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Price: EUR 3

(¹) Text with EEA relevance

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

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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) No 258/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 March 2012**

implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition

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 thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) In accordance with Council Decision 2001/748/EC of 16 October 2001 concerning the signing on behalf of the European Community of the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, annexed to the Convention against transnational organised crime ⁽²⁾, the Commission signed that Protocol (hereinafter referred to as the 'UN Firearms Protocol') on behalf of the Community on 16 January 2002.

(2) The UN Firearms Protocol, the purpose of which is to promote, facilitate and strengthen cooperation among Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, entered into force on 3 July 2005.

⁽¹⁾ Position of the European Parliament of 13 October 2011 (not yet published in the Official Journal) and Council Decision of 8 March 2012.

⁽²⁾ OJ L 280, 24.10.2001, p. 5.

(3) In order to facilitate the tracing of firearms and efficiently combat illicit trafficking in firearms, their parts and essential components and ammunition, it is necessary to improve the exchange of information between Member States, in particular through the better use of existing communication channels.

(4) Personal data must be processed in accordance with the rules laid down in 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 ⁽³⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁴⁾.

(5) In its Communication of 18 July 2005 on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms ⁽⁵⁾, the Commission announced its intention to implement Article 10 of the UN Firearms Protocol as part of the measures which need to be taken in order for the Union to be in a position to conclude that Protocol.

(6) The UN Firearms Protocol requires Parties to put in place or improve administrative procedures or systems to exercise effective control over the manufacturing, marking, import and export of firearms.

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁵⁾ COM(2005) 329. The Communication also announced the technical modification of Directive 91/477/EEC aimed at integrating the appropriate provisions required by the UN Protocol as regards intra-Community transfers of weapons concerned by the Directive, finally amended by Directive 2008/51/EC of the European Parliament and of the Council (OJ L 179, 8.7.2008, p. 5).

- (7) Compliance with the UN Firearms Protocol also requires that illicit manufacture of or trafficking in firearms, their parts and essential components and ammunition be established as criminal offences, and that measures be taken to enable the confiscation of items so manufactured or trafficked.
- (8) This Regulation should not apply to firearms, their parts and essential components or ammunition that are intended specifically for military purposes. The measures to meet the requirements of Article 10 of the UN Firearms Protocol should be adapted to provide for simplified procedures for firearms for civilian use. Consequently, some facilitation with regard to authorisation for multiple shipments, transit measures and temporary exports for lawful purposes should be ensured.
- (9) This Regulation does not affect the application of Article 346 of the Treaty on the Functioning of the European Union, which refers to essential interests of the security of the Member States, nor has this Regulation any impact on Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community⁽¹⁾, or on Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons⁽²⁾. Moreover, the UN Firearms Protocol, and consequently this Regulation, do not apply to State-to-State transactions or to State transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.
- (10) Directive 91/477/EEC addresses transfers of firearms for civilian use within the territory of the Union, while this Regulation focuses on measures in respect of export from the customs territory of the Union to or through third countries.
- (11) Firearms, their parts and essential components and ammunition when imported from third countries are subject to Union law and, in particular, to the requirements of Directive 91/477/EEC.
- (12) Consistency should be ensured with regard to record-keeping provisions in force under Union law.
- (13) In order to ensure that this Regulation is properly applied, Member States should take measures giving the competent authorities appropriate powers.
- (14) In order to maintain the list of firearms, their parts and essential components and ammunition for which an authorisation is required under this Regulation, 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 aligning Annex I to this Regulation to Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽³⁾, and to Annex I to Directive 91/477/EEC. 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.
- (15) The Union has adopted a body of customs rules, contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽⁴⁾ and its implementing provisions as laid down in Commission Regulation (EEC) No 2454/93⁽⁵⁾. Consideration should also be given to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)⁽⁶⁾ whose provisions are applicable in different phases according to Article 188 thereof. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.
- (16) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (17) This Regulation is without prejudice to the Union regime for the control of exports, transfer, brokering and transit of dual-use items established by Council Regulation (EC) No 428/2009⁽⁷⁾.
- (18) This Regulation is consistent with the other relevant provisions on firearms, their parts, essential components and ammunition for military use, security strategies, illicit trafficking in small arms and light weapons and exports of military technology, including Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment⁽⁸⁾.

⁽¹⁾ OJ L 146, 10.6.2009, p. 1.

⁽²⁾ OJ L 256, 13.9.1991, p. 51.

⁽³⁾ OJ L 256, 7.9.1987, p. 1.

⁽⁴⁾ OJ L 302, 19.10.1992, p. 1.

⁽⁵⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁶⁾ OJ L 145, 4.6.2008, p. 1.

⁽⁷⁾ OJ L 134, 29.5.2009, p. 1.

⁽⁸⁾ OJ L 335, 13.12.2008, p. 99.

- (19) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (20) This Regulation does not prevent the Member States from applying their constitutional rules relating to public access to official documents, taking into account Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT, DEFINITIONS AND SCOPE

Article 1

This Regulation lays down rules governing export authorisation, and import and transit measures for firearms, their parts and essential components and ammunition, for the purpose of implementing Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime (the 'UN Firearms Protocol').

Article 2

For the purposes of this Regulation:

- (1) 'firearm' means any portable barrelled weapon that expels, is designed to expel or may be converted to expel, a shot, bullet or projectile by the action of a combustible propellant as referred to in Annex I.

An object is considered as capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

- it has the appearance of a firearm, and
- as a result of its construction or the material from which it is made, it can be so converted;

- (2) 'parts' means any element or replacement element as referred to in Annex I specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

- (3) 'essential components' means the breech-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted;

- (4) 'ammunition' means the complete round or the components thereof, including cartridge cases, primers,

propellant powder, bullets or projectiles that are used in a firearm, as referred to in Annex I, provided that those components are themselves subject to authorisation in the relevant Member State;

- (5) 'deactivated firearms' means objects otherwise corresponding to the definition of a firearm which have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or modification that would permit the firearm to be reactivated in any way.

Member States shall make arrangements for these deactivation measures to be verified by a competent authority. Member States shall, in the context of that verification, provide for the issue of a certificate or record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm;

- (6) 'export' means:

- (a) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92;

- (b) a re-export within the meaning of Article 182 of Regulation (EEC) No 2913/92 but not including goods moving under the external transit procedure, as referred to in Article 91 of that Regulation where no re-export formalities as referred to in Article 182(2) thereof have been fulfilled;

- (7) 'person' means a natural person, a legal person and, where the possibility is provided for under the rules in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;

- (8) 'exporter' means any person, established in the Union, who makes or on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Union.

Where the benefit of a right to dispose of firearms, their parts and essential components or ammunition accrues to a person established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Union;

- (9) 'customs territory of the Union' means the territory within the meaning of Article 3 of Regulation (EEC) No 2913/92;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

- (10) 'export declaration' means the act whereby a person indicates in the prescribed form and manner his intention to place firearms, their parts and essential components, and ammunition under an export procedure;
- (11) 'temporary export' means the movement of firearms leaving the customs territory of the Union and intended for re-importation within a period not exceeding 24 months;
- (12) 'transit' means the operation of transport of goods leaving the customs territory of the Union and passing through the territory of one or more third countries with final destination in another third country;
- (13) 'transshipment' means transit involving the physical operation of unloading goods from the importing means of transport followed by reloading, for the purpose of re-exportation, generally onto another means of transport;
- (14) 'export authorisation' means:
- (a) a single authorisation or licence granted to one specific exporter for one shipment of one or more firearms, their parts and essential components and ammunition to one identified final recipient or consignee in a third country; or
 - (b) a multiple authorisation or licence granted to one specific exporter for multiple shipments of one or more firearms, their parts and essential components and ammunition to one identified final recipient or consignee in a third country; or
 - (c) a global authorisation or licence granted to one specific exporter for multiple shipments of one or more firearms, their parts and essential components and ammunition to several identified final recipients or consignees in one or several third countries;
- (15) 'illicit trafficking' means the import, export, sale, delivery, movement or transfer of firearms, their parts and essential components or ammunition from or across the territory of one Member State to that of a third country, if any of the following applies:
- (a) the Member State concerned does not authorise it in accordance with the terms of this Regulation;
 - (b) the firearms are not marked in accordance with Article 4(1) and (2) of Directive 91/477/EEC;
 - (c) the imported firearms are not marked at the time of import at least with a simple marking permitting identification of the first country of import within the European Union, or, where the firearms do not bear such a marking, a unique marking identifying the imported firearms;
- (16) 'tracing' means the systematic tracking of firearms and, where possible, their parts and essential components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of Member States in detecting, investigating and analysing illicit manufacturing and trafficking.

Article 3

1. This Regulation shall not apply to:

- (a) State to State transactions or State transfers;
- (b) firearms, their parts and essential components and ammunition if specially designed for military use and, in any case, firearms of the fully automatic firing type;
- (c) firearms, their parts and essential components and ammunition when destined for the armed forces, the police, or the public authorities of the Member States;
- (d) collectors and bodies concerned with cultural and historical aspects of firearms, their parts and essential components and ammunition and recognised as such for the purpose of this Regulation by the Member State in whose territory they are established, provided that tracing measures are ensured;
- (e) deactivated firearms;
- (f) antique firearms and their replicas as defined in accordance with national legislation, provided that antique firearms do not include firearms manufactured after 1899.

2. This Regulation is without prejudice to Regulation (EEC) No 2913/92 (Community Customs Code), Regulation (EEC) No 2454/93 (implementing provisions of the Community Customs Code), Regulation (EC) No 450/2008 (Modernised Customs Code), and to the regime for the control of exports, transfer, brokering and transit of dual-use items established by Regulation (EC) No 428/2009 (Dual Use Regulation).

CHAPTER II

EXPORT AUTHORISATION, PROCEDURES AND CONTROLS AND IMPORT AND TRANSIT MEASURES

Article 4

1. An export authorisation established in accordance with the form set out in Annex II shall be required for the export of firearms, their parts and essential components and ammunition listed in Annex I. Such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be issued in writing or by electronic means.

2. Where the export of firearms, their parts, essential components and ammunition requires an export authorisation pursuant to this Regulation and that export is also subject to authorisation requirements in accordance with Common Position 2008/944/CFSP, Member States may use a single procedure to carry out the obligations imposed on them by this Regulation and by that Common Position.

3. If the firearms, their parts and essential components and ammunition are located in one or more Member States other than the one where the application for export authorisation has been made, that fact shall be indicated on that application. The competent authorities of the Member State to which the application for export authorisation has been made shall immediately consult the competent authorities of the Member State or States in question and provide the relevant information. The Member State or States consulted shall make known within 10 working days any objections it or they may have to the granting of such an authorisation, which shall bind the Member State in which the application has been made.

Article 5

The Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Annex I on the basis of the amendments to Annex I to Regulation (EEC) No 2658/87, and on the basis of the amendments to Annex I to Directive 91/477/EEC.

Article 6

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 5 shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 5 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 5 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 7

1. Before issuing an export authorisation for firearms, their parts and essential components and ammunition, the Member State concerned shall verify that:

- (a) the importing third country has authorised the relevant import; and
- (b) the third countries of transit, if any, have given notice in writing — and at the latest prior to shipment — that they have no objection to the transit. This provision does not apply:
 - to shipments by sea or air and through ports or airports of third countries provided that there is no transshipment or change of means of transport,
 - in the case of temporary exports for verifiable lawful purposes, which include hunting, sport shooting, evaluation, exhibitions without sale, and repair.

2. Member States may decide that, if no objections to the transit are received within 20 working days from the day of the written request for no objection to the transit submitted by the exporter, the consulted third country of transit shall be regarded as having no objection to the transit.

3. The exporter shall supply the competent authority of the Member State responsible for issuing the export authorisation with the necessary documents proving that the importing third country has authorised the import and that the third country of transit had no objection to the transit.

4. Member States shall process applications for export authorisations within a period of time to be determined by national law or practice, which shall not exceed 60 working days, from the date on which all required information has been provided to the competent authorities. Under exceptional circumstances and for duly justified reasons, that period may be extended to 90 working days.

5. The period of validity of an export authorisation shall not exceed the period of validity of the import authorisation. Where the import authorisation does not specify a period of validity, except under exceptional circumstances and for duly justified reasons, the period of validity of an export authorisation shall be at least nine months.

6. Member States may decide to make use of electronic documents for the purpose of processing the applications for export authorisation.

Article 8

1. For the purpose of tracing, the export authorisation and the import licence or import authorisation issued by the importing third country and the accompanying documentation shall together contain information that includes:

- (a) the dates of issue and expiry;

- (b) the place of issue;
- (c) the country of export;
- (d) the country of import;
- (e) whenever applicable, the third country or countries of transit;
- (f) the consignee;
- (g) the final recipient, if known at the time of the shipment;
- (h) particulars enabling the identification of the firearms, their parts and essential components and ammunition, and the quantity thereof including, at the latest prior to the shipment, the marking applied to the firearms.

2. The information referred to in paragraph 1, if contained in the import licence or import authorisation, shall be provided by the exporter in advance to the third countries of transit, at the latest prior to the shipment.

Article 9

1. Simplified procedures for the temporary export or the re-export of firearms, their parts, essential components and ammunition shall apply as follows:

- (a) No export authorisation shall be required for:
 - (i) the temporary export by hunters or sport shooters as part of their accompanied personal effects, during a journey to a third country, provided that they substantiate to the competent authorities the reasons for the journey, in particular by producing an invitation or other proof of the hunting or sport shooting activities in the third country of destination, of:
 - one or more firearms,
 - their essential components, if marked, as well as parts,
 - their related ammunition, limited to a maximum of 800 rounds for hunters and a maximum of 1 200 rounds for sport shooters;
 - (ii) the re-export by hunters or sport shooters as part of their accompanied personal effects following temporary admission for hunting or sport shooting activities, provided that the firearms remain the property of a person established outside the customs territory of the Union and the firearms are re-exported to that person.

(b) When leaving the customs territory of the Union through a Member State other than the Member State of their residence, hunters and sport shooters shall produce to the competent authorities a European Firearms Pass as provided for in Articles 1 and 12 of Directive 91/477/EEC. In the case of travel by air, the European Firearms Pass shall be produced to the competent authorities where the relevant

items are handed over to the airline for transport out of the customs territory of the Union.

When leaving the customs territory of the Union through the Member State of their residence, hunters and sport shooters may, instead of a European Firearms Pass, choose to produce another document considered valid for this purpose by the competent authorities of that Member State.

- (c) The competent authorities of a Member State shall, for a period not exceeding 10 days, suspend the process of export or, if necessary, otherwise prevent firearms, their parts and essential components or ammunition from leaving the customs territory of the Union through that Member State, where they have grounds for suspicion that the reasons substantiated by hunters or sport shooters are not in conformity with the relevant considerations and the obligations laid down in Article 10. In exceptional circumstances and for duly justified reasons, the period referred to in this point may be extended to 30 days.

2. Member States shall, in accordance with national law, establish simplified procedures for:

- (a) the re-export of firearms following temporary admission for evaluation or exhibition without sale, or inward processing for repair, provided that the firearms remain the property of a person established outside the customs territory of the Union and the firearms are re-exported to that person;
- (b) the re-export of firearms, their parts and essential components and ammunition if they are held in temporary storage from the moment they enter the customs territory of the Union until their exit;
- (c) the temporary export of firearms for the purpose of evaluation and repair and exhibition without sale, provided that the exporter substantiates the lawful possession of these firearms and exports them under the outward processing or temporary exportation customs procedures.

Article 10

1. In deciding whether to grant an export authorisation under this Regulation, Member States shall take into account all relevant considerations including, where appropriate:

- (a) their obligations and commitments as parties to the relevant international export control arrangements or relevant international treaties;
- (b) considerations of national foreign and security policy, including those covered by Common Position 2008/944/CFSP;
- (c) considerations as to intended end use, consignee, identified final recipient and the risk of diversion.

2. In addition to the relevant considerations set out in paragraph 1, when assessing an application for an export authorisation, Member States shall take into account the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

In deciding whether to grant an export authorisation under this Regulation, Member States shall respect their obligations with regard to sanctions imposed by decisions adopted by the Council or by a decision of the Organisation for Security and Cooperation in Europe (OSCE) or by a binding resolution of the Security Council of the United Nations, in particular as regards arms embargoes.

Article 11

1. Member States shall:

- (a) refuse to grant an export authorisation if the applicant has a criminal record concerning conduct constituting an offence listed in Article 2(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽¹⁾, or concerning any other conduct provided that it constituted an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (b) annul, suspend, modify or revoke an export authorisation if the conditions for granting it are not met or are no longer met.

This paragraph is without prejudice to stricter rules under national legislation.

2. Where Member States refuse, annul, suspend, modify or revoke an export authorisation, they shall notify the competent authorities of the other Member States thereof and share the relevant information with them. Where the competent authorities of a Member State have suspended an export authorisation, their final assessment shall be communicated to the other Member States at the end of the period of suspension.

3. Before the competent authorities of a Member State grant an export authorisation under this Regulation, they shall take into account all refusals under this Regulation of which they have been notified, in order to ascertain whether an authorisation has been refused by the competent authorities of another Member State or Member States for an essentially identical transaction (concerning an item with essentially identical parameters or technical characteristics and in respect of the same importer or consignee).

They may first consult the competent authorities of the Member State or Member States which issued refusals, annulments, suspensions, modifications or revocations under paragraphs 1 and 2. If, following such consultation, the competent authorities of the Member State decide to grant an authorisation, they shall

notify the competent authorities of the other Member States, providing all relevant information to explain the decision.

4. All information shared in accordance with the provisions of this Article shall be in compliance with the provisions of Article 19(2) concerning its confidentiality.

Article 12

In accordance with their national law or practice in force, Member States shall keep, for not less than 20 years, all information relating to firearms and, where appropriate and feasible, their parts and essential components and ammunition, which is necessary to trace and identify those firearms, their parts and essential components and ammunition, and to prevent and detect illicit trafficking therein. That information shall include the place, dates of issue and expiry of the export authorisation; the country of export; the country of import; where applicable, the third country of transit; the consignee; the final recipient if known at the time of export; and the description and quantity of the items, including any markings applied to them.

This Article shall not apply to exports as referred to in Article 9.

Article 13

1. Member States shall, in case of suspicion, request the importing third country to confirm receipt of the dispatched shipment of firearms, their parts and essential components or ammunition.

2. Upon request of a third country of export which is a Party to the UN Firearms Protocol at the time of the export, Member States shall confirm the receipt within the customs territory of the Union of the dispatched shipment of firearms, their parts and essential components or ammunition, which shall be ensured in principle by producing the relevant customs importation documents.

3. Member States shall comply with paragraphs 1 and 2 in accordance with their national law or practice in force. In particular, with regard to exports, the competent authority of the Member State may decide either to address the exporter or to contact the importing third country directly.

Article 14

Member States shall take such measures as may be necessary to ensure that their authorisation procedures are secure and that the authenticity of authorisation documents can be verified or validated.

Verification and validation may also, where appropriate, be ensured by means of diplomatic channels.

Article 15

In order to ensure that this Regulation is properly applied, Member States shall take necessary and proportionate measures to enable their competent authorities to:

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

- (a) gather information on any order or transaction involving firearms, their parts and essential components and ammunition; and
- (b) establish that the export control measures are being properly applied, which may, in particular, include the power to enter the premises of persons with an interest in an export transaction.

Article 16

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

CHAPTER III

CUSTOMS FORMALITIES

Article 17

1. When completing customs formalities for the export of firearms, their parts and essential components or ammunition at the customs office of export, the exporter shall furnish proof that any necessary export authorisation has been obtained.

2. The exporter may be required to provide a translation into an official language of the Member State where the export declaration is presented of any documents furnished as proof.

3. Without prejudice to any powers conferred on them under Regulation (EEC) No 2913/92, Member States shall, for a period not exceeding 10 days, suspend the process of export from their territory or, if necessary, otherwise prevent firearms, their parts and essential components or ammunition which are covered by a valid export authorisation from leaving the customs territory of the Union through their territory, where they have grounds for suspicion that:

- (a) relevant information was not taken into account when the authorisation was granted; or
- (b) circumstances have materially changed since the authorisation was granted.

In exceptional circumstances and for duly substantiated reasons, that period may be extended to 30 days.

4. Within the period or extended period referred to in paragraph 3, Member States shall either release the firearms, their parts and essential components or ammunition, or take action pursuant to Article 11(1)(b).

Article 18

1. Member States may provide that customs formalities for the export of firearms, their parts and essential components or ammunition can be completed only at customs offices empowered to that end.

2. Member States availing themselves of the option set out in paragraph 1 shall inform the Commission of the duly empowered customs offices or of subsequent changes thereto.

The Commission shall publish and update that information on a yearly basis in the C series of the *Official Journal of the European Union*.

CHAPTER IV

ADMINISTRATIVE COOPERATION

Article 19

1. Member States shall, in cooperation with the Commission and in accordance with Article 21(2), take all appropriate measures to establish direct cooperation and exchange of information between competent authorities with a view to enhancing the efficiency of the measures established by this Regulation. Such information may include:

- (a) details of exporters whose application for an authorisation is refused, or of exporters who are the subject of decisions taken by Member States pursuant to Article 11;
- (b) data on consignees or other actors involved in suspicious activities, and, where available, routes taken.

2. Council Regulation (EC) No 515/97⁽¹⁾ on mutual assistance, and in particular the provisions thereof as to the confidentiality of information, shall apply *mutatis mutandis* to measures under this Article, without prejudice to Article 20 of this Regulation.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 20

1. A Firearms Exports Coordination Group (the 'Coordination Group') chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to it.

The Coordination Group shall examine any question concerning the application of this Regulation which may be raised either by the Chair or by a representative of a Member State. It shall be bound by the confidentiality rules of Regulation (EC) No 515/97.

2. The Chair of the Coordination Group or the Coordination Group shall, whenever necessary, consult any relevant stakeholders concerned by this Regulation.

Article 21

1. Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 16.

2. By 19 April 2012, each Member State shall inform the other Member States and the Commission of the national

⁽¹⁾ 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).

authorities competent for implementing Articles 7, 9, 11 and 17. Based on that information, the Commission shall publish and update a list of those authorities on a yearly basis in the C series of the *Official Journal of the European Union*.

3. By 19 April 2017, and thereafter upon request of the Coordination Group and in any event every 10 years, the Commission shall review the implementation of this Regulation and present a report to the European Parliament and the Council on its application, which may include proposals for its amendment. Member States shall provide the Commission with all appropriate information for the preparation of the report, including information about the use of the single procedure provided for in Article 4(2).

Article 22

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

It shall apply from 30 September 2013.

However, paragraphs 1 and 2 of Article 13 shall apply from the 30th day after the date on which the UN Firearms Protocol enters into force in the European Union, following its conclusion pursuant to Article 218 of the Treaty on the Functioning of the European Union.

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

Done at Strasbourg, 14 March 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
N. WAMMEN

ANNEX I ⁽¹⁾**List of firearms, their parts and essential components and ammunition**

	Description	CN CODE ⁽¹⁾
1	Semi-automatic or repeating short firearms	ex 9302 00 00
2	Single-shot short firearms with centre-fire percussion	ex 9302 00 00
3	Single-shot short firearms with rimfire percussion whose overall length is less than 28 cm	ex 9302 00 00
4	Semi-automatic long firearms whose magazine and chamber can together hold more than three rounds	ex 9303 20 10 ex 9303 20 95 ex 9303 30 00 ex 9303 90 00
5	Semi-automatic long firearms whose magazine and chamber cannot together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds.	ex 9303 20 10 ex 9303 20 95 ex 9303 30 00 ex 9303 90 00
6	Repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length	ex 9303 20 10 ex 9303 20 95
7	Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms	ex 9302 00 00 ex 9303 20 10 ex 9303 20 95 ex 9303 30 00 ex 9303 90 00
8	Repeating long firearms other than those listed in point 6	ex 9303 20 95 ex 9303 30 00 ex 9303 90 00
9	Long firearms with single-shot rifled barrels	ex 9303 30 00 ex 9303 90 00
10	Semi-automatic long firearms other than those in points 4 to 7	ex 9303 90 00
11	Single-shot short firearms with rimfire percussion whose overall length is not less than 28 cm	ex 9302 00 00
12	Single-shot long firearms with smooth-bore barrels	9303 10 00 ex 9303 20 10 ex 9303 20 95
13	Parts specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm. Any essential component of such firearms: the breech-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted	ex 9305 10 00 ex 9305 21 00 ex 9305 29 00 ex 9305 99 00

⁽¹⁾ Based on the Combined Nomenclature of goods as laid down in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

	Description	CN CODE ⁽¹⁾
14	Ammunition: the complete round or the components thereof, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorisation in the relevant Member State	ex 3601 00 00 ex 3603 00 90 ex 9306 21 00 ex 9306 29 00 ex 9306 30 10 ex 9306 30 90 ex 9306 90 90
15	Collections and collectors' pieces of historical interest Antiques of an age exceeding 100 years	ex 9705 00 00 ex 9706 00 00

⁽¹⁾ When an 'ex' code is indicated, the scope is to be determined by application of the CN code and corresponding description taken together.

For the purposes of this Annex:

- (a) 'short firearm' means a firearm with a barrel not exceeding 30 centimetres or whose overall length does not exceed 60 centimetres;
- (b) 'long firearm' means any firearm other than a short firearm;
- (c) 'automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire more than one round with one pull on the trigger;
- (d) 'semi-automatic firearm' means a firearm which reloads automatically each time a round is fired and can fire only one round with one pull on the trigger;
- (e) 'repeating firearm' means a firearm which, after a round has been fired, is designed to be reloaded from a magazine or cylinder by means of a manually-operated action;
- (f) 'single-shot firearm' means a firearm with no magazine which is loaded before each shot by the manual insertion of a round into the chamber or a loading recess at the breech of the barrel.

ANNEX II

(model for export authorisation forms)
(referred to in Article 4 of this Regulation)

When granting export authorisations, Member States will strive to ensure the visibility of the nature of the authorisation on the form issued.

This is an export authorisation valid in all Member States of the European Union until its expiry date.

EUROPEAN UNION		EXPORT OF FIREARMS (Regulation (EU) No 258/2012)			
Type of authorisation Single <input type="checkbox"/> Multiple <input type="checkbox"/> Global <input type="checkbox"/>					
AUTHORISATION	1	1. Exporter <i>(EORI number if applicable)</i>	No	2. Identification number of the authorisation ⁽¹⁾	3. Expiry date
		4. Contact point details			
		5. Consignee(s) <i>(EORI number if applicable)</i>	6. Issuing authority		
		7. Agent(s)/Representative(s) <i>(if different from exporter) (EORI number if applicable)</i>	No	8. Country(ies) of export	Code ⁽²⁾
				9. Country(ies) of import and number(s) of import authorisation(s)	Code ⁽²⁾
		10. Final recipient(s) <i>(if known at the time of the shipment) (EORI number if applicable)</i>	11. Third countries of transit <i>(if applicable)</i>		Code ⁽²⁾
			12. Member State(s) of intended entry into the customs export procedure		Code ⁽²⁾
		13. Description of the items	14. Harmonised System or Combined Nomenclature Code <i>(if applicable – 8 digits)</i>		
		13a. Marking	15. Currency and Value	16. Quantity of the items	
		17. End use <i>(if applicable)</i>	18. Contract date <i>(if applicable)</i>	19. Customs export procedure	
		20. Additional information required by national legislation <i>(to be specified on the form)</i>			
		Available for pre-printed information			
		At discretion of Member States			
	For completion by issuing authority				
	Signature		Stamp		
	Issuing Authority				
	Place and date				

⁽¹⁾ For completion by the issuing authority.

⁽²⁾ See Council Regulation (EC) No 1172/95 (OJ L 118, 25.5.1995, p. 10).

EUROPEAN UNION

1a. (1)	1. Exporter	2. Identification number		9. Country of import and number of import authorisation
		5. Consignee		
AUTHORISATION	13.1. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.2. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.3. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.4. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.5. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.6. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
	13.7. Description of the items	14. Commodity code (if applicable with 8 digits)		
	13a. Marking	15. Currency and Value	16. Quantity of the items	
<p>Note: A separate template shall be filled in for each consignee, in line with the 1a template. In part 1 of column 22, indicate the quantity still available and in part 2 of column 22, indicate the quantity deducted at this occasion.</p>				

21. Net quantity/value (<i>Net mass/other unit with indication of unit</i>)		23. In words for quantity/ value deducted	24. Customs document (<i>Type and number</i>) or extract (<i>Nr</i>) and date of deduction	25. Member State, name and signature, stamp of deduction
22. In numbers				
1				
2				
1				
2				
1				
2				
1				
2				
1				
2				
1				
2				

(¹) A separate template shall be filled in for each consignee.

**REGULATION (EU) No 259/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 March 2012**

amending Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

- (1) In its Report of 4 May 2007 to the Council and the European Parliament, the Commission evaluated, pursuant to Regulation (EC) No 648/2004 of the European Parliament and of the Council ⁽³⁾, the use of phosphates in detergents. Following further analysis, it has been concluded that the use of phosphates in consumer laundry detergents and consumer automatic dishwasher detergents should be limited in order to reduce the contribution of phosphates from detergents to eutrophication risks and to reduce the cost of phosphates removal in waste water treatment plants. Those cost savings outweigh the cost of reformulating consumer laundry detergents with alternatives to phosphates.
- (2) Efficient alternatives to phosphate-based consumer laundry detergents require small amounts of other phosphorus compounds, namely phosphonates which, if used in increasing quantities, might be of concern for the environment. While it is important to encourage the use of alternative substances with a more favourable environmental profile than phosphates and other phosphorus compounds in the manufacture of consumer laundry detergents and consumer automatic dishwasher

detergents, such substances should, under their normal conditions of use, present no risk, or a lower risk, to humans and/or the environment. The REACH ⁽⁴⁾ system should therefore, where appropriate, be used to evaluate such substances.

- (3) The interaction between phosphates and other phosphorus compounds requires a careful choice of the scope and level of the limitation on the use of phosphates in consumer laundry detergents and consumer automatic dishwasher detergents. The limitation should apply not only to phosphates, but also to all phosphorus compounds in order to preclude a mere substitution of other phosphorus compounds for phosphates. The limit on phosphorus content should be low enough to effectively prevent the marketing of phosphate-based consumer laundry detergent formulations, while being high enough to allow the minimum quantity of phosphonates required for alternative formulations.

- (4) It is currently not appropriate to extend limitations on the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents to industrial and institutional detergents at the level of the Union because suitable technically and economically feasible alternatives to the use of phosphates in those detergents are not yet available. As concerns consumer automatic dishwasher detergents, alternatives are likely to be more widely available in the near future. It is therefore appropriate to provide a restriction on the use of phosphates in those detergents. Such a restriction should apply from a future date by which time alternatives to phosphates are expected to be widely available, in order to stimulate the developments of new products. It is also appropriate to specify a maximum permissible phosphorus content, based on evidence including existing national restrictions for phosphorus in consumer automatic dishwasher detergents. However, it is also necessary to provide that the Commission should, before that restriction becomes applicable throughout the Union, carry out a thorough assessment of the limit value based on the most recent available data and, if justified, present a legislative proposal. That assessment should cover the impact on the environment, industry and consumers of consumer automatic dishwasher detergents with phosphorus levels above and below the limit value set out in Annex VIa

⁽¹⁾ OJ C 132, 3.5.2011, p. 71.

⁽²⁾ Position of the European Parliament of 14 December 2011 (not yet published in the Official Journal) and decision of the Council of 10 February 2012.

⁽³⁾ OJ L 104, 8.4.2004, p. 1.

⁽⁴⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (OJ L 396, 30.12.2006, p. 1).

- and alternatives, taking into account matters including their cost, availability, cleaning efficiency and impact on waste water treatment.
- (5) One of the aims of this Regulation is to protect the environment by reducing eutrophication caused by phosphorus in detergents used by consumers. It would therefore not be appropriate to force Member States that already have restrictions concerning phosphorus in consumer automatic dishwasher detergents to adapt those restrictions before the Union restriction becomes applicable. Furthermore, it is desirable that Member States be permitted to phase in the restrictions set out in this Regulation as early as possible.
- (6) A definition of 'cleaning' should be included in Regulation (EC) No 648/2004 instead of a reference to the relevant ISO standard to facilitate readability, and definitions of 'consumer laundry detergent' and 'consumer automatic dishwasher detergent' should also be included. Furthermore, it is appropriate to clarify the definition of 'placing on the market' and to include a definition of 'making available on the market'.
- (7) In order to provide accurate information within the shortest possible timescale, it is appropriate to modernise the way in which the Commission publishes the lists of competent authorities and approved laboratories.
- (8) In order to adapt Regulation (EC) No 648/2004 to scientific and technical progress, to introduce provisions on solvent-based detergents and in order to introduce appropriate individual risk-based concentration limits for fragrance allergens, 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 amendments to the Annexes to that Regulation that are necessary to meet those objectives. 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.
- (9) Member States should lay down rules on penalties applicable to infringements of Regulation (EC) No 648/2004 and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (10) It is appropriate to provide for deferred application of the restrictions established in this Regulation so as to allow operators, in particular small and medium-sized enterprises, to reformulate their phosphate-based consumer laundry detergents and consumer automatic dishwasher detergents using alternatives during their usual reformulation cycle in order to minimise the costs thereof.
- (11) Since the objectives of this Regulation, namely to reduce the contribution of phosphates from consumer detergents to eutrophication risks, to reduce the costs of phosphates removal in waste water treatment plants and to ensure the smooth functioning of the internal market in consumer laundry detergents and consumer automatic dishwasher detergents, cannot be sufficiently achieved by Member States because national measures with different technical specifications cannot ensure a comprehensive improvement in the quality of water crossing national borders, and can therefore be better achieved at the level of the Union, 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.
- (12) Regulation (EC) No 648/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 648/2004 is hereby amended as follows:

- (1) in Article 1(2), the third and fourth indents are replaced by the following, and a fifth indent is added:
- the additional labelling of detergents, including fragrance allergens,
 - the information that manufacturers must hold at the disposal of the Member States' competent authorities and medical personnel,
 - limitations on the content of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents.',
- (2) Article 2 is amended as follows:
- (a) the following points are inserted:
- 1a. "Consumer laundry detergent" means a detergent for laundry placed on the market for use by non-professionals, including in public laundrettes.

1b. “Consumer automatic dishwasher detergent” means a detergent placed on the market for use in automatic dishwashers by non-professionals.;

(b) point 3 is replaced by the following:

‘3. “Cleaning” means the process by which an undesirable deposit is dislodged from a substrate or from within a substrate and brought into a state of solution or dispersion.;

(c) point 9 is replaced by the following:

‘9. “Placing on the market” means the first making available on the Union market. Import into the Union customs territory shall be deemed to be placing on the market.

9a. “Making available on the market” means any supply for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.;

(3) the following Article is inserted:

‘Article 4a

Limitations on the content of phosphates and of other phosphorus compounds

Detergents listed in Annex VIa that do not comply with the limitations on the content of phosphates and of other phosphorus compounds laid down in that Annex shall not be placed on the market from the dates set out therein.;

(4) in Article 8, paragraph 4 is replaced by the following:

‘4. The Commission shall make publicly available the lists of competent authorities, mentioned in paragraph 1, and of approved laboratories, mentioned in paragraph 2.;

(5) in Article 11, paragraph 4 is replaced by the following:

‘4. Additionally, the packaging of consumer laundry detergents and consumer automatic dishwasher detergents shall bear the information provided for in section B of Annex VII.;

(6) in Article 12, paragraph 3 is deleted;

(7) Articles 13 and 14 are replaced by the following:

‘Article 13

Adaptation of Annexes

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a in order to introduce amendments necessary for adapting Annexes I to IV, VII and VIII to scientific and technical progress. The Commission shall, wherever possible, use European standards.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a in order to introduce amendments to the Annexes of this Regulation regarding solvent-based detergents.

3. Where individual risk-based concentration limits for the fragrance allergens are established by the Scientific Committee on Consumer Safety, the Commission shall adopt delegated acts in accordance with Article 13a in order to adapt the limit of 0,01 % set out in section A of Annex VII accordingly.

Article 13a

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 13 shall be conferred on the Commission for a period of 5 years from 19 April 2012. By 19 July 2016, the Commission shall draw up a report in respect of the delegation of power. The delegation of power shall be tacitly extended for further periods of 5 years, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each such period.

3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.

Article 14

Free movement clause

1. Member States shall not prohibit, restrict or impede the making available on the market of detergents, and/or of surfactants for detergents, which comply with the requirements of this Regulation, on grounds that are dealt with in this Regulation.

2. Member States may maintain or lay down national rules concerning restrictions on the content of phosphates and of other phosphorus compounds in detergents for which no restrictions on the content are set out in Annex VIa where justified, in particular, on grounds such as the protection of public health or the environment and where technically and economically feasible alternatives are available.

3. Member States may maintain national rules that were in force on 19 March 2012 concerning restrictions on the content of phosphates and of other phosphorus compounds in detergents for which restrictions set out in Annex VIa have not yet become applicable. Such existing national measures shall be reported to the Commission by 30 September 2012 and may remain in force until the date when the restrictions set out in Annex VIa apply.

4. From 19 March 2012 until 31 December 2016 Member States may adopt national rules that implement the restriction on the content of phosphates and of other phosphorus compounds laid down in the point 2 of Annex VIa, where justified, in particular, on grounds such as the protection of public health or the environment and where technically and economically feasible alternatives are available. Member States shall notify such measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (*).

5. The Commission shall make publicly available the list of national measures referred to in paragraphs 3 and 4.

(*) OJ L 204, 21.7.1998, p. 37.;

(8) in Article 15, paragraph 1 is replaced by the following:

‘1. Where a Member State has justifiable grounds for believing that a specific detergent, although complying with the requirements of this Regulation, constitutes a risk to the safety or health of humans or of animals or a risk to the environment, it may take all appropriate provisional measures, commensurate with the nature of the risk, in order to ensure that the detergent concerned no longer presents that risk, is withdrawn from the market or recalled within a reasonable period or its availability is otherwise restricted.

The Member State shall immediately inform the other Member States and the Commission thereof, giving the reasons for its decision.’;

(9) Article 16 is replaced by the following:

‘Article 16

Report

1. By 31 December 2014, the Commission shall, taking into account information from Member States on the content of phosphorus in consumer automatic dishwasher detergents placed on the market in their territories and in the light of any existing or new scientific information available to it regarding substances employed in phosphates-containing and alternative formulations, evaluate by way of a thorough assessment whether the restriction set out in point 2 of Annex VIa should be modified. That assessment shall include an analysis of the impact on the environment, industry and consumers of consumer automatic dishwasher detergents with phosphorus levels above and below the limit value set out in Annex VIa, taking into account matters including cost, availability, cleaning efficiency and the impact on waste water treatment. The Commission shall submit that thorough assessment to the European Parliament and to the Council.

2. In addition, if the Commission, on the basis of the thorough assessment referred to in paragraph 1, considers that the restriction of phosphates and other phosphorus compounds used in consumer automatic dishwasher detergents requires revision, it shall, by 1 July 2015, present an appropriate legislative proposal. Any such proposal must be aimed at minimising the negative impact from all consumer automatic dishwasher detergent products on the wider environment, whilst considering any economic costs as identified in that thorough assessment. Unless the European Parliament and the Council, on the basis of such a proposal, decide otherwise by 31 December 2016, the limit value set out in point 2 of Annex VIa shall become the limitation for phosphorus content in consumer automatic dishwasher detergents from the date set out in that point.’;

(10) Article 18 is replaced by the following:

‘Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. This may also include appropriate measures allowing the competent authorities of the Member States to prevent the making available on the market of detergents or surfactants for detergents that fail to comply with this Regulation. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions and any subsequent amendment affecting those provisions to the Commission without delay.

Those rules shall include measures allowing the competent authorities of Member States to detain consignments of detergents that fail to comply with this Regulation.’;

(11) the text set out in the Annex to this Regulation is inserted as Annex VIa to Regulation (EC) No 648/2004;

(12) Annex VII shall be amended as follows:

(a) in section A, the following text is deleted:

'If individual risk-based concentration limits for the fragrance allergens are subsequently established by the SCCNFP, the Commission shall propose the adoption of such limits to replace the limit of 0,01 % mentioned above. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(3).'

(b) section B is replaced by the following:

B. Labelling of dosage information

As prescribed in Article 11(4), the following provisions on labelling shall apply to the packaging of detergents sold to the general public.

Consumer laundry detergents

The packaging of detergents sold to the general public intended to be used as laundry detergents shall bear the following information:

- the recommended quantities and/or dosage instructions expressed in millilitres or grams appropriate to a standard washing machine load, for soft, medium and hard water hardness levels and making provision for one or two cycle washing processes,
- for heavy-duty detergents, the number of standard washing machine loads of "normally soiled" fabrics, and, for detergents for delicate fabrics, the number of standard washing machine loads of "lightly soiled" fabrics, that can be washed with the contents of the package using water of medium hardness, corresponding to 2,5 millimoles CaCO₃/l,

- the capacity of any measuring cup, if provided, shall be indicated in millilitres or grams, and markings shall be provided to indicate the dose of detergent appropriate for a standard washing machine load for soft, medium and hard water hardness levels,

The standard washing machine loads are 4,5 kg dry fabric for heavy-duty detergents and 2,5 kg dry fabric for light-duty detergents, in line with the definitions of Commission Decision 1999/476/EC of 10 June 1999 establishing the Ecological Criteria for the award of the Community Eco-label to Laundry Detergents (*). A detergent shall be considered to be a heavy-duty detergent unless the claims of the manufacturer predominantly promotes fabric care, i.e. low temperature wash, delicate fibres and colours.

Consumer automatic dishwasher detergents

The packaging of detergents sold to the general public intended to be used as automatic dishwasher detergents shall bear the following information:

- the standard dosage expressed in grams or ml or number of tablets for the main washing cycle for normally soiled tableware in a fully loaded 12 place settings dishwasher, making provisions, where relevant, for soft, medium, and hard water hardness,

(*) OJ L 187, 20.7.1999, p. 52. Decision as amended by Decision 2011/264/EU (OJ L 111, 30.4.2011, p. 34).'

Article 2

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, 14 March 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
N. WAMMEN

ANNEX

‘ANNEX VIa

LIMITATIONS ON THE CONTENT OF PHOSPHATES AND OF OTHER PHOSPHORUS COMPOUNDS

Detergent	Limitations	Date as of which the limitation applies
1. Consumer laundry detergents	Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,5 grams in the recommended quantity of the detergent to be used in the main cycle of the washing process for a standard washing machine load as defined in section B of Annex VII for water of hard water hardness — for “normally soiled” fabrics in the case of heavy-duty detergents, — for “lightly soiled” fabrics in the case of detergents for delicate fabrics,	30 June 2013
2. Consumer automatic dishwasher detergents	Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,3 grams in the standard dosage as defined in section B of Annex VII	1 January 2017

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
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) The creation of an integrated market for electronic payments in euro, with no distinction between national and cross-border payments is necessary for the proper functioning of the internal market. To that end, the single euro payments area (SEPA) project aims to develop common Union-wide payment services to replace current national payment services. As a result of the introduction of open, common payment standards, rules and practices, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euro. This should apply to SEPA payments within and across national boundaries under the same basic conditions and in accordance with the same rights and obligations, regardless of location within the Union. SEPA should be completed in a way that facilitates access for new market entrants and the development of new products, and creates favourable conditions for increased competition in payment services and for the unhindered development and swift, Union-wide

implementation of innovations relating to payments. Consequently, improved economies of scale, increased operating efficiency and strengthened competition should lead to downward price pressure in electronic payment services in euro on a 'best-of-breed' basis. The effects of this should be significant, in particular in Member States where payments are relatively expensive compared to other Member States. The transition to SEPA should therefore not be accompanied by overall price increases for payment service users (PSUs) in general and for consumers in particular. Instead, where the PSU is a consumer, the principle of not levying higher charges should be encouraged. The Commission will continue to monitor price developments in the payment sector and is invited to provide an annual analysis thereof.

(2) The success of SEPA is very important economically and politically. SEPA is fully in line with the Europe 2020 strategy which aims at a smarter economy in which prosperity results from innovation and from the more efficient use of available resources. Both the European Parliament, through its resolutions of 12 March 2009 ⁽⁴⁾ and of 10 March 2010 ⁽⁵⁾ on the implementation of SEPA, and the Council in its conclusions adopted on 2 December 2009, have underlined the importance of achieving rapid migration to SEPA.

(3) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market ⁽⁶⁾ provides a modern legal foundation for the creation of an internal market for payments, of which SEPA is a fundamental element.

(4) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community ⁽⁷⁾ also provides a number of facilitating measures for the success of SEPA such as the extension of the principle of equal charges to cross-border direct debits and reachability for direct debits.

(5) Self-regulatory efforts of the European banking sector through the SEPA initiative have not proven sufficient to drive forward concerted migration to Union-wide schemes for credit transfers and direct debits on both the supply and the demand side. In particular,

⁽¹⁾ OJ C 155, 25.5.2011, p. 1.

⁽²⁾ OJ C 218, 23.7.2011, p. 74.

⁽³⁾ Position of the European Parliament of 14 February 2012 (not yet published in the Official Journal) and Council decision of 28 February 2012.

⁽⁴⁾ OJ C 87 E, 1.4.2010, p. 166.

⁽⁵⁾ OJ C 349 E, 22.12.2010, p. 43.

⁽⁶⁾ OJ L 319, 5.12.2007, p. 1.

⁽⁷⁾ OJ L 266, 9.10.2009, p. 11.

consumer and other user interests have not been taken into account in a sufficient and transparent way. The voice of all relevant stakeholders should be heard. Moreover, that self-regulatory process has not been subject to appropriate governance mechanisms, which may partly explain the slow uptake on the demand side. While the recent establishment of the SEPA Council represents a significant improvement of the governance of the SEPA project, fundamentally and formally governance still remains very much in the hands of the European Payments Council (EPC). The Commission should therefore review the governance arrangements of the whole SEPA project before the end of 2012 and, where necessary, make a proposal. That review should examine, inter alia, the composition of the EPC, the interaction between the EPC and an overarching governance structure, such as the SEPA Council, and the role of that overarching structure.

- (6) Only rapid and comprehensive migration to Union-wide credit transfers and direct debits will generate the full benefits of an integrated payments market, so that the high costs of running both 'legacy' and SEPA products in parallel can be eliminated. Rules should therefore be laid down to cover the execution of all credit transfer and direct debit transactions denominated in euro within the Union. However, card transactions should not be covered at this stage, since common standards for Union card payments are still under development. Money remittance, internally processed payments, large-value payment transactions, payments between payment service providers (PSPs) for their own account and payments via mobile phone or any other means of telecommunication or digital or IT device should not fall within the scope of those rules since those payment services are not comparable to credit transfers or direct debits. Where a payment card at the point of sale or some other device such as a mobile phone is used as the means to initiate a payment transaction, either at the point of sale or remotely, which directly results in a credit transfer or a direct debit to and from a payment account identified by the existing national basic bank account number (BBAN) or the international bank account number (IBAN), that payment transaction should, however, be included. In addition, given the specific characteristics of payments processed through large-value payment systems, namely their high priority, urgency, and primarily large amount, it is not appropriate to cover such payments under this Regulation. That exclusion should not include direct debit payments, unless the payer has explicitly requested the payment be routed via a large-value payment system.
- (7) Several payment services currently exist, mostly for payments through the internet, which also use IBAN and the business identifier code (BIC) and are based on credit transfers or direct debits but have additional features. Those services are expected to extend beyond their current national borders and could fulfil a consumer demand for innovative, safe and cheap payment services. In order not to foreclose such services from the market,

the regulation of the end-dates for credit transfers and direct debits provided for in this Regulation should apply only to the credit transfer or direct debit underlying those transactions.

- (8) In the vast majority of payment transactions in the Union, it is possible to identify a unique payment account using only IBAN without additionally specifying BIC. Reflecting this reality, banks in a number of Member States have already established a directory, database or other technical means to identify the BIC corresponding to a specific IBAN. BIC is required only in a very small, residual number of cases. It seems unjustified and excessively burdensome to oblige all payers and payees throughout the Union always to provide BIC in addition to IBAN for the small number of cases where this is currently necessary. A much simpler approach would be for PSPs and other parties to solve and eliminate those cases where a payment account cannot be identified unambiguously by a given IBAN. Therefore the necessary technical means should be developed to enable all users to identify unambiguously a payment account by IBAN alone.
- (9) For a credit transfer to be executed, the payee's payment account must be reachable. Therefore, in order to encourage the successful take-up of Union-wide credit transfer and direct debit services, a reachability obligation should be established across the Union. To improve transparency, it is furthermore appropriate to consolidate that obligation and the reachability obligation for direct debits already established under Regulation (EC) No 924/2009 in a single act. All payee payment accounts reachable for a national credit transfer should also be reachable via a Union-wide credit transfer scheme. All payers' payment accounts reachable for a national direct debit should also be reachable via a Union-wide direct debit scheme. This should apply whether or not a PSP decides to participate in a particular credit transfer or direct debit scheme.
- (10) Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euro, it is essential that the processing of credit transfers and direct debits is not hindered by business rules or technical obstacles such as compulsory adherence to more than one system for settling cross-border payments. Credit transfers and direct debits should be carried out under a scheme, the basic rules of which are adhered to by PSPs representing a majority of PSPs within a majority of the Member States and constituting a majority of PSPs within the Union, and which are the same both for cross-border and for purely national credit transfer and direct debit transactions. Where there is more than one payment system for the processing of such payments, those payment systems should be interoperable through the use of Union-wide and international standards so that all PSUs and all PSPs can enjoy the benefits of seamless retail euro payments across the Union.

- (11) Given the specific characteristics of the business market, whilst business-to-business credit transfer or direct debit schemes need to comply with all other provisions in this Regulation, including having the same rules for cross-border and national transactions, the requirement that participants represent a majority of PSPs within the majority of Member States should apply only to the extent that PSPs providing business-to-business credit transfer or direct debit services represent a majority of PSPs in the majority of Member States where such services are available, and constitute a majority of PSPs providing such services within the Union.
- (12) It is crucial to identify technical requirements unambiguously determining the features which Union-wide payment schemes to be developed under appropriate governance arrangements have to respect in order to ensure interoperability between payment systems. Such technical requirements should not restrict flexibility and innovation but should be open to and neutral towards potential new developments and improvements in the payments market. Technical requirements should be designed taking into account the special characteristics of credit transfers and direct debits, in particular with regard to the data elements contained in the payment message.
- (13) It is important to take measures to strengthen the confidence of PSUs in the use of such services, especially for direct debits. Such measures should allow payers to instruct their PSPs to limit direct debit collection to a certain amount or a certain periodicity and to establish specific positive or negative lists of payees. Within the framework of the establishment of Union-wide direct debit schemes, it is appropriate that consumers are able to benefit from such checks. Nevertheless for the practical implementation of such checks on payees, it is important that PSPs are able to check on the basis of IBAN, and, for a transitional period, but only where necessary, BIC, or some other unique creditor identifier of specified payees. Other relevant rights of users are already established in Directive 2007/64/EC and should be fully ensured.
- (14) Technical standardisation is a cornerstone for the integration of networks, such as the Union payments market. The use of standards developed by international or European standardisation bodies should be mandatory as from a given date for all relevant transactions. In the payment context, such mandatory standards are IBAN, BIC, and the financial services messaging standard 'ISO 20022 XML'. The use of those standards by all PSPs is therefore a requirement for full interoperability throughout the Union. In particular, the mandatory use of IBAN and BIC where necessary should be promoted through comprehensive communication and facilitating measures in Member States in order to allow a smooth and easy transition to Union-wide credit transfers and direct debits, in particular for consumers. PSPs should be able to agree, bilaterally or multilaterally, on the expansion of the basic Latin character set to support regional variations of SEPA standard messages.
- (15) It is absolutely crucial that all actors, and particularly Union citizens, are properly informed, in a timely manner, so that they are fully prepared for the changes brought about by SEPA. Key stakeholders such as PSPs, public administrations and national central banks as well as other heavy users of regular payments should therefore carry out specific and extensive information campaigns, proportionate to the need and tailored to their audience as may be necessary, in order to raise public awareness and prepare citizens for SEPA migration. In particular, there is a need to familiarise citizens with migration from BBAN to IBAN. National SEPA coordination committees are best placed to coordinate such information campaigns.
- (16) In order to allow a concerted transition process in the interests of clarity and simplicity for consumers, it is appropriate to set a single migration deadline by which all credit transfers and direct debit transactions should comply with those technical requirements, while leaving the market open for further development and innovation.
- (17) For a transitional period, Member States should be able to permit PSPs to allow consumers to continue using BBAN for national payment transactions on condition that interoperability is ensured by converting BBAN technically and securely into the respective unique payment account identifier by the PSP concerned. The PSP should not levy any direct or indirect charges or other fees linked to that service.
- (18) Although the level of development of credit transfer and direct debit services differs from one Member State to another, a common deadline at the end of an adequate period for implementation, which allows for all the necessary processes to take place would contribute to a coordinated, coherent and integrated migration to SEPA and would help prevent a two-speed SEPA, which would cause greater confusion among consumers.
- (19) PSPs and PSUs should have sufficient time to adapt to the technical requirements. However, the adaptation period should not unnecessarily delay the benefits to consumers or penalise the efforts of proactive operators that have already moved towards SEPA. For national payment and cross-border payment transactions, the PSPs should provide their retail customers with the necessary technical services in order to ensure a smooth and secure conversion to the technical requirements laid down in this Regulation.

- (20) It is important to provide legal certainty to the payments industry on business models for direct debits. Regulation of multilateral interchange fees (MIFs) for direct debits is essential to create neutral conditions of competition between PSPs and so to permit the development of a single market for direct debits. Such fees for transactions which are rejected, refused, returned or reversed because they cannot be properly executed or result in exception processing (so-called 'R-transactions' where the letter 'R' can signify 'reject', 'refusal', 'return', 'reversal', 'revocation' or 'request for cancellation'), could help to allocate costs efficiently within the internal market. Therefore, it would appear beneficial for the creation of an effective European direct debit market to prohibit per transaction MIF. Nevertheless, R-transaction fees should be allowed, provided that they comply with certain conditions. PSPs must provide clear and understandable information to consumers on R-transaction fees in the interests of transparency and consumer protection. In any event, the R-transaction rules are without prejudice to the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Furthermore, it should be noted that in general direct debits and card payments have different characteristics, in particular in terms of the higher potential for payees to provide incentives for the use of a direct debit by payers through a pre-existing contract between the payee and the payer, whilst for card payments no such prior contract exists and the payment transaction is often an isolated and irregular event. Therefore, the provisions on MIFs for direct debits are without prejudice to the analysis under Union competition rules of MIFs for payment card transactions. Additional optional services are not covered by the prohibition under this Regulation where they are clearly and unequivocally distinct from the core direct debit services and where PSPs and PSUs are completely at liberty to offer or use such services. Nevertheless they remain subject to Union and national competition rules.
- (21) Therefore, the possibility to apply per transaction MIF for national and cross-border direct debits should be limited in time and general conditions should be laid down for the application of interchange fees for R-transactions.
- (22) The Commission should monitor the level of R-transaction fees across the Union. R-transaction fees in the internal market should converge over time so that they do not vary across Member States to an extent to threaten the level playing field.
- (23) In some Member States, there are certain legacy payment services which are credit transfers or direct debits but which have very specific functionalities, often due to historical or legal reasons. The transaction volume of such services is usually marginal. Such services could therefore be classified as niche products. A transitional period for such niche products, sufficiently long to minimise the impact of migration on PSUs, should help both sides of the market to focus first on the migration of the bulk of credit transfers and direct debits, thereby allowing the majority of the potential benefits of an integrated payments market in the Union to be reaped earlier. In some Member States, specific direct debit instruments exist which seem very similar to payment card transactions in that the payer uses a card at the point of sale to initiate the payment transaction but the underlying payment transaction is a direct debit. In such payment transactions the card is used only for a read-out in order to facilitate the electronic generation of the mandate, which has to be signed by the payer at the point of sale. Although such payment services cannot be classified as a niche product, there is a need for a transitional period in relation to such payment services because of the substantial transaction volume involved. In order to enable the stakeholders to implement an adequate SEPA substitute, that transitional period should be of sufficient length.
- (24) For the proper functioning of the internal market for payments it is essential to ensure that payers such as consumers, businesses or public authorities are able to send credit transfers to payment accounts held by the payees with PSPs which are located in other Member States and which are reachable in accordance with this Regulation.
- (25) In order to secure a smooth transition to SEPA, a valid payee authorisation to collect recurring direct debits in a legacy scheme should remain valid after the migration deadline established in this Regulation. Such an authorisation should be considered as representing consent to the payer's PSP to execute the recurring direct debits collected by the payee in compliance with this Regulation, in the absence of national law relating to the continued validity of the mandate or customer agreements changing direct debit mandates to allow their continuation. However, consumer rights must be protected and where existing direct debit mandates have unconditional refund rights, such rights should be maintained.
- (26) Competent authorities should be empowered to fulfil their monitoring duties efficiently and to take all necessary measures including considering complaints to ensure that PSPs comply with this Regulation. Also, Member States should ensure that complaints against PSUs for not complying with this Regulation can be filed and that this Regulation can be enforced in an effective and efficient manner by administrative or judicial means. To foster compliance with this Regulation the competent authorities of different Member States should cooperate with each other and, where appropriate, with the European Central Bank (ECB) and the national central banks of the Member States and other

relevant competent authorities, such as the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾ (EBA), designated under Union or national legislation applicable to PSPs.

- (27) 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. Those penalties should not be applied to consumers.
- (28) In order to ensure that redress is possible where this Regulation has been incorrectly applied, or where disputes occur between PSUs and PSPs concerning rights and obligations arising under this Regulation, Member States should establish adequate and effective out-of-court complaint and redress procedures. Member States should be able to decide that those procedures apply only to consumers or only to consumers and microenterprises.
- (29) The Commission should submit a report to the European Parliament, the Council, the European Economic and Social Committee, EBA and the ECB on the application of this Regulation. The report should be accompanied, where necessary, by a proposal for the amendment of this Regulation.
- (30) In order to ensure that the technical requirements for credit transfers and direct debits in euro remain up to date, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of those technical requirements. In the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice. It is of particular importance that the Commission carry out appropriate and transparent consultation during its preparatory work, including with the ECB and all relevant stakeholders. 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 the Council.
- (31) Since PSPs located in Member States whose currency is not the euro would need to undertake special preparatory work outside the payments market for their national currency, such PSPs should be allowed to defer the application of the technical requirements for a certain period. Member States whose currency is not the euro should, however, comply with the technical requirements to create a true European payments area, which will strengthen the internal market.
- (32) In order to ensure broad public support for SEPA, a high level of protection for payers is essential, particularly for direct debit transactions. The current and only pan-European direct debit scheme for consumers developed by the EPC provides for a 'no-questions-asked', unconditional refund right for authorised payments during a period of 8 weeks from the date on which the funds were debited, while that refund right is subject to several conditions under Articles 62 and 63 of Directive 2007/64/EC. In the light of the prevailing market situation and of the necessity to ensure a high level of consumer protection, the impact of those provisions should be assessed in the report that, in accordance with Article 87 of Directive 2007/64/EC, the Commission shall, no later than 1 November 2012, present to the European Parliament, the Council, the European Economic and Social Committee and the ECB accompanied, where appropriate, by a proposal for its revision.
- (33) 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⁽²⁾ governs the processing of personal data carried out pursuant to this Regulation. Migration to SEPA and the introduction of common standards and rules for payments should be based on compliance with national law on the protection of sensitive personal data in Member States and should safeguard the interests of Union citizens.
- (34) Financial messages relating to payments and transfers in the SEPA are outside the scope of the Agreement between the European Union and the United States of America of 28 June 2010 on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program⁽³⁾.
- (35) Since the objective of this Regulation, namely establishing technical and business requirements for credit transfers and direct debits in euro, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale or 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.

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 195, 27.7.2010, p. 5.

- (36) Pursuant to Article 5(1) of Regulation (EC) No 924/2009, Member States are to remove settlement-based national reporting obligations on PSPs for balance of payments statistics relating to payment transactions of their customers of up to EUR 50 000. The collection of balance-of-payments statistics based on settlements emerged after the end of foreign exchange controls and until now, constitutes a major data source alongside others such as direct surveys, contributing to good quality statistics. From the beginning of the 1990s some Member States opted to rely more on information reported directly by companies and households than on data reported through banks on behalf of their customers. Although settlement-based reporting represents a solution that, in terms of society as a whole, reduces the cost of balance-of-payments compilation while assuring good-quality statistics, in strict terms of cross-border payments the maintenance of such reporting in some Member States might diminish efficiency and increase costs. Since one aim of SEPA is to reduce the costs of cross-border payments, settlement-based balance-of-payments reporting should be abolished completely.
- (37) In order to enhance legal certainty it is appropriate to align the deadlines for interchange fees set out in Article 7 of Regulation (EC) No 924/2009 with the provisions laid down in this Regulation.
- (38) Regulation (EC) No 924/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down rules for credit transfer and direct debit transactions denominated in euro within the Union where both the payer's payment service provider and the payee's payment service provider are located in the Union, or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.
2. This Regulation does not apply to the following:
 - (a) payment transactions carried out between and within PSPs, including their agents or branches, for their own account;
 - (b) payment transactions processed and settled through large-value payment systems, excluding direct debit payment transactions which the payer has not explicitly requested be routed via a large-value payment system;
 - (c) payment transactions through a payment card or similar device, including cash withdrawals, unless the payment card or similar device is used only to generate the

information required to directly make a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN;

- (d) payment transactions by means of any telecommunication, digital or IT device, if such payment transactions do not result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN;
- (e) transactions of money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC;
- (f) payment transactions transferring electronic money as defined in point (2) of Article 2 of 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⁽¹⁾, unless such transactions result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN.

3. Where payment schemes are based on payment transactions by credit transfers or direct debits but have additional optional features or services, this Regulation applies only to the underlying credit transfers or direct debits.

Article 2

Definitions

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

- (1) 'credit transfer' means a national or cross-border payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the PSP which holds the payer's payment account, based on an instruction given by the payer;
- (2) 'direct debit' means a national or cross-border payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent;
- (3) 'payer' means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer's payment account, a natural or legal person who makes a payment order to a payee's payment account;
- (4) 'payee' means a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction;
- (5) '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;

⁽¹⁾ OJ L 267, 10.10.2009, p. 7.

- (6) 'payment system' means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions;
- (7) 'payment scheme' means a single set of rules, practices, standards and/or implementation guidelines agreed between PSPs for the execution of payment transactions across the Union and within Member States, and which is separated from any infrastructure or payment system that supports its operation;
- (8) 'PSP' means a payment service provider falling under any of the categories referred to in Article 1(1) of Directive 2007/64/EC and the legal and natural persons referred to in Article 26 of Directive 2007/64/EC, but excludes the bodies listed in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁽¹⁾ benefiting from a waiver under Article 2(3) of Directive 2007/64/EC;
- (9) 'PSU' means a natural or legal person making use of a payment service in the capacity of payer or payee;
- (10) 'payment transaction' means an act, initiated by the payer or by the payee of transferring funds between payment accounts in the Union, irrespective of any underlying obligations between the payer and the payee;
- (11) 'payment order' means an instruction by a payer or payee to his PSP requesting the execution of a payment transaction;
- (12) 'interchange fee' means a fee paid between the payer's PSP and the payee's PSP for direct debit transactions;
- (13) 'MIF' means a multilateral interchange fee which is subject to an arrangement between more than two PSPs;
- (14) 'BBAN' means a payment account number identifier, which unambiguously identifies an individual payment account with a PSP in a Member State and which can only be used for national payment transactions while the same payment account is identified by IBAN for cross-border payment transactions;
- (15) 'IBAN' means an international payment account number identifier, which unambiguously identifies an individual payment account in a Member State, the elements of which are specified by the International Organisation for Standardisation (ISO);
- (16) 'BIC' means a business identifier code that unambiguously identifies a PSP, the elements of which are specified by the ISO;
- (17) 'ISO 20022 XML standard' means a standard for the development of electronic financial messages as defined by the ISO, encompassing the physical representation of the payment transactions in XML syntax, in accordance with business rules and implementation guidelines of Union-wide schemes for payment transactions falling within the scope of this Regulation;
- (18) 'large-value payment system' means a payment system the main purpose of which is to process, clear or settle single payment transactions of high priority and urgency, and primarily of large amount;
- (19) 'settlement date' means a date on which obligations with respect to the transfer of funds are discharged between the payer's PSP and the payee's PSP;
- (20) 'collection' means a part of a direct debit transaction starting from its initiation by the payee until its end through the normal debiting of the payer's payment account;
- (21) 'mandate' means the expression of consent and authorisation given by the payer to the payee and (directly or indirectly via the payee) to the payer's PSP to allow the payee to initiate a collection for debiting the payer's specified payment account and to allow the payer's PSP to comply with such instructions;
- (22) 'retail payment system' means a payment system the main purpose of which is to process, clear or settle credit transfers or direct debits, which are generally bundled together for transmission and are primarily of small amount and low priority, and that is not a large-value payment system;
- (23) 'microenterprise' means an enterprise, which at the time of conclusion of the payment service contract, is an enterprise as defined in Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC⁽²⁾;
- (24) 'consumer' means a natural person acting for purposes other than trade, business or profession in payment service contracts;
- (25) 'R-transaction' means a payment transaction which cannot be properly executed by a PSP or which results in exception processing, inter alia, because of a lack of funds, revocation, a wrong amount or a wrong date, a lack of mandate or wrong or closed account;
- (26) 'cross-border payment transaction' means a payment transaction initiated by a payer or by a payee where the payer's PSP and the payee's PSP are located in different Member States;
- (27) 'national payment transaction' means a payment transaction initiated by a payer or by a payee, where the payer's PSP and the payee's PSP are located in the same Member State;

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

⁽²⁾ OJ L 124, 20.5.2003, p. 36.

(28) 'reference party' means a natural or legal person on behalf of whom a payer makes a payment or a payee receives a payment.

Article 3

Reachability

1. A payee's PSP which is reachable for a national credit transfer under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for credit transfers initiated by a payer through a PSP located in any Member State.

2. A payer's PSP which is reachable for a national direct debit under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for direct debits initiated by a payee through a PSP located in any Member State.

3. Paragraph 2 shall apply only to direct debits which are available to consumers as payers under the payment scheme.

Article 4

Interoperability

1. Payment schemes to be used by PSPs for the purposes of carrying out credit transfers and direct debits shall comply with the following conditions:

- (a) their rules are the same for national and cross-border credit transfer transactions within the Union and similarly for national and cross-border direct debit transactions within the Union; and
- (b) the participants in the payment scheme represent a majority of PSPs within a majority of Member States, and constitute a majority of PSPs within the Union, taking into account only PSPs that provide credit transfers or direct debits respectively.

For the purposes of point (b) of the first subparagraph, where neither the payer nor the payee is a consumer, only Member States where such services are made available by PSPs and only PSPs providing such services shall be taken into account.

2. The operator or, in the absence of a formal operator, the participants of a retail payment system within the Union shall ensure that their payment system is technically interoperable with other retail payment systems within the Union through the use of standards developed by international or European standardisation bodies. In addition, they shall not adopt business rules that restrict interoperability with other retail payment systems within the Union. Payment systems designated under Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment

and securities settlement systems⁽¹⁾ shall only be obliged to ensure technical interoperability with other payment systems designated under the same Directive.

3. The processing of credit transfers and direct debits shall not be hindered by technical obstacles.

4. The payment scheme owner or, where there is no formal payment scheme owner, the leading participant of a new entrant retail payment scheme which has participants in at least eight Member States, may apply to the competent authorities in the Member State where the payment scheme owner or leading participant is located for a temporary exemption from the conditions set out in point (b) of the first subparagraph of paragraph 1. Those competent authorities may grant, after consulting the competent authorities in the other Member States where the new entrant payment scheme has a participant, the Commission and the ECB, such an exemption for a maximum of 3 years. Those competent authorities shall base their decision on the potential of the new entrant payment scheme to develop into a fully fledged pan-European payment scheme and its contribution to improving competition or promoting innovation.

5. With the exception of payment services benefiting from a waiver under Article 16(4), this Article shall be effective by 1 February 2014.

Article 5

Requirements for credit transfer and direct debit transactions

1. PSPs shall carry out credit transfer and direct debit transactions in accordance with the following requirements:

- (a) they must use the payment account identifier specified in point (1)(a) of the Annex for the identification of payment accounts regardless of the location of the PSPs concerned;
- (b) they must use the message formats specified in point (1)(b) of the Annex, when transmitting payment transactions to another PSP or via a retail payment system;
- (c) they must ensure that PSUs use the payment account identifier specified in point (1)(a) of the Annex for the identification of payment accounts, whether the payer's PSP and the payee's PSP or the sole PSP in the payment transaction are located in the same Member State or in different Member States;
- (d) they must ensure that where a PSU that is not a consumer or a microenterprise, initiates or receives individual credit transfers or individual direct debits which are not transmitted individually, but are bundled together for transmission, the message formats specified in point (1)(b) of the Annex are used.

⁽¹⁾ OJ L 166, 11.6.1998, p. 45.

Without prejudice to point (b) of the first subparagraph, PSPs shall, upon the specific request of a PSU, use the message formats specified in point (1)(b) of the Annex in relation to that PSU.

2. PSPs shall carry out credit transfers in accordance with the following requirements, subject to any obligation laid down in the national law implementing Directive 95/46/EC:

- (a) the payer's PSP must ensure that the payer provides the data elements specified in point (2)(a) of the Annex;
- (b) the payer's PSP must provide the data elements specified in point (2)(b) of the Annex to the payee's PSP;
- (c) the payee's PSP must provide or make available to the payee the data elements specified in point (2)(d) of the Annex.

3. PSPs shall carry out direct debits in accordance with the following requirements, subject to any obligation laid down in national law implementing Directive 95/46/EC:

- (a) the payee's PSP must ensure that:
 - (i) the payee provides the data elements specified in point (3)(a) of the Annex with the first direct debit and one-off direct debit and with each subsequent payment transaction,
 - (ii) the payer gives consent both to the payee and to the payer's PSP (directly or indirectly via the payee), the mandates, together with later modifications or cancellation, are stored by the payee or by a third party on behalf of the payee and the payee is informed of this obligation by the PSP in accordance with Articles 41 and 42 of Directive 2007/64/EC;
- (b) the payee's PSP must provide the payer's PSP with the data elements specified in point (3)(b) of the Annex;
- (c) the payer's PSP must provide or make available to the payer the data elements specified in point (3)(c) of the Annex;
- (d) the payer must have the right to instruct its PSP:
 - (i) to limit a direct debit collection to a certain amount or periodicity or both,
 - (ii) where a mandate under a payment scheme does not provide for the right to a refund, to verify each direct debit transaction, and to check whether the amount and periodicity of the submitted direct debit transaction is equal to the amount and periodicity agreed in the mandate, before debiting their payment account, based on the mandate-related information,

- (iii) to block any direct debits to the payer's payment account or to block any direct debits initiated by one or more specified payees or to authorise direct debits only initiated by one or more specified payees;

Where neither the payer nor the payee is a consumer, PSPs shall not be required to comply with point (d)(i), (ii) or (iii).

The payer's PSP shall inform the payer of the rights referred to in point (d) in accordance with Articles 41 and 42 of Directive 2007/64/EC.

Upon the first direct debit transaction or a one-off direct debit transaction and upon each subsequent direct debit transaction, the payee shall send the mandate-related information to his or her PSP and the payee's PSP shall transmit that mandate-related information to the payer's PSP with each direct debit transaction.

4. In addition to the requirements referred to in paragraph 1, the payee accepting credit transfers shall communicate its payment account identifier specified in point (1)(a) of the Annex and, until 1 February 2014 for national payment transactions and until 1 February 2016 for cross-border payment transactions, but only where necessary, its PSP's BIC to its payers, when a credit transfer is requested.

5. Before the first direct debit transaction, a payer shall communicate its payment account identifier specified in point (1)(a) of the Annex. The BIC of a payer's PSP shall be communicated until 1 February 2014 for national payment transactions and until 1 February 2016 for cross-border payment transactions by the payer but only where necessary.

6. Where the framework agreement between the payer and the payer's PSP does not provide for the right to a refund, the payer's PSP shall, without prejudice to paragraph (3)(a)(ii), verify each direct debit transaction to check whether the amount of the submitted direct debit transaction is equal to the amount and periodicity agreed in the mandate before debiting the payer's payment account, based on the mandate-related information.

7. After 1 February 2014 for national payment transactions and after 1 February 2016 for cross-border payment transactions PSPs shall not require PSUs to indicate the BIC of the PSP of a payer or of the PSP of a payee.

8. The payer's PSP and the payee's PSP shall not levy additional charges or other fees on the read-out process to automatically generate a mandate for those payment transactions initiated through or by means of a payment card at the point of sale, which result in direct debit.

Article 6

End-dates

1. By 1 February 2014, credit transfers shall be carried out in accordance with the technical requirements set out in Article 5(1), (2) and (4) and points 1 and 2 of the Annex.

2. By 1 February 2014, direct debits shall be carried out in accordance with Article 8(2) and (3) and with the requirements set out in Article 5(1), (3), (5), (6) and (8) and points 1 and 3 of the Annex.

3. Without prejudice to Article 3, direct debits shall be carried out in accordance with the requirements set out in Article 8(1) by 1 February 2017 for national payments and by 1 November 2012 for cross-border payments.

4. For national payment transactions a Member State or, with the approval of the Member State concerned, the PSPs of a Member State may, after taking into account and evaluating the state of preparedness and readiness of their citizens, set earlier dates than those referred to in paragraphs 1 and 2.

Article 7

Validity of mandates and right to a refund

1. A valid payee authorisation to collect recurring direct debits in a legacy scheme prior to 1 February 2014 shall continue to remain valid after that date and shall be considered as representing the consent to the payer's PSP to execute the recurring direct debits collected by that payee in compliance with this Regulation in the absence of national law or customer agreements continuing the validity of direct debit mandates.

2. Mandates as referred to in paragraph 1 shall allow for unconditional refunds and refunds backdated to the date of the refunded payment where such refunds have been provided for within the framework of the existing mandate.

Article 8

Interchange fees for direct debit transactions

1. Without prejudice to paragraph 2, no MIF per direct debit transaction or other agreed remuneration with an equivalent object or effect shall apply to direct debit transactions.

2. For R-transactions a MIF may be applied provided that the following conditions are complied with:

(a) the arrangement aims at efficiently allocating costs to the PSP which, or the PSU of which, has caused the R-transaction, as appropriate, while taking into account the existence of transaction costs and ensures that the payer is not automatically charged and the PSP is prohibited

from charging PSUs in respect of a given type of R-transaction fees that exceed the cost borne by the PSP for such transactions;

(b) the fees are strictly cost based;

(c) the level of the fees does not exceed the actual costs of handling an R-transaction by the most cost-efficient comparable PSP that is a representative party to the arrangement in terms of volume of transactions and nature of services;

(d) the application of the fees in accordance with points (a), (b) and (c) prevent the PSP from charging additional fees relating to the costs covered by those interchange fees to their respective PSUs;

(e) there is no practical and economically viable alternative to the arrangement which would lead to an equally or more efficient handling of R-transactions at equal or lower cost to consumers.

For the purposes of the first subparagraph, only cost categories directly and unequivocally relevant to the handling of the R-transaction shall be considered in the calculation of the R-transaction fees. Those costs shall be precisely determined. The breakdown of the amount of the costs, including separate identification of each of its components, shall be part of the arrangement to allow for easy verification and monitoring.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to unilateral arrangements by a PSP and to bilateral arrangements between PSPs that have an object or effect equivalent to that of a multilateral arrangement.

Article 9

Payment accessibility

1. A payer making a credit transfer to a payee holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.

2. A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.

Article 10

Competent authorities

1. Member States shall designate as the competent authorities responsible for ensuring compliance with this Regulation public authorities, bodies recognised by national law or public authorities expressly empowered for that purpose by national law, including national central banks. Member States may designate existing bodies to act as competent authorities.

2. Member States shall notify the Commission of the competent authorities designated under paragraph 1 by 1 February 2013. They shall notify the Commission and the European Supervisory Authority (European Banking Authority) (EBA) without delay of any subsequent change concerning those authorities.

3. Member States shall ensure that the competent authorities referred to in paragraph 1 have all the powers necessary for the performance of their duties. Where there is more than one competent authority for matters covered by this Regulation on its territory, Member States shall ensure that those authorities cooperate closely so that they can discharge their respective duties effectively.

4. The competent authorities shall monitor compliance by PSPs with this Regulation effectively and take all necessary measures to ensure such compliance. They shall cooperate with each other in accordance with Article 24 of Directive 2007/64/EC and with Article 31 of Regulation (EU) No 1093/2010.

Article 11

Penalties

1. Member States shall, by 1 February 2013, lay down rules on the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and measures by 1 August 2013 and shall notify it without delay of any subsequent amendment affecting them.

2. The penalties referred to in paragraph 1 shall not be applied to consumers.

Article 12

Out-of-court complaint and redress procedures

1. Member States shall establish adequate and effective out-of-court complaint and redress procedures for the settlement of disputes concerning rights and obligations arising from this Regulation between PSUs and their PSPs. For those purposes, Member States shall designate existing bodies or where appropriate, set up new bodies.

2. Member States shall notify the Commission of the bodies referred to in paragraph 1 by 1 February 2013. They shall notify the Commission without delay of any subsequent change concerning those bodies.

3. Member States may provide for this Article to apply only to PSUs that are consumers or only to those that are consumers and microenterprises. Member States shall inform the Commission of any such provision by 1 August 2013.

Article 13

Delegation of power

The Commission shall be empowered to adopt delegated acts in accordance with Article 14 to amend the Annex, in order to take account of technical progress and market developments.

Article 14

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 13 shall be conferred on the Commission for a period of 5 years from 31 March 2012. The Commission shall draw up a report in respect of the delegation of power not later than 9 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 3 months before the end of each period.

3. The delegation of power referred to in Article 13 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 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 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 3 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 3 months at the initiative of the European Parliament or the Council.

Article 15

Review

By 1 February 2017, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee, ECB and EBA a report on the application of this Regulation accompanied, if appropriate, by a proposal.

Article 16

Transitional provisions

1. By way of derogation from Article 6(1) and (2), Member States may allow PSPs to provide PSUs, until 1 February 2016, with conversion services for national payment transactions

enabling PSUs that are consumers to continue using BBAN instead of the payment account identifier specified in point (1)(a) of the Annex on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into the respective payment account identifier specified in point (1)(a) of the Annex. That payment account identifier shall be delivered to the initiating PSU, where appropriate before the payment is executed. In such a case PSPs shall not levy any charges or other fees on the PSU directly or indirectly linked to those conversion services.

2. PSPs that offer payment services denominated in euro and that are located in a Member State which does not have the euro as its currency shall comply with Article 3 when offering payment services denominated in euro by 31 October 2016. If, however, the euro is introduced as the currency of any such Member State before 31 October 2015, the PSP located in that Member State shall comply with Article 3 within 1 year of the date on which the Member State concerned joined the euro area.

3. Member States may allow their competent authorities to waive all or some of the requirements referred to in Article 6(1) and (2) for those credit transfer or direct debit transactions with a cumulative market share, based on the official payment statistics published annually by the ECB, of less than 10 % of the total number of credit transfers or direct debit transactions respectively, in that Member State until 1 February 2016.

4. Member States may allow their competent authorities to waive all or some of the requirements referred to in Article 6(1) and (2) for those payment transactions generated using a payment card at the point of sale which result in direct debit to and from a payment account identified by BBAN or IBAN until 1 February 2016.

5. By way of derogation from Article 6(1) and (2), Member States may allow their competent authorities, until 1 February 2016, to waive the specific requirement to use the message formats specified in point (1)(b) of the Annex set out in Article 5(1)(d) for PSUs which initiate or receive individual credit transfers or direct debits that are bundled together for transmission. Notwithstanding a possible waiver, PSPs shall fulfil the requirements set out in Article 5(1)(d) where a PSU requests such a service.

6. By way of derogation from Article 6(1) and (2), Member States may defer the requirements relating to provision of BIC for national payment transactions in Article 5(4), (5) and (7) until 1 February 2016.

7. Where a Member State intends to make use of a derogation as provided for in paragraph 1, 3, 4, 5 or 6, that Member State shall notify the Commission accordingly by 1 February 2013, and shall subsequently allow its competent authority to waive, as relevant, some or all of the requirements set out in Article 5, Article 6(1) or (2) and the Annex, for the

relevant payment transactions as referred to in the respective paragraphs or subparagraphs and for a period not exceeding that of the derogation. Member States shall notify the Commission of the payment transactions subject to the derogation and of any subsequent change.

8. PSPs located in, and PSUs making use of a payment service in a Member State which does not have the euro as its currency shall comply with the requirements of Articles 4 and 5 by 31 October 2016. Operators of retail payment systems for a Member State which does not have the euro as its currency shall comply with the requirements of Article 4(2) by 31 October 2016.

If, however, the euro is introduced as the currency of any such Member State before 31 October 2015, the PSPs or where relevant operators of retail payment systems located and PSUs making use of a payment service, in that Member State shall comply with the respective provisions within 1 year of the date on which the Member State concerned joined the euro area, but not earlier than the respective dates specified for the Member States having the euro as their own currency on 31 March 2012.

Article 17

Amendments to Regulation (EC) No 924/2009

Regulation (EC) No 924/2009 is hereby amended as follows:

(1) in Article 2, point (10) is replaced by the following:

'10. "funds" means banknotes and coins, scriptural money and electronic money as defined in Article 2(2) of 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 (*).

(*) OJ L 267, 10.10.2009, p. 7.;

(2) in Article 3, paragraph 1 is replaced by the following:

'1. Charges levied by a payment service provider on a payment service user in respect of cross-border payments shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency.;

(3) Article 4 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

‘3. The payment service provider may levy charges additional to those levied in accordance with Article 3(1) on the payment service user where that user instructs the payment service provider to execute the cross-border payment without communicating IBAN and, where appropriate and in accordance with 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 (*), the related BIC for the payment account in the other Member State. Those charges shall be appropriate and in line with the costs. They shall be agreed between the payment service provider and the payment service user. The payment service provider shall inform the payment service user of the amount of the additional charges in good time before the payment service user is bound by such an agreement.

(*) OJ L 94, 30.3.2012 p. 22.’;

(4) in Article 5, paragraph 1 is replaced by the following:

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

Done at Strasbourg, 14 March 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
N. WAMMEN

‘1. With effect from 1 February 2016, Member States shall remove settlement-based national reporting obligations on payment service providers for balance of payments statistics relating to payment transactions of their customers.’;

(5) Article 7 is amended as follows:

(a) in paragraph 1, the date ‘1 November 2012’ is replaced by ‘1 February 2017’;

(b) in paragraph 2, the date ‘1 November 2012’ is replaced by ‘1 February 2017’;

(c) in paragraph 3, the date ‘1 November 2012’ is replaced by ‘1 February 2017’;

(6) Article 8 is deleted.

Article 18

Entry into force

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

ANNEX

TECHNICAL REQUIREMENTS (ARTICLE 5)

- (1) In addition to the essential requirements set out in Article 5, the following technical requirements shall apply to credit transfers and direct debit transactions:
- (a) The payment account identifier referred to in Article 5(1)(a) and (c) must be IBAN.
 - (b) The standard for message format referred to in Article 5(1)(b) and (d) must be the ISO 20022 XML standard.
 - (c) The remittance data field must allow for 140 characters. Payment schemes may allow for a higher number of characters, except if the device used to remit information has technical limitations relating to the number of characters, in which case the technical limit of the device applies.
 - (d) Remittance reference information and all the other data elements provided in accordance with points (2) and (3) of this Annex must be passed in full and without alteration between PSPs in the payment chain.
 - (e) Once the required data is available in electronic form payment transactions must allow for a fully automated, electronic processing in all process stages throughout the payment chain (end-to-end straight through processing), enabling the entire payment process to be conducted electronically without the need for re-keying or manual intervention. This must also apply to exceptional handling of credit transfers and direct debit transactions, whenever possible.
 - (f) Payment schemes must set no minimum threshold for the amount of the payment transaction allowing for credit transfers and direct debits but are not required to process payment transactions with zero amount.
 - (g) Payment schemes are not obliged to carry out credit transfers and direct debits exceeding the amount of EUR 999 999 999,99.
- (2) In addition to the requirements referred to in point (1), the following requirements shall apply to credit transfer transactions:
- (a) The data elements referred to in Article 5(2)(a) are the following:
 - (i) the payer's name and/or the IBAN of the payer's payment account,
 - (ii) the amount of the credit transfer,
 - (iii) the IBAN of the payee's payment account,
 - (iv) where available, the payee's name,
 - (v) any remittance information.
 - (b) The data elements referred to in Article 5(2)(b) are the following:
 - (i) the payer's name,
 - (ii) the IBAN of the payer's payment account,
 - (iii) the amount of the credit transfer,
 - (iv) the IBAN of the payee's payment account,
 - (v) any remittance information,
 - (vi) any payee identification code,
 - (vii) the name of any payee reference party,
 - (viii) any purpose of the credit transfer,
 - (ix) any category of the purpose of the credit transfer.
 - (c) In addition, the following mandatory data elements are to be provided by the payer's PSP to the payee's PSP:
 - (i) the BIC of the payer's PSP (if not agreed otherwise by the PSPs involved in the payment transaction),

- (ii) the BIC of the payee's PSP (if not agreed otherwise by the PSPs involved in the payment transaction),
 - (iii) the identification code of the payment scheme,
 - (iv) the settlement date of the credit transfer,
 - (v) the reference number of the credit transfer message of the payer's PSP,
- (d) The data elements referred to in Article 5(2)(c) are the following:
- (i) the payer's name,
 - (ii) the amount of the credit transfer,
 - (iii) any remittance information.
- (3) In addition to the requirements referred to in point (1), the following requirements shall apply to direct debit transactions:
- (a) The data elements referred to in Article 5(3)(a)(i) are the following:
- (i) the type of direct debit (recurrent, one-off, first, last or reversal),
 - (ii) the payee's name,
 - (iii) the IBAN of the payee's payment account to be credited for the collection,
 - (iv) where available, the payer's name,
 - (v) the IBAN of the payer's payment account to be debited for the collection,
 - (vi) the unique mandate reference,
 - (vii) where the payer's mandate is given after 31 March 2012, the date on which it was signed,
 - (viii) the amount of the collection,
 - (ix) where the mandate has been taken over by a payee other than the payee who issued the mandate, the unique mandate reference as given by the original payee who issued the mandate,
 - (x) the payee's identifier,
 - (xi) where the mandate has been taken over by a payee other than the payee who issued the mandate, the identifier of the original payee who issued the mandate,
 - (xii) any remittance information from the payee to the payer,
 - (xiii) any purpose of the collection,
 - (xiv) any category of the purpose of the collection.
- (b) The data elements referred to in Article 5(3)(b) are the following:
- (i) the BIC of the payee's PSP (if not agreed otherwise by the PSPs involved in the payment transaction),
 - (ii) the BIC of the payer's PSP (if not agreed otherwise by the PSPs involved in the payment transaction),
 - (iii) the payer reference party's name (if present in dematerialised mandate),
 - (iv) the payer reference party's identification code (if present in dematerialised mandate),
 - (v) the payee reference party's name (if present in the dematerialised mandate),
 - (vi) the payee reference party's identification code (if present in dematerialised mandate),
 - (vii) the identification code of the payment scheme,
 - (viii) the settlement date of the collection,
 - (ix) the payee's PSP's reference for the collection,

- (x) the type of mandate,
 - (xi) the type of direct debit (recurrent, one-off, first, last or reversal),
 - (xii) the payee's name,
 - (xiii) the IBAN of the payee's payment account to be credited for the collection,
 - (xiv) where available, the payer's name,
 - (xv) the IBAN of the payer's payment account to be debited for the collection,
 - (xvi) the unique mandate reference,
 - (xvii) the date of signing of the mandate if the mandate is given by the payer after 31 March 2012,
 - (xviii) the amount of the collection,
 - (xix) the unique mandate reference as given by the original payee who issued the mandate (if the mandate has been taken over by another payee than the payee who issued the mandate),
 - (xx) the payee's identifier,
 - (xxi) the identifier of the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate),
 - (xxii) any remittance information from the payee to the payer.
- (c) The data elements referred to in Article 5(3)(c) are the following:
- (i) the unique mandate reference,
 - (ii) the payee's identifier,
 - (iii) the payee's name,
 - (iv) the amount of the collection,
 - (v) any remittance information,
 - (vi) the identification code of the payment scheme.
-

REGULATION (EU) No 261/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 March 2012
amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector

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 the first paragraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

(1) Successive reforms of the common market organisation covering milk and milk products, now contained in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽⁴⁾, have been aimed at market orientation, that is, letting price signals guide the decisions of farmers in terms of what and how much to produce, so as to strengthen the competitive situation of the dairy sector and its sustainability in the context of globalised trade. It was therefore decided to increase quotas gradually, by adopting Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007 ⁽⁵⁾ (the 'Health Check' reform of 2008-2009), in order to ensure a smooth phasing out of the milk quota system by 2015.

(2) In the period from 2007 to 2009, exceptional developments took place in the milk and milk products sector markets, which ultimately resulted in a price collapse in 2008/09. Initially, extreme weather conditions in Oceania brought about a significant decline in supplies, leading to a rapid and significant increase in prices. Although world supplies started to recover and prices started to return to more normal levels, the subsequent financial and economic crisis negatively affected Union dairy producers, aggravating price volatility. Higher commodity prices resulted in a significant increase in feed and other input costs including energy. Subsequently, a drop in worldwide, as well as Union, demand, including demand for milk and milk products, during a period when Union production remained stable, led Union prices to fall to the lower safety net level. This sharp decline in dairy commodity prices failed to fully translate into lower dairy prices at consumer levels, generating, for downstream sectors, a widening in the gross margin for most milk and milk sector products and countries, and preventing demand for them from adjusting to low commodity prices, slowing down price recovery and exacerbating the impact of low prices on milk producers, the viability of many of whom was put at serious risk.

(3) In response to this difficult market situation for milk, a High Level Expert Group on Milk (HLG) was set up in October 2009 with the purpose of discussing mid- and long-term arrangements for the milk and milk products sector which, in the context of the end of dairy quotas in 2015, would contribute to stabilising the market and milk producers' incomes and to enhancing transparency in the sector.

(4) The HLG obtained oral and written input from major European stakeholder groups in the dairy supply chain representing farmers, dairy processors, dairy traders, retailers and consumers. Furthermore, the HLG received contributions from invited academic experts, third-country representatives, national competition authorities and from the Commission's services. A dairy stakeholder conference was also held on 26 March 2010 allowing a wider range of actors in the supply chain to express their views. The HLG delivered its report on 15 June 2010. The report contained an analysis of the current state of the dairy sector and a number of recommendations which focused on contractual relations, the bargaining power of producers, interprofessional/interbranch organisations, transparency (including the further elaboration of the European Price Monitoring Tool), market measures and futures, marketing standards and origin labelling, and innovation and research. As a first step, this Regulation addresses the first four of these issues.

⁽¹⁾ OJ C 218, 23.7.2011, p. 110.

⁽²⁾ OJ C 192, 1.7.2011, p. 36.

⁽³⁾ Position of the European Parliament of 15 February 2012 (not yet published in the Official Journal) and decision of the Council of 28 February 2012.

⁽⁴⁾ OJ L 299, 16.11.2007, p. 1.

⁽⁵⁾ OJ L 30, 31.1.2009, p. 1.

- (5) The HLG noted that the dairy producing and processing sectors are highly differentiated between Member States. There is also a highly variable situation between operators and types of operators within individual Member States. However, in many cases the concentration of supply is low, which results in an imbalance in bargaining power in the supply chain between farmers and dairies. This imbalance can lead to unfair commercial practices; in particular, farmers may not know at the moment of delivery what price they will receive for their milk because frequently the price is fixed much later by dairies on the basis of the added value obtained, which is often beyond the farmer's control.
- (6) There is thus a problem of price transmission along the chain, in particular as regards farm-gate prices, the level of which generally does not evolve in line with rising production costs. Conversely, during 2009, the supply of milk did not adjust promptly to lower demand. Indeed, in some large producer Member States, farmers reacted to lower prices by producing more than in the previous year. Value added in the dairy chain has become increasingly concentrated in the downstream sectors, especially dairies and retailers, with a final consumer price that is not reflected in the price paid to milk producers. All actors in the dairy chain, including the distribution sector, should be encouraged to collaborate to address this imbalance.
- (7) For dairies, the volume of milk which is delivered to them during the season is not always well planned. Even in the case of dairy cooperatives (which are owned by farmers, possess processing facilities and process 58 % of the Union's raw milk), there is a potential failure to adapt supply to demand: farmers are obliged to deliver all their milk to their cooperative and the cooperative is obliged to accept all that milk.
- (8) The use of formalised written contracts concluded in advance of delivery containing basic elements is not widespread. However, such contracts may help to reinforce the responsibility of operators in the dairy chain and increase awareness of the need to better take into account the signals of the market, to improve price transmission and to adapt supply to demand, as well as to help to avoid certain unfair commercial practices.
- (9) In the absence of Union legislation concerning such contracts, Member States may, within their own contract law systems, decide to make the use of such contracts compulsory provided that in doing so Union law is respected and in particular that the proper functioning of the internal market and the common market organisation is respected. In view of the diversity of the situations that exist across the Union in relation to contract law, in the interests of subsidiarity, such a decision should remain with Member States. Equal conditions should apply to all deliveries of raw milk on a given territory. Therefore, if a Member State decides that every delivery of raw milk in its territory to a processor by a farmer must be covered by a written contract between the parties, this obligation should also apply to deliveries of raw milk coming from other Member States, but it is not necessary for it to apply to deliveries to other Member States. In accordance with the principle of subsidiarity it should be left to Member States to decide whether to require a first purchaser to make a written offer to a farmer for such a contract.
- (10) In order to ensure appropriate minimum standards for such contracts and to ensure that the internal market and the common market organisation function well, some basic conditions for the use of such contracts should be laid down at Union level. All such basic conditions should, however, be freely negotiated. Nevertheless, in order to strengthen the stability of the dairy market and the outlet for milk producers in certain Member States where the use of extremely short contracts is quite widespread, Member States should be allowed to set a minimum contract duration to be included in such contracts and/or offers. Such minimum duration should however be imposed only on contracts between first purchasers and milk producers or in the offers made by first purchasers to milk producers. Moreover, it should not impair the proper functioning of the internal market and milk producers should be free to opt out or refuse such a minimum duration. Among the basic conditions, it is important that the price payable for the delivery can be set in the contract, at the choice of the contracting parties, as a static price or a price varying depending on defined factors, such as the volume and the quality or composition of the raw milk delivered, without excluding the possibility of a combination of a static price for a certain volume and a formula price for an additional volume of raw milk delivered in a single contract.
- (11) Dairy cooperatives which have in their statutes or in the rules and decisions based thereon provisions with effects similar to those of the basic conditions for contracts laid down in this Regulation should, in the interests of simplicity, be exempted from a requirement that there be a written contract.
- (12) In order to strengthen the effectiveness of the contract-based system set out above, where intermediate parties collect milk from farmers to deliver to processors, Member States should be given the possibility of applying that system also to those intermediaries.

- (13) Article 42 of the Treaty on the Functioning of the European Union (TFEU) provides that Union rules on competition are to apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) TFEU, which itself provides for the establishment of the common organisation of agricultural markets.
- (14) In order to ensure the viable development of production and thus to ensure a fair standard of living for dairy farmers, their bargaining power vis-à-vis dairy processors should be strengthened, thereby resulting in a fairer distribution of value added along the supply chain. Therefore, in order to realise these objectives of the common agricultural policy, a provision should be adopted pursuant to Article 42 and Article 43(2) TFEU to allow producer organisations constituted solely of dairy farmers or their associations to jointly negotiate contract terms, including price, for some or all of its members' production, with a dairy. However, only producer organisations which seek and obtain recognition under Article 122 of Regulation (EC) No 1234/2007 should be eligible to benefit from that provision. In addition, that provision should not apply to recognised producers' organisations, including cooperatives, that process all the raw milk of their members, since no delivery of raw milk to other processors is at stake. Furthermore, provision should be made for the possibility of de facto recognition under this Regulation for existing producer organisations recognised under national law.
- (15) So as not to undermine the effective functioning of cooperatives and for the sake of clarity, it should be specified that, when a farmer's membership of a cooperative entails an obligation, in respect of all or a part of that farmer's milk production, to deliver raw milk, the conditions of which are set out in the cooperative's statutes or in the rules and decisions based thereon, those conditions should not be subject to a negotiation through a producer organisation.
- (16) In addition, in order to maintain effective competition on the dairy market, this possibility should be subject to appropriate limits expressed in terms of a percentage of the Union's production and of the production of any Member State covered by such negotiations. The limit expressed in terms of a percentage of the national production should first apply to the volume of raw milk produced in the producing Member State or in each of the producing Member States. The same percentage limit should also apply to the volume of raw milk delivered to any particular Member State of destination.
- (17) In view of the importance of protected designations of origin (PDO) and protected geographical indications (PGI), notably for vulnerable rural regions, and in order to ensure the value added and to maintain the quality of, in particular, cheeses benefiting from PDO or PGI, and in the context of the expiring milk quota system, Member States should be allowed to apply rules to regulate the supply of such cheese produced in the defined geographical area. The rules should cover the entire production of the cheese concerned and should be requested by an interbranch organisation, a producer organisation or a group as defined in Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾. Such a request should be supported by a large majority of milk producers representing a large majority of the volume of milk used for that cheese and, in the case of interbranch organisations and groups, by a large majority of cheese producers representing a large majority of the production of that cheese. Moreover, these rules should be subject to strict conditions, in particular in order to avoid damage to the trade in products in other markets and to protect minority rights. Member States should immediately publish and notify to the Commission the adopted rules, ensure regular checks and repeal the rules in case of non-compliance.
- (18) Rules have been introduced at Union level for interbranch organisations in some sectors. These organisations can play useful roles in allowing dialogue between actors in the supply chain and in promoting best practice and market transparency. Such rules should also be applied in the milk and milk products sector, along with the provisions clarifying the position of such organisations under competition law, provided that the activities of those organisations do not distort competition or the internal market or adversely affect the good functioning of the common organisation of agricultural markets. Member States should encourage all relevant actors to participate in interbranch organisations.
- (19) In order to follow developments in the market, the Commission needs timely information on volumes of raw milk delivered. Therefore, provision should be made to ensure that the first purchaser communicates such information to the Member States on a regular basis and that the Member State notifies the Commission thereof.
- (20) The Commission also needs notifications from Member States with respect to contractual negotiations, recognition of producer organisations and their associations and interbranch organisations, as well as contractual relations in the milk and milk products sector, for

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

the purpose of monitoring and analysing the application of this Regulation, notably with a view to preparing the reports which it should present to the European Parliament and Council on the development of the dairy market.

- (21) The measures set out in this Regulation are justified in the current economic circumstances of the dairy market and the structure of the supply chain. They should therefore be applied for a sufficiently long period to allow them to have full effect. However, given their far-reaching nature, they should be temporary and subject to review for the purpose of seeing how they have operated and whether they should continue to apply. This should be dealt with in two Commission reports on the development of the dairy market, covering, in particular, potential incentives to encourage farmers to enter into joint production agreements, to be submitted by 30 June 2014 and by 31 December 2018 respectively.
- (22) The economy of certain disadvantaged regions in the Union depends heavily on milk production. Because of the specific characteristics of these regions, general policies need be adapted to better meet their needs. The common agricultural policy already contains specific measures for those disadvantaged regions. Additional policy measures laid down in this Regulation may contribute to strengthening the position of milk producers in such regions. These effects should however be evaluated in the abovementioned reports on the basis of which the Commission should, where necessary, submit proposals to the European Parliament and to the Council.
- (23) In order to ensure that the objectives and responsibilities of producer organisations and associations of producer organisations in the milk and milk products sector are clearly defined, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the conditions for the recognition of transnational producer organisations and transnational associations of producer organisations, the rules on the establishment and the conditions of administrative assistance in the case of transnational cooperation and the calculation of the volume of raw milk covered by negotiations by a producer organisation. 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.
- (24) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission. The implementing powers relating to the implementation of conditions for the recognition of producer organisations and their associations and interbranch organisations, the notifications by those organisations of the volume of raw milk covered by negotiations, the notifications to be made by the Member States to the Commission concerning those

organisations and the rules for the regulation of supply of cheese benefiting from a PDO or a PGI, detailed rules concerning agreements, decisions and concerted practices in the milk and milk products sector, the content, format and timing of compulsory declarations in that sector, certain aspects of contracts for the delivery of raw milk by farmers and the notification, to the Commission, of options taken by the Member State in this respect should be exercised in accordance with 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⁽¹⁾.

- (25) In the light of the Commission's powers in the field of Union competition policy and given the special nature of those acts, the Commission should decide without applying Regulation (EU) No 182/2011 whether certain agreements and concerted practices in the milk and milk products sector are incompatible with Union competition rules, whether the negotiations by a producer organisation relating to more than one Member State may take place and whether certain rules laid down by the Member States to regulate the supply of such cheese with a PDO or a PGI should be repealed.
- (26) Regulation (EC) No 1234/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1234/2007

Regulation (EC) No 1234/2007 is hereby amended as follows:

- (1) in point (a) of the first paragraph of Article 122, the following point is inserted:
- ‘(iiiia) milk and milk products;’
- (2) in Article 123, the following paragraph is added:
- ‘4. Member States may also recognise interbranch organisations which:
- (a) have formally requested recognition and are made up of representatives of economic activities linked to the production of raw milk and linked to at least one of the following stages of the supply chain: processing of or trade in, including distribution of, products of the milk and milk products sector;
- (b) are formed on the initiative of all or some of the representatives referred to in point (a);

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

(c) carry out, in one or more regions of the Union, taking into account the interests of the members of those interbranch organisations and of consumers, one or more of the following activities:

- (i) improving the knowledge and the transparency of production and the market, including by publication of statistical data on the prices, volumes and durations of contracts for the delivery of raw milk which have been previously concluded, and by providing analyses of potential future market developments at regional, national and international level;
- (ii) helping to coordinate better the way the products of the milk and milk products sector are placed on the market, in particular by means of research and market studies;
- (iii) promoting consumption of, and providing information on, milk and milk products in both internal and external markets;
- (iv) exploring potential export markets;
- (v) drawing up standard forms of contract compatible with Union rules for the sale of raw milk to purchasers and/or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions;
- (vi) providing the information and carrying out the research necessary to adjust production in favour of products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;
- (vii) maintaining and developing the production potential of the dairy sector, inter alia, by promoting innovation and supporting programmes for applied research and development in order to exploit the full potential of milk and milk products, especially in order to create value-added products which are more attractive to the consumer;
- (viii) seeking ways of restricting the use of animal-health products, improving the management of other inputs and enhancing food safety and animal health;
- (ix) developing methods and instruments for improving product quality at all stages of production and marketing;
- (x) exploiting the potential of organic farming and protecting and promoting such farming as well as the production of products with designations of origin, quality labels and geographical indications; and
- (xi) promoting integrated production or other environmentally sound production methods.;

(3) in Chapter II of Title II of Part II, the following Section is inserted:

Section IIA

Rules concerning producer organisations and interbranch organisations in the milk and milk products sector

Article 126a

Recognition of producer organisations and their associations in the milk and milk products sector

1. Member States shall recognise as producer organisations in the milk and milk products sector all legal entities or clearly defined parts of legal entities applying for such recognition, provided that:

- (a) they meet the requirements laid down in points (b) and (c) of the first paragraph of Article 122;
- (b) they have a minimum number of members and/or cover a minimum volume of marketable production, to be laid down by the Member State concerned, in the area where they operate;
- (c) there is sufficient evidence that they can carry out their activities properly, both over time and in terms of effectiveness and concentration of supply;
- (d) they have a statute that is consistent with points (a), (b) and (c) of this paragraph.

2. In response to an application, Member States may recognise an association of recognised producer organisations in the milk and milk products sector if the Member State concerned considers that this association is capable of carrying out effectively any of the activities of a recognised producer organisation and that it fulfils the conditions laid down in paragraph 1.

3. Member States may decide that producer organisations which have been recognised before 2 April 2012 on the basis of national law and which fulfil the conditions laid down in paragraph 1 of this Article are to be considered to be recognised as producer organisations pursuant to point (iia) of point (a) of the first paragraph of Article 122.

Producer organisations which have been recognised before 2 April 2012 on the basis of national law and which do not fulfil the conditions laid down in paragraph 1 of this Article may continue to exercise their activities under national law until 3 October 2012.

4. Member States shall:

- (a) decide whether to grant a recognition to a producer organisation within 4 months of the lodging of an application accompanied by all the relevant supporting evidence; this application shall be lodged with the Member State where the organisation has its headquarters;

- (b) carry out, at intervals to be determined by them, checks to ascertain that recognised producer organisations and associations of producer organisations are complying with the provisions of this Chapter;
- (c) in the event of non-compliance or irregularities in the implementation of the measures provided for in this Chapter, impose on those organisations and associations the applicable penalties they have laid down and decide whether, if necessary, recognition should be withdrawn;
- (d) inform the Commission once a year, and no later than 31 March, of every decision to grant, refuse or withdraw recognition which they have taken during the previous calendar year.

Article 126b

Recognition of interbranch organisations in the milk and milk products sector

1. Member States may recognise interbranch organisations in the milk and milk products sector provided that such organisations:

- (a) meet the requirements laid down in Article 123(4);
- (b) carry out their activities in one or more regions in the territory concerned;
- (c) account for a significant share of the economic activities referred to in Article 123(4)(a);
- (d) do not themselves engage in the production of processing of or the trade in products in the milk and milk products sector.

2. Member States may decide that interbranch organisations which have been recognised before 2 April 2012 on the basis of national law and which fulfil the conditions laid down in paragraph 1 are to be considered to be recognised as interbranch organisations under Article 123(4).

3. Where Member States make use of the option to recognise an interbranch organisation in accordance with paragraph 1 and/or 2, they shall:

- (a) decide whether to grant recognition to the interbranch organisation within 4 months of the lodging of an application accompanied by all the relevant supporting evidence; this application shall be lodged with the Member State where the organisation has its headquarters;
- (b) carry out, at intervals to be determined by them, checks to verify that recognised interbranch organisations are complying with the conditions governing their recognition;
- (c) in the event of non-compliance or irregularities in the implementation of the measures provided for in this Regulation, impose on those organisations the applicable penalties they have laid down and decide whether, if necessary, recognition should be withdrawn;

(d) withdraw recognition if:

- (i) the requirements and conditions for recognition laid down in this Article are no longer met;
- (ii) the interbranch organisation engages in any of the agreements, decisions and concerted practices referred to in Article 177a(4), without prejudice to any other penalties to be imposed pursuant to national law;
- (iii) the interbranch organisation fails to comply with the notification obligation referred to in Article 177a(2);

(e) inform the Commission once a year, and no later than 31 March, of every decision to grant, refuse or withdraw recognition taken during the previous calendar year.

Article 126c

Contractual negotiations in the milk and milk products sector

1. A producer organisation in the milk and milk products sector which is recognised under Article 122 may negotiate on behalf of its farmer members, in respect of part or all of their joint production, contracts for the delivery of raw milk by a farmer to a processor of raw milk, or to a collector within the meaning of the second subparagraph of Article 185f(1).

2. The negotiations by the producer organisation may take place:

- (a) whether or not there is a transfer of ownership of the raw milk by the farmers to the producer organisation;
- (b) whether or not the price negotiated is the same as regards the joint production of some or all of the farmer members;

(c) provided that, for a particular producer organisation:

- (i) the volume of raw milk covered by such negotiations does not exceed 3,5 % of total Union production; and
- (ii) the volume of raw milk covered by such negotiations which is produced in any particular Member State does not exceed 33 % of the total national production of that Member State; and
- (iii) the volume of raw milk covered by such negotiations which is delivered in any particular Member State does not exceed 33 % of the total national production of that Member State;

(d) provided that the farmers concerned are not members of any other producer organisation which also negotiates such contracts on their behalf; however, Member States may derogate from this condition in duly justified cases where farmers hold two distinct production units located in different geographic areas;

(e) provided that the raw milk is not covered by an obligation to deliver arising from the farmer's membership of a cooperative in accordance with the conditions set out in the cooperative's statutes or the rules and decisions provided for in or derived from these statutes; and

(f) provided that the producer organisation notifies the competent authorities of the Member State or Member States in which it operates of the volume of raw milk covered by such negotiations.

3. Notwithstanding the conditions set out in points (ii) and (iii) of point (c) of paragraph 2, a producer organisation may negotiate pursuant to paragraph 1, provided that, with regard to that producer organisation, the volume of raw milk covered by the negotiations which is produced in or delivered in a Member State having a total annual raw milk production of less than 500 000 tonnes does not exceed 45 % of the total national production of that Member State.

4. For the purposes of this Article, references to producer organisations shall also include associations of such producer organisations.

5. For the purposes of applying point (c) of paragraph 2 and paragraph 3, the Commission shall publish, by such means as it considers appropriate, the amounts of raw milk production in the Union and the Member States using the most up-to-date information available.

6. By way of derogation from point (c) of paragraph 2 and paragraph 3, even where the thresholds set out therein are not exceeded, the competition authority referred to in the second subparagraph of this paragraph may decide in an individual case that a particular negotiation by the producer organisation should either be reopened or should not take place at all if it considers that this is necessary in order to prevent competition being excluded or in order to avoid seriously damaging SME processors of raw milk in its territory.

For negotiations covering more than one Member State, the decision referred to in the first subparagraph shall be taken by the Commission without applying the procedure referred to in Article 195(2) or Article 196b(2). In other cases, that decision shall be taken by the national competition authority of the Member State to which the negotiations relate.

The decisions referred to in this paragraph shall not apply earlier than the date of their notification to the undertakings concerned.

7. For the purposes of this Article:

(a) a "national competition authority" means the authority referred to in Article 5 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty (*);

(b) an "SME" means a micro-, small- or medium-sized enterprise within the meaning of Commission Recom-

mendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (**).

8. The Member States in which negotiations take place in accordance with this Article shall notify the Commission of the application of point (f) of paragraph 2 and paragraph 6.

Article 126d

Regulation of supply for cheese with a protected designation of origin or protected geographical indication

1. Upon the request of a producer organisation recognised under point (a) of the first paragraph of Article 122, an interbranch organisation recognised under Article 123(4) or a group of operators referred to in Article 5(1) of Regulation (EC) No 510/2006, Member States may lay down, for a limited period of time, binding rules for the regulation of the supply of cheese benefiting from a protected designation of origin or from a protected geographical indication under Article 2(1)(a) and (b) of Regulation (EC) No 510/2006.

2. The rules referred to in paragraph 1 shall comply with the conditions set out in paragraph 4 and shall be subject to the existence of a prior agreement between the parties in the geographical area referred to in Article 4(2)(c) of Regulation (EC) No 510/2006. Such an agreement shall be concluded between at least two thirds of the milk producers or their representatives representing at least two thirds of the raw milk used for the production of the cheese referred to in paragraph 1 and, if appropriate, at least two thirds of the producers of that cheese representing at least two thirds of the production of that cheese in the geographical area referred to in Article 4(2)(c) of Regulation (EC) No 510/2006.

3. For the purpose of paragraph 1, concerning cheese benefiting from a protected geographical indication, the geographical area of origin of the raw milk, as set in the product specification for the cheese, shall be the same as the geographical area referred to in Article 4(2)(c) of Regulation (EC) No 510/2006 related to that cheese.

4. The rules referred to in paragraph 1:

(a) shall only cover the regulation of supply of the product concerned and shall have the aim of adapting the supply of that cheese to demand;

(b) shall have effect only on the product concerned;

(c) may be made binding for no more than 3 years and be renewed after this period, following a new request, as referred to in paragraph 1;

(d) shall not damage the trade of products other than those concerned by the rules referred to in paragraph 1;

(e) shall not relate to any transaction after the first marketing of the cheese concerned;

- (f) shall not allow for price fixing, including where prices are set for guidance or recommendation;
- (g) shall not render unavailable an excessive proportion of the product concerned that would otherwise be available;
- (h) shall not create discrimination, constitute a barrier for new entrants in the market, or lead to small producers being adversely affected;
- (i) shall contribute to maintaining the quality and/or the development of the product concerned;
- (j) shall be without prejudice to Article 126c.

5. The rules referred to in paragraph 1 shall be published in an official publication of the Member State concerned.

6. Member States shall carry out checks in order to ensure that the conditions laid down in paragraph 4 are complied with, and, where it has been found by the competent national authorities that such conditions have not been complied with, shall repeal the rules referred to in paragraph 1.

7. Member States shall notify the Commission forthwith of the rules referred to in paragraph 1 which they have adopted. The Commission shall inform Member States of any notification of such rules.

8. The Commission may at any time adopt implementing acts requiring that a Member State repeal the rules laid down by that Member State pursuant to paragraph 1 if the Commission finds that those rules do not comply with the conditions laid down in paragraph 4, prevent or distort competition in a substantial part of the internal market or jeopardise free trade or the attainment of the objectives of Article 39 TFEU. Those implementing acts shall be adopted without applying the procedure referred to in Article 195(2) or Article 196b(2).

Article 126e

Commission powers in relation to producer organisations and interbranch organisations in the milk and milk products sector

1. In order to ensure that the objectives and responsibilities of producer organisations and associations of producer organisations in the milk and milk products sector are clearly defined, so as to contribute to the effectiveness of the actions of such organisations without imposing an undue burden, the Commission shall be empowered to adopt delegated acts in accordance with Article 196a which lay down:

- (a) the conditions for recognising transnational producer organisations and transnational associations of producer organisations;
- (b) rules relating to the establishment and the conditions of administrative assistance to be given by the relevant competent authorities in the case of transnational cooperation;

- (c) additional rules regarding the calculation of the volume of raw milk covered by the negotiations referred to in Article 126c(2)(c) and Article 126c(3).

2. The Commission may adopt implementing acts laying down detailed rules necessary for:

- (a) the implementation of the conditions for recognition of producer organisations and their associations and interbranch organisations set out in Articles 126a and 126b;
- (b) the notification referred to in Article 126c(2)(f);
- (c) the notifications to be made by the Member States to the Commission in accordance with Article 126a(4)(d), Article 126b(3)(e), Article 126c(8) and Article 126d(7);
- (d) the procedures relating to administrative assistance in the case of transnational cooperation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).

(*) OJ L 1, 4.1.2003, p. 1. Editorial note: The title of Regulation (EC) No 1/2003 has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to Articles 81 and 82 of the Treaty.

(**) OJ L 124, 20.5.2003, p. 36.;

- (4) in Article 175 the words 'subject to Articles 176 to 177 of this Regulation' are replaced by the words 'subject to Articles 176 to 177a of this Regulation';

- (5) the following Article is inserted:

'Article 177a

Agreements, decisions and concerted practices in the milk and milk products sector

1. Article 101(1) TFEU shall not apply to the agreements, decisions and concerted practices of recognised interbranch organisations for the purpose of carrying out the activities referred to in Article 123(4)(c) of this Regulation.

2. Paragraph 1 shall only apply if:

- (a) the agreements, decisions and concerted practices have been notified to the Commission; and
- (b) within 3 months of receipt of all the details required, the Commission, without applying the procedure referred to in Article 195(2) or Article 196b(2), has not found that the agreements, decisions or concerted practices are incompatible with Union rules.

3. The agreements, decisions and concerted practices may not be put into effect before the period referred to in point (b) of paragraph 2 elapses.

4. Agreements, decisions and concerted practices shall in any case be declared incompatible with Union rules if they:

- (a) may lead to the partitioning of markets in any form within the Union;
- (b) may affect the sound operation of the market organisation;
- (c) may create distortions of competition and are not essential to achieving the objectives of the common agricultural policy pursued by the interbranch organisation activity;
- (d) entail the fixing of prices;
- (e) may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.

5. If, after the period referred to in point (b) of paragraph 2 has expired, the Commission finds that the conditions for applying paragraph 1 have not been met, it shall, without applying the procedure referred to in Article 195(2) or Article 196b(2), take a decision declaring that Article 101(1) TFEU applies to the agreement, decision or concerted practice in question.

That Commission decision shall not apply earlier than the date of its notification to the interbranch organisation concerned, unless that interbranch organisation has given incorrect information or has abused the exemption provided for in paragraph 1 of this Article.

6. In the case of multiannual agreements, the notification for the first year shall be valid for the subsequent years of the agreement. However, the Commission may, on its own initiative or at the request of another Member State, issue a finding of incompatibility at any time.

7. The Commission may adopt implementing acts laying down measures necessary for the uniform application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).;

(6) Article 184 is amended as follows:

(a) point 6 is replaced by the following:

‘6. before 31 December 2010 and 31 December 2012 to the European Parliament and Council regarding the evolution of the market situation and the consequent conditions for smoothly phasing out the milk quota system, accompanied, if necessary, by appropriate proposals;’;

(b) the following point is added:

‘9. by 30 June 2014 and by 31 December 2018 to the European Parliament and the Council regarding the development of the market situation in the milk and milk products sector and in particular on the

operation of point (iiia) of point (a) of the first paragraph of Article 122, of Article 123(4) and of Articles 126c, 126d, 177a, 185e and 185f, assessing, in particular, the effects on milk producers and milk production in disadvantaged regions in connection with the general objective of maintaining production in such regions, and covering potential incentives to encourage farmers to enter into joint production agreements together with any appropriate proposals.’;

(7) the following Articles are inserted:

‘Article 185e

Compulsory declarations in the milk and milk products sector

From 1 April 2015, the first purchasers of raw milk shall declare to the competent national authority the quantity of raw milk that has been delivered to them each month.

For the purpose of this Article and of Article 185f, a “first purchaser” means an undertaking or group which buys milk from producers in order to:

- (a) subject it to collecting, packing, storing, chilling or processing, including under a contract;
- (b) sell it to one or more undertakings treating or processing milk or other milk products.

Member States shall notify the Commission of the quantity of raw milk referred to in the first subparagraph.

The Commission may adopt implementing acts laying down rules on the content, format and timing of such declarations and measures relating to the notifications to be made by the Member States in accordance with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).

Article 185f

Contractual relations in the milk and milk products sector

1. If a Member State decides that every delivery of raw milk in its territory by a farmer to a processor of raw milk must be covered by a written contract between the parties and/or decides that first purchasers must make a written offer for a contract for the delivery of raw milk by the farmers, such a contract and/or such an offer for a contract shall fulfil the conditions laid down in paragraph 2.

Where the Member State decides that deliveries of raw milk by a farmer to a processor of raw milk must be covered by a written contract between the parties, it shall also decide which stage or stages of the delivery shall be covered by such a contract if the delivery of raw milk is made through one or more collectors. For the purposes of this Article, a “collector” means an undertaking which transports raw milk from a farmer or another collector to a processor of raw milk or another collector, where the ownership of the raw milk is transferred in each case.

2. The contract and/or the offer for a contract shall:

- (a) be made in advance of the delivery;
- (b) be made in writing; and
- (c) include, in particular, the following elements:
 - (i) the price payable for the delivery, which shall:
 - be static and be set out in the contract, and/or,
 - be calculated by combining various factors set out in the contract, which may include market indicators reflecting changes in market conditions, the volume delivered and the quality or composition of the raw milk delivered,
 - (ii) the volume of raw milk which may and/or must be delivered and the timing of such deliveries;
 - (iii) the duration of the contract, which may include either a definite or an indefinite duration with termination clauses;
 - (iv) details regarding payment periods and procedures;
 - (v) arrangements for collecting or delivering raw milk; and
 - (vi) rules applicable in the event of *force majeure*.

3. By way of derogation from paragraph 1, a contract and/or an offer for a contract shall not be required where raw milk is delivered by a farmer to a cooperative of which the farmer is a member if the statutes of that cooperative or the rules and decisions provided for in or derived from these statutes contain provisions having similar effects to the provisions set out in points (a), (b) and (c) of paragraph 2.

4. All elements of contracts for the delivery of raw milk concluded by farmers, collectors or processors of raw milk, including the elements referred to in paragraph 2(c), shall be freely negotiated between the parties.

Notwithstanding the first subparagraph,

- (i) where a Member State decides to make written contracts for the delivery of raw milk compulsory in accordance with paragraph 1 of this Article, it may establish a minimum duration, applicable only to written contracts between a farmer and the first purchaser of raw milk. Such a minimum duration shall be at least 6 months and shall not impair the proper functioning of the internal market; and/or
- (ii) where a Member State decides that the first purchaser of raw milk must make a written offer for a contract to the farmer in accordance with paragraph 1, it may provide that the offer must include a minimum duration for the contract, set by national law for this purpose. Such a minimum duration shall be at least 6 months and shall not impair the proper functioning of the internal market.

The second subparagraph shall be without prejudice to the farmer's right to refuse such a minimum duration provided that he does so in writing. In this case, the parties shall be free to negotiate all elements of the contract, including those elements referred to in paragraph 2(c).

5. The Member States which make use of the options referred to in this Article shall notify the Commission of how they are applied.

6. The Commission may adopt implementing acts laying down measures necessary for the uniform application of points (a) and (b) of paragraph 2 and paragraph 3 of this Article and measures relating to notifications to be made by the Member States in accordance with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).;

(8) in Chapter I of Part VII, the following Articles are added:

'Article 196a

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 126e(1) shall be conferred on the Commission for a period of 5 years from 2 April 2012. The Commission shall draw up a report in respect of the delegation of power not later than 9 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 3 months before the end of each period.

3. The delegation of power referred to in Article 126e(1) 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 126e(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or of the Council.

Article 196b

Committee procedure

1. The Commission shall be assisted by a committee which shall be referred to as the Committee for the Common Organisation of Agricultural Markets. That committee is a committee within the meaning of 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 (*).

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

(*) OJ L 55, 28.2.2011, p. 13.

(9) in Article 204, the following paragraph is added:

7. As regards the milk and milk products sector, point (iiia) of point (a) of the first paragraph of Article 122, Article 123(4) and Articles 126a, 126b, 126e, and 177a

shall apply from 2 April 2012 until 30 June 2020 and Articles 126c, 126d, 185e and 185f shall apply from 3 October 2012 until 30 June 2020.

Article 2

Entry into force

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

2. It shall apply from 2 April 2012.

However, Articles 126c, 126d, 185e and 185f of Regulation (EC) No 1234/2007, as inserted by this Regulation, shall apply from 3 October 2012.

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

Done at Strasbourg, 14 March 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
N. WAMMEN

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