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[1] Text with EEA relevance

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/1011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

(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 pricing of many financial instruments and financial contracts depends on the accuracy and integrity of benchmarks. Serious cases of manipulation of interest rate benchmarks such as LIBOR and EURIBOR, as well as allegations that energy, oil and foreign exchange benchmarks have been manipulated, demonstrate that benchmarks can be subject to conflicts of interest. The use of discretion, and weak governance regimes, increase the vulnerability of benchmarks to manipulation. Failures in, or doubts about, the accuracy and integrity of indices used as benchmarks can undermine market confidence, cause losses to consumers and investors and distort the real economy. It is therefore necessary to ensure the accuracy, robustness and integrity of benchmarks and of the benchmark determination process.

(2) Directive 2014/65/EU of the European Parliament and of the Council ([4]) contains certain requirements with respect to the reliability of benchmarks used to price a listed financial instrument. Directive 2003/71/EC of the European Parliament and of the Council ([5]) contains certain requirements on benchmarks used by issuers.

([1]) OJ C 113, 15.4.2014, p. 1.
([2]) OJ C 177, 11.6.2014, p. 42.
([3]) Position of the European Parliament of 28 April 2016 (not yet published in the Official Journal) and decision of the Council of 17 May 2016.
([4]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
([5]) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

Directive 2009/65/EC of the European Parliament and of the Council ([1]) contains certain requirements on the use of benchmarks by undertakings for collective investment in transferable securities (UCITS). Regulation (EU) No 1227/2011 of the European Parliament and of the Council ([2]) contains certain provisions which prohibit the manipulation of benchmarks that are used for wholesale energy products. However, those legislative acts only cover certain aspects of certain benchmarks and they neither address all the vulnerabilities in the provision of all benchmarks, nor do they cover all uses of financial benchmarks in the financial industry.

(3) Benchmarks are vital in pricing cross-border transactions, thereby facilitating the effective functioning of the internal market in a wide variety of financial instruments and services. Many benchmarks used as reference rates in financial contracts, in particular mortgages, are provided in one Member State but used by credit institutions and consumers in other Member States. In addition, such credit institutions often hedge their risks or obtain funding for granting those financial contracts in the cross-border interbank market. Only a few Member States have adopted national rules on benchmarks, but their respective legal frameworks on benchmarks already show divergences regarding aspects such as the scope of application. In addition, the International Organisation of Securities Commissions (IOSCO) agreed principles on financial benchmarks on 17 July 2013 ('IOSCO principles for financial benchmarks'), Principles for Oil Price Reporting Agencies on 5 October 2012 ('IOSCO principles for PRAs') (together, 'the IOSCO principles'), and since those principles provide a certain flexibility as to their exact scope and means of implementation, Member States are likely to adopt rules at national level which would implement such principles in a divergent manner.

(4) Those divergent approaches would result in fragmentation of the internal market since administrators and users of benchmarks would be subject to different rules in different Member States. Thus, benchmarks provided in one Member State could be prevented from being used in other Member States. In the absence of a harmonised framework to ensure the accuracy and integrity of benchmarks used in financial instruments and financial contracts, or in order to measure the performance of investment funds, in the Union it is therefore likely that differences in Member States' laws will create obstacles to the smooth functioning of the internal market for the provision of benchmarks.

(5) Union consumer protection rules do not cover the particular issue of adequate information on benchmarks in financial contracts. As a result of consumer complaints and litigation relating to the use of benchmarks in several Member States, it is likely that divergent measures, inspired by legitimate concerns of consumer protection, would be adopted at national level, which could result in fragmentation of the internal market due to the divergent conditions of competition attached to different levels of consumer protection.

(6) Therefore, in order to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to financial markets, and to ensure a high level of consumer and investor protection, it is appropriate to lay down a regulatory framework for benchmarks at Union level.

(7) It is appropriate and necessary for that framework to take the form of a regulation in order to ensure that provisions directly imposing obligations on persons involved in the provision, contribution and use of benchmarks are applied in a uniform manner throughout the Union. Since a legal framework for the provision of benchmarks necessarily involves measures specifying precise requirements concerning aspects inherent to such provision of benchmarks, even small divergences on the approach taken regarding one of those aspects could lead to significant impediments in the cross-border provision of benchmarks. Therefore, the use of a regulation, which is directly applicable, should reduce the possibility of divergent measures being taken at national level, and should ensure a consistent approach and greater legal certainty, and prevent the appearance of significant impediments in the cross-border provision of benchmarks.

(8) The scope of this Regulation should be as broad as necessary to create a preventive regulatory framework. The provision of benchmarks involves discretion in their determination and is inherently subject to certain types of

([1]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([2]) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

conflicts of interest, which implies the existence of opportunities and incentives to manipulate benchmarks. Such risk factors are common to all benchmarks and should be made subject to adequate governance and control requirements. The degree of risk, however, varies, and the approach adopted should therefore be tailored to the particular circumstances. Since the vulnerability and importance of a benchmark varies over time, restricting the scope by reference to indices that are currently important or vulnerable would not address the risks that any benchmark poses in the future. In particular, benchmarks that are currently not widely used could be used more in the future with the result that, in their regard, even a minor manipulation could have a significant impact.

(9) The critical determinant of the scope of this Regulation should be whether the output value of the benchmark determines the value of a financial instrument or a financial contract, or measures the performance of an investment fund. Therefore, the scope should not be dependent on the nature of the input data. Benchmarks calculated from economic input data, such as share prices and non-economic numbers, or values such as weather parameters should thus be included. The framework provided for in this Regulation should also acknowledge the existence of a large number of benchmarks and the different impact that they have on financial stability and the real economy. This Regulation should also provide for a proportionate response to the risks that different benchmarks pose. This Regulation should therefore cover benchmarks which are used to price financial instruments listed or traded on regulated venues.

(10) A large number of consumers are parties to financial contracts, in particular consumer credit agreements secured by mortgages, that reference benchmarks that are subject to the same risks. This Regulation should therefore cover credit agreements as defined in Directives 2008/48/EC ([1]) and 2014/17/EU of the European Parliament and of the Council ([2]).

(11) Many investment indices involve significant conflicts of interest and are used to measure the performance of a fund such as a UCITS fund. Some of those benchmarks are published and others are made available, for free or upon payment of a fee, to the public or a section of the public and their manipulation can adversely affect investors. This Regulation should therefore cover indices or reference rates that are used to measure the performance of an investment fund.

(12) All contributors of input data to benchmarks can exercise discretion and are potentially subject to conflicts of interest, and so risk being a source of manipulation. Contributing to a benchmark is a voluntary activity. If any initiative requires contributors to significantly change their business models, they could cease to contribute. However, for entities already subject to regulation and supervision, requiring good governance and control systems is not expected to lead to substantial costs or disproportionate administrative burden. Therefore this Regulation imposes certain obligations on supervised contributors. When a benchmark is determined on the basis of readily available data, the source of such data should not be considered to be a contributor.

(13) Financial benchmarks are not only used in the issuance and manufacturing of financial instruments and contracts. The financial industry also relies on benchmarks for measuring the performance of investment funds for the purpose of return tracking or of determining the asset allocation of a portfolio or of computing the performance fees. A given benchmark can be used either directly as a reference for financial instruments and financial contracts or to measure the performance of investment funds, or indirectly within a combination of benchmarks. In the latter case, the setting and review of the weights to be assigned to various indices within a combination for the purpose of determining the pay-out or the value of a financial instrument or a financial contract or measuring the performance of an investment fund also amounts to use as such an activity does not involve discretion, in contrast to the activity of provision of benchmarks. The holding of financial instruments referencing a certain benchmark is not considered to be use of the benchmark.

(14) Central banks already meet principles, standards and procedures which ensure that they exercise their activities with integrity and in an independent manner. It is therefore not necessary that central banks be subject to this Regulation. When central banks provide benchmarks, especially where those benchmarks are intended for transaction purposes, it is their responsibility to set appropriate internal procedures in order to ensure the

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

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

accuracy, integrity, reliability and independence of those benchmarks, in particular with respect to transparency in governance and computation methodology.

(15) Furthermore, public authorities, including national statistics agencies, should not be subject to this Regulation where they contribute data to, provide or have control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation.

(16) An administrator is the natural or legal person that has control over the provision of a benchmark and in particular administers the arrangements for determining the benchmark, collects and analyses the input data, determines the benchmark and publishes it. An administrator should be able to outsource to a third party one or more of those functions, including the calculation or publication of the benchmark, or other relevant services and activities in the provision of the benchmark. However, where a person merely publishes or refers to a benchmark as part of that person's journalistic activities but does not have control over the provision of that benchmark, that person should not be subject to the requirements imposed on administrators by this Regulation.

(17) An index is calculated using a formula or some other methodology on the basis of underlying values. There exists a degree of discretion in constructing the formula, performing the necessary calculation and determining the input data which creates a risk of manipulation. Therefore, all benchmarks sharing that characteristic of discretion should be covered by this Regulation.

(18) However, where a single price or value is used as a reference to a financial instrument, for example where the price of a single security is the reference price for an option or future, there is no calculation, input data or discretion. Therefore single price or single value reference prices should not be considered to be benchmarks for the purposes of this Regulation.

(19) Reference prices or settlement prices produced by central counterparties (CCPs) should not be considered to be benchmarks because they are used to determine settlement, margins and risk management and thus do not determine the amount payable under a financial instrument or the value of a financial instrument.

(20) The provision of borrowing rates by creditors should not be considered to be benchmark provision for the purposes of this Regulation. A borrowing rate provided by a creditor is either set by an internal decision or calculated as a spread or mark-up over an index (e.g. EURIBOR). In the first case, the creditor is exempt from this Regulation for activity concerning financial contracts entered into by that creditor with its own clients, while in the latter case the creditor is considered to be only a user of a benchmark.

(21) In order to ensure the integrity of benchmarks, benchmark administrators should be required to implement adequate governance arrangements to control conflicts of interest and to safeguard confidence in the integrity of benchmarks. Even where effectively managed, most administrators are subject to some conflicts of interest and could have to make judgements and decisions which affect a diverse group of stakeholders. It is therefore important that administrators have in place a function that operates with integrity to oversee the implementation and effectiveness of the governance arrangements that provide effective oversight.

