, full address, country, VAT number)	2. Issue number	
		3. Proposed place and date of import	
		4. Authority responsible for issue (name, address and telephone No)	
	5. Declarant/representative as applicable (name and full address)	6. Country of origin (and geonomenclature code)	
		7. Country of consignment (and geonomenclature code)	
		8. Last day of validity	
2	9. Description of goods		10. CN code and category
			11. Quantity in kilograms (net mass) or in additional sets
			12. Value in euro, CIF at Union frontier
13. Additional remarks			
14. Competent authority's endorsement			
Date:			
Signature: (Stamp)			

15. ATTRIBUTIONS Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
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Extension pages to be attached hereto.

ANNEX III

Repealed Regulations with list of the successive amendments thereto

Council Regulation (EC) No 625/2009
(OJ L 185, 17.7.2009, p. 1).

Regulation (EU) No 37/2014 of the European Parliament
and of the Council
(OJ L 18, 21.1.2014, p. 1).

Only point 20 of the Annex

Council Regulation (EC) No 427/2003
(OJ L 65, 8.3.2003, p. 1).

Council Regulation (EC) No 1985/2003
(OJ L 295, 13.11.2003, p. 43).

Regulation (EU) No 37/2014 of the European Parliament
and of the Council
(OJ L 18, 21.1.2014, p. 1).

Only point 9 of the Annex

ANNEX IV

Correlation Table

Regulation (EC) No 625/2009	Regulation (EC) No 427/2003	This Regulation
Article 1		Article 1
Article 2		Article 2
Article 4		Article 22
Article 5		Article 3
Article 6		Article 4
Article 7		Article 5
Article 8		Article 6
Article 9(1)		Article 7(1)
Article 9(1a)		Article 7(2)
Article 9(2)		Article 7(3)
Article 10		Article 8
Article 11		Article 9
Article 12		Article 10
Article 13		Article 11
Article 14		Article 12
Article 15		Article 13
Article 16		Article 14
Article 17		Article 15
Article 18		Article 16
Article 19		Article 17
Article 19a		Article 18
Article 20		Article 19
	Articles 1 to 14	—
	Article 14a	Article 20
	Article 14b	Article 21
	Articles 15 to 24	—
Article 21		Article 23
Article 22		Article 24
Annex I		Annex I
Annex II		Annex II
Annex III		Annex III
Annex IV		Annex IV
	Annex I	—
	Annex II	—

REGULATION (EU) 2015/756 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
suspending certain concessions relating to the import into the Union of agricultural products
originating in Turkey
(codification)

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,

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

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

Whereas:

- (1) Council Regulation (EC) No 1506/98 ⁽³⁾ has been substantially amended ⁽⁴⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) Under the Agreement establishing an Association between the European Economic Community and Turkey ⁽⁵⁾ ('the Agreement') concessions were granted to that country in respect of certain agricultural products.
- (3) Decision No 1/98 of the EC-Turkey Association Council ⁽⁶⁾ provides for the improvement and consolidation of trade preferences relating to the import into the Union of agricultural products originating in Turkey and establishes a series of preferential concessions for Union exports of meat and live animals to Turkey.
- (4) Turkey has since 1996 been applying a ban on the import of live animals of the bovine species (CN code 0102) and restrictions on the import of beef (CN codes 0201-0202). Those measures, being quantitative restrictions, are incompatible with the Agreement and prevent the Union from benefiting from the concessions granted to it under Decision No 1/98. Despite talks intended to achieve a negotiated solution with Turkey to the problem, the quantitative restrictions are still in place.
- (5) As a result of those measures, exports to Turkey of the products in question originating in the Union are blocked. In order to protect the Union's commercial interests, the situation should be counterbalanced by means of equivalent measures. The concessions set out in Annex I to this Regulation should therefore be suspended.
- (6) In order to ensure uniform conditions for the implementation of this Regulation, 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 ⁽⁷⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

The two tariff quotas set out in Annex I are suspended.

⁽¹⁾ Opinion of 10 December 2014 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 11 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

⁽³⁾ Council Regulation (EC) No 1506/98 of 13 July 1998 establishing a concession in the form of a Community tariff quota for Turkey in 1998 in respect of hazelnuts and suspending certain concessions (OJ L 200, 16.7.1998, p. 1).

⁽⁴⁾ See Annex II.

⁽⁵⁾ OJ 217, 29.12.1964, p. 3687/64.

⁽⁶⁾ Decision No 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products (OJ L 86, 20.3.1998, p. 1).

⁽⁷⁾ 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).

Article 2

The Commission shall, by means of implementing acts, terminate the suspension referred to in Article 1 once the barriers to preferential exports from the Union to Turkey have been lifted. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 3(2).

Article 3

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of Regulation (EU) No 1308/2013 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 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the Committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the Committee so decides or at least a quarter of committee members so request.

Article 4

Regulation (EC) No 1506/98 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 5

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 Strasbourg, 29 April 2015.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
Z. KALNIŅA-LUKAŠEVICA

⁽¹⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

ANNEX I

Serial No	CN code	Description of goods	Size of quota per year or per period indicated (tonnes)	Rate of duty applicable
09.0217	ex 0807 11 00	Watermelons, fresh:	14 000	Free
		from 16 June to 31 March		
09.0207	2002 90 31	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, other than whole or in pieces, with a dry matter content of 12 % or more by weight	30 000 with a dry matter content of 28-30 % by weight	Free
09.0209	2002 90 39			
	2002 90 91			
	2002 90 99			

ANNEX II

Repealed Regulation with the amendment thereto

Council Regulation (EC) No 1506/98
(OJ L 200, 16.7.1998, p. 1).

Regulation (EU) No 255/2014 of the European Parliament
and of the Council
(OJ L 84, 20.3.2014, p. 57).

Article 3 only

ANNEX III

Correlation Table

Regulation (EC) No 1506/98	This Regulation
Article 1	—
Article 2	Article 1
Article 3	Article 2
Article 3a	Article 3
—	Article 4
Article 4	Article 5
Annex I	—
Annex II	Annex I
—	Annex II
—	Annex III

REGULATION (EU) 2015/757 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 29 April 2015****on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/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 192(1) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Directive 2009/29/EC of the European Parliament and of the Council ⁽³⁾ and Decision No 406/2009/EC of the European Parliament and of the Council ⁽⁴⁾ which call for contributions from all sectors of the economy to achieve emission reductions, including the international maritime shipping sector, provide that in the event that no international agreement which includes international maritime emissions in its reduction targets through the International Maritime Organisation (IMO) has been approved by Member States or no such agreement through the United Nations Framework Convention on Climate Change has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions in the Community reduction commitment, with the aim of the proposed act entering into force by 2013. Such a proposal should minimise any negative impact on the Community's competitiveness while taking into account the potential environmental benefits.
- (2) Maritime transport has an impact on the global climate and on air quality, as a result of the carbon dioxide (CO₂) emissions and other emissions that it generates, such as nitrogen oxides (NO_x), sulphur oxides (SO_x), methane (CH₄), particulate matter (PM) and black carbon (BC).
- (3) International maritime shipping remains the only means of transportation not included in the Union's commitment to reduce greenhouse gas emissions. According to the impact assessment accompanying the proposal for this Regulation, Union-related CO₂ emissions from international shipping increased by 48 % between 1990 and 2007.
- (4) In the light of the rapidly developing scientific understanding of the impact of non-CO₂ related emissions from maritime transport on the global climate, an updated assessment of that impact should be carried out regularly in the context of this Regulation. Based on its assessments, the Commission should analyse the implications for policies and measures, in order to reduce those emissions.
- (5) The European Parliament's Resolution of 5 February 2014 on a 2030 framework for climate and energy policies called on the Commission and the Member States to set a binding EU 2030 target of reducing domestic greenhouse gas emissions by at least 40 % compared to 1990 levels. The European Parliament also pointed out that all sectors of the economy would need to contribute to reducing greenhouse gas emissions if the Union is to deliver its fair share of global efforts.

⁽¹⁾ OJ C 67, 6.3.2014, p. 170.

⁽²⁾ Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 5 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 28 April 2015 (not yet published in the Official Journal).

⁽³⁾ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

⁽⁴⁾ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

- (6) In its Conclusions of 23 and 24 October 2014, the European Council endorsed a binding EU target of an at least 40 % domestic reduction in greenhouse gas emissions by 2030 compared to 1990. The European Council also stated the importance of reducing greenhouse gas emissions and risks related to fossil fuel dependency in the transport sector and invited the Commission to further examine instruments and measures for a comprehensive and technology-neutral approach, inter alia, for the promotion of emissions reduction and energy efficiency in transport.
- (7) The 7th Environment Action Programme (EAP) ⁽¹⁾ underlines that all sectors of the economy will need to contribute to reducing greenhouse gas emissions if the Union is to deliver its fair share of global efforts. In this context the 7th EAP highlights that the White paper on transport of 2011 needs to be underpinned by a strong policy framework.
- (8) In July 2011, the IMO adopted technical and operational measures, in particular the Energy Efficiency Design Index (EEDI) for new ships and the Ship Energy Efficiency Management Plan (SEEMP), which will bring improvement in terms of reducing the expected increase in greenhouse gas emissions, but alone cannot lead to the necessary absolute reductions of greenhouse gas emissions from international shipping to keep efforts in line with the global objective of limiting increases in global temperatures to 2 °C.
- (9) According to data provided by the IMO, the specific energy consumption and CO₂ emissions of ships could be reduced by up to 75 % by applying operational measures and implementing existing technologies; a significant part of those measures can be regarded as cost-effective and being such that they could offer net benefits to the sector, as the reduced fuel costs ensure the pay-back of any operational or investment costs.
- (10) In order to reduce CO₂ emissions from shipping at Union level, the best possible option remains setting up a system for monitoring, reporting and verification (MRV system) of CO₂ emissions based on the fuel consumption of ships as a first step of a staged approach for the inclusion of maritime transport emissions in the Union's greenhouse gas reduction commitment, alongside emissions from other sectors that are already contributing to that commitment. Public access to the emissions data will contribute to removing market barriers that prevent the uptake of many cost-negative measures which would reduce greenhouse gas emissions from maritime transport.
- (11) The adoption of measures to reduce greenhouse gas emissions and fuel consumption is hampered by the existence of market barriers such as a lack of reliable information on the fuel efficiency of ships or of technologies available for retrofitting ships, a lack of access to finance for investments in ship efficiency, and split incentives, as shipowners would not benefit from their investments in ship efficiency when fuel bills are paid by operators.
- (12) The results of the stakeholder consultation and discussions with international partners indicate that a staged approach for the inclusion of maritime transport emissions in the Union's greenhouse gas reduction commitment should be applied with the implementation of a robust MRV system for CO₂ emissions from maritime transport as a first step and the pricing of those emissions at a later stage. This approach facilitates the making of significant progress at international level on the agreement of greenhouse gas emission reduction targets and further measures to achieve those reductions at minimum cost.
- (13) The introduction of a Union MRV system is expected to lead to emission reductions of up to 2 % compared to business-as-usual, and aggregated net costs reductions of up to EUR 1,2 billion by 2030 as it could contribute to the removal of market barriers, in particular those related to the lack of information about ship efficiency, by providing comparable and reliable information on fuel consumption and energy efficiency to the relevant markets. This reduction of transport costs should facilitate international trade. Furthermore, a robust MRV system is a prerequisite for any market-based measure, efficiency standard or other measure, whether applied at Union level or globally. It also provides reliable data to set precise emission reduction targets and to assess the progress of maritime transport's contribution towards achieving a low carbon economy. Given the international nature of shipping, the preferred and most effective method of reducing greenhouse gas emissions in international maritime transport would be by global agreement.

⁽¹⁾ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

- (14) All intra-Union voyages, all incoming voyages from the last non-Union port to the first Union port of call and all outgoing voyages from a Union port to the next non-Union port of call, including ballast voyages, should be considered relevant for the purposes of monitoring. CO₂ emissions in Union ports, including emissions arising from ships at berth or moving within a port, should also be covered, particularly as specific measures for their reduction or avoidance are available. These rules should be applied in a non-discriminatory manner to all ships regardless of their flag. However, since this Regulation focuses on maritime transport, it should not establish monitoring, reporting and verification requirements for ship movements and activities not serving the purpose of transporting cargo or passengers for commercial purposes, such as dredging, ice-breaking, pipe laying or offshore installation activities.
- (15) To ensure a level-playing field for ships operating in less favourable climate conditions, it should be possible to include specific information relating to a ship's ice class, and to its navigation through ice, in the data monitored on the basis of this Regulation.
- (16) The proposed MRV system should take the form of a Regulation on account of the complex and highly technical nature of provisions to be introduced, the need for uniform rules applicable throughout the Union to reflect the international nature of maritime transport with numerous ships being expected to call at ports in different Member States, and to facilitate implementation throughout the Union.
- (17) A robust ship-specific Union MRV system should be based on the calculation of emissions from fuel consumed on voyages to and from Union ports, as fuel sales data could not provide appropriately accurate estimates for the fuel consumption within this specific scope, due to the large tank capacities of ships.
- (18) The Union MRV system should also cover other relevant information allowing for the determination of ships' efficiency or for the further analysis of the drivers for the development of emissions, while preserving the confidentiality of commercial or industrial information. This scope also aligns the Union MRV system with international initiatives to introduce efficiency standards for existing ships, also covering operational measures, and contributes to the removal of market barriers related to the lack of information.
- (19) In order to minimise the administrative burden for shipowners and operators, in particular for small and medium-sized enterprises, and to optimise the cost-benefit ratio of the MRV system without jeopardising the objective of covering a widely predominant share of greenhouse gas emissions from maritime transport, the rules for MRV should only apply to large emitters. A threshold of 5 000 gross tonnage (GT) has been selected after detailed objective analysis of sizes and emissions of ships going to and coming from Union ports. Ships above 5 000 GT account for around 55 % of the number of ships calling into Union ports and represent around 90 % of the related emissions. This non-discriminatory threshold would ensure that the most relevant emitters are covered. A lower threshold would result in a higher administrative burden while a higher threshold would limit the coverage of emissions and thus the environmental effectiveness of the MRV system.
- (20) To further reduce the administrative burden for shipowners and operators, the monitoring rules should focus on CO₂ as the most relevant greenhouse gas emitted by maritime transport.
- (21) The rules should take into account existing requirements and data already available on board ships; therefore, companies should be given the opportunity to select one of the following four monitoring methods: the use of Bunker Fuel Delivery Notes, bunker fuel tank monitoring on-board, flow meters for applicable combustion processes or direct emission measurements. A monitoring plan specific to each ship should document the choice made and provide further details on the application of the selected method.
- (22) Any company with responsibility for an entire reporting period over a ship performing shipping activities should be considered responsible for all monitoring and reporting obligations arising in relation to that reporting period, including the submission of a satisfactorily verified emissions report. In the event of a change of company, the new company should only be responsible for the monitoring and reporting obligations related to the reporting period during which the change of company has taken place. To facilitate the fulfilment of these obligations, the new company should receive a copy of the latest monitoring plan and document of compliance, if applicable.

- (23) Other greenhouse gases, climate forcers or air pollutants should not be covered by the Union MRV system at this stage to avoid requirements to install not sufficiently reliable or commercially available measuring equipment, which could impede the implementation of the Union MRV system.
- (24) The IMO International Convention for the Prevention of Pollution from Ships (MARPOL) provides for the mandatory application of the EEDI to new ships and the use of SEEMP's throughout the entire world fleet.
- (25) To minimise the administrative burden for shipowners and operators, reporting and publication of reported information should be organised on an annual basis. By restricting the publication of emissions, fuel consumption and efficiency-related information to annual averages and aggregated figures, confidentiality issues should be addressed. In order to ensure that the protection of legitimate economic interests overriding the public interest in disclosure is not undermined, a different level of aggregation of data should be applied in exceptional cases at the request of the company. The data reported to the Commission should be integrated with statistics to the extent that those data are relevant for the development, production and dissemination of European statistics in accordance with Commission Decision 2012/504/EU ⁽¹⁾.
- (26) Verification by accredited verifiers should ensure that monitoring plans and emissions reports are correct and in compliance with the requirements set out in this Regulation. As an important element to simplify verification, verifiers should check data credibility by comparing reported data with estimated data based on ship tracking data and characteristics. Such estimates could be provided by the Commission. In order to ensure impartiality, verifiers should be independent and competent legal entities and should be accredited by national accreditation bodies established pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽²⁾.
- (27) A document of compliance issued by a verifier should be kept on board ships to demonstrate compliance with the obligations for monitoring, reporting and verification. Verifiers should inform the Commission of the issuance of such documents.
- (28) Based on experience from similar tasks related to maritime safety, the European Maritime Safety Agency (EMSA) should, within the framework of its mandate, support the Commission by carrying out certain tasks.
- (29) Enforcement of the obligations relating to the MRV system should be based on existing instruments, namely those established under Directive 2009/16/EC of the European Parliament and of the Council ⁽³⁾ and Directive 2009/21/EC of the European Parliament and of the Council ⁽⁴⁾, and on information on the issuance of documents of compliance. The document confirming compliance of the ship with the monitoring and reporting obligations should be added to the list of certificates and documents referred to in Annex IV to Directive 2009/16/EC.
- (30) Member States should endeavour to inspect ships which enter ports under their jurisdiction and for which certain required information concerning the document of compliance is not available.
- (31) Non-compliance with the provisions of this Regulation should result in the application of penalties. Member States should lay down rules on those penalties. Those penalties should be effective, proportionate and dissuasive.
- (32) In the case of ships having failed to comply with monitoring and reporting requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, it is appropriate to provide for the possibility of expulsion. Such a measure should be applied in such a way as to allow the situation of non-compliance to be rectified within a reasonable period of time.
- (33) Member States that have no maritime ports in their territory and which have no ships flying their flag and falling under the scope of this Regulation, or which have closed their national ship registers, should be able to derogate from the provisions of this Regulation relating to penalties, as long as no such ships are flying their flag.

⁽¹⁾ Commission Decision 2012/504/EU of 17 September 2012 on Eurostat (OJ L 251, 18.9.2012, p. 49).

⁽²⁾ 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).

⁽³⁾ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

⁽⁴⁾ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

- (34) The Union MRV system should serve as a model for the implementation of a global MRV system. A global MRV system is preferable as it could be regarded as more effective due to its broader scope. In this context, and with a view to facilitating the development of international rules within the IMO for the monitoring, reporting and verification of greenhouse gas emissions from maritime transport, the Commission should share relevant information on the implementation of this Regulation with the IMO and other relevant international bodies on a regular basis and relevant submissions should be made to the IMO. Where an agreement on a global MRV system is reached, the Commission should review the Union MRV system with a view to aligning it to the global MRV system.
- (35) In order to take account of relevant international rules and international and European standards as well as technological and scientific developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of reviewing certain technical aspects of monitoring and reporting of CO₂ emissions from ships and of further specifying the rules for the verification activities and the methods of accreditation of verifiers. 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.
- (36) In order to ensure uniform conditions for the use of standard templates for the monitoring of CO₂ emissions and other relevant information, for the use of automated systems and standard electronic templates for the coherent reporting of CO₂ emissions and other relevant information to the Commission and the authorities of the flag States concerned, for the specification of technical rules specifying the parameters applicable to categories of ships other than passenger, ro-ro and container ships and for the revision of those parameters, 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⁾.
- (37) Since the objective of this Regulation, namely to monitor, report and verify CO₂ emissions from ships as the first step of a staged approach to reduce greenhouse gas emissions, cannot be sufficiently achieved by the Member States, due to the international nature of maritime transport, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (38) The rules establishing the MRV system should comply with Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽³⁾.
- (39) This Regulation should enter into force on 1 July 2015 to ensure that the Member States and relevant stakeholders have sufficient time to take the necessary measures for the effective application of this Regulation before the first reporting period starting on 1 January 2018,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules for the accurate monitoring, reporting and verification of carbon dioxide (CO₂) emissions and of other relevant information from ships arriving at, within or departing from ports under the jurisdiction of a Member State, in order to promote the reduction of CO₂ emissions from maritime transport in a cost effective manner.

⁽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⁾ 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).

⁽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 of the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 2***Scope**

1. This Regulation applies to ships above 5 000 gross tonnage in respect of CO₂ emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State.
2. This Regulation does not apply to warships, naval auxiliaries, fish-catching or fish-processing ships, wooden ships of a primitive build, ships not propelled by mechanical means, or government ships used for non-commercial purposes.

*Article 3***Definitions**

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

- (a) 'CO₂ emissions' means the release of CO₂ into the atmosphere by ships;
- (b) 'port of call' means the port where a ship stops to load or unload cargo or to embark or disembark passengers; consequently, stops for the sole purposes of refuelling, obtaining supplies, relieving the crew, going into dry-dock or making repairs to the ship and/or its equipment, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, and stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities are excluded;
- (c) 'voyage' means any movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes;
- (d) 'company' means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner;
- (e) 'gross tonnage' (GT) means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, adopted by the International Maritime Organization (IMO) in London on 23 June 1969, or any successor convention;
- (f) 'verifier' means a legal entity carrying out verification activities which is accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and this Regulation;
- (g) 'verification' means the activities carried out by a verifier to assess the conformity of the documents transmitted by the company with the requirements of this Regulation;
- (h) 'document of compliance' means a document specific to a ship, issued to a company by a verifier, which confirms that that ship has complied with the requirements of this Regulation for a specific reporting period;
- (i) 'other relevant information' means information related to CO₂ emissions from the consumption of fuels, to transport work and to the energy efficiency of ships, which enables the analysis of emission trends and the assessment of ships' performances;
- (j) 'emission factor' means the average emission rate of a greenhouse gas relative to the activity data of a source stream, assuming complete oxidation for combustion and complete conversion for all other chemical reactions;
- (k) 'uncertainty' means a parameter, associated with the result of the determination of a quantity, that characterises the dispersion of the values that could reasonably be attributed to the particular quantity, including the effects of systematic as well as of random factors, expressed as a percentage, and describes a confidence interval around the mean value comprising 95 % of inferred values taking into account any asymmetry of the distribution of values;
- (l) 'conservative' means that a set of assumptions is defined in order to ensure that no under-estimation of annual emissions or over-estimation of distances or amounts of cargo carried occurs;
- (m) 'reporting period' means one calendar year during which CO₂ emissions have to be monitored and reported. For voyages starting and ending in two different calendar years, the monitoring and reporting data shall be accounted under the first calendar year concerned;

- (n) 'ship at berth' means a ship which is securely moored or anchored in a port falling under the jurisdiction of a Member State while it is loading, unloading or hotelling, including the time spent when not engaged in cargo operations;
- (o) 'ice class' means the notation assigned to the ship by the competent national authorities of the flag State or an organisation recognised by that State, showing that the ship has been designed for navigation in sea-ice conditions.

CHAPTER II

MONITORING AND REPORTING

SECTION 1

Principles and methods for monitoring and reporting

Article 4

Common principles for monitoring and reporting

1. In accordance with Articles 8 to 12, companies shall, for each of their ships, monitor and report on the relevant parameters during a reporting period. They shall carry out that monitoring and reporting within all ports under the jurisdiction of a Member State and for any voyages to or from a port under the jurisdiction of a Member State.
2. Monitoring and reporting shall be complete and cover CO₂ emissions from the combustion of fuels, while the ships are at sea as well as at berth. Companies shall apply appropriate measures to prevent any data gaps within the reporting period.
3. Monitoring and reporting shall be consistent and comparable over time. To that end, companies shall use the same monitoring methodologies and data sets subject to modifications assessed by the verifier.
4. Companies shall obtain, record, compile, analyse and document monitoring data, including assumptions, references, emission factors and activity data, in a transparent manner that enables the reproduction of the determination of CO₂ emissions by the verifier.
5. Companies shall ensure that the determination of CO₂ emissions is neither systematically nor knowingly inaccurate. They shall identify and reduce any source of inaccuracies.
6. Companies shall enable reasonable assurance of the integrity of the CO₂ emission data to be monitored and reported.
7. Companies shall endeavour to take account of the recommendations included in the verification reports issued pursuant to Article 13(3) or (4) in their subsequent monitoring and reporting.

Article 5

Methods for monitoring CO₂ emissions and other relevant information

1. For the purposes of Article 4(1), (2) and (3), companies shall, for each of their ships, determine the CO₂ emissions in accordance with any of the methods set out in Annex I, and monitor other relevant information in accordance with the rules set out in Annex II or adopted pursuant to it.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to amend the methods set out in Annex I and the rules set out in Annex II, in order to take into account relevant international rules as well as international and European standards. The Commission shall be also empowered to adopt delegated acts in accordance with Article 23 to amend Annexes I and II in order to refine the elements of the monitoring methods set out therein, in the light of technological and scientific developments.

SECTION 2

Monitoring plan

Article 6

Content and submission of the monitoring plan

1. By 31 August 2017, companies shall submit to the verifiers a monitoring plan for each of their ships indicating the method chosen to monitor and report CO₂ emissions and other relevant information.

2. Notwithstanding paragraph 1, for ships falling under the scope of this Regulation for the first time after 31 August 2017, the company shall submit a monitoring plan to the verifier without undue delay and no later than two months after each ship's first call in a port under the jurisdiction of a Member State.

3. The monitoring plan shall consist of a complete and transparent documentation of the monitoring method for the ship concerned and shall contain at least the following elements:

- (a) the identification and type of the ship, including its name, its IMO identification number, its port of registry or home port, and the name of the shipowner;
- (b) the name of the company and the address, telephone and e-mail details of a contact person;
- (c) a description of the following CO₂ emission sources on board the ship: main engines, auxiliary engines, gas turbines, boilers and inert gas generators, and the fuel types used;
- (d) a description of the procedures, systems and responsibilities used to update the list of CO₂ emission sources over the reporting period;
- (e) a description of the procedures used to monitor the completeness of the list of voyages;
- (f) a description of the procedures for monitoring the fuel consumption of the ship, including:
 - (i) the method chosen from among those set out in Annex I for calculating the fuel consumption of each CO₂ emission source, including, where applicable, a description of the measuring equipment used,
 - (ii) the procedures for the measurement of fuel uplifts and fuel in tanks, a description of the measuring equipment used and the procedures for recording, retrieving, transmitting and storing information regarding measurements, as applicable,
 - (iii) the method chosen for the determination of density, where applicable,
 - (iv) a procedure to ensure that the total uncertainty of fuel measurements is consistent with the requirements of this Regulation, where possible referring to national laws, clauses in customer contracts or fuel supplier accuracy standards;
- (g) single emission factors used for each fuel type, or in the case of alternative fuels, the methodologies for determining the emission factors, including the methodology for sampling, methods of analysis and a description of the laboratories used, with the ISO 17025 accreditation of those laboratories, if any;
- (h) a description of the procedures used for determining activity data per voyage, including:
 - (i) the procedures, responsibilities and data sources for determining and recording the distance,
 - (ii) the procedures, responsibilities, formulae and data sources for determining and recording the cargo carried and the number of passengers, as applicable,
 - (iii) the procedures, responsibilities, formulae and data sources for determining and recording the time spent at sea between the port of departure and the port of arrival;
- (i) a description of the method to be used to determine surrogate data for closing data gaps;
- (j) a revision record sheet to record all the details of the revision history.

4. The monitoring plan may also contain information on the ice class of the ship and/or the procedures, responsibilities, formulae and data sources for determining and recording the distance travelled and the time spent at sea when navigating through ice.

5. Companies shall use standardised monitoring plans based on templates. Those templates, including the technical rules for their uniform application, shall be determined by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

Article 7

Modifications of the monitoring plan

1. Companies shall check regularly, and at least annually, whether a ship's monitoring plan reflects the nature and functioning of the ship and whether the monitoring methodology can be improved.

2. Companies shall modify the monitoring plan in any of the following situations:
 - (a) where a change of company occurs;
 - (b) where new CO₂ emissions occur due to new emission sources or due to the use of new fuels not yet contained in the monitoring plan;
 - (c) where a change in availability of data, due to the use of new types of measuring equipment, new sampling methods or analysis methods, or for other reasons, may affect the accuracy of the determination of CO₂ emissions;
 - (d) where data resulting from the monitoring method applied has been found to be incorrect;
 - (e) where any part of the monitoring plan is identified as not being in conformity with the requirements of this Regulation and the company is required to revise it pursuant to Article 13(1).
3. Companies shall notify to the verifiers without undue delay any proposals for modification of the monitoring plan.
4. Modifications of the monitoring plan under points (b), (c) and (d) of paragraph 2 of this Article shall be subject to assessment by the verifier in accordance with Article 13(1). Following the assessment, the verifier shall notify the company whether those modifications are in conformity.

SECTION 3

Monitoring of CO₂ emissions and other relevant information

Article 8

Monitoring of activities within a reporting period

From 1 January 2018, companies shall, based on the monitoring plan assessed in accordance with Article 13(1), monitor CO₂ emissions for each ship on a per-voyage and an annual basis by applying the appropriate method for determining CO₂ emissions among those set out in Part B of Annex I and by calculating CO₂ emissions in accordance with Part A of Annex I.

Article 9

Monitoring on a per-voyage basis

1. Based on the monitoring plan assessed in accordance with Article 13(1), for each ship arriving in or departing from, and for each voyage to or from, a port under a Member State's jurisdiction, companies shall monitor in accordance with Part A of Annex I and Part A of Annex II the following parameters:
 - (a) port of departure and port of arrival including the date and hour of departure and arrival;
 - (b) amount and emission factor for each type of fuel consumed in total;
 - (c) CO₂ emitted;
 - (d) distance travelled;
 - (e) time spent at sea;
 - (f) cargo carried;
 - (g) transport work.

Companies may also monitor information relating to the ship's ice class and to navigation through ice, where applicable.

2. By way of derogation from paragraph 1 of this Article and without prejudice to Article 10, a company shall be exempt from the obligation to monitor the information referred to in paragraph 1 of this Article on a per-voyage basis in respect of a specified ship, if:
 - (a) all of the ship's voyages during the reporting period either start from or end at a port under the jurisdiction of a Member State; and
 - (b) the ship, according to its schedule, performs more than 300 voyages during the reporting period.

*Article 10***Monitoring on an annual basis**

Based on the monitoring plan assessed in accordance with Article 13(1), for each ship and for each calendar year, companies shall monitor in accordance with Part A of Annex I and with Part B of Annex II the following parameters:

- (a) amount and emission factor for each type of fuel consumed in total;
- (b) total aggregated CO₂ emitted within the scope of this Regulation;
- (c) aggregated CO₂ emissions from all voyages between ports under a Member State's jurisdiction;
- (d) aggregated CO₂ emissions from all voyages which departed from ports under a Member State's jurisdiction;
- (e) aggregated CO₂ emissions from all voyages to ports under a Member State's jurisdiction;
- (f) CO₂ emissions which occurred within ports under a Member State's jurisdiction at berth;
- (g) total distance travelled;
- (h) total time spent at sea;
- (i) total transport work;
- (j) average energy efficiency.

Companies may monitor information relating to the ship's ice class and to navigation through ice, where applicable.

Companies may also monitor fuel consumed and CO₂ emitted, differentiating on the basis of other criteria defined in the monitoring plan.

*SECTION 4***Reporting***Article 11***Content of the emissions report**

1. From 2019, by 30 April of each year, companies shall submit to the Commission and to the authorities of the flag States concerned, an emissions report concerning the CO₂ emissions and other relevant information for the entire reporting period for each ship under their responsibility, which has been verified as satisfactory by a verifier in accordance with Article 13.

2. Where there is a change of company, the new company shall ensure that each ship under its responsibility complies with the requirements of this Regulation in relation to the entire reporting period during which it takes responsibility for the ship concerned.

3. Companies shall include in the emissions report the following information:

- (a) data identifying the ship and the company, including:
 - (i) name of the ship,
 - (ii) IMO identification number,
 - (iii) port of registry or home port,
 - (iv) ice class of the ship, if included in the monitoring plan,
 - (v) technical efficiency of the ship (the Energy Efficiency Design Index (EEDI) or the Estimated Index Value (EIV) in accordance with IMO Resolution MEPC.215 (63), where applicable),
 - (vi) name of the shipowner,
 - (vii) address of the shipowner and its principal place of business,

- (viii) name of the company (if not the shipowner),
- (ix) address of the company (if not the shipowner) and its principal place of business,
- (x) address, telephone and e-mail details of a contact person;
- (b) the identity of the verifier that assessed the emissions report;
- (c) information on the monitoring method used and the related level of uncertainty;
- (d) the results from annual monitoring of the parameters in accordance with Article 10.

Article 12

Format of the emissions report

1. The emissions report shall be submitted using automated systems and data exchange formats, including electronic templates.
2. The Commission shall determine, by means of implementing acts, technical rules establishing the data exchange formats, including the electronic templates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

CHAPTER III

VERIFICATION AND ACCREDITATION

Article 13

Scope of verification activities and verification report

1. The verifier shall assess the conformity of the monitoring plan with the requirements laid down in Articles 6 and 7. Where the verifier's assessment identifies non-conformities with those requirements, the company concerned shall revise its monitoring plan accordingly and submit the revised plan for a final assessment by the verifier before the reporting period starts. The company shall agree with the verifier on the timeframe necessary to introduce those revisions. That timeframe shall in any event not extend beyond the beginning of the reporting period.

2. The verifier shall assess the conformity of the emissions report with the requirements laid down in Articles 8 to 12 and Annexes I and II.

In particular the verifier shall assess whether the CO₂ emissions and other relevant information included in the emissions report have been determined in accordance with Articles 8, 9 and 10 and the monitoring plan.

3. Where the verification assessment concludes, with reasonable assurance from the verifier, that the emissions report is free from material misstatements, the verifier shall issue a verification report stating that the emissions report has been verified as satisfactory. The verification report shall specify all issues relevant to the work carried out by the verifier.

4. Where the verification assessment concludes that the emissions report includes misstatements or non-conformities with the requirements of this Regulation, the verifier shall inform the company thereof in a timely manner. The company shall then correct the misstatements or non-conformities so as to enable the verification process to be completed in time and shall submit to the verifier the revised emissions report and any other information that was necessary to correct the non-conformities identified. In its verification report, the verifier shall state whether the misstatements or non-conformities identified during the verification assessment have been corrected by the company. Where the communicated misstatements or non-conformities have not been corrected and, individually or combined, lead to material misstatements, the verifier shall issue a verification report stating that the emissions report does not comply with this Regulation.

Article 14

General obligations and principles for the verifiers

1. The verifier shall be independent from the company or from the operator of a ship and shall carry out the activities required under this Regulation in the public interest. For that purpose, neither the verifier nor any part of the same legal entity shall be a company or ship operator, the owner of a company, or be owned by them, nor shall the verifier have relations with the company that could affect its independence and impartiality.

2. When considering the verification of the emissions report and of the monitoring procedures applied by the company, the verifier shall assess the reliability, credibility and accuracy of the monitoring systems and of the reported data and information relating to CO₂ emissions, in particular:

- (a) the attribution of fuel consumption to voyages;
- (b) the reported fuel consumption data and related measurements and calculations;
- (c) the choice and the employment of emission factors;
- (d) the calculations leading to the determination of the overall CO₂ emissions;
- (e) the calculations leading to the determination of the energy efficiency.

3. The verifier shall only consider emissions reports submitted in accordance with Article 12 if reliable and credible data and information enable the CO₂ emissions to be determined with a reasonable degree of certainty and provided that the following are ensured:

- (a) the reported data are coherent in relation to estimated data that are based on ship tracking data and characteristics such as the installed engine power;
- (b) the reported data are free of inconsistencies, in particular when comparing the total volume of fuel purchased annually by each ship and the aggregate fuel consumption during voyages;
- (c) the collection of the data has been carried out in accordance with the applicable rules; and
- (d) the relevant records of the ship are complete and consistent.

Article 15

Verification procedures

1. The verifier shall identify potential risks related to the monitoring and reporting process by comparing reported CO₂ emissions with estimated data based on ship tracking data and characteristics such as the installed engine power. Where significant deviations are found, the verifier shall carry out further analyses.

2. The verifier shall identify potential risks related to the different calculation steps by reviewing all data sources and methodologies used.

3. The verifier shall take into consideration any effective risk control methods applied by the company to reduce levels of uncertainty associated with the accuracy specific to the monitoring methods used.

4. The company shall provide the verifier with any additional information that enables it to carry out the verification procedures. The verifier may conduct spot-checks during the verification process to determine the reliability of reported data and information.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the rules for the verification activities referred to in this Regulation. When adopting these acts, the Commission shall take into account the elements set out in Part A of Annex III. The rules specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

Article 16

Accreditation of verifiers

1. Verifiers that assess the monitoring plans and the emissions reports, and issue verification reports and documents of compliance referred to in this Regulation shall be accredited for activities under the scope of this Regulation by a national accreditation body pursuant to Regulation (EC) No 765/2008.

2. Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 765/2008 shall apply.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the methods of accreditation of verifiers. When adopting these acts, the Commission shall take into account the elements set out in Part B of Annex III. The methods specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

CHAPTER IV

COMPLIANCE AND PUBLICATION OF INFORMATION*Article 17***Document of compliance**

1. Where the emissions report fulfils the requirements set out in Articles 11 to 15 and those in Annexes I and II, the verifier shall issue, on the basis of the verification report, a document of compliance for the ship concerned.
2. The document of compliance shall include the following information:
 - (a) identity of the ship (name, IMO identification number and port of registry or home port);
 - (b) name, address and principal place of business of the shipowner;
 - (c) identity of the verifier;
 - (d) date of issue of the document of compliance, its period of validity and the reporting period it refers to.
3. Documents of compliance shall be valid for the period of 18 months after the end of the reporting period.
4. The verifier shall inform the Commission and the authority of the flag State, without delay, of the issuance of any document of compliance. The verifier shall transmit the information referred to in paragraph 2 using automated systems and data exchange formats, including electronic templates.
5. The Commission shall determine, by means of implementing acts, technical rules for the data exchange formats, including the electronic templates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

*Article 18***Obligation to carry a valid document of compliance on board**

By 30 June of the year following the end of a reporting period, ships arriving at, within or departing from a port under the jurisdiction of a Member State, and which have carried out voyages during that reporting period, shall carry on board a valid document of compliance.

*Article 19***Compliance with monitoring and reporting requirements and inspections**

1. Based on the information published in accordance with Article 21(1), each Member State shall take all the measures necessary to ensure compliance with the monitoring and reporting requirements set out in Articles 8 to 12 by ships flying its flag. Member States shall regard the fact that a document of compliance has been issued for the ship concerned, in accordance with Article 17(4), as evidence of such compliance.
2. Each Member State shall ensure that any inspection of a ship in a port under its jurisdiction carried out in accordance with Directive 2009/16/EC includes checking that a valid document of compliance is carried on board.
3. For each ship in respect of which the information referred to in points (i) and (j) of Article 21(2), is not available at the time when it enters a port under the jurisdiction of a Member State, the Member State concerned may check that a valid document of compliance is carried on board.

*Article 20***Penalties, information exchange and expulsion order**

1. Member States shall set up a system of penalties for failure to comply with the monitoring and reporting obligations set out in Articles 8 to 12 and shall take all the measures necessary to ensure that those penalties are imposed. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2017, and shall notify to the Commission without delay any subsequent amendments.

2. Member States shall establish an effective exchange of information and effective cooperation between their national authorities responsible for ensuring compliance with monitoring and reporting obligations or, where applicable, their authorities entrusted with penalty procedures. National penalty procedures against a specified ship by any Member State shall be notified to the Commission, the European Maritime Safety Agency (EMSA), to the other Member States and to the flag State concerned.

3. In the case of ships that have failed to comply with the monitoring and reporting requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, the competent authority of the Member State of the port of entry may issue an expulsion order which shall be notified to the Commission, EMSA, the other Member States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State shall refuse entry of the ship concerned into any of its ports until the company fulfils its monitoring and reporting obligations in accordance with Articles 11 and 18. The fulfilment of those obligations shall be confirmed by the notification of a valid document of compliance to the competent national authority which issued the expulsion order. This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.

4. The shipowner or operator of a ship or its representative in the Member States shall have the right to an effective remedy before a court or tribunal against an expulsion order and shall be properly informed thereof by the competent authority of the Member State of the port of entry. Member States shall establish and maintain appropriate procedures for this purpose.

5. Any Member State without maritime ports in its territory and which has closed its national ship register or has no ships flying its flag that fall within the scope of this Regulation, and as long as no such ships are flying its flag, may derogate from the provisions of this Article. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on 1 July 2015. Any subsequent change shall also be communicated to the Commission.

Article 21

Publication of information and Commission report

1. By 30 June each year, the Commission shall make publicly available the information on CO₂ emissions reported in accordance with Article 11 as well as the information set out in paragraph 2 of this Article.

2. The Commission shall include the following in the information to be made publicly available:

- (a) the identity of the ship (name, IMO identification number and port of registry or home port);
- (b) the technical efficiency of the ship (EEDI or EIV, where applicable);
- (c) the annual CO₂ emissions;
- (d) the annual total fuel consumption for voyages;
- (e) the annual average fuel consumption and CO₂ emissions per distance travelled of voyages;
- (f) the annual average fuel consumption and CO₂ emissions per distance travelled and cargo carried on voyages;
- (g) the annual total time spent at sea in voyages;
- (h) the method applied for monitoring;
- (i) the date of issue and the expiry date of the document of compliance;
- (j) the identity of the verifier that assessed the emissions report;
- (k) any other information monitored and reported on a voluntary basis in accordance with Article 10.

3. Where, due to specific circumstances, disclosure of a category of aggregated data under paragraph 2, which does not relate to CO₂ emissions, would exceptionally undermine the protection of commercial interests deserving protection as a legitimate economic interest overriding the public interest in disclosure pursuant to Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁽¹⁾, a different level of aggregation of that specific data shall be applied, at the request of the company, so as to protect such interests. Where application of a different level of aggregation is not possible, the Commission shall not make those data publicly available.

⁽¹⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

4. The Commission shall publish an annual report on CO₂ emissions and other relevant information from maritime transport, including aggregated and explained results, with the aim of informing the public and allowing for an assessment of the CO₂ emissions and the energy efficiency of maritime transport per size, type of ships, activity, or any other category deemed relevant.
5. The Commission shall assess every two years the maritime transport sector's overall impact on the global climate including through non-CO₂-related emissions or effects.
6. Within the framework of its mandate, EMSA shall assist the Commission in its work to comply with this Article and Articles 12 and 17 of this Regulation, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽¹⁾.

CHAPTER V

INTERNATIONAL COOPERATION

Article 22

International cooperation

1. The Commission shall inform the IMO and other relevant international bodies on a regular basis of the implementation of this Regulation, without prejudice to the distribution of competences or to decision-making procedures as provided for in the Treaties.
2. The Commission and, where relevant, the Member States shall maintain technical exchange with third countries, in particular the further development of monitoring methods, the organisation of reporting and the verification of emissions reports.
3. In the event that an international agreement on a global monitoring, reporting and verification system for greenhouse gas emissions or on global measures to reduce greenhouse gas emissions from maritime transport is reached, the Commission shall review this Regulation and shall, if appropriate, propose amendments to this Regulation in order to ensure alignment with that international agreement.

CHAPTER VI

DELEGATED AND IMPLEMENTING POWERS AND FINAL PROVISIONS

Article 23

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.
2. The power to adopt delegated acts referred to in Articles 5(2), 15(5) and 16(3) shall be conferred on the Commission for a period of five years from 1 July 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of 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 5(2), 15(5) and 16(3) 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.

⁽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).

5. A delegated act adopted pursuant to Articles 5(2), 15(5) and 16(3) 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 24

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 26 of Regulation (EU) No 525/2013 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 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 25

Amendments to Directive 2009/16/EC

The following point shall be added to the list set out in Annex IV to Directive 2009/16/EC:

‘50. Document of Compliance issued under Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC ^(*).

^(*) OJ L 123, 19.5.2015, p. 55.’

Article 26

Entry into force

This Regulation shall enter into force on 1 July 2015.

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

Done at Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

⁽¹⁾ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

ANNEX I

Methods for monitoring CO₂ emissionsA. CALCULATION OF CO₂ EMISSIONS (ARTICLE 9)

For the purposes of calculating CO₂ emissions companies shall apply the following formula:

Fuel consumption × emission factor

Fuel consumption shall include fuel consumed by main engines, auxiliary engines, gas turbines, boilers and inert gas generators.

Fuel consumption within ports at berth shall be calculated separately.

In principle, default values for emission factors of fuels shall be used unless the company decides to use data on fuel quality set out in the Bunker Fuel Delivery Notes (BDN) and used for demonstrating compliance with applicable regulations of sulphur emissions.

Those default values for emission factors shall be based on the latest available values of the Intergovernmental Panel for Climate Change (IPCC). Those values can be derived from Annex VI to Commission Regulation (EU) No 601/2012 ⁽¹⁾.

Appropriate emission factors shall be applied in respect of biofuels and alternative non-fossil fuels.

B. METHODS FOR DETERMINING CO₂ EMISSIONS

The company shall define in the monitoring plan which monitoring method is to be used to calculate fuel consumption for each ship under its responsibility and ensure that once the method has been chosen, it is consistently applied.

Actual fuel consumption for each voyage shall be used and be calculated using one of the following methods:

- (a) Bunker Fuel Delivery Note (BDN) and periodic stocktakes of fuel tanks;
- (b) Bunker fuel tank monitoring on board;
- (c) Flow meters for applicable combustion processes;
- (d) Direct CO₂ emissions measurements.

Any combination of these methods, once assessed by the verifier, may be used if it enhances the overall accuracy of the measurement.

1. Method A: BDN and periodic stocktakes of fuel tanks

This method is based on the quantity and type of fuel as defined on the BDN combined with periodic stocktakes of fuel tanks based on tank readings. The fuel at the beginning of the period, plus deliveries, minus fuel available at the end of the period and de-bunkered fuel between the beginning of the period and the end of the period together constitute the fuel consumed over the period.

The period means the time between two port calls or time within a port. For the fuel used during a period, the fuel type and the sulphur content need to be specified.

This method shall not be used when BDN are not available on board ships, especially when cargo is used as a fuel, for example, liquefied natural gas (LNG) boil-off.

Under existing MARPOL Annex VI regulations, the BDN is mandatory, is to be retained on board for three years after the delivery of the bunker fuel and is to be readily available. The periodic stocktake of fuel tanks on-board is based on fuel tank readings. It uses tank tables relevant to each fuel tank to determine the volume at the time of the fuel tank reading. The uncertainty associated with the BDN shall be specified in the monitoring plan. Fuel tank readings shall be carried out by appropriate methods such as automated systems, soundings and dip tapes. The method for tank sounding and uncertainty associated shall be specified in the monitoring plan.

⁽¹⁾ Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 181, 12.7.2012, p. 30).

Where the amount of fuel uplift or the amount of fuel remaining in the tanks is determined in units of volume, expressed in litres, the company shall convert that amount from volume to mass by using actual density values. The company shall determine the actual density by using one of the following:

- (a) on-board measurement systems;
- (b) the density measured by the fuel supplier at fuel uplift and recorded on the fuel invoice or BDN.

The actual density shall be expressed in kg/l and determined for the applicable temperature for a specific measurement. In cases for which actual density values are not available, a standard density factor for the relevant fuel type shall be applied once assessed by the verifier.

2. Method B: Bunker fuel tank monitoring on-board

This method is based on fuel tank readings for all fuel tanks on-board. The tank readings shall occur daily when the ship is at sea and each time the ship is bunkering or de-bunkering.

The cumulative variations of the fuel tank level between two readings constitute the fuel consumed over the period.

The period means the time between two port calls or time within a port. For the fuel used during a period, the fuel type and the sulphur content need to be specified.

Fuel tank readings shall be carried out by appropriate methods such as automated systems, soundings and dip tapes. The method for tank sounding and uncertainty associated shall be specified in the monitoring plan.

Where the amount of fuel uplift or the amount of fuel remaining in the tanks is determined in units of volume, expressed in litres, the company shall convert that amount from volume to mass by using actual density values. The company shall determine the actual density by using one of the following:

- (a) on-board measurement systems;
- (b) the density measured by the fuel supplier at fuel uplift and recorded on the fuel invoice or BDN;
- (c) the density measured in a test analysis conducted in an accredited fuel test laboratory, where available.

The actual density shall be expressed in kg/l and determined for the applicable temperature for a specific measurement. In cases for which actual density values are not available, a standard density factor for the relevant fuel type shall be applied once assessed by the verifier.

3. Method C: Flow meters for applicable combustion processes

This method is based on measured fuel flows on-board. The data from all flow meters linked to relevant CO₂ emission sources shall be combined to determine all fuel consumption for a specific period.

The period means the time between two port calls or time within a port. For the fuel used during a period, the fuel type and the sulphur content need to be monitored.

The calibration methods applied and the uncertainty associated with flow meters used shall be specified in the monitoring plan.

Where the amount of fuel consumed is determined in units of volume, expressed in litres, the company shall convert that amount from volume to mass by using actual density values. The company shall determine the actual density by using one of the following:

- (a) on-board measurement systems;
- (b) the density measured by the fuel supplier at fuel uplift and recorded on the fuel invoice or BDN.

The actual density shall be expressed in kg/l and determined for the applicable temperature for a specific measurement. In cases for which actual density values are not available, a standard density factor for the relevant fuel type shall be applied once assessed by the verifier.

4. Method D: Direct CO₂ emissions measurement

The direct CO₂ emissions measurements may be used for voyages and for CO₂ emissions occurring in ports located in a Member State's jurisdiction. CO₂ emitted shall include CO₂ emitted by main engines, auxiliary engines, gas turbines, boilers and inert gas generators. For ships for which reporting is based on this method, the fuel consumption shall be calculated using the measured CO₂ emissions and the applicable emission factor of the relevant fuels.

This method is based on the determination of CO₂ emission flows in exhaust gas stacks (funnels) by multiplying the CO₂ concentration of the exhaust gas with the exhaust gas flow.

The calibration methods applied and the uncertainty associated with the devices used shall be specified in the monitoring plan.

ANNEX II

Monitoring of other relevant information

A. MONITORING ON A PER VOYAGE BASIS (ARTICLE 9)

1. For the purposes of monitoring other relevant information on a per-voyage basis (Article 9(1)), companies shall respect the following rules:

- (a) the date and hour of departure and arrival shall be considered using Greenwich Mean Time (GMT). The time spent at sea shall be calculated based on port departure and arrival information and shall exclude anchoring;
- (b) the distance travelled may be either the distance of the most direct route between the port of departure and the port of arrival or the real distance travelled. In the event of the use of the distance of the most direct route between the port of departure and the port of arrival, a conservative correction factor should be taken into account to ensure that the distance travelled is not significantly underestimated. The monitoring plan shall specify which distance calculation is used and, if necessary, the correction factor used. The distance travelled shall be expressed in nautical miles;
- (c) transport work shall be determined by multiplying the distance travelled with the amount of cargo carried;
- (d) for passenger ships, the number of passengers shall be used to express cargo carried. For all other categories of ships, the amount of cargo carried shall be expressed either as metric tonnes or as standard cubic metres of cargo, as appropriate;
- (e) for ro-ro ships, cargo carried shall be defined as the number of cargo units (trucks, cars, etc.) or lane-metres multiplied by default values for their weight. Where cargo carried by ro-ro ships has been defined based on Annex B to the CEN standard EN 16258 (2012), covering 'Methodology for calculation and declaration of energy consumption and GHG emissions of transport services (freight and passengers)', that definition shall be deemed to comply with this Regulation.

For the purposes of this Regulation, 'ro-ro ship' means a ship designed for the carriage of roll-on-roll-off cargo transportation units or with roll-on-roll-off cargo spaces;

- (f) for container ships, cargo carried shall be defined as the total weight in metric tonnes of the cargo or, failing that, the amount of 20-foot equivalent units (TEU) multiplied by default values for their weight. Where cargo carried by a container ship is defined in accordance with applicable IMO Guidelines or instruments pursuant to the Convention for the Safety of Life at Sea (SOLAS Convention), that definition shall be deemed to comply with this Regulation.

For the purposes of this Regulation, 'container ship' means a ship designed exclusively for the carriage of containers in holds and on deck;

- (g) the determination of cargo carried for categories of ships other than passenger ships, ro-ro ships and container ships shall enable the taking into account, where applicable, of the weight and volume of cargo carried and the number of passengers carried. Those categories shall include, inter alia, tankers, bulk carriers, general cargo ships, refrigerated cargo ships, vehicle carriers and combination carriers.

2. In order to ensure uniform conditions for the application of point (g) of paragraph 1, the Commission shall adopt, by means of implementing acts, technical rules specifying the parameters applicable to each of the other categories of ships referred to under that point.

Those implementing acts shall be adopted not later than 31 December 2016 in accordance with the examination procedure referred to in Article 24(2).

The Commission, by means of implementing acts, may revise, where appropriate, the applicable parameters referred to in point (g) of paragraph 1. Where relevant, the Commission shall also revise those parameters to take account of amendments to this Annex pursuant to Article 5(2). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

3. In complying with the rules referred to in paragraphs 1 and 2, companies may also choose to include specific information relating to the ship's ice class and to navigation through ice.

B. MONITORING ON AN ANNUAL BASIS (ARTICLE 10)

For the purposes of monitoring other relevant information on an annual basis, companies shall respect the following rules:

The values to be monitored under Article 10 shall be determined by aggregation of the respective per voyage data.

Average energy efficiency shall be monitored by using at least four indicators: fuel consumption per distance, fuel consumption per transport work, CO₂ emissions per distance and CO₂ emissions per transport work, which shall be calculated as follows:

Fuel consumption per distance = total annual fuel consumption/total distance travelled

Fuel consumption per transport work = total annual fuel consumption/total transport work

CO₂ emissions per distance = total annual CO₂ emissions/total distance travelled

CO₂ emissions per transport work = total annual CO₂ emissions/total transport work.

In complying with these rules, companies may also choose to include specific information relating to the ship's ice class and to navigation through ice, as well as other information related to the fuel consumed and CO₂ emitted, differentiating on the basis of other criteria defined in the monitoring plan.

ANNEX III

Elements to be taken into account for the delegated acts provided for in Articles 15 and 16

A. VERIFICATION PROCEDURES

- Competencies of verifiers,
- documents to be provided by companies to verifiers,
- risk assessment to be carried out by verifiers,
- assessment of the conformity of the monitoring plan,
- verification of the emissions report,
- materiality level,
- reasonable assurance of verifiers,
- misstatements and non-conformities,
- content of the verification report,
- recommendations for improvements,
- communication between companies, verifiers and the Commission.

B. ACCREDITATION OF VERIFIERS

- How accreditation for shipping activities can be requested,
 - how verifiers will be assessed by the national accreditation bodies in order to issue an accreditation certificate,
 - how the national accreditation bodies will perform the surveillance needed to confirm the continuation of the accreditation,
 - requirements for national accreditation bodies in order to be competent to provide accreditation to verifiers for shipping activities, including reference to harmonised standards.
-

REGULATION (EU) 2015/758 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
concerning type-approval requirements for the deployment of the eCall in-vehicle system based on
the 112 service and amending Directive 2007/46/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) A comprehensive Union type-approval system for motor vehicles has been established by Directive 2007/46/EC of the European Parliament and of the Council ⁽³⁾.
- (2) The technical requirements for the type-approval of motor vehicles with regard to numerous safety and environmental elements have been harmonised at Union level in order to ensure a high level of road safety throughout the Union.
- (3) The deployment of an eCall service available in all vehicles and in all Member States has been one of the principal Union objectives in the area of road safety since 2003. In order to achieve that objective, a series of initiatives have been launched, as part of a voluntary deployment approach, but have not achieved sufficient progress to date.
- (4) In order to further improve road safety, the Commission Communication of 21 August 2009 entitled 'eCall: Time for Deployment' proposed new measures to deploy an in-vehicle emergency call service in the Union. One of the suggested measures was to make mandatory the fitting of 112-based eCall in-vehicle systems in all new types of vehicles starting with vehicles of categories M₁ and N₁ as defined in Annex II to Directive 2007/46/EC.
- (5) On 3 July 2012, the European Parliament adopted a resolution on eCall: a new 112 service for citizens, which urged the Commission to submit a proposal within the framework of Directive 2007/46/EC in order to ensure the mandatory deployment of a public, 112-based eCall system by 2015.
- (6) It is still necessary to improve the operation of the 112 service throughout the Union, so that it provides assistance swiftly and effectively in emergencies.
- (7) The Union eCall system is expected to reduce the number of fatalities in the Union as well as the severity of injuries caused by road accidents, thanks to the early alerting of the emergency services. The mandatory introduction of the 112-based eCall in-vehicle system, together with the necessary and coordinated infrastructure upgrade in public mobile wireless communications networks for conveying eCalls and Public Safety Answering Points (PSAPs) for receiving and handling eCalls, would make the service available to all citizens and thus contribute to the reduction of fatalities and severe injuries, of costs relating to healthcare, of congestion caused by accidents and of other costs.

⁽¹⁾ OJ C 341, 21.11.2013, p. 47.

⁽²⁾ Position of the European Parliament of 26 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 2 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 28 April 2015 (not yet published in the Official Journal).

⁽³⁾ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

- (8) In accordance with Article 1(1) of Decision No 585/2014/EU of the European Parliament and of the Council ⁽¹⁾, Member States are to deploy on their territory, at least six months before the date of application of this Regulation and in any event no later than 1 October 2017, the eCall PSAP infrastructure required for the proper receipt and handling of all eCalls. In accordance with Article 3 of Decision No 585/2014/EU, Member States are to report by 24 December 2015 to the Commission on the state of implementation of that Decision. If the report concludes that the eCall PSAP infrastructure will not be operational by 1 October 2017, the Commission should take appropriate action to ensure that the eCall PSAP infrastructure is deployed.
- (9) In accordance with paragraph 4 of Commission Recommendation 2011/750/EU ⁽²⁾, Member States should ensure that mobile network operators implemented the mechanism to handle the 'eCall discriminator' in their networks by 31 December 2014. If the review referred to in paragraph 6 of that Recommendation concludes that the 'eCall discriminator' will not be implemented by 31 March 2016, the Commission should take appropriate action to ensure that mobile network operators implement the mechanism to handle the 'eCall discriminator'.
- (10) The provision of accurate and reliable positioning information is an essential element of the effective operation of the 112-based eCall in-vehicle system. Therefore, it is appropriate to require its compatibility with the services provided by the Galileo and European Geostationary Navigation Overlay Service (EGNOS) programmes as set out in Regulation (EU) No 1285/2013 of the European Parliament and of the Council ⁽³⁾. The system established under the Galileo programme is an independent global satellite navigation system and the one established under the EGNOS programme is a regional satellite navigation system improving the quality of the Global Positioning System signal.
- (11) The mandatory equipping of vehicles with the 112-based eCall in-vehicle system should initially apply only to new types of passenger cars and light commercial vehicles (categories M₁ and N₁) for which an appropriate triggering mechanism already exists. The possibility of extending the application of the 112-based eCall in-vehicle system requirement in the near future to include other vehicle categories, such as heavy goods vehicles, buses and coaches, powered two-wheelers and agricultural tractors, should be further assessed by the Commission with a view to presenting, if appropriate, a legislative proposal to that effect.
- (12) The equipping of vehicles of existing types to be manufactured after 31 March 2018 with the 112-based eCall in-vehicle system should be promoted in order to increase penetration. In respect of types of vehicles type-approved before 31 March 2018, an eCall system may be retrofitted on a voluntary basis.
- (13) The public interoperable Union-wide eCall service based on the single European emergency call number 112 and third party service supported eCall systems (TPS eCall services) can coexist provided that the measures necessary to ensure continuity in the provision of the service to the consumer are adopted. In order to ensure continuity of the public 112-based eCall service in all Member States throughout the lifetime of the vehicle and to guarantee that the public 112-based eCall service is always automatically available, all vehicles should be equipped with the public 112-based eCall service, regardless of whether or not a vehicle owner opts for a TPS eCall service.
- (14) Consumers should be provided with a realistic overview of the 112-based eCall in-vehicle system and of the TPS eCall system, if the vehicle is equipped with one, as well as comprehensive and reliable information regarding any additional functionalities or services linked to the private emergency service, in-vehicle emergency or assistance-call applications on offer, and regarding the level of service to be expected with the purchase of third party services and the associated cost. The 112-based eCall service is a public service of general interest and should therefore be accessible free of charge to all consumers.
- (15) The mandatory equipping of vehicles with the 112-based eCall in-vehicle system should be without prejudice to the right of all stakeholders such as car manufacturers and independent operators to offer additional emergency

⁽¹⁾ Decision No 585/2014/EU of the European Parliament and of the Council of 15 May 2014 on the deployment of the interoperable EU-wide eCall service (OJ L 164, 3.6.2014, p. 6).

⁽²⁾ Commission Recommendation 2011/750/EU of 8 September 2011 on support for an EU-wide eCall service in electronic communication networks for the transmission of in-vehicle emergency calls based on 112 ('eCalls') (OJ L 303, 22.11.2011, p. 46).

⁽³⁾ Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

and/or added value services, in parallel with or building on the 112-based eCall in-vehicle system. However, any additional services should be designed in such a way that they do not increase driver distraction or affect the functioning of the 112-based eCall in-vehicle system and the efficient work of emergency call centres. The 112-based eCall in-vehicle system and the system providing private or added-value services should be designed in such a way that no exchange of personal data between them is possible. Where provided, those services should comply with the applicable safety, security and data protection legislation and should always remain optional for consumers.

- (16) In order to ensure open choice for customers and fair competition, as well as encourage innovation and boost the competitiveness of the Union's information technology industry on the global market, the eCall in-vehicle systems should be based on an interoperable, standardised, secure and open-access platform for possible future in-vehicle applications or services. As this requires technical and legal back-up, the Commission should assess without delay, on the basis of consultations with all stakeholders involved, including vehicle manufacturers and independent operators, all options for promoting and ensuring such an open-access platform and, if appropriate, put forward a legislative initiative to that effect. Furthermore, the 112-based eCall in-vehicle system should be accessible for a reasonable fee not exceeding a nominal amount and without discrimination to all independent operators for repair and maintenance purposes in accordance with Regulation (EC) No 715/2007 of the European Parliament and of the Council ⁽¹⁾.
- (17) In order to maintain the integrity of the type-approval system, only those 112-based eCall in-vehicle systems which can be fully tested should be accepted for the purposes of this Regulation.
- (18) The 112-based eCall in-vehicle system, as an emergency system, requires the highest possible level of reliability. The accuracy of the minimum set of data and of the voice transmission, and quality, should be ensured, and a uniform testing regime should be developed to ensure the longevity and durability of the 112-based eCall in-vehicle system. Periodic roadworthiness tests should therefore be carried out regularly in accordance with Directive 2014/45/EU of the European Parliament and of the Council ⁽²⁾.
- (19) Small series vehicles and vehicles approved pursuant to Article 24 of Directive 2007/46/EC are excluded, under that Directive, from the requirements on the protection of occupants in the event of frontal impact and side impact. Therefore, those vehicles should be excluded from the obligation to comply with the eCall requirements set out in this Regulation. Moreover, some vehicles of categories M₁ and N₁ cannot for technical reasons be equipped with an appropriate eCall triggering mechanism.
- (20) Special purpose vehicles should be subject to compliance with the eCall requirements set out in this Regulation, where the base/incomplete vehicle is equipped with the necessary triggering mechanism.
- (21) Any processing of personal data through the 112-based eCall in-vehicle system should comply with the personal data protection rules provided for in Directive 95/46/EC of the European Parliament and of the Council ⁽³⁾ and in Directive 2002/58/EC of the European Parliament and of the Council ⁽⁴⁾, in particular to guarantee that vehicles equipped with 112-based eCall in-vehicle systems, in their normal operational status related to 112 eCall, are not traceable and are not subject to any constant tracking and that the minimum set of data sent by the 112-based eCall in-vehicle system includes the minimum information required for the appropriate handling of emergency calls. This should take into account the recommendations made by the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up under Article 29 of Directive 95/46/EC ('Article 29 Data Protection Working Party') and contained in its 'Working document on data protection and privacy implications in eCall initiative', adopted on 26 September 2006.

⁽¹⁾ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

⁽²⁾ Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (OJ L 127, 29.4.2014, p. 51).

⁽³⁾ 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).

⁽⁴⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (22) Manufacturers should implement all the necessary measures in order to comply with the rules on privacy and data protection set out in this Regulation in accordance with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ⁽¹⁾.
- (23) When complying with technical requirements, vehicle manufacturers should integrate technical forms of data protection into in-vehicle systems and should comply with the principle of 'privacy by design'.
- (24) Manufacturers should provide the information about the existence of a free public eCall system, based on the single European emergency number 112, the right of the vehicle owner to choose to use that system rather than a TPS eCall system and the processing of data carried out through the 112-based eCall in-vehicle system as part of the technical documentation handed over together with the vehicle. That information should also be available for downloading online.
- (25) Data transmitted via the 112-based eCall in-vehicle system and processed by the PSAPs can be transferred to the emergency service and service partners referred to in Decision No 585/2014/EU only in the event of incidents related to eCalls and under the conditions set out in that Decision and are used exclusively for the attainment of the objectives of that Decision. Data processed by the PSAPs through the 112-based eCall in-vehicle system are not transferred to any other third parties without the explicit prior consent of the data subject.
- (26) The European standardisation organisations, the European Telecommunications Standards Institute (ETSI) and the European Committee for Standardisation (CEN), have developed common standards for the deployment of a pan-European eCall service, which should apply for the purposes of this Regulation, as this will facilitate the technological evolution of the eCall in-vehicle service, ensure the interoperability and continuity of the service throughout the Union, and reduce the costs of implementation for the Union as a whole.
- (27) In order to ensure the application of common technical requirements regarding the 112-based eCall in-vehicle system, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the exemption of certain classes of vehicles of categories M₁ and N₁ from the obligation to install eCall in-vehicle systems, of the establishment of detailed technical requirements and tests for the EC type-approval of vehicles with regard to their eCall in-vehicle systems and the EC type-approval of systems, components and separate technical units designed and constructed for such vehicles, and of the establishment of detailed technical rules and test procedures for the application of certain rules on personal data processing and for ensuring that there is no exchange of personal data between the 112-based eCall in-vehicle system and third party systems. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and with relevant stakeholders, consulting in particular consumer protection organisations, as well as the European Data Protection Supervisor and the Article 29 Data Protection Working Party in accordance with the applicable legislation. 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.
- (28) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers relating to the practical arrangements for assessing the absence of traceability and tracking, the template for the user information and the administrative provisions for the EC type-approval regarding the template for the information documents to be provided by manufacturers for the purposes of the type-approval, the template of the EC type-approval certificates and the model for the EC type-approval mark, 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 ⁽²⁾.
- (29) Vehicle manufacturers should be allowed sufficient time to adapt to the technical requirements of this Regulation.
- (30) This Regulation is a new separate Regulation in the context of the EC type-approval procedure provided for in Directive 2007/46/EC and, therefore, Annexes I, III, IV and XI to that Directive should be amended accordingly.

⁽¹⁾ OJ C 326, 26.10.2012, p. 391.

⁽²⁾ 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).

- (31) Since the objective of this Regulation, namely the achievement of the internal market through the introduction of common technical requirements for new type-approved vehicles equipped with the 112-based eCall in-vehicle system, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale, 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 that objective.
- (32) 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 ⁽¹⁾ and delivered an opinion on 29 October 2013 ⁽²⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the general requirements for the EC type-approval of vehicles in respect of the 112-based eCall in-vehicle systems, and of 112-based eCall in-vehicle systems, components and separate technical units.

Article 2

Scope

1. This Regulation shall apply to vehicles of categories M₁ and N₁ as defined in points 1.1.1 and 1.2.1 of Part A of Annex II to Directive 2007/46/EC and to 112-based eCall in-vehicle systems, components and separate technical units designed and constructed for such vehicles.

It shall not apply to the following vehicles:

- (a) vehicles produced in small series approved pursuant to Articles 22 and 23 of Directive 2007/46/EC;
 - (b) vehicles approved pursuant to Article 24 of Directive 2007/46/EC;
 - (c) vehicles which cannot for technical reasons be equipped with an appropriate eCall triggering mechanism, as determined in accordance with paragraph 2.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 8 to identify classes of vehicles of categories M₁ and N₁ which cannot be equipped with an appropriate eCall triggering mechanism for technical reasons, on the basis of a study assessing the costs and benefits which is carried out or mandated by the Commission and taking into account all relevant safety and technical aspects.

The first such delegated acts shall be adopted by 9 June 2016.

Article 3

Definitions

For the purposes of this Regulation and in addition to the definitions laid down in Article 3 of Directive 2007/46/EC, the following definitions apply:

- (1) ‘112-based eCall in-vehicle system’ means an emergency system, comprising in-vehicle equipment and the means to trigger, manage and enact the eCall transmission, that is activated either automatically via in-vehicle sensors or manually, which carries, by means of public mobile wireless communications networks, a minimum set of data and establishes a 112-based audio channel between the occupants of the vehicle and an eCall PSAP;

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

⁽²⁾ OJ C 38, 8.2.2014, p. 8.

- (2) 'eCall' means an in-vehicle emergency call to 112, made either automatically by means of the activation of in-vehicle sensors or manually, which carries a minimum set of data and establishes an audio channel between the vehicle and the eCall PSAP via public mobile wireless communications networks;
- (3) 'public safety answering point' or 'PSAP' means a physical location where emergency calls are first received under the responsibility of a public authority or a private organisation recognised by the Member State;
- (4) 'most appropriate PSAP' means a PSAP determined beforehand by the responsible authorities to cover emergency calls from a certain area or for emergency calls of a certain type;
- (5) 'eCall PSAP' means the most appropriate PSAP determined beforehand by the authorities to first receive and handle eCalls;
- (6) 'minimum set of data' or 'MSD' means the information defined by the standard 'Intelligent transport systems — eSafety — eCall minimum set of data (MSD)' (EN 15722:2011) which is sent to the eCall PSAP;
- (7) 'in-vehicle equipment' means equipment permanently installed within the vehicle that provides or has access to the in-vehicle data required to perform the eCall transaction via a public mobile wireless communications network;
- (8) 'eCall transaction' means the establishment of a mobile wireless communications session across a public wireless communications network and the transmission of the MSD from a vehicle to an eCall PSAP and the establishment of an audio channel between the vehicle and the same eCall PSAP;
- (9) 'public mobile wireless communications network' means a mobile wireless communications network available to the public in accordance with Directives 2002/21/EC ⁽¹⁾ and 2002/22/EC ⁽²⁾ of the European Parliament and of the Council;
- (10) 'third party services supported eCall' or 'TPS eCall' means an in-vehicle emergency call to a third party service provider, made either automatically by means of the activation of in-vehicle sensors or manually, which carries, by means of public mobile wireless communications networks, the MSD and establishes an audio channel between the vehicle and the third party service provider;
- (11) 'third party service provider' means an organisation recognised by national authorities as being allowed to receive a TPS eCall and to forward the MSD to the eCall PSAP;
- (12) 'third party services eCall in-vehicle system' or 'TPS eCall in-vehicle system' means a system activated either automatically via in-vehicle sensors or manually, which carries, by means of public mobile wireless communications networks, the MSD and establishes an audio channel between the vehicle and the third party service provider.

Article 4

General obligations of the manufacturers

Manufacturers shall demonstrate that all new types of vehicles referred to in Article 2 are equipped with a permanently installed 112-based eCall in-vehicle system, in accordance with this Regulation and the delegated and implementing acts adopted pursuant to this Regulation.

Article 5

Specific obligations of manufacturers

1. Manufacturers shall ensure that all of their new types of vehicle and 112-based eCall in-vehicle systems, components and separate technical units designed and constructed for such vehicles are manufactured and approved in accordance with this Regulation and the delegated and implementing acts adopted pursuant to this Regulation.
2. Manufacturers shall demonstrate that all new types of vehicles are constructed in such a way as to ensure that, in the event of a severe accident, detected by activation of one or more sensors or processors within the vehicle, which occurs in the territory of the Union, an eCall to the single European emergency number 112 is triggered automatically.

⁽¹⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

⁽²⁾ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

Manufacturers shall demonstrate that new types of vehicles are constructed in such a way as to ensure that an eCall to the single European emergency number 112 can also be triggered manually.

Manufacturers shall ensure that the manual trigger control of the 112-based eCall in-vehicle system is designed in such a way as to avoid mishandling.

3. Paragraph 2 is without prejudice to the right of the vehicle owner to use a TPS eCall in-vehicle system providing a similar service, in addition to the 112-based eCall in-vehicle system, provided that all the following conditions are met:

- (a) the TPS eCall in-vehicle system shall comply with the standard EN 16102:2011 'Intelligent transport systems — eCall — Operating requirements for third party support';
- (b) manufacturers shall ensure that there is only one system active at a time and that the 112-based eCall in-vehicle system is triggered automatically in the event that the TPS eCall in-vehicle system does not function;
- (c) the vehicle owner shall have the right to choose to use the 112-based eCall in-vehicle system rather than a TPS eCall in-vehicle system at all times;
- (d) manufacturers shall include information on the right referred to in point (c) in the owner's manual.

4. Manufacturers shall ensure that the receivers in the 112-based eCall in-vehicle systems are compatible with the positioning services provided by the Galileo and the EGNOS systems. Manufacturers may also choose, in addition, compatibility with other satellite navigation systems.

5. Only those 112-based eCall in-vehicle systems, either permanently installed within the vehicle or type-approved separately, which can be tested shall be accepted for the purposes of EC type-approval.

6. Manufacturers shall demonstrate that, in the event of a critical system failure which would result in an inability to execute a 112-based eCall, a warning will be given to the occupants of the vehicle.

7. The 112-based eCall in-vehicle system shall be accessible to all independent operators for a reasonable fee not exceeding a nominal amount and without discrimination for repair and maintenance purposes in accordance with Regulation (EC) No 715/2007.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 8 establishing the detailed technical requirements and tests for the EC type-approval of vehicles in respect of their 112-based eCall in-vehicle systems and the EC type-approval of 112-based eCall in-vehicle systems, components and separate technical units.

The technical requirements and tests referred to in the first subparagraph shall be based on the requirements set out in paragraphs 2 to 7 and on the available standards relating to eCall, where applicable, including:

- (a) EN 16072:2011 'Intelligent transport system — eSafety — Pan-European eCall operating requirements';
- (b) EN 16062:2011 'Intelligent transport systems — eSafety — eCall high level application requirements (HLAP)';
- (c) CEN/TS 16454:2013 'Intelligent transport systems — eSafety — eCall end to end conformance testing', as regards the 112-based eCall in-vehicle system conformance to the pan-European eCall;
- (d) EN 15722:2011 'Intelligent transport systems — eSafety — eCall minimum set of data (MSD)';
- (e) EN 16102:2011 'Intelligent transport systems — eCall — Operating requirements for third party support';
- (f) any additional European standards relating to the eCall system adopted in conformity with the procedures laid down in Regulation (EU) No 1025/2012 of the European Parliament and of the Council ⁽¹⁾, or Regulations of the United Nations Economic Commission for Europe (UNECE Regulations) relating to eCall systems to which the Union has acceded.

⁽¹⁾ 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).

The first such delegated acts shall be adopted by 9 June 2016.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 8 to update the versions of the standards referred to in paragraph 8 of this Article when a new version is adopted.

Article 6

Rules on privacy and data protection

1. This Regulation is without prejudice to Directives 95/46/EC and 2002/58/EC. Any processing of personal data through the 112-based eCall in-vehicle system shall comply with the personal data protection rules provided for in those Directives.

2. The personal data processed pursuant to this Regulation shall only be used for the purpose of handling the emergency situations referred to in the first subparagraph of Article 5(2).

3. The personal data processed pursuant to this Regulation shall not be retained longer than necessary for the purpose of handling the emergency situations referred to in the first subparagraph of Article 5(2). Those data shall be fully deleted as soon as they are no longer necessary for that purpose.

4. Manufacturers shall ensure that the 112-based eCall in-vehicle system is not traceable and is not subject to any constant tracking.

5. Manufacturers shall ensure that, in the internal memory of the 112-based eCall in-vehicle system, data are automatically and continuously removed. Only the retention of the last three locations of the vehicle shall be permitted in so far as it is strictly necessary to specify the current location and the direction of travel at the time of the event.

6. Those data shall not be available outside the 112-based eCall in-vehicle system to any entities before the eCall is triggered.

7. Privacy enhancing technologies shall be embedded in the 112-based eCall in-vehicle system in order to provide eCall users with the appropriate level of privacy protection, as well as the necessary safeguards to prevent surveillance and misuse.

8. The MSD sent by the 112-based eCall in-vehicle system shall include only the minimum information as referred to in the standard EN 15722:2011 'Intelligent transport systems — eSafety — eCall minimum set of data (MSD)'. No additional data shall be transmitted by the 112-based eCall in-vehicle system. That MSD shall be stored in such a way as to make its full and permanent deletion possible.

9. Manufacturers shall provide clear and comprehensive information in the owner's manual about the processing of data carried out through the 112-based eCall in-vehicle system. That information shall consist of:

- (a) the reference to the legal basis for the processing;
- (b) the fact that the 112-based eCall in-vehicle system is activated by default;
- (c) the arrangements for data processing that the 112-based eCall in-vehicle system performs;
- (d) the specific purpose of the eCall processing, which shall be limited to the emergency situations referred to in the first subparagraph of Article 5(2);
- (e) the types of data collected and processed and the recipients of that data;
- (f) the time limit for the retention of data in the 112-based eCall in-vehicle system;
- (g) the fact that there is no constant tracking of the vehicle;
- (h) the arrangements for exercising data subjects' rights as well as the contact service responsible for handling access requests;
- (i) any necessary additional information regarding traceability, tracking and processing of personal data in relation to the provision of a TPS eCall and/or other added value services, which shall be subject to explicit consent by the owner and in compliance with Directive 95/46/EC. Particular account shall be taken of the fact that differences may exist between the data processing carried out through the 112-based eCall in-vehicle system and the TPS eCall in-vehicle systems or other added value services.

10. In order to avoid confusion as to the purposes pursued and the added value of the processing, the information referred to in paragraph 9 shall be provided in the owner's manual separately for the 112-based eCall in-vehicle system and the TPS eCall systems prior to the use of the system.

11. Manufacturers shall ensure that the 112-based eCall in-vehicle system and any additional system providing TPS eCall or an added-value service are designed in such a way that no exchange of personal data between them is possible. The non-use of a system providing TPS eCall or an added-value service or the refusal of the data subject to give consent to the processing of his or her personal data for a TPS eCall service or an added value service shall not create any adverse effects on the use of the 112-based eCall in-vehicle system.

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 8 in order to establish:

- (a) the detailed technical requirements and test procedures for the application of the rules on personal data processing referred to in paragraphs 2 and 3;
- (b) the detailed technical requirements and test procedures for ensuring that there is no exchange of personal data between the 112-based eCall in-vehicle system and third party systems as referred to in paragraph 11.

The first such delegated acts shall be adopted by 9 June 2016.

13. The Commission shall, by means of implementing acts, lay down:

- (a) the practical arrangements for assessing the absence of traceability and tracking referred to in paragraphs 4, 5 and 6;
- (b) the template for the user information referred to in paragraph 9.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

The first such implementing acts shall be adopted by 9 June 2016.

Article 7

Obligations of the Member States

With effect from 31 March 2018, national authorities shall only grant EC type-approval in respect of the 112-based eCall in-vehicle system to new types of vehicles and to new types of 112-based eCall in-vehicle systems, components and separate technical units designed and constructed for such vehicles which comply with this Regulation and the delegated and implementing acts adopted pursuant to this Regulation.

Article 8

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 5(8) and (9) and Article 6(12) shall be conferred on the Commission for a period of five years from 8 June 2015. 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 Article 2(2), Article 5(8) and (9) and Article 6(12) 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 2(2), Article 5(8) and (9) and Article 6(12) 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 9

Implementing acts

The Commission shall adopt implementing acts laying down the administrative provisions for the EC type-approval of vehicles with regard to the 112-based eCall in-vehicle system and of 112-based eCall in-vehicle systems, components and separate technical units designed and constructed for such vehicles as required by Article 5(1) regarding:

- (a) the templates for the information documents to be provided by manufacturers for the purposes of the type-approval;
- (b) the templates for the EC type-approval certificates;
- (c) the model(s) for the EC type-approval mark.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

The first such implementing acts shall be adopted by 9 June 2016.

Article 10

Committee procedure

1. The Commission shall be assisted by the 'Technical Committee — Motor Vehicles' (TCMV) established by Article 40(1) of Directive 2007/46/EC. That committee is 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 11

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliance by manufacturers with the provisions of this Regulation and the delegated and implementing acts adopted pursuant to this Regulation. They shall take all measures necessary to ensure that the penalties are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission, and shall notify it without delay of any subsequent amendment affecting them.

2. The type of non-compliance which is to be subject to a penalty shall include at least the following:

- (a) making a false declaration during an approval procedure or a procedure leading to a recall;
- (b) falsifying test results for type-approval;
- (c) withholding data or technical specifications which could lead to recall, refusal or withdrawal of type-approval;
- (d) breaching provisions laid down in Article 6;
- (e) acting in breach of the provisions of Article 5(7).

*Article 12***Reporting and review**

1. By 31 March 2021, the Commission shall prepare an evaluation report to be presented to the European Parliament and to the Council on the achievements of the 112-based eCall in-vehicle system, including its penetration rate. The Commission shall investigate whether the scope of this Regulation should be extended to other categories of vehicles, such as heavy goods vehicles, buses and coaches, powered two-wheelers, and agricultural tractors. If appropriate, the Commission shall present a legislative proposal to that effect.
2. Following a broad consultation with all relevant stakeholders and a study assessing the costs and benefits, the Commission shall assess the need of requirements for an interoperable, standardised, secure and open-access platform. If appropriate, and no later than 9 June 2017, the Commission shall adopt a legislative initiative based on those requirements.

*Article 13***Amendments to Directive 2007/46/EC**

Annexes I, III, IV and XI to Directive 2007/46/EC are hereby amended in accordance with the Annex to this Regulation.

*Article 14***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*.

Article 2(2), Article 5(8) and (9), Article 6(12) and (13) and Articles 8, 9, 10 and 12 shall apply from 8 June 2015.

Articles other than those referred to in the second paragraph of this Article shall apply from 31 March 2018.

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

Done at Strasbourg, 29 April 2015.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
Z. KALNIŅA-LUKAŠEVICA

ANNEX

Amendments to Directive 2007/46/EC

Directive 2007/46/EC is amended as follows:

(1) in Annex I, the following points are added:

‘12.8. eCall system

12.8.1. Presence: yes/no ⁽¹⁾

12.8.2. technical description or drawings of the device: ...’;

(2) in Annex III, Part I, section A, the following points are added:

‘12.8. eCall system

12.8.1. Presence: yes/no ⁽¹⁾’;

(3) in Annex IV, Part I is amended as follows:

(a) the following item is added to the table:

Item	Subject	Regulatory act	Applicability									
			M ₁	M ₂	M ₃	N ₁	N ₂	N ₃	O ₁	O ₂	O ₃	O ₄
‘72	eCall system	Regulation (EU) 2015/758	X			X’;						

(b) Appendix 1 is amended as follows:

(i) the following item is added to Table 1:

Item	Subject	Regulatory act	Specific issues	Applicability and specific requirements
‘72	eCall system	Regulation (EU) 2015/758		N/A’;

(ii) the following item is added to Table 2:

Item	Subject	Regulatory act	Specific issues	Applicability and specific requirements
‘72	eCall system	Regulation (EU) 2015/758		N/A’;

(c) in Appendix 2, Section ‘4. Technical Requirements’ is amended as follows:

(i) the following item is added to Part I: Vehicles belonging to category M₁:

Item	Regulatory act reference	Alternative requirements
‘72	Regulation (EU) 2015/758 (eCall systems)	The requirements of that Regulation shall not apply.’;

(ii) the following item is added to Part II: Vehicles belonging to category N₁:

Item	Regulatory act reference	Alternative requirements
'72	Regulation (EU) 2015/758 (eCall systems)	The requirements of that Regulation shall not apply.;

(4) Annex XI is amended as follows:

(a) in Appendix 1, the following item is added to the table:

Item	Subject	Regulatory act reference	M ₁ ≤ 2 500 (*) kg	M ₁ > 2 500 (*) kg	M ₂	M ₃
'72	eCall system	Regulation (EU) 2015/758	G	G	N/A	N/A;

(b) in Appendix 2, the following item is added to the table:

Item	Subject	Regulatory act reference	M ₁	M ₂	M ₃	N ₁	N ₂	N ₃	O ₁	O ₂	O ₃	O ₄
'72	eCall system	Regulation (EU) 2015/758	G	N/A	N/A	G	N/A	N/A	N/A	N/A	N/A	N/A;

(c) in Appendix 3, the following item is added to the table:

Item	Subject	Regulatory act reference	M ₁
'72	eCall system	Regulation (EU) 2015/758	G;

(d) in Appendix 4, the following item is added to the table:

Item	Subject	Regulatory act reference	M ₂	M ₃	N ₁	N ₂	N ₃	O ₁	O ₂	O ₃	O ₄
'72	eCall system	Regulation (EU) 2015/758	N/A	N/A	G	N/A	N/A	N/A	N/A	N/A	N/A.

REGULATION (EU) 2015/759 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
amending Regulation (EC) No 223/2009 on European statistics
(Text with relevance for the EEA and Switzerland)

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 338(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) The European Statistical System ('ESS'), as a partnership, has, in general, successfully consolidated its activities to ensure the development, production and dissemination of high-quality European statistics, including by improving governance of the ESS.
- (2) However, some weaknesses have recently been identified, in particular with regard to the statistical quality-management framework.
- (3) In its Communication of 15 April 2011 entitled 'Towards robust quality management for European Statistics' the Commission suggested action to address those weaknesses and to strengthen governance of the ESS. In particular, it suggested a targeted amendment of Regulation (EC) No 223/2009 of the European Parliament and of the Council ⁽³⁾.
- (4) In its conclusions of 20 June 2011, the Council welcomed the Commission's initiative and stressed the importance of continuously improving the governance and efficiency of the ESS.
- (5) The impact on the statistical domain of recent developments in the context of the economic-governance framework of the Union should be taken into account, in particular those aspects related to professional independence such as transparent recruitment and dismissal processes, budgetary allocations and release calendars, as laid down in Regulation (EU) No 1175/2011 of the European Parliament and of the Council ⁽⁴⁾, as well as those aspects related to the requirement for bodies in charge of monitoring the implementation of national fiscal rules to enjoy functional autonomy, as laid down in Regulation (EU) No 473/2013 of the European Parliament and of the Council ⁽⁵⁾.
- (6) Those aspects that relate to professional independence, such as transparent recruitment and dismissal processes, budgetary allocations and release calendars, should not remain limited to the statistics produced for the purposes of the fiscal surveillance system and the excessive deficit procedure but should apply to all European statistics developed, produced and disseminated by the ESS.

⁽¹⁾ OJ C 374, 4.12.2012, p. 2.

⁽²⁾ Position of the European Parliament of 21 November 2013 (not yet published in the Official Journal) and position of the Council at first reading of 5 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 28 April 2015 (not yet published in the Official Journal).

⁽³⁾ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

⁽⁴⁾ Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 306, 23.11.2011, p. 12).

⁽⁵⁾ Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (OJ L 140, 27.5.2013, p. 11).

- (7) Moreover, the adequacy of resources attributed on an annual or a multiannual basis and available to meet statistical needs is a necessary condition for ensuring the professional independence of statistical authorities and the high quality of statistical data.
- (8) To that end, the professional independence of statistical authorities should be strengthened and minimum standards, applicable across the Union, should be ensured. Specific guarantees should be provided to the heads of national statistical institutes (NSIs), in terms of the performance of statistical tasks, organisational management and resource allocation. The procedures for recruitment of heads of NSIs should be transparent and based only on professional criteria. They should ensure that the principle of equal opportunities is respected, in particular with regard to gender.
- (9) While credible European statistics require strong professional independence on the part of statisticians, European statistics should also respond to policy needs and provide statistical support for new policy initiatives at national and at Union level.
- (10) It is necessary for the independence of the statistical authority of the Union (Eurostat) to be consolidated and guaranteed by means of effective parliamentary scrutiny and for the independence of NSIs to be consolidated and guaranteed by means of democratic accountability.
- (11) Furthermore, the coordinating role already attributed to the NSIs should be clarified as regards its scope, in order to achieve more efficient coordination of statistical activities at national level, including quality management, while duly taking into account the statistical tasks performed by the European System of Central Banks (ESCB). To the extent that European statistics may be compiled by National Central Banks (NCBs) in their capacity as members of the ESCB, the NSIs and the NCBs should cooperate closely in accordance with national arrangements with a view to ensuring production of complete and coherent European statistics, while ensuring the necessary cooperation between the ESS and the ESCB.
- (12) In order to reduce the burden on statistical authorities and respondents, the NSIs and other national authorities should be able to access and use administrative records promptly and free-of-charge, including those filed electronically, and to integrate those records with statistics.
- (13) European statistics should be easy to compare and to access and should be updated promptly and regularly so as to ensure that Union policies and funding initiatives take full account of developments in the Union.
- (14) The NSIs should furthermore be consulted at an early stage on the design of new administrative records that could provide data for statistical purposes and on planned changes to, or cessation of, existing administrative sources. They should also receive relevant metadata from the owners of administrative data and coordinate standardisation activities concerning administrative records that are relevant for statistical data production.
- (15) The confidentiality of data obtained from administrative records should be protected under the common principles and guidelines applicable to all confidential data used for the production of European statistics. Quality assessment frameworks applicable to those data, as well as principles of transparency, should also be drawn up and published.
- (16) All users should have access to the same data at the same time. NSIs should draw up release calendars for the publication of periodical data.
- (17) The quality of European statistics could be strengthened and the confidence of users reinforced, by involving national governments in the responsibility of applying the European Statistics Code of Practice (the Code of Practice). To that end, a 'Commitment on Confidence in Statistics' (Commitment) by a Member State, taking account of national specificities, should include specific undertakings by the government of that Member State to improve or maintain the conditions for the implementation of the Code of Practice. The Commitment, which should be updated as necessary, could include national high quality assurance frameworks, including self-assessments, improvement actions and monitoring mechanisms.
- (18) The Commission (Eurostat) should take all necessary measures to allow easy online access to complete and user-friendly data series. Where possible, periodic updates should provide year-on-year and month-on-month information on each Member State.

- (19) As the production of European statistics must be based on long-term operational and financial planning in order to ensure a high degree of independence, the European statistical programme should cover the same period as the multiannual financial framework.
- (20) Regulation (EC) No 223/2009 confers powers on the Commission to implement some of the provisions of that Regulation in accordance with Council Decision 1999/468/EC ⁽¹⁾. As a consequence of the entry into force of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁾, which repeals Decision 1999/468/EC, the powers conferred upon the Commission should be aligned to that new legal framework. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. The Commission should ensure that those implementing acts do not impose a significant additional administrative burden on the Member States or on the respondents.
- (21) The Commission should have the power to adopt implementing acts in accordance with Article 291(2) of the Treaty on the Functioning of the European Union (TFEU) in order to ensure uniform application of quality requirements by laying down the modalities, structure and periodicity of quality reports covered by sectoral legislation, when sectoral statistical legislation does not provide for those. The Commission should ensure that those implementing acts do not impose a significant additional administrative burden on the Member States or on the respondents.
- (22) There is a need for uniform conditions for implementing access to confidential data for scientific purposes. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with a view to establishing the arrangements, rules and conditions governing such access at Union level. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (23) Since the objective of this Regulation, namely to strengthen governance of the ESS, cannot be sufficiently achieved by the Member States but can rather, by reason of the requirement to have credible data established at the Union level, 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 that objective.
- (24) The independence of the ESCB in the performance of its tasks as described in Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank should be fully respected in the implementation of this Regulation, in conformity with Articles 130 and 338 TFEU.
- (25) The ESS Committee has been consulted.
- (26) Regulation (EC) No 223/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 223/2009

Regulation (EC) No 223/2009 is amended as follows:

- (1) In Article 2(1), point (a) is replaced by the following:

‘(a) “professional independence”, meaning that statistics must be developed, produced and disseminated in an independent manner, particularly as regards the selection of techniques, definitions, methodologies and sources to be used, and the timing and content of all forms of dissemination, and that the performance of those tasks is free from any pressures from political or interest groups or from Union or national authorities;’.

⁽¹⁾ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁽²⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(2) In Article 5, paragraph 1 is replaced by the following:

‘1. The national statistical authority designated by each Member State as the body having the responsibility for coordinating all activities at national level for the development, production and dissemination of European statistics, which are determined in the European statistical programme in accordance with Article 1, (the NSI) shall act in this regard as the sole contact point for the Commission (Eurostat) on statistical matters.

The coordinating responsibility of the NSI shall cover all other national authorities responsible for the development, production and dissemination of European statistics, which are determined in the European statistical programme in accordance with Article 1. The NSI shall, in particular, be responsible at the national level for coordinating statistical programming and reporting, quality monitoring, methodology, data transmission and communication on ESS statistical actions. To the extent that some of those European statistics may be compiled by National Central Banks (NCBs) in their capacity as members of the European System of Central Banks (ESCB), the NSIs and the NCBs shall cooperate closely in accordance with national arrangements with a view to ensuring the production of complete and coherent European statistics, while ensuring the necessary cooperation between the ESS and the ESCB as set out in Article 9.’.

(3) The following Article is inserted:

‘Article 5a

Heads of NSIs and statistical heads of other national authorities

1. Within their national statistical system, Member States shall ensure the professional independence of officials responsible for the tasks set out in this Regulation.

2. To that end, the heads of NSIs shall:

- (a) have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for European statistics developed, produced and disseminated by the NSI;
- (b) be empowered to decide on all matters regarding the internal management of the NSI;
- (c) act in an independent manner while performing their statistical tasks; and neither seek nor take instructions from any government or other institution, body, office or entity;
- (d) be responsible for the statistical activities and budget execution of the NSI;
- (e) publish an annual report and may express comments on budget allocation issues related to the statistical activities of the NSI;
- (f) coordinate the statistical activities of all national authorities that are responsible for the development, production and dissemination of European statistics, as set out in Article 5(1);
- (g) produce national guidelines, where this is necessary to ensure quality in the development, production and dissemination of all European statistics within their national statistical system and monitor and review their implementation; while being responsible for ensuring compliance with those guidelines solely within the NSI; and
- (h) represent their national statistical system within the ESS.

3. Each Member State shall ensure that other national authorities responsible for the development, production and dissemination of European statistics carry out such tasks in accordance with the national guidelines produced by the head of the NSI.

4. Member States shall ensure that the procedures for the recruitment and appointment of heads of NSIs and, where appropriate, statistical heads of other national authorities producing European statistics, are transparent and based only on professional criteria. Those procedures shall ensure that the principle of equal opportunities is respected, in particular with regard to gender. The reasons for dismissal of heads of NSIs or their transfer to another position shall not compromise professional independence.

5. Each Member State may establish a national body for assuring the professional independence of the producers of European statistics. The heads of NSIs and, where appropriate, the statistical heads of other national authorities producing European statistics may take advice from such bodies. The procedures for the recruitment, transfer and dismissal of the members of such bodies shall be transparent and based only on professional criteria. Those procedures shall ensure that the principle of equal opportunities is respected, in particular with regard to gender.’

(4) In Article 6, paragraphs 2 and 3 are replaced by the following:

‘2. At Union level, the Commission (Eurostat) shall act independently in ensuring the production of European statistics according to established rules and statistical principles.

3. Without prejudice to Article 5 of the Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank, the Commission (Eurostat) shall coordinate the statistical activities of the institutions and bodies of the Union, in particular with a view to ensuring consistency and quality of the data and minimising reporting burden. To that end, the Commission (Eurostat) may invite any institution or body of the Union to consult or cooperate with it for the purpose of developing methods and systems for statistical purposes in their respective field of competence. Any of those institutions or bodies which propose to produce statistics shall consult the Commission (Eurostat) and take into account any recommendation that it may make to this effect.’

(5) The following Article is inserted:

‘Article 6a

Director-General of the Commission (Eurostat)

1. Eurostat is the statistical authority of the Union and a Directorate-General of the Commission. It shall be headed by a Director-General.

2. The Commission shall ensure that the procedure for the recruitment of the Director-General of Eurostat is transparent and based on professional criteria. The procedure shall ensure that the principle of equal opportunities is respected, in particular with regard to gender.

3. The Director-General shall have sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases and publications for all statistics produced by Eurostat. When carrying out those statistical tasks, the Director-General shall act in an independent manner and shall neither seek nor take instructions from the Union institutions or bodies, from any government or other institution, body, office or agency.

4. The Director-General of Eurostat shall be responsible for the statistical activities of Eurostat. The Director-General of Eurostat shall appear immediately after appointment by the Commission, and annually thereafter, in the framework of the statistical dialogue before the relevant committee of the European Parliament to discuss matters pertaining to statistical governance, methodology and statistical innovation. The Director-General of Eurostat shall publish an annual report.’

(6) In Article 11, the following paragraphs are added:

‘3. Member States and the Commission shall take all the necessary measures to maintain confidence in European statistics. To this effect, “Commitments on Confidence in Statistics” (the Commitments) by Member States and by the Commission shall further aim to ensure public trust in European statistics and progress in the implementation of the statistical principles contained in the Code of Practice. The Commitments shall include specific policy commitments to improve or maintain, as necessary, the conditions for the implementation of the Code of Practice and shall be published with a citizen’s summary.

4. The Commitments by Member States shall be monitored regularly by the Commission on the basis of annual reports sent by Member States and shall be updated as necessary.

In the absence of the publication of a Commitment by 9 June 2017, a Member State shall submit to the Commission and make public a progress report on the implementation of the Code of Practice and, where applicable, on the efforts undertaken towards the establishment of a Commitment. Those progress reports shall be updated periodically, at least every two years following their initial publication.

The Commission shall report to the European Parliament and the Council on the published Commitments and, where appropriate, progress reports, by 9 June 2018 and every two years thereafter.

5. The Commitment established by the Commission shall be regularly monitored by European Statistical Governance Advisory Board (ESGAB). ESGAB's assessment of the implementation of the Commitment shall be included in its annual report submitted to the European Parliament and the Council in accordance with Decision No 235/2008/EC of the European Parliament and of the Council (*). ESGAB shall report to the European Parliament and the Council on the implementation of the Commitment by 9 June 2018.

(*) Decision No 235/2008/EC of the European Parliament and of the Council of 11 March 2008 establishing the European Statistical Governance Advisory Board (OJ L 73, 15.3.2008, p. 17).'

(7) Article 12 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. Specific quality requirements, such as target values and minimum standards for the production of statistics, may also be laid down in sectoral legislation.

In order to ensure the uniform application of the quality criteria laid down in paragraph 1 to the data covered by sectoral legislation in specific statistical domains, the Commission shall adopt implementing acts laying down the modalities, structure and periodicity of quality reports covered by sectoral legislation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

3. Member States shall provide the Commission (Eurostat) with reports on the quality of data transmitted, including any concerns they have regarding the accuracy of the data. The Commission (Eurostat) shall assess the quality of the data transmitted, on the basis of appropriate analysis, and shall prepare and publish reports and communications on the quality of European statistics.;

(b) the following paragraphs are added:

'4. In the interest of transparency, the Commission (Eurostat) shall, where appropriate, make public its assessment of the quality of national contributions to European statistics.

5. Where sectoral legislation provides for fines in cases where Member States misrepresent statistical data, the Commission may, in accordance with the Treaties and such sectoral legislation, initiate and conduct investigations as necessary including, where appropriate, on-site inspections in order to establish whether such misrepresentation was serious and intentional or grossly negligent.'

(8) In Article 13, paragraph 1 is replaced by the following:

'1. The European statistical programme shall provide the framework for the development, production and dissemination of European statistics, setting out the main fields and the objectives of the actions envisaged for a period corresponding to that of the multiannual financial framework. It shall be adopted by the European Parliament and the Council. Its impact and cost effectiveness shall be assessed with input from independent experts.'

(9) In Article 14, paragraph 2 is replaced by the following:

'2. The Commission may, by means of implementing acts, decide on a temporary direct statistical action provided that:

(a) the action does not provide for data collection covering more than three reference years;

(b) the data are already available or accessible within the NSIs and other national authorities responsible, or can be obtained directly, using the appropriate samples for the observation of the statistical population at Union level with the adequate coordination with the NSIs and other national authorities; and

- (c) the Union makes financial contributions to the NSIs and other national authorities to cover the incremental costs incurred by them, in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (*).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

- (*) 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).'

- (10) Article 17 is replaced by the following:

'Article 17

Annual work programme

The Commission shall submit to the ESS Committee its annual work programme by 30 April for the following year.

In preparing each annual work programme, the Commission shall ensure effective priority setting, including reviewing, reporting on statistical priorities and allocation of financial resources. The Commission shall take the utmost account of the comments of the ESS Committee. Each annual work programme shall be based on the European statistical programme and shall indicate, in particular:

- (a) the actions which the Commission considers to have priority, taking account of Union policy needs, national and Union financial constraints and the response burden;
- (b) initiatives regarding the review of priorities, including negative priorities, and the reduction of the burden on both data providers and producers of statistics; and
- (c) the procedures and any legal instruments envisaged by the Commission for implementation of the annual work programme.'

- (11) The following Article is inserted:

'Article 17a

Access, use and integration of administrative records

1. In order to reduce the burden on respondents, the NSIs, other national authorities as referred to in Article 4, and the Commission (Eurostat) shall have the right to access and use, promptly and free of charge, all administrative records and to integrate those administrative records with statistics, to the extent necessary for the development, production and dissemination of European statistics, which are determined in the European Statistical Programme in accordance with Article 1.

2. The NSIs and the Commission (Eurostat) shall be consulted on, and involved in, the initial design, subsequent development and discontinuation of administrative records built up and maintained by other bodies, thus facilitating the further use of those records for the purpose of producing European statistics. They shall be involved in the standardisation activities concerning administrative records that are relevant for the production of European statistics.

3. Access by, and involvement of the NSIs, other national authorities and the Commission (Eurostat) pursuant to paragraphs 1 and 2 shall be limited to administrative records within their own respective public administrative system.

4. Administrative records made available by their owners to the NSIs, other national authorities and the Commission (Eurostat) in order to be used for the production of European statistics shall be accompanied by relevant metadata.

5. The NSIs and owners of administrative records shall establish the necessary cooperation mechanisms.'

(12) In Article 20(4), the second subparagraph is replaced by the following:

‘The NSIs, other national authorities and the Commission (Eurostat) shall take all necessary measures to ensure the alignment of principles and guidelines with regard to the physical and logical protection of confidential data. The Commission shall ensure such alignment by means of implementing acts, without supplementing this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).’

(13) In Article 23, the second paragraph is replaced by the following:

‘The Commission shall establish, by means of implementing acts, the arrangements, rules and conditions for access at Union level. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).’

(14) Article 24 is deleted.

(15) Article 26 is replaced by the following:

‘Article 26

Violation of statistical confidentiality

Member States and the Commission shall take appropriate measures to prevent and penalise any violations of statistical confidentiality. The penalties provided for shall be effective, proportionate and dissuasive.’

(16) Article 27 is replaced by the following:

‘Article 27

Committee procedure

1. The Commission shall be assisted by the ESS Committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

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

(*) 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).’

Article 2

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 Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

REGULATION (EU) 2015/760 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2015
on European long-term investment funds
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of smart, sustainable and inclusive growth, in accordance with the Europe 2020 strategy, high employment, and competitiveness for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance of lasting duration to various infrastructure projects, unlisted companies, or listed small and medium-sized enterprises (SMEs) that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the Union's real economy and the implementation of its policies.
- (2) On the demand side, ELTIFs can provide a steady income stream for pension administrators, insurance companies, foundations, municipalities and other entities that face regular and recurrent liabilities and are seeking long-term returns within well-regulated structures. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income stream.
- (3) Financing for projects such as transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), the roll-out of new technologies and systems that reduce use of resources and energy, or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect, and can also mobilise capital by attracting third-country investors.
- (4) The focus of this Regulation is to boost European long-term investments in the real economy. Long-term investments in projects, undertakings, and infrastructure in third countries can also bring capital to ELTIFs and thereby benefit the European economy. Therefore, such investments should not be prevented.
- (5) In the absence of a regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging national requirements on portfolio composition, diversification, and eligible assets, in particular

⁽¹⁾ OJ C 67, 6.3.2014, p. 71.

⁽²⁾ OJ C 126, 26.4.2014, p. 8.

⁽³⁾ Position of the European Parliament of 10 March 2015 (not yet published in the Official Journal) and decision of the Council of 20 April 2015.

investment in commodities, create obstacles to the cross-border marketing of investment funds that focus on unlisted undertakings and real assets because investors cannot easily compare the different investment propositions offered to them. Diverging national requirements also lead to different levels of investor protection. Furthermore, diverging national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of financial derivative instruments, rules applicable to short selling or to securities financing transactions, lead to discrepancies in the level of investor protection. In addition, diverging national requirements on redemption or holding periods impede the cross-border selling of funds investing in unlisted assets. By increasing legal uncertainty, those divergences can undermine the confidence of investors when considering investments in such funds and reduce the scope for investors to choose effectively between various long-term investment opportunities. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty on the Functioning of the European Union, as interpreted by consistent case law of the Court of Justice of the European Union.

- (6) Uniform rules are necessary to ensure that ELTIFs display a coherent and stable product profile across the Union. More specifically, in order to ensure the smooth functioning of the internal market and a high level of investor protection, it is necessary to establish uniform rules regarding the operation of ELTIFs, in particular on the composition of their portfolio and the investment instruments that they are allowed to use in order to gain exposure to long-term assets, such as equity or debt instruments issued by listed SMEs and by unlisted undertakings, as well as real assets. Uniform rules on the portfolio of an ELTIF are also required to ensure that ELTIFs that aim to generate regular income maintain a diversified portfolio of investment assets suitable for maintaining a regular cash flow. ELTIFs are a first step towards creating an integrated internal market for raising capital that can be channelled towards long-term investments in the European economy. The smooth functioning of the internal market for long-term investments requires the Commission to continue its assessment of potential barriers that might stand in the way of raising long-term capital across borders, including barriers that arise from the fiscal treatment of such investments.
- (7) It is essential to ensure that the rules on the operation of ELTIFs, in particular regarding the composition of their portfolio and the investment instruments that they are allowed to use, be directly applicable to the managers of ELTIFs and, therefore, these new rules need to be adopted as a Regulation. This also ensures uniform conditions for the use of the designation 'ELTIF', by preventing the emergence of diverging national requirements. Managers of ELTIFs should follow the same rules across the Union in order to enhance the confidence of investors in ELTIFs and ensure enduring trustworthiness of the 'ELTIF' designation. At the same time, by adopting uniform rules, the complexity of the regulatory requirements applicable to ELTIFs is reduced. By means of uniform rules, the managers' cost of compliance with diverging national requirements governing funds that invest in listed and unlisted undertakings and comparable categories of real assets is also reduced. This is especially true for managers of ELTIFs that wish to raise capital on a cross-border basis. The adoption of uniform rules also contributes to the elimination of competitive distortions.
- (8) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council ⁽¹⁾, since that Directive forms the legal framework governing the management and marketing of alternative investment funds (AIFs) in the Union. By definition, ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
- (9) Whereas Directive 2011/61/EU also provides for a staged third-country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long-term investment product. Accordingly, only an EU AIF as defined in Directive 2011/61/EU should be eligible to become an ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.
- (10) The new rules applicable to ELTIFs should build on the existing regulatory framework established by Directive 2011/61/EU and the acts adopted for its implementation. Therefore, the product rules concerning ELTIFs should apply in addition to the rules laid down in existing Union law. In particular, the management and marketing rules laid down in Directive 2011/61/EU should apply to ELTIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directive 2011/61/EU should apply correspondingly to the cross-border activities of ELTIFs. These should be supplemented by specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.

⁽¹⁾ 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).

- (11) Uniform rules should apply to all EU AIFs that wish to market themselves as ELTIFs. EU AIFs that do not wish to market themselves as ELTIFs should not be bound by these rules, thereby also accepting that they do not benefit from the advantages that ensue. Undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs should not be eligible for marketing as ELTIFs.
- (12) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require competent authorities to authorise ELTIFs. The harmonised authorisation and supervision procedures for AIFMs under Directive 2011/61/EU should therefore be supplemented with a special authorisation procedure for ELTIFs. Procedures should be put in place to ensure that only EU AIFMs authorised in accordance with Directive 2011/61/EU and capable of managing an ELTIF may manage ELTIFs. All appropriate steps should be taken to ensure that an ELTIF will be able to comply with the harmonised rules governing the activity of these funds. A specific authorisation procedure should apply where the ELTIF is internally managed and no external AIFM is appointed.
- (13) Given that EU AIFs may take different legal forms that do not necessarily endow them with legal personality, the provisions requiring ELTIFs to take action should be understood to refer to the manager of the ELTIF in cases where the ELTIF is constituted as an EU AIF that is not in a position to act by itself because it has no legal personality of its own.
- (14) In order to ensure that ELTIFs target long-term investments and contribute to the financing of a sustainable growth of the Union's economy, rules on the portfolio of ELTIFs should require the clear identification of the categories of assets that are eligible for investment by ELTIFs, and of the conditions under which they should be eligible. An ELTIF should invest at least 70 % of its capital in eligible investment assets. In order to ensure the integrity of ELTIFs, it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by giving rise to risks that are different from those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long-term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the risks inherent to its own investments. Given the liquid nature of commodities and the financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded from eligible investment assets. That rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities.
- (15) The definition of what constitutes a long-term investment is broad. Eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. Nevertheless, as listed SMEs may face problems of liquidity and access to the secondary market, they should also be considered to be qualifying portfolio undertakings. The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns.
- (16) An ELTIF should be allowed to invest in assets other than eligible investment assets as may be necessary to manage its cash flow efficiently, but only so long as this is consistent with the ELTIF's long-term investment strategy.
- (17) Eligible investment assets should be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings, and loans provided to them. They should also include participations in other funds that are focused on assets, such as investments in unlisted undertakings that issue equity or debt instruments for which there is not always a readily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a category of eligible assets, provided that they yield a predictable cash flow, whether regular or irregular, in the sense that they can be modelled and valued based on a discounted cash flow valuation method. Those assets could indicatively include social infrastructure that yields a predictable return, such as energy, transport and communication infrastructure, as well as education, health,

welfare support or industrial facilities. Conversely, assets such as works of art, manuscripts, wine stocks or jewellery should not be eligible as they do not normally yield a predictable cash flow.

- (18) Eligible investment assets should include real assets with a value of more than EUR 10 000 000 that generate an economic and social benefit. Such assets include infrastructure, intellectual property, vessels, equipment, machinery, aircraft or rolling stock, and immovable property. Investments in commercial property or housing should be permitted to the extent that they serve the purpose of contributing to smart, sustainable and inclusive growth or to the Union's energy, regional and cohesion policies. Investments in such immovable property should be clearly documented so as to demonstrate the long-term commitment in the property. This Regulation is not seeking to promote speculative investments.
- (19) The scale of infrastructure projects means that they require large amounts of capital to remain invested for long periods of time. Such infrastructure projects include public building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks, and waste management infrastructure such as recycling or collection systems.
- (20) Quasi-equity instruments should be understood to comprise a type of financing instrument which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.
- (21) To reflect existing business practices, an ELTIF should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. In addition, for the purposes of ensuring the widest possible opportunities for fundraising, investments in other ELTIFs, European Venture Capital Funds (EuVECFs), regulated by Regulation (EU) No 345/2013 of the European Parliament and of the Council ⁽¹⁾, and European Social Entrepreneurship Funds (EuSEFs), regulated by Regulation (EU) No 346/2013 of the European Parliament and of the Council ⁽²⁾, should be permitted. To prevent dilution of the investments in qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ELTIFs, EuVECFs, and EuSEFs provided that they have not themselves invested more than 10 % of their capital in other ELTIFs.
- (22) The use of financial undertakings may be necessary in order to pool and organise the contributions of different investors, including investments of a public nature, in infrastructure projects. ELTIFs should therefore be permitted to invest in eligible investment assets by means of financial undertakings, so long as these undertakings are dedicated to financing long-term projects, as well as the growth of SMEs.
- (23) Unlisted undertakings can face difficulties accessing capital markets and financing further growth and expansion. Private financing through equity stakes or loans are typical ways of raising financing. Because such instruments are by their nature long-term investments, they require patient capital which ELTIFs can provide. Moreover, listed SMEs often face significant obstacles in acquiring long-term financing and ELTIFs may provide valuable alternative sources of funding.
- (24) Categories of long-term assets within the meaning of this Regulation should therefore comprise unlisted undertakings that issue equity or debt instruments for which there might not be a readily identifiable buyer, and listed undertakings with a maximum capitalisation of EUR 500 000 000.
- (25) Where the manager of an ELTIF holds a stake in a portfolio undertaking, there is a risk that the manager puts its own interests ahead of the interests of investors in the ELTIF. To avoid such a conflict of interests, and to ensure sound corporate governance, an ELTIF should only invest in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other ELTIFs, EuVECFs, or EuSEFs that are managed by the manager of the ELTIF.

⁽¹⁾ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1).

⁽²⁾ Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18).

- (26) In order to allow managers of ELTIFs a certain degree of flexibility in the investment of their funds, trading in assets other than long-term investments should be permitted up to a maximum threshold of 30 % of the capital of the ELTIF.
- (27) In order to limit risk-taking by ELTIFs, it is essential to reduce counterparty risk by subjecting the portfolio of ELTIFs to clear diversification requirements. All over-the-counter (OTC) derivatives should be subject to Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁾.
- (28) In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.
- (29) In order to allow managers of ELTIFs to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to 30 % of the value of the capital of the ELTIF. That should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should borrow only in the currency in which the manager of the ELTIF expects to acquire the asset. In order to address concerns related to shadow banking activities, the cash borrowed by the ELTIF should not be used for granting loans to qualifying portfolio undertakings.
- (30) Due to the long-term and illiquid nature of the investments of an ELTIF, the manager of the ELTIF should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the particular features and characteristics of the investments but should not exceed five years after the date of the authorisation as an ELTIF or half the life of the ELTIF, whichever is the earlier.
- (31) ELTIFs, on account of their portfolio profile and their focus on categories of long-term assets, are designed to channel private savings toward the European economy. ELTIFs are also conceived as an investment vehicle through which the European Investment Bank (the EIB) Group can channel its European infrastructure or SME financing. By virtue of this Regulation, ELTIFs are structured as a pooled investment vehicle that responds to the EIB Group's focus on contributing to a balanced and steady development of an internal market for long-term investments in the interest of the Union. Given their focus on categories of long-term assets, ELTIFs can fulfil their designated role as a priority tool to accomplish the Investment Plan for Europe set out in the Commission communication of 26 November 2014.
- (32) The Commission should prioritise and streamline its processes for all applications by ELTIFs for financing from the EIB. The Commission should therefore streamline the delivery of any opinions or contributions on any applications by ELTIFs for financing from the EIB.
- (33) Moreover, Member States, as well as regional and local authorities, may have an interest in making potential investors and the public aware of ELTIFs.
- (34) Notwithstanding the fact that an ELTIF is not required to offer redemption rights before the end of its life, nothing should prevent an ELTIF from seeking admission of its units or shares to a regulated market or to a multilateral trading facility, thus providing investors with an opportunity to sell their units or shares before the end of the life of the ELTIF. The rules or instruments of incorporation of an ELTIF should not prevent units or shares of the ELTIF being admitted to trading on a regulated market or on a multilateral trading facility, nor should they prevent investors from freely transferring their units or shares to third parties who wish to purchase those units or shares. This is intended to promote secondary markets as an important venue for retail investors for buying and selling units or shares of ELTIFs.
- (35) While individual investors may be interested in investing in an ELTIF, the illiquid nature of most investments in long-term projects precludes an ELTIF from offering regular redemptions to its investors. The commitment of the individual investor to an investment in such assets is, by its nature, made to the full term of the investment. ELTIFs should, consequently, be structured in principle so as not to offer regular redemptions before the end of the life of the ELTIF.

⁽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).

- (36) In order to incentivise investors, in particular retail investors, who might not be willing to lock their capital up for a long period of time, an ELTIF should be able to offer, under certain conditions, early redemption rights to its investors. Therefore, the manager of the ELTIF should be given discretion to decide whether to establish ELTIFs with or without redemption rights, according to the ELTIF's investment strategy. When a redemption rights regime is in place, those rights and their main features should be clearly predefined and disclosed in the rules or instruments of incorporation of the ELTIF.
- (37) In order for investors to redeem effectively their units or shares at the end of the ELTIF's life, the manager of the ELTIF should start to sell the portfolio of assets of the ELTIF in good time to ensure that its value is properly realised. In determining an orderly disinvestment schedule, the manager of the ELTIF should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.
- (38) In order to broaden retail investors' access to ELTIFs, a UCITS is able to invest in units or shares issued by an ELTIF to the extent that the ELTIF's units or shares are eligible under Directive 2009/65/EC of the European Parliament and of the Council ⁽¹⁾.
- (39) It should be possible for an ELTIF to reduce its capital on a pro rata basis in the event that it has divested itself of one of its assets, in particular in the case of an infrastructure investment.
- (40) The unlisted assets in which an ELTIF has invested may obtain a listing on a regulated market during the life of the fund. Where that happens, the assets may no longer comply with the non-listing requirement of this Regulation. In order to allow the manager of the ELTIF to disinvest in an orderly manner from such assets that would no longer be eligible, the assets could continue to count towards the 70 % limit of eligible investment assets for up to three years.
- (41) Given the specific characteristics of ELTIFs, as well as of the retail and professional investors they target, it is important that sound transparency requirements be put in place that are capable of allowing prospective investors to make an informed judgement and be fully aware of the risks involved. In addition to complying with the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council ⁽²⁾ and Commission Regulation (EC) No 809/2004 ⁽³⁾. When marketing an ELTIF to retail investors, it should be mandatory to publish a key information document in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council ⁽⁴⁾. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF.
- (42) ELTIFs may be attractive to investors, such as municipalities, churches, charities and foundations, which should be able to request to be treated as professional clients in circumstances where they meet the conditions of Section II of Annex II of Directive 2014/65/EU of the European Parliament and of the Council ⁽⁵⁾.
- (43) As ELTIFs target not only professional but also retail investors across the Union, it is necessary that certain additional requirements be added to the marketing requirements already laid down in Directive 2011/61/EU, in order to ensure an appropriate degree of retail investor protection. Accordingly, facilities should be made

⁽¹⁾ 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).

⁽²⁾ 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).

⁽³⁾ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).

⁽⁴⁾ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

⁽⁵⁾ 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).

available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares, and making available the information which the ELTIF and the manager of the ELTIF are required to provide. Moreover, in order to ensure that retail investors are not at a disadvantage relative to professional investors, certain safeguards should be put in place when ELTIFs are marketed to retail investors. In the event that the marketing or placing of ELTIFs to retail investors is done through a distributor, such distributor should comply with the relevant requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽¹⁾.

- (44) The manager of the ELTIF or the distributor should obtain all necessary information regarding the retail investor's knowledge and experience, financial situation, risk appetite, investment objectives and time horizon in order to assess whether the ELTIF is suitable for marketing to that retail investor, taking into account, inter alia, the life and the intended investment strategy of the ELTIF. In addition, where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor should indicate clearly and in written form that this product may not be suitable for those retail investors unable to sustain such a long-term and illiquid commitment.
- (45) When an ELTIF is marketed to retail investors, the depositary of the ELTIF should comply with the provisions of Directive 2009/65/EC as regards the eligible entities that are permitted to act as depositaries, the 'no discharge of liability' rule, and the reuse of assets.
- (46) With a view to strengthening the protection of retail investors, this Regulation in addition provides that for retail investors whose portfolio, composed of cash deposits and financial instruments excluding any financial instruments that have been given as collateral, does not exceed EUR 500 000, the manager of the ELTIF or any distributor, after having performed a suitability test and having provided appropriate investment advice, should ensure that the retail investor does not invest an aggregate amount exceeding 10 % of the investor's portfolio in ELTIFs and the initial amount invested in one or more ELTIFs is not less than EUR 10 000.
- (47) Under exceptional circumstances specified in the rules or instruments of incorporation of an ELTIF, the life of the ELTIF could be extended or reduced to allow for more flexibility where, for instance, a project is completed later or earlier than expected, in order to bring it into line with its long-term investment strategy.
- (48) The competent authority of the ELTIF should verify on an on-going basis whether an ELTIF complies with this Regulation. As the competent authorities are already provided with extensive powers under Directive 2011/61/EU, it is necessary to extend those powers having regard to this Regulation.
- (49) 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 be able to exercise all the powers conferred on it under Directive 2011/61/EU with respect to this Regulation and should be provided with all resources necessary for that purpose, in particular human resources.
- (50) ESMA should play a central role in the application of the rules concerning ELTIFs, by ensuring consistent application of Union rules by national competent authorities. As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the drawing up of draft regulatory technical standards which do not involve policy choices for submission to the Commission. These regulatory technical standards should concern the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments, the circumstances in which the life of an ELTIF will be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, the features of the schedule for the orderly disposal of ELTIF assets, the definitions of, and calculation methodologies for costs borne by investors, presentation of cost disclosures, and the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.

⁽¹⁾ 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).

⁽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).

- (51) Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ should be fully applicable to the exchange, transmission and processing of personal data for the purposes of this Regulation.
- (52) Since the objectives of this Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance safety and reliability of ELTIFs with the efficient operation of the market for long-term financing and the cost for its various stakeholders, 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 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.
- (53) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data as well as access to services of general economic interest. This Regulation has to be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and objective

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (EU AIFs) or compartments of EU AIFs that are marketed in the Union as European long-term investment funds (ELTIFs).
2. The objective of this Regulation is to raise and channel capital towards European long-term investments in the real economy, in line with the Union objective of smart, sustainable and inclusive growth.
3. Member States shall not add any further requirements in the field covered by this Regulation.

Article 2

Definitions

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

- (1) 'capital' means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors;
- (2) 'professional investor' means an investor which is considered to be a professional client, or may, on request, be treated as a professional client in accordance with Annex II to Directive 2014/65/EU;
- (3) 'retail investor' means an investor who is not a professional investor;
- (4) 'equity' means ownership interest in a qualifying portfolio undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;

⁽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 of the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (5) 'quasi-equity' means any type of financing instrument where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;
- (6) 'real asset' means an asset that has value due to its substance and properties and may provide returns, including infrastructure and other assets that give rise to economic or social benefit, such as education, counselling, research and development, and including commercial property or housing only where they are integral to, or an ancillary element of, a long-term investment project that contributes to the Union objective of smart, sustainable and inclusive growth;
- (7) 'financial undertaking' means any of the following:
- (a) 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⁾;
 - (b) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;
 - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ⁽²⁾;
 - (d) a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;
 - (e) a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;
 - (f) a management company as defined in point (b) of Article 2(1) of Directive 2009/65/EC;
 - (g) an AIFM as defined in point (b) of Article 4(1) of Directive 2011/61/EU.
- (8) 'EU AIF' means EU AIF as defined in point (k) of Article 4(1) of Directive 2011/61/EU;
- (9) 'EU AIFM' means EU AIFM as defined in point (l) of Article 4(1) of Directive 2011/61/EU;
- (10) 'competent authority of the ELTIF' means the competent authority of the EU AIF within the meaning of point (h) of Article 4(1) of Directive 2011/61/EU;
- (11) 'home Member State of the ELTIF' means the Member State where the ELTIF is authorised;
- (12) 'manager of the ELTIF' means the authorised EU AIFM approved to manage an ELTIF, or the internally managed ELTIF where the legal form of the ELTIF permits internal management and where no external AIFM has been appointed;
- (13) 'competent authority of the manager of the ELTIF' means the competent authority of the home Member State of the AIFM within the meaning of point (q) of Article 4(1) of Directive 2011/61/EU;
- (14) 'securities lending' and 'securities borrowing' mean any transaction in which a counterparty transfers securities subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, that transaction being considered as securities lending for the counterparty transferring the securities and being considered as securities borrowing for the counterparty to which they are transferred;
- (15) 'repurchase transaction' means a repurchase transaction as defined in point (83) of Article 4(1) of Regulation (EU) No 575/2013;
- (16) 'financial instrument' means a financial instrument as specified in Section C of Annex I to Directive 2014/65/EU;
- (17) 'short selling' means an activity as defined in point (b) of Article 2(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council ⁽³⁾;
- (18) 'regulated market' means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (19) 'multilateral trading facility' means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/65/EU.

⁽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⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁽³⁾ 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).

*Article 3***Authorisation and central public register**

1. An ELTIF may only be marketed in the Union when it has been authorised in accordance with this Regulation. Authorisation as an ELTIF shall be valid for all Member States.
2. Only EU AIFs shall be eligible to apply for and to be granted authorisation as an ELTIF.
3. The competent authorities of the ELTIFs shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn pursuant to this Regulation.

ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation, the manager of the ELTIF and the competent authority of the ELTIF. The register shall be made available in electronic format.

*Article 4***Designation and prohibition on transformation**

1. The designation 'ELTIF' or 'European long-term investment fund' in relation to a collective investment undertaking, or the units or shares it issues, may only be used where the collective investment undertaking has been authorised in accordance with this Regulation.
2. ELTIFs shall be prohibited from transforming themselves into collective investment undertakings that are not covered by this Regulation.

*Article 5***Application for authorisation as an ELTIF**

1. An application for authorisation as an ELTIF shall be made to the competent authority of the ELTIF.

The application for authorisation as an ELTIF shall include the following:

- (a) the fund rules or instruments of incorporation;
- (b) information on the identity of the proposed manager of the ELTIF and its current and previous fund management experience and history;
- (c) information on the identity of the depositary;
- (d) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.

The competent authority of the ELTIF may request clarification and information as regards the documentation and information provided under the second subparagraph.

2. Only an EU AIFM authorised under Directive 2011/61/EU may apply to the competent authority of the ELTIF for approval to manage an ELTIF for which authorisation is requested in accordance with paragraph 1. In the event that the competent authority of the ELTIF is the same as the competent authority of the EU AIFM, such an application for approval shall refer to the documentation submitted for authorisation under Directive 2011/61/EU.

An application for approval to manage an ELTIF shall include the following:

- (a) the written agreement with the depositary;
- (b) information on delegation arrangements regarding portfolio and risk management and administration with regard to the ELTIF;
- (c) information about the investment strategies, the risk profile and other characteristics of AIFs that the EU AIFM is authorised to manage.

The competent authority of the ELTIF may ask the competent authority of the EU AIFM for clarification and information as regards the documentation referred to in the second subparagraph or an attestation as to whether ELTIFs fall within the scope of the EU AIFM's authorisation to manage AIFs. The competent authority of the EU AIFM shall provide an answer within 10 working days from the date on which it received the request submitted by the competent authority of the ELTIF.

3. Applicants shall be informed within two months from the date of submission of a complete application whether authorisation as an ELTIF, including approval for the EU AIFM to manage the ELTIF, has been granted.

4. Any subsequent modifications to the documentation referred to in paragraphs 1 and 2 shall be immediately notified to the competent authority of the ELTIF.

5. By way of derogation from paragraphs 1 and 2, an EU AIF the legal form of which permits internal management and the governing body of which chooses not to appoint an external AIFM shall apply simultaneously for authorisation as an ELTIF under this Regulation and as an AIFM under Directive 2011/61/EU.

Without prejudice to Article 7 of Directive 2011/61/EU, the application for authorisation as an internally managed ELTIF shall include the following:

- (a) the fund rules or instruments of incorporation;
- (b) a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors.

By way of derogation from paragraph 3, an internally managed EU AIF shall be informed within three months from the date of submission of a complete application whether authorisation as an ELTIF has been granted.

Article 6

Conditions for granting authorisation as an ELTIF

1. An EU AIF shall be authorised as an ELTIF only where its competent authority:

- (a) is satisfied that the EU AIF is able to meet all the requirements of this Regulation;
- (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF, the fund rules or instruments of incorporation, and the choice of the depositary.

2. In the event that an EU AIF makes an application pursuant to Article 5(5) of this Regulation, the competent authority shall authorise the EU AIF only where it is satisfied that the EU AIF complies with both the requirements of this Regulation and of Directive 2011/61/EU regarding the authorisation of an EU AIFM.

3. The competent authority of the ELTIF may refuse to approve the application of an EU AIFM to manage an ELTIF only where the EU AIFM:

- (a) does not comply with this Regulation;
- (b) does not comply with Directive 2011/61/EU;
- (c) is not authorised by its competent authority to manage AIFs that follow investment strategies of the type covered by this Regulation; or
- (d) has not provided the documentation referred to in Article 5(2), or any clarification or information requested thereunder.

Before refusing to approve an application, the competent authority of the ELTIF shall consult the competent authority of the EU AIFM.

4. The competent authority of the ELTIF shall not grant authorisation as an ELTIF to the EU AIF that has made an application for authorisation if it is legally prevented from marketing its units or shares in its home Member State.

5. The competent authority of the ELTIF shall communicate to the EU AIF the reason for its refusal to grant authorisation as an ELTIF.

6. An application which has been rejected under this Chapter shall not be resubmitted to the competent authorities of other Member States.

7. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the home Member State of the ELTIF or that the EU AIFM pursue or delegate any activities in the home Member State of the ELTIF.

Article 7

Applicable rules and liability

1. An ELTIF shall comply at all times with the provisions of this Regulation.
2. An ELTIF and the manager of the ELTIF shall comply at all times with Directive 2011/61/EU.
3. The manager of the ELTIF shall be responsible for ensuring compliance with this Regulation and shall also be liable in accordance with Directive 2011/61/EU for any infringements of this Regulation. The manager of the ELTIF shall also be liable for losses or damages resulting from non-compliance with this Regulation.

CHAPTER II

OBLIGATIONS CONCERNING THE INVESTMENT POLICIES OF ELTIFs

SECTION 1

General rules and eligible assets

Article 8

Investment compartments

Where an ELTIF comprises more than one investment compartment, each compartment shall be regarded as a separate ELTIF for the purposes of this Chapter.

Article 9

Eligible investments

1. In accordance with the objectives referred to in Article 1(2), an ELTIF shall invest only in the following categories of assets and only under the conditions specified in this Regulation:

- (a) eligible investment assets;
- (b) assets referred to in Article 50(1) of Directive 2009/65/EC.

2. An ELTIF shall not undertake any of the following activities:

- (a) short selling of assets;
- (b) taking direct or indirect exposure to commodities, including via financial derivative instruments, certificates representing them, indices based on them or any other means or instrument that would give an exposure to them;
- (c) entering into securities lending, securities borrowing, repurchase transactions, or any other agreement which has an equivalent economic effect and poses similar risks, if thereby more than 10 % of the assets of the ELTIF are affected;
- (d) using financial derivative instruments, except where the use of such instruments solely serves the purpose of hedging the risks inherent to other investments of the ELTIF.

3. In order to ensure the consistent application of this Article, ESMA shall, after conducting a public consultation, develop draft regulatory technical standards specifying criteria for establishing the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments referred to in point (d) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 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 10***Eligible investment assets**

An asset referred to in point (a) of Article 9(1) shall be eligible for investment by an ELTIF only where it falls into one of the following categories:

- (a) equity or quasi-equity instruments which have been:
 - (i) issued by a qualifying portfolio undertaking and acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
 - (ii) issued by a qualifying portfolio undertaking in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
 - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority owned subsidiary, in exchange for an equity or quasi-equity instrument acquired in accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking or from a third party via the secondary market;
- (b) debt instruments issued by a qualifying portfolio undertaking;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking with a maturity no longer than the life of the ELTIF;
- (d) units or shares of one or several other ELTIFs, EuVECAs and EuSEFs provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10 % of their capital in ELTIFs;
- (e) direct holdings or indirect holdings via qualifying portfolio undertakings of individual real assets with a value of at least EUR 10 000 000 or its equivalent in the currency in which, and at the time when, the expenditure is incurred.

*Article 11***Qualifying portfolio undertaking**

1. A qualifying portfolio undertaking referred to in Article 10 shall be a portfolio undertaking other than a collective investment undertaking that fulfils the following requirements:

- (a) it is not a financial undertaking;
- (b) it is an undertaking which:
 - (i) is not admitted to trading on a regulated market or on a multilateral trading facility; or
 - (ii) is admitted to trading on a regulated market or on a multilateral trading facility and at the same time has a market capitalisation of no more than EUR 500 000 000;
- (c) it is established in a Member State, or in a third country provided that the third country:
 - (i) is not a high-risk and non-cooperative jurisdiction identified by the Financial Action Task Force;
 - (ii) has signed an agreement with the home Member State of the manager of the ELTIF and with every other Member State in which the units or shares of the ELTIF are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

2. By way of derogation from point (a) of paragraph 1 of this Article, a qualifying portfolio undertaking may be a financial undertaking that exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in point (e) of Article 10.

*Article 12***Conflict of interest**

An ELTIF shall not invest in an eligible investment asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs or EuVECAs that it manages.

SECTION 2

Provisions on investment policies*Article 13***Portfolio composition and diversification**

1. An ELTIF shall invest at least 70 % of its capital in eligible investment assets.
2. An ELTIF shall invest no more than:
 - (a) 10 % of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
 - (b) 10 % of its capital directly or indirectly in a single real asset;
 - (c) 10 % of its capital in units or shares of any single ELTIF, EuVECA or EuSEF;
 - (d) 5 % of its capital in assets referred to in point (b) of Article 9(1) where those assets have been issued by any single body.
3. The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio shall not exceed 20 % of the value of the capital of the ELTIF.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from OTC derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 5 % of the value of the capital of the ELTIF.
5. By way of derogation from points (a) and (b) of paragraph 2, an ELTIF may raise the 10 % limit referred to therein to 20 %, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in which it invests more than 10 % of its capital does not exceed 40 % of the value of the capital of the ELTIF.
6. By way of derogation from point (d) of paragraph 2, an ELTIF may raise the 5 % limit referred to therein to 25 % where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
7. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Directive 2013/34/EU of the European Parliament and of the Council ⁽¹⁾ or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 6.

*Article 14***Rectification of investment positions**

In the event that an ELTIF infringes the diversification requirements set out in Article 13(2) to 13(6) and the infringement is beyond the control of the manager of the ELTIF, the manager of the ELTIF shall, within an appropriate period of time, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the ELTIF.

*Article 15***Concentration**

1. An ELTIF may acquire no more than 25 % of the units or shares of a single ELTIF, EuVECA, or EuSEF.
2. The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in point (b) of Article 9(1) of 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).

*Article 16***Borrowing of cash**

1. An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:
 - (a) it represents no more than 30 % of the value of the capital of the ELTIF;
 - (b) it serves the purpose of investing in eligible investment assets, except for loans referred to in point (c) of Article 10, provided that the holdings in cash or cash equivalents of the ELTIF are not sufficient to make the investment concerned;
 - (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;
 - (d) it has a maturity no longer than the life of the ELTIF;
 - (e) it encumbers assets that represent no more than 30 % of the value of the capital of the ELTIF.
2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether or not it intends to borrow cash as part of its investment strategy.

*Article 17***Application of portfolio composition and diversification rules**

1. The investment limit laid down in Article 13(1) shall:
 - (a) apply by the date specified in the rules or instruments of incorporation of the ELTIF;
 - (b) cease to apply once the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF;
 - (c) be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months.

The date referred to in point (a) of the first subparagraph shall take account of the particular features and characteristics of the assets to be invested by the ELTIF, and shall be no later than either five years after the date of the authorisation as an ELTIF, or half the life of the ELTIF as determined in accordance with Article 18(3), whichever is the earlier. In exceptional circumstances, the competent authority of the ELTIF, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year.

2. Where a long-term asset in which an ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with point (b) of Article 11(1), the long-term asset may continue to be counted for the purpose of calculating the investment limit referred to in Article 13(1) for a maximum of three years from the date on which the qualifying portfolio undertaking no longer fulfils the requirements of point (b) of Article 11(1).

CHAPTER III

REDEMPTION, TRADING AND ISSUE OF UNITS OR SHARES OF AN ELTIF AND DISTRIBUTION OF PROCEEDS AND CAPITAL*Article 18***Redemption policy and life of ELTIFs**

1. Investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors shall be possible from the day following the date of the end of the life of the ELTIF.

Rules or instruments of incorporation of the ELTIF shall clearly indicate a specific date for the end of the life of the ELTIF and may provide for the right to extend temporarily the life of the ELTIF and the conditions for exercising such a right.

Rules or instruments of incorporation of the ELTIF and disclosures to investors shall lay down the procedures for the redemption of units or shares and the disposal of assets, and state clearly that redemptions to investors shall commence on the day following the date of the end of life of the ELTIF.

2. By way of derogation from paragraph 1, rules or instruments of incorporation of the ELTIF may provide for the possibility of redemptions before the end of the life of the ELTIF, provided that all of the following conditions are fulfilled:

- (a) redemptions are not granted before the date specified in point (a) of Article 17(1);
- (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authorities that an appropriate liquidity management system and effective procedures for monitoring the liquidity risk of the ELTIF are in place, which are compatible with the long-term investment strategy of the ELTIF and the proposed redemption policy;
- (c) the manager of the ELTIF sets out a defined redemption policy, which clearly indicates the periods of time during which investors may request redemptions;
- (d) the redemption policy of the ELTIF ensures that the overall amount of redemptions within any given period is limited to a percentage of those assets of the ELTIF which are referred to in point (b) of Article 9(1). This percentage shall be aligned to the liquidity management and investment strategy disclosed by the manager of the ELTIF;
- (e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the total amount of requests for redemptions within any given period of time exceed the percentage referred to in point (d) of this paragraph.

3. The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.

4. Investors may request the winding down of an ELTIF if their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which they were made.

5. Investors shall always have the option to be repaid in cash.

6. Repayment in kind out of an ELTIF's assets shall be possible only where all of the following conditions are met:

- (a) the rules or instruments of incorporation of the ELTIF provide for this possibility, provided that all investors are treated fairly;
- (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
- (c) no specific rules restrict the transfer of those assets.

7. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, as referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 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

Secondary market

1. The rules or instruments of incorporation of an ELTIF shall not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility.

2. The rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF.

3. An ELTIF shall publish in its periodical reports the market value of its listed units or shares along with the net asset value per unit or share.

4. In the event that there is a material change in the value of an asset, the manager of the ELTIF shall disclose this to investors in its periodical reports.

Article 20

Issuance of new units or shares

1. An ELTIF may offer new issues of units or shares in accordance with its rules or instruments of incorporation.
2. An ELTIF shall not issue new units or shares at a price below their net asset value without a prior offering of those units or shares at that price to existing investors in the ELTIF.

Article 21

Disposal of ELTIF assets

1. An ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and shall disclose this to the competent authority of the ELTIF at the latest one year before the date of the end of the life of the ELTIF.
2. The schedule referred to in paragraph 1 shall include:
 - (a) an assessment of the market for potential buyers;
 - (b) an assessment and comparison of potential sales prices;
 - (c) a valuation of the assets to be divested;
 - (d) a time-frame for the disposal schedule.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and the valuation in point (c) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 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 22

Distribution of proceeds and capital

1. An ELTIF may regularly distribute to investors the proceeds generated by the assets contained in its portfolio. Those proceeds shall comprise:
 - (a) proceeds that the assets are regularly producing;
 - (b) capital appreciation realised after the disposal of an asset.
2. The proceeds shall not be distributed to the extent that they are required for future commitments of the ELTIF.
3. An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset before the end of the life of the ELTIF, provided that such a disposal is duly considered to be in the investors' interests by the manager of the ELTIF.
4. The rules or instruments of incorporation of an ELTIF shall specify the distribution policy that the ELTIF will apply during its life.

CHAPTER IV

TRANSPARENCY REQUIREMENTS

Article 23

Transparency

1. The units or shares of an ELTIF shall not be marketed in the Union without prior publication of a prospectus.

The units or shares of an ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document in accordance with Regulation (EU) No 1286/2014.

2. The prospectus shall include all information necessary to enable investors to make an informed assessment regarding the investment proposed to them and, in particular, the risks attached thereto.

3. The prospectus shall contain at least the following:

- (a) a statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long-term in nature;
- (b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC and Regulation (EC) No 809/2004;
- (c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already covered under point(b) of this paragraph;
- (d) a prominent indication of the categories of assets in which the ELTIF is authorised to invest;
- (e) a prominent indication of the jurisdictions in which the ELTIF is allowed to invest;
- (f) any other information considered by the competent authorities to be relevant for the purposes of paragraph 2.

4. The prospectus and any other marketing documents shall prominently inform investors about the illiquid nature of the ELTIF.

In particular, the prospectus and any other marketing documents shall clearly:

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) inform investors about the end of the life of the ELTIF as well as the option to extend the life of the ELTIF, where this is provided for, and the conditions thereof;
- (c) state whether the ELTIF is intended to be marketed to retail investors;
- (d) explain the rights of investors to redeem their investment in accordance with Article 18 and with the rules or instruments of incorporation of the ELTIF;
- (e) state the frequency and the timing of distributions of proceeds, if any, to investors during the life of the ELTIF;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF;
- (g) describe the hedging policy of the ELTIF, including a prominent indication that financial derivative instruments may be used only for the purpose of hedging risks inherent to other investments of the ELTIF, and an indication of the possible impact of the use of financial derivative instruments on the risk profile of the ELTIF;
- (h) inform investors about the risks related to investing in real assets, including infrastructure;
- (i) inform investors regularly, at least once a year, of the jurisdictions in which the ELTIF has invested.

5. In addition to the information required under Article 22 of Directive 2011/61/EU, the annual report of an ELTIF shall contain the following:

- (a) a cash flow statement;
- (b) information on any participation in instruments involving Union budgetary funds;
- (c) information on the value of the individual qualifying portfolio undertakings and the value of other assets in which the ELTIF has invested, including the value of financial derivative instruments used;
- (d) information on the jurisdictions in which the assets of the ELTIF are located.

6. Upon the request of a retail investor, the manager of the ELTIF shall provide additional information relating to the quantitative limits that apply to the risk management of the ELTIF, the methods chosen to that end, and the recent evolution of the main risks and yields of the categories of assets.

Article 24

Additional requirements of the prospectus

1. An ELTIF shall send its prospectus and any amendments thereto, as well as its annual report, to the competent authorities of the ELTIF. Upon request, an ELTIF shall provide this documentation to the competent authority of the manager of the ELTIF. This documentation shall be provided by the ELTIF within the time period specified by these competent authorities.

2. The rules or instruments of incorporation of an ELTIF shall form an integral part of the prospectus and shall be annexed thereto.

The documents referred to in the first subparagraph shall not be required to be annexed to the prospectus where the investor is informed that, upon request, the investor shall be sent those documents or be apprised of the place where, in each Member State in which the units or shares are marketed, the investor may consult them.

3. The prospectus shall specify the manner in which the annual report shall be available to investors. It shall provide that a paper copy of the annual report shall be delivered to retail investors upon request and free of charge.

4. The prospectus and the latest published annual report shall be provided to investors upon request and free of charge.

The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to retail investors upon request and free of charge.

5. The essential elements of the prospectus shall be kept up to date.

Article 25

Cost disclosure

1. The prospectus shall prominently inform investors of the level of the different costs borne directly or indirectly by the investors. The different costs shall be grouped according to the following headings:

- (a) costs of setting up the ELTIF;
- (b) costs related to the acquisition of assets;
- (c) management and performance related fees;
- (d) distribution costs;
- (e) other costs, including administrative, regulatory, depository, custodial, professional service and audit costs.

2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.

3. ESMA shall develop draft regulatory technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.

When developing these draft regulatory technical standards, ESMA shall take into account the regulatory technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014.

ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 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 V

MARKETING OF UNITS OR SHARES OF ELTIFs

Article 26

Facilities available to investors

1. The manager of an ELTIF the units or shares of which are intended to be marketed to retail investors shall, in each Member State where it intends to market such units or shares, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide.

2. ESMA shall develop draft regulatory technical standards to specify the types and characteristics of the facilities referred to in paragraph 1, their technical infrastructure and the content of their tasks in respect of the retail investors.

ESMA shall submit those draft regulatory technical standards to the Commission by 9 September 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***Internal assessment process for ELTIFs marketed to retail investors**

1. The manager of an ELTIF, the units or shares of which are intended to be marketed to retail investors, shall establish and apply a specific internal process for the assessment of that ELTIF before it is marketed or distributed to retail investors.
2. As part of the internal process referred to in paragraph 1, the manager of the ELTIF shall assess whether the ELTIF is suitable for marketing to retail investors, taking into account at least:
 - (a) the life of the ELTIF; and
 - (b) the intended investment strategy of the ELTIF.
3. The manager of the ELTIF shall make available to any distributor all appropriate information on an ELTIF that is marketed to retail investors, including all information regarding its life and investment strategy, as well as the internal assessment process and the jurisdictions in which the ELTIF is allowed to invest.

*Article 28***Specific requirements concerning the distribution of ELTIFs to retail investors**

1. When directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall obtain information regarding the following:
 - (a) the retail investor's knowledge and experience in the investment field relevant to the ELTIF;
 - (b) the retail investor's financial situation, including that investor's ability to bear losses;
 - (c) the retail investor's investment objectives, including that investor's time horizon.Based on the information obtained under the first subparagraph, the manager of the ELTIF shall recommend the ELTIF only if it is suitable for that particular retail investor.
2. Where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, the manager of the ELTIF or the distributor shall issue a clear written alert that the ELTIF product may not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment.

*Article 29***Specific provisions concerning the depositary of an ELTIF marketed to retail investors**

1. By way of derogation from Article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in Article 23(2) of Directive 2009/65/EC.
2. By way of derogation from the second subparagraph of Article 21(13) and Article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3. The liability of the depositary referred to in Article 21(12) of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
4. Any agreement that contravenes paragraph 3 shall be void.
5. The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that:

- (a) the reuse of the assets is executed for the account of the ELTIF;
- (b) the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF;

- (c) the reuse is for the benefit of the ELTIF and in the interests of the unit- or shareholders; and
- (d) the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement.

The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

Article 30

Additional requirements for marketing ELTIFs to retail investors

1. The units or shares of an ELTIF may be marketed to retail investors on the condition that retail investors are provided with appropriate investment advice from the manager of the ELTIF or the distributor.
2. A manager of an ELTIF may directly offer or place units or shares of the ELTIF to retail investors only if that manager is authorised to provide the services referred to in points (a) and (b)(i) of Article 6(4) of Directive 2011/61/EU and only after that manager has performed the suitability test referred to in Article 28(1) of this Regulation.
3. Where the financial instrument portfolio of a potential retail investor does not exceed EUR 500 000, the manager of the ELTIF or any distributor, after having performed the suitability test referred to in Article 28(1) and having provided appropriate investment advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10 % of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is EUR 10 000.

The potential retail investor shall be responsible for providing the manager of the ELTIF or the distributor with accurate information on the potential retail investor's financial instrument portfolio and investments in ELTIFs as referred to in the first subparagraph.

For the purpose of this paragraph, a financial instrument portfolio shall be understood to include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

4. The rules or instruments of incorporation of an ELTIF marketed to retail investors shall provide that all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors.
5. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.
6. Retail investors shall be able, during the subscription period and at least two weeks after the date of their subscription to units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.
7. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which allow retail investors to file complaints in the official language or one of the official languages of their Member State.

Article 31

Marketing of units or shares of ELTIFs

1. The manager of an ELTIF shall be able to market the units or shares of that ELTIF to professional and retail investors in its home Member State upon notification in accordance with Article 31 of Directive 2011/61/EU.
2. The manager of an ELTIF shall be able to market the units or shares of that ELTIF to professional and retail investors in Member States other than in the home Member State of the manager of the ELTIF upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. The manager of an ELTIF shall, in respect of each ELTIF that it manages, specify to competent authorities whether or not it intends to market the ELTIF to retail investors.

4. In addition to the documentation and information required pursuant to Articles 31 and 32 of Directive 2011/61/EU, the manager of the ELTIF shall provide competent authorities with the following:

- (a) the prospectus of the ELTIF;
- (b) the key information document of the ELTIF in the event that it is marketed to retail investors; and
- (c) information on the facilities referred to in Article 26.

5. The competences and powers of the competent authorities pursuant to Articles 31 and 32 of Directive 2011/61/EU shall be understood to refer also to the marketing of ELTIFs to retail investors and to cover the additional requirements laid down in this Regulation.

6. In addition to its powers set out in the first subparagraph of Article 31(3) of Directive 2011/61/EU, the competent authority of the home Member State of the manager of the ELTIF shall also prevent the marketing of an ELTIF if the manager of the ELTIF does not or will not comply with this Regulation.

7. In addition to its powers set out in the first subparagraph of Article 32(3) of Directive 2011/61/EU, the competent authority of the home Member State of the manager of the ELTIF shall also refuse the transmission of a complete notification file to the competent authorities of the Member State where the ELTIF is intended to be marketed if the manager of the ELTIF does not comply with this Regulation.

CHAPTER VI

SUPERVISION

Article 32

Supervision by the competent authorities

1. The competent authorities shall supervise compliance with this Regulation on an ongoing basis.
2. The competent authority of the ELTIF shall be responsible for supervising compliance with the rules laid down in Chapters II, III and IV.
3. The competent authority of the ELTIF shall be responsible for supervising compliance with the obligations set out in the rules or instruments of incorporation of the ELTIF, and the obligations set out in the prospectus, which shall comply with this Regulation.
4. The competent authority of the manager of the ELTIF shall be responsible for supervising the adequacy of the arrangements and organisation of the manager of the ELTIF so that the manager of the ELTIF is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the ELTIFs that it manages.

The competent authority of the manager of the ELTIF shall be responsible for supervising compliance of the manager of the ELTIF with this Regulation.

5. Competent authorities shall monitor collective investment undertakings established or marketed in their territories to verify that they do not use the designation 'ELTIF' or suggest that they are an ELTIF unless they are authorised under, and comply with, this Regulation.

Article 33

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.
2. The powers conferred on competent authorities in accordance with Directive 2011/61/EU, including those related to penalties, shall also be exercised with respect to this Regulation.
3. The competent authority of the ELTIF shall prohibit the use of the designation 'ELTIF' or 'European long-term investment fund' in the event that the manager of the ELTIF no longer complies with this Regulation.

*Article 34***Powers and competences of ESMA**

1. ESMA shall have the powers necessary to carry out the tasks attributed to it by this Regulation.
2. ESMA's powers in accordance with Directive 2011/61/EU shall also be exercised with respect to this Regulation and in compliance with Regulation (EC) No 45/2001.
3. For the purposes of Regulation (EU) No 1095/2010, this Regulation shall be understood as a further legally binding Union act which confers tasks on ESMA as referred to in Article 1(2) of Regulation (EU) No 1095/2010.

*Article 35***Cooperation between competent authorities**

1. The competent authority of the ELTIF and the competent authority of the manager of the ELTIF, if different, shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation.
2. Competent authorities shall cooperate with each other in accordance with Directive 2011/61/EU.
3. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.
4. Competent authorities and ESMA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to identify and remedy infringements of this Regulation.

CHAPTER VII

FINAL PROVISIONS*Article 36***Processing of applications by the Commission**

The Commission shall prioritise and streamline its processes for all applications by ELTIFs for financing from the EIB. The Commission shall streamline the delivery of any opinions or contributions on any applications by ELTIFs for financing from the EIB.

*Article 37***Review**

1. No later than 9 June 2019, the Commission shall start a review of the application of this Regulation. The review shall analyse, in particular:
 - (a) the impact of Article 18;
 - (b) the impact on asset diversification of the application of the minimum threshold of 70 % of eligible investment assets laid down in Article 13(1);
 - (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs falling under Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
 - (d) the extent to which the list of eligible assets and investments should be updated, as well as the diversification rules, portfolio composition and limits regarding the borrowing of cash.
2. Following the review referred to in paragraph 1 of this Article, and after consulting ESMA, the Commission shall submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the Capital Markets Union and to the achievement of the objectives set out in Article 1(2). The report shall be accompanied, where appropriate, by a legislative proposal.

*Article 38***Entry into force**

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

It shall apply from 9 December 2015.

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

Done at Strasbourg, 29 April 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

Z. KALNIŅA-LUKAŠEVICA

CORRIGENDA**Corrigendum to Regulation (EU) No 375/2014 of the European Parliament and of the Council of 3 April 2014 establishing the European Voluntary Humanitarian Aid Corps ('EU Aid Volunteers initiative')**

(Official Journal of the European Union L 122 of 24 April 2014)

On page 15, Article 24(2):

for: '2. The power to adopt delegated acts referred to in Article 7(2), Article 9(2) and Article 20(3) shall be conferred on the Commission for a period of seven years from 25 April 2014.'

read: '2. The power to adopt delegated acts referred to in Article 7(2), Article 9(2) and Article 20(3) and (4) shall be conferred on the Commission for a period of seven years from 25 April 2014.'