(22) The manipulation or unreliability of benchmarks can cause damage to investors and consumers. Therefore, this Regulation should set out a framework for retention of records by administrators and contributors as well as for providing transparency about a benchmark's purpose and methodology which facilitates a more efficient and fairer resolution of potential claims in accordance with national or Union law.

(23) Auditing and the effective enforcement of this Regulation requires *ex post* analysis and evidence. This Regulation should therefore set out requirements for adequate record-keeping by benchmark administrators relating to the calculation of the benchmark for a sufficient period of time. The reality that a benchmark intends to measure and the environment in which it is measured are likely to change over time. Therefore it is necessary that the process and methodology of the provision of benchmarks are reviewed on a periodic basis to identify shortcomings and

possible improvements. Many stakeholders can be impacted by failures in the provision of the benchmark and can help identify such shortcomings. This Regulation should therefore set out a framework for the establishment of a complaints handling mechanism by benchmark administrators to enable stakeholders to notify the benchmark administrator of complaints and ensure that the benchmark administrator objectively evaluates the merits of any complaint.

(24) The provision of benchmarks frequently involves the outsourcing of important functions such as calculating the benchmark, gathering input data and disseminating the benchmark. In order to ensure the effectiveness of the governance arrangements, it is necessary to ensure that any such outsourcing does not relieve benchmark administrators of any of their obligations and responsibilities, and is done in such a way that it does not interfere with either the administrators' ability to meet their obligations or responsibilities, or the relevant competent authority's ability to supervise them.

(25) The benchmark administrator is the central recipient of input data and is able to evaluate the integrity and accuracy of input data on a consistent basis. It is therefore necessary that this Regulation requires administrators to take certain measures where an administrator considers that input data does not represent the market or economic reality that a benchmark intends to measure, comprising measures to change the input data, the contributors or the methodology or else to cease providing that benchmark. Furthermore, an administrator should, as part of its control framework, establish measures to monitor, where feasible, input data prior to the publication of the benchmark and to validate input data after publication, including comparing that data against historical patterns where applicable.

(26) Any discretion that can be exercised in providing input data creates an opportunity to manipulate a benchmark. Where the input data is transaction-based data, there is less discretion and therefore the opportunity to manipulate the data is reduced. As a general rule, benchmark administrators should therefore use actual transaction-based input data where possible but other data can be used in those cases where the transaction data is insufficient or inappropriate to ensure the integrity and accuracy of the benchmark.

(27) The accuracy and reliability of a benchmark in measuring the economic reality it is intended to measure depends on the methodology and input data used. It is therefore necessary to adopt a transparent methodology that ensures the benchmark's reliability and accuracy. Such transparency does not mean the publication of the formula applied for the determination of a given benchmark, but rather the disclosure of elements sufficient to allow stakeholders to understand how the benchmark is derived and to assess its representativeness, relevance and appropriateness for its intended use.

(28) It could become necessary to change the methodology to ensure the continued accuracy of the benchmark, but any changes in the methodology have an impact on users and stakeholders of the benchmark. It is therefore necessary to specify the procedures to be followed when changing the benchmark methodology, including the need for consultation, so that users and stakeholders can take the necessary action in light of those changes or notify the administrator if they have concerns about those changes.

(29) Employees of the administrator can identify possible infringements of this Regulation or potential vulnerabilities that could lead to manipulation or attempted manipulation. This Regulation should therefore put in place a framework to enable employees to alert administrators confidentially of possible infringements of this Regulation.

(30) The integrity and accuracy of benchmarks depends on the integrity and accuracy of the input data provided by contributors. It is essential that the obligations of contributors in respect of such input data are clearly specified, that compliance with those obligations can be relied upon, and that the obligations are consistent with the benchmark administrator's controls and methodology. It is therefore necessary that the benchmark administrator produces a code of conduct to specify those requirements and the contributor's responsibilities concerning the provision of input data. The administrator should be satisfied that contributors adhere to the code of conduct. Where contributors are located in third countries, the administrator should be satisfied to the extent possible.

(31) Contributors are potentially subject to conflicts of interest and are able to exercise discretion in the determination of input data. Therefore, it is necessary for contributors to be subject to governance arrangements in order to ensure that those conflicts are managed and that the input data is accurate, conforms to the administrator's requirements and can be validated.

(32) Many benchmarks are determined by the application of a formula using input data that is provided by the following entities: a trading venue, an approved publication arrangement, a consolidated tape provider, an approved reporting mechanism, an energy exchange or an emission allowance auction platform. In some situations, data collection is outsourced to a service provider that receives the data entirely and directly from those entities. In those cases, existing regulation and supervision ensure the integrity and transparency of the input data and provide for governance requirements and procedures for the notification of infringements. Therefore, those benchmarks are less vulnerable to manipulation, are subject to independent verifications, and the relevant administrators are accordingly released from certain obligations set out in this Regulation.

(33) Different types of benchmarks and different benchmark sectors have different characteristics, vulnerabilities and risks. The provisions of this Regulation should be further specified for particular benchmark sectors and types. Interest rate benchmarks are benchmarks that play an important role in the transmission of monetary policy and so it is necessary to introduce specific provisions in this Regulation for such benchmarks.

(34) Physical commodities markets have unique characteristics which should be taken into account. Commodity benchmarks are widely used and can have sector-specific characteristics, so it is necessary to introduce specific provisions in this Regulation for such benchmarks. Certain commodity benchmarks are exempt from this Regulation but would need to nevertheless respect the relevant IOSCO principles. Commodity benchmarks can become critical since the regime is not limited to benchmarks based on submissions by contributors which are in majority supervised entities. For critical commodity benchmarks subject to Annex II, the requirements of this Regulation regarding mandatory contribution and colleges are not applicable.

(35) The failure of critical benchmarks can impact market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in Member States. Those potentially destabilising effects of the failure of a critical benchmark could be felt in a single Member State or in more than one. It is therefore necessary that this Regulation provides for a process to determine those benchmarks that should be considered to be critical benchmarks and that additional requirements apply to ensure the integrity and robustness of such benchmarks.

(36) Critical benchmarks can be determined using a quantitative criterion or a combination of quantitative and qualitative criteria. In addition, in cases where a benchmark does not meet the appropriate quantitative threshold, it could nonetheless be recognised as critical where the benchmark has no or very few market-led substitutes and its existence and accuracy are relevant for market integrity, financial stability or consumer protection in one or more Member States, and where all the relevant competent authorities agree that such a benchmark should be recognised as critical. In the event of disagreement between the relevant competent authorities, the decision of the competent authority of the administrator on whether such a benchmark should be recognised as critical should prevail. In such a case, the European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([1]), should be able to publish an opinion on the assessment made by the competent authority of the administrator. Furthermore, a competent authority can also designate a benchmark as critical based on certain qualitative criteria where the administrator and the majority of the contributors to the benchmark are located in its Member State. All critical benchmarks should be included in a list established by a way of an implementing act by the Commission, which should be reviewed and updated regularly.

(37) The cessation of the administration of a critical benchmark by an administrator could render financial contracts or financial instruments invalid, cause losses to consumers and investors, and impact financial stability. It is therefore necessary to include a power for the relevant competent authority to require mandatory administration of a critical benchmark in order to preserve the existence of the benchmark in question. In the event of insolvency proceedings of a benchmark administrator, the competent authority should provide an assessment for

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

the consideration of the relevant judicial authority of whether and how the critical benchmark could be transitioned to a new administrator or could cease to be provided.

(38) Without prejudice to the application of Union competition law and the ability of Member States to take measures to facilitate compliance with it, it is necessary to require administrators of critical benchmarks, including critical commodity benchmarks, to take adequate steps to ensure that licences of, and information on, benchmarks are provided on a fair, reasonable, transparent and non-discriminatory basis to all users.

(39) Contributors that cease to contribute input data to critical benchmarks can undermine the credibility of such benchmarks, as the capability of such benchmarks to measure the underlying market or economic reality would as a result be impaired. It is therefore necessary to include a power for the relevant competent authority to require mandatory contributions from supervised entities to critical benchmarks in order to preserve the credibility of the benchmark in question. Mandatory contribution of input data is not intended to impose an obligation on supervised entities to enter into, or to commit to entering into, transactions.

(40) Due to the existence of a large variety of types and sizes of benchmarks, it is important to introduce proportionality in this Regulation and to avoid putting an excessive administrative burden on administrators of benchmarks the cessation of which poses less threat to the wider financial system. Thus, in addition to the regime for critical benchmarks, two distinct regimes should be introduced: one for significant benchmarks and one for non-significant benchmarks.

(41) Administrators of significant benchmarks should be able to choose not to apply a limited number of detailed requirements of this Regulation. Competent authorities should, however, maintain the right to require the application of those requirements, based on criteria outlined in this Regulation. Delegated acts and implementing acts that apply to significant benchmark administrators should take due account of the principle of proportionality and aim to avoid administrative burden where possible.

(42) Administrators of non-significant benchmarks are subject to a less detailed regime, whereby administrators should be able to choose not to apply some requirements of this Regulation. In such a case, the administrator in question should explain why it is appropriate not to do so in a compliance statement which should be published and provided to the administrator's competent authority. That competent authority should review the compliance statement and should be able to request additional information or require changes to ensure compliance with this Regulation. While non-significant benchmarks could still be vulnerable to manipulation, they are more easily substitutable, therefore transparency to users should be the main tool used for market participants to make informed choices about the benchmarks they consider appropriate for use. For that reason, the delegated acts in Title II should not apply to non-significant benchmark administrators.

(43) In order for users of benchmarks to choose appropriately from among, and understand the risks of, benchmarks, they need to know what a given benchmark intends to measure and its susceptibility to manipulation. Therefore, the benchmark administrator should publish a benchmark statement specifying those elements. In order to ensure uniform application and that benchmark statements are of reasonable length but at the same time focus on providing the key information needed to users in an easily accessible manner, ESMA should provide further specification of the content of the benchmark statement, differentiating appropriately among the different types and specificities of benchmarks and their administrators.

(44) This Regulation should take into account the IOSCO principles, which serve as global standards for regulatory requirements for benchmarks. As an overarching principle, in order to ensure investor protection, supervision and regulation in a third country should be equivalent to Union supervision and regulation of benchmarks. Therefore, benchmarks provided from that third country can be used by supervised entities in the Union where a positive decision on equivalence of the third- country regime has been taken by the Commission. In such circumstances, competent authorities should enter into cooperation arrangements with supervisory authorities in third countries. ESMA should coordinate the development of such cooperation arrangements and the exchange between competent authorities of information received from third countries. However, in order to avoid any adverse impact resulting from a possible abrupt cessation of the use in the Union of benchmarks provided from a third country, this Regulation also provides for certain other mechanisms (namely, recognition and endorsement) under which third-country benchmarks can be used by supervised entities located in the Union.

(45) This Regulation introduces a process for the recognition of administrators located in a third country by the competent authority of the Member State of reference. Recognition should be granted to administrators complying with the requirements of this Regulation. Acknowledging the role of the IOSCO principles as a global standard for the provision of benchmarks, the competent authority of the Member State of reference should be able to grant recognition to administrators on the basis of them applying the IOSCO principles. To do so, the competent authority should assess the application of the IOSCO principles by a specific administrator and determine whether such application is equivalent, for the administrator in question, to compliance with the various requirements established in this Regulation, taking into account the specificities of the regime of recognition as compared to the equivalence regime.

(46) This Regulation also introduces an endorsement regime allowing, under certain conditions, administrators or supervised entities located in the Union to endorse benchmarks provided from a third country in order for such benchmarks to be used in the Union. To do so, the competent authority should take into account whether, in providing the benchmark to be endorsed, compliance with the IOSCO principles would be equivalent to compliance with this Regulation, taking into account the specificities of the regime of endorsement as compared to the equivalence regime. An administrator or a supervised entity that has endorsed a benchmark provided from a third country should be fully responsible for such endorsed benchmarks and for the fulfilment of the relevant conditions referred to in this Regulation.

(47) All benchmark administrators are able to exercise discretion, are potentially subject to conflicts of interest, and risk having inadequate governance and control systems in place. As administrators control the benchmark determination process, requiring authorisation or registration and supervision of administrators is the most effective way of ensuring the integrity of benchmarks.

(48) Certain administrators should be authorised and supervised by the competent authority of the Member State where the administrator in question is located. Entities already subject to supervision and that provide financial benchmarks other than critical benchmarks should be registered and supervised by the competent authority for the purposes of this Regulation. Entities that provide only indices that qualify as non-significant benchmarks should also be registered by the relevant competent authority. Authorisation and registration should be distinct processes with authorisation requiring a more extensive assessment of the administrator's application. Whether an administrator is authorised or registered should not affect the supervision of that administrator by the relevant competent authorities. Additionally, a transitional regime should be introduced, according to which persons providing benchmarks which are not critical and are not widely used in one or more Member States could be registered, with a view to facilitating the initial phase of application of this Regulation. ESMA should maintain at the Union level a register that contains information on authorised or registered administrators, on benchmarks and the administrators that provide those benchmarks by virtue of a positive decision under either the equivalence regime or the recognition regime, on Union administrators or supervised entities that have endorsed benchmarks from a third country, and on any such endorsed benchmarks and their administrators located in a third country.

(49) In some circumstances a person provides an index but could be unaware that the index in question is being used as a reference for a financial instrument, a financial contract or an investment fund. That is particularly the case where the users and benchmark administrator are located in different Member States. It is therefore necessary to increase the level of transparency concerning which specific benchmark is being used. Such transparency can be achieved by improving the content of the prospectuses or key information documents required by Union law and the content of the notifications required by Regulation (EU) No 596/2014 of the European Parliament and of the Council ([1]).

(50) A set of effective tools and powers and resources for the competent authorities of Member States guarantees supervisory effectiveness. This Regulation should therefore, in particular, provide for a minimum set of supervisory and investigative powers which should be entrusted to competent authorities of Member States in accordance with national law. When exercising their powers under this Regulation, competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision-making.

(51) For the purpose of detecting infringements of this Regulation, it is necessary for competent authorities to be able to access, in accordance with national law, the premises of legal persons in order to seize documents. Access to such premises is necessary when there is reasonable suspicion that documents and other data related to the

([1]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

subject-matter of an inspection or investigation exist and could be relevant to prove an infringement of this Regulation. Additionally, access to such premises is necessary where the person to whom a demand for information has already been made fails to comply with it, or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, access to premises should take place after having obtained that prior judicial authorisation.

(52) Existing recordings of telephone conversations and data traffic records from supervised entities can constitute crucial, and sometimes the only, evidence to detect and prove the existence of infringements of this Regulation, in particular the compliance with governance and control requirements. Such records and recordings can help to verify the identity of the person responsible for the submission of input data, those responsible for its approval and whether organisational separation of employees is maintained. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by supervised entities, in those cases where a reasonable suspicion exists that such recordings or records related to the subject-matter of the inspection or investigation could be relevant to prove an infringement of this Regulation.

(53) This Regulation respects the fundamental rights and observes the principles recognised in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life, the protection of personal data, the right to freedom of expression and information, the freedom to conduct a business, the right to property, the right to consumer protection, the right to an effective remedy, the right of defence. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles.

(54) The rights of defence of the persons concerned should be fully respected. In particular, persons subject to proceedings should be provided with access to the findings upon which the competent authorities has based the decision and should be given the right to be heard.

(55) Transparency regarding benchmarks is necessary for reasons of financial market stability and investor protection. Any exchange or transmission of information by competent authorities should take place in accordance with the rules on the transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council ([1]). Any exchange or transmission of information by ESMA should take place in accordance with the rules on the transfer of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]).

(56) Taking into consideration the principles set out in the Commission's Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector, and legal acts of the Union adopted as a follow-up to that Communication, Member States should, in order to ensure a common approach and deterrent effect, lay down rules on administrative sanctions and other administrative measures, including pecuniary sanctions, applicable to infringements of the provisions of this Regulation and should ensure that they are implemented. Those administrative sanctions and other administrative measures should be effective, proportionate and dissuasive.

(57) Administrative sanctions and other administrative measures applied in specific cases should be determined taking into account, where appropriate, factors such as the repayment of any identified financial benefit, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for administrative pecuniary sanctions to have a deterrent effect and, where appropriate, include a reduction in return for cooperation with the competent authority. In particular, the actual amount of administrative pecuniary sanctions to be imposed in a specific case should be able to reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious infringements, while administrative pecuniary sanctions significantly lower than the maximum level should be able to be applied to minor infringements or in case of settlement. The possibility of imposing a temporary ban on the exercise of management functions within benchmark administrators or contributors should be available to the competent authority.

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

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

(58) This Regulation should not limit the ability of Member States to provide for higher levels of administrative sanctions and should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

(59) Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringement, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Regulation which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(60) It is necessary to reinforce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their function, so as to ensure the effective enforcement of this Regulation, including in situations where an infringement or suspected infringement is of concern to authorities in two or more Member States. When exchanging information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.

(61) In order to ensure that decisions made by competent authorities to impose an administrative sanction or other administrative measure have a deterrent effect on the public at large, they should be published. The publication of decisions imposing an administrative sanction or other administrative measure is also an important tool for competent authorities to inform market participants of the type of behaviour that is considered to infringe this Regulation and to promote wider good behaviour amongst market participants. If such publication risks causing disproportionate damage to the persons involved, or jeopardises the stability of financial markets or an on-going investigation, the competent authority should either publish the administrative sanction or other administrative measure on an anonymous basis or delay the publication. In addition, competent authorities should have the option not to publish a decision imposing administrative sanctions or other administrative measures at all where anonymous or delayed publication is considered insufficient to ensure that the stability of financial markets is not jeopardised. Competent authorities are also not required to publish administrative sanctions or other administrative measures which are deemed to be of a minor nature where publication would be disproportionate.

(62) Critical benchmarks can involve contributors, administrators and users in more than one Member State. Thus, the cessation of the provision of such a benchmark or any events that can significantly undermine its integrity could have an impact in more than one Member State, meaning that the supervision of such a benchmark only by the competent authority of the Member State in which the administrator of the benchmark is located will not be efficient and effective in terms of addressing the risks that the critical benchmark poses. In such a case, in order to ensure the effective exchange of supervisory information among competent authorities and coordination of their activities and supervisory measures, colleges, comprising competent authorities and ESMA, should be formed. The activities of the colleges should contribute to the harmonised application of rules under this Regulation and to the convergence of supervisory practices. The competent authority of the administrator should establish written arrangements regarding the exchange of information, the decision-making process, which could include rules on voting procedures, any cooperation for the purposes of mandatory contribution measures, and the cases where the competent authorities should consult each other. ESMA's legally binding mediation is a key element of the achievement of coordination, supervisory consistency and convergence of supervisory practices.

(63) Benchmarks can reference financial instruments and financial contracts that have a long duration. In certain cases, such benchmarks risk no longer being permitted to be provided once this Regulation comes into effect because they have characteristics that cannot be adjusted to conform to the requirements of this Regulation. At the same time, prohibiting the continued provision of such a benchmark could result in the termination or frustration of the financial instruments or financial contracts and so harm investors. It is therefore necessary to make provision to allow for the continued provision of such benchmarks for a transitional period.

(64) In cases where this Regulation captures or potentially captures supervised entities and markets covered by Regulation (EU) No 1227/2011, the Agency for the Cooperation of Energy Regulators (ACER) would need to be consulted by ESMA in order to draw upon ACER's expertise in energy markets and to mitigate any dual regulation.

(65) In order to specify further technical elements of this Regulation, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of the specification of technical elements of definitions; in respect of the calculation of the nominal amounts of financial instruments, notional amount of derivatives and the net asset value of investment funds referencing a benchmark to determine whether such benchmark is critical; in respect of reviewing the calculation method used to determine the threshold for the determination of critical and significant benchmarks; in respect of establishing the objective reasons for the endorsement of a benchmark or family of benchmarks provided in a third country; in respect of establishing the elements to assess whether the cessation or the changing of an existing benchmark could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references such benchmark; and in respect of the extension of the 24-month period envisaged for the registration instead of authorisation of certain administrators. When adopting those acts, the Commission should take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks, in particular the work of IOSCO. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making ([1]) of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(66) Technical standards should ensure consistent harmonisation of the requirements for the provision of and contribution to indices used as benchmarks and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices for submission to the Commission. The Commission should adopt draft regulatory technical standards developed by ESMA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, regarding the procedures and the characteristics of the oversight function; regarding how to ensure the appropriateness and the verifiability of the input data as well as the internal oversight and verification procedures of a contributor; regarding the information to be provided by an administrator about the benchmark and methodology; regarding the elements of the code of conduct; regarding the requirements concerning systems and controls; regarding the criteria that the competent authority should take into account when deciding whether to apply certain additional requirements; regarding the contents of the benchmark statement and the cases in which an update of such a statement is required; regarding the minimum content of the cooperation arrangements between the competent authorities and ESMA; regarding the form and content of the application for recognition of a third country administrator and presentation of the information that is to be provided with such an application; and regarding the information to be provided in the application for authorisation or registration.

(67) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish and review a list of public authorities in the Union, to establish and review the list of critical benchmarks, and to determine the equivalence of the legal framework to which providers of benchmarks of third countries are subject for the purposes of full or partial equivalence. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([2]).

(68) The Commission should also be empowered to adopt implementing technical standards developed by ESMA establishing templates for the compliance statements, procedures and forms for exchange of information between competent authorities and ESMA, by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

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

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

(69) Since the objectives of this Regulation, namely to lay down a consistent and effective regime to address the vulnerabilities that benchmarks pose, cannot be sufficiently achieved by the Member States, given that the overall impact of the problems relating to benchmarks can be fully perceived only in a Union context, but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(70) Given the urgency of the need to restore confidence in benchmarks and promote fair and transparent financial markets, this Regulation should enter into force on the day following that of its publication.

(71) Consumers are able to enter into financial contracts, in particular mortgages and consumer credit contracts, that reference a benchmark, but unequal bargaining power and the use of standard terms mean that they can have a limited choice about the benchmark used. It is therefore necessary to ensure that at least adequate information is provided by creditors or credit intermediaries to consumers. To that end, Directives 2008/48/EC and 2014/17/EU should therefore be amended accordingly.

(72) Regulation (EU) No 596/2014 requires persons discharging managerial responsibilities, as well as persons closely associated with them, to notify the issuer and the competent authority of every transaction conducted on their own account relating to financial instruments that are themselves linked to shares and debt instruments of their issuer. However, there are a variety of financial instruments that are linked to shares and debt instruments of a given issuer. Such financial instruments include units in collective investment undertakings, structured products or financial instruments embedding a derivative that provides exposure to the performance of shares or debt instruments issued by an issuer. Every transaction in such financial instruments above a *de minimis* threshold should be subject to notification to the issuer and the competent authority. An exception should be made where either the linked financial instrument provides an exposure of 20 % or less to the issuer's shares or debt instruments, or the person discharging managerial responsibilities or person closely associated with them did not and could not know the investment composition of the linked financial instrument. Regulation (EU) No 596/2014 should therefore be amended,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject-matter

This Regulation introduces a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, or to measure the performance of investment funds in the Union. This Regulation thereby contributes to the proper functioning of the internal market while achieving a high level of consumer and investor protection.

Article 2

Scope

1. This Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

2. This Regulation shall not apply to:

(a) a central bank;

(b) a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;

(c) a central counterparty (CCP), where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;

(d) the provision of a single reference price for any financial instrument listed in Section C of Annex I to Directive 2014/65/EU;

(e) the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

(f) a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients;

(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:

(i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, or which are traded on only one such trading venue;

(ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;

(h) an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1).

Article 3

Definitions

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

(1) 'index' means any figure:

(a) that is published or made available to the public;

(b) that is regularly determined:

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

(ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;

(2) 'index provider' means a natural or legal person that has control over the provision of an index;

(3) 'benchmark' means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;

(4) 'family of benchmarks' means a group of benchmarks provided by the same administrator and determined from input data of the same nature which provides specific measures of the same or similar market or economic reality;

(5) 'provision of a benchmark' means:

(a) administering the arrangements for determining a benchmark;

(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and

(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;

(6) 'administrator' means a natural or legal person that has control over the provision of a benchmark;

(7) 'use of a benchmark' means:

(a) issuance of a financial instrument which references an index or a combination of indices;

(b) determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices;

(c) being a party to a financial contract which references an index or a combination of indices;

(d) providing a borrowing rate as defined in point (j) of Article 3 of Directive 2008/48/EC calculated as a spread or mark-up over an index or a combination of indices and that is solely used as a reference in a financial contract to which the creditor is a party;

(e) measuring the performance of an investment fund through an index or a combination of indices for the purpose of tracking the return of such index or combination of indices, of defining the asset allocation of a portfolio, or of computing the performance fees;

(8) 'contribution of input data' means providing any input data not readily available to an administrator, or to another person for the purposes of passing to an administrator, that is required in connection with the determination of a benchmark, and is provided for that purpose;

(9) 'contributor' means a natural or legal person contributing input data;

(10) 'supervised contributor' means a supervised entity that contributes input data to an administrator located in the Union;

(11) 'submitter' means a natural person employed by the contributor for the purpose of contributing input data;

(12) 'assessor' means an employee of an administrator of a commodity benchmark, or any other natural person whose services are placed at the administrator's disposal or under the control of the administrator, and who is responsible for applying a methodology or judgement to input data and other information to reach a conclusive assessment about the price of a certain commodity;

(13) 'expert judgement' means the exercise of discretion by an administrator or a contributor with respect to the use of data in determining a benchmark, including extrapolating values from prior or related transactions, adjusting values for factors that might influence the quality of data such as market events or impairment of a buyer or seller's credit quality, and weighting firm bids or offers greater than a particular concluded transaction;

(14) 'input data' means the data in respect of the value of one or more underlying assets, or prices, including estimated prices, quotes, committed quotes or other values, used by an administrator to determine a benchmark;

(15) 'transaction data' means observable prices, rates, indices or values representing transactions between unaffiliated counterparties in an active market subject to competitive supply and demand forces;

(16) 'financial instrument' means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU for which a request for admission to trading on a trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, has been made or which is traded on a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or via a systematic internaliser as defined in point (20) of Article 4(1) of that Directive;

(17) 'supervised entity' means any of the following:

(a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]);

(b) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;

(c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council ([2]);

(d) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(e) a UCITS as defined in Article 1(2) of Directive 2009/65/EC or, where applicable, a UCITS management company as defined in point (b) of Article 2(1) of that Directive;

(f) an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ([3]);

(g) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council ([4]);

(h) a creditor as defined in point (b) of Article 3 of Directive 2008/48/EC for the purposes of credit agreements as defined in point (c) of Article 3 of that Directive;

(i) a non-credit institution as defined in point (10) of Article 4 of Directive 2014/17/EU for the purposes of credit agreements as defined in point (3) of Article 4 of that Directive;

(j) a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU;

(k) a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([5]);

(l) a trade repository as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;

(m) an administrator;

(18) 'financial contract' means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC;

(b) any credit agreement as defined in point (3) of Article 4 of Directive 2014/17/EU;

(19) 'investment fund' means an AIF as defined in point (a) of Article 4(1) of Directive 2011/61/EU, or a UCITS as defined in Article 1(2) of Directive 2009/65/EC;

([1]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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

([3]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([4]) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

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

(20) 'management body' means the body or bodies of an administrator or another supervised entity which are appointed in accordance with national law, which are empowered to set the strategy, objectives and overall direction of the administrator or other supervised entity, and which oversee and monitor management decision-making and include persons who effectively direct the business of the administrator or other supervised entity;

(21) 'consumer' means a natural person who, in financial contracts covered by this Regulation, is acting for purposes which are outside his or her trade, business or profession;

(22) 'interest rate benchmark' means a benchmark which for the purposes of point (1)(b)(ii) of this paragraph is determined on the basis of the rate at which banks may lend to, or borrow from, other banks, or agents other than banks, in the money market;

(23) 'commodity benchmark' means a benchmark where the underlying asset for the purposes of point (1)(b)(ii) of this paragraph is a commodity within the meaning of point (1) of Article 2 of Commission Regulation (EC) No 1287/2006 ([1]), excluding emission allowances as referred to in point (11) of Section C of Annex I to Directive 2014/65/EU;

(24) 'regulated-data benchmark' means a benchmark determined by the application of a formula from:

(a) input data contributed entirely and directly from:

(i) a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or a trading venue in a third country for which the Commission has adopted an implementing decision that the legal and supervisory framework of that country is considered to have equivalent effect within the meaning of Article 28(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council ([2]), or a regulated market considered to be equivalent under Article 2a of Regulation (EU) No 648/2012, but in each case only with reference to transaction data concerning financial instruments;

(ii) an approved publication arrangement as defined in point (52) of Article 4(1) of Directive 2014/65/EU or a consolidated tape provider as defined in point (53) of Article 4(1) of Directive 2014/65/EU, in accordance with mandatory post-trade transparency requirements, but only with reference to transaction data concerning financial instruments that are traded on a trading venue;

(iii) an approved reporting mechanism as defined in point (54) of Article 4(1) of Directive 2014/65/EU, but only with reference to transaction data concerning financial instruments that are traded on a trading venue and that must be disclosed in accordance with mandatory post-trade transparency requirements;

(iv) an electricity exchange as referred to in point (j) of Article 37(1) of Directive 2009/72/EC of the European Parliament and of the Council ([3]);

(v) a natural gas exchange as referred to in point (j) of Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council ([4]);

(vi) an auction platform referred to in Article 26 or 30 of Commission Regulation (EU) No 1031/2010 ([5]);

(vii) a service provider to which the benchmark administrator has outsourced the data collection in accordance with Article 10, provided that the service provider receives the data entirely and directly from an entity referred to in points (i) to (vi);

(b) net asset values of investment funds;

([1]) Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

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

([3]) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55).

([4]) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

([5]) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

(25) 'critical benchmark' means a benchmark other than a regulated-data benchmark that fulfils any of the conditions laid down in Article 20(1) and which is on the list established by the Commission pursuant to that Article;

(26) 'significant benchmark' means a benchmark that fulfils the conditions laid down in Article 24(1);

(27) 'non-significant benchmark' means a benchmark that does not fulfil the conditions laid down in Articles 20(1) and 24(1);

(28) 'located' means, in relation to a legal person, the country where that person's registered office or other official address is situated and, in relation to a natural person, the country where that person is resident for tax purposes;

(29) 'public authority' means:

(a) any government or other public administration, including the entities charged with or intervening in the management of the public debt;

(b) any entity or person either performing public administrative functions under national law or having public responsibilities or functions or providing public services, including measures of employment, economic activities and inflation, under the control of an entity within the meaning of point (a).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to specify further technical elements of the definitions laid down in paragraph 1 of this Article, in particular specifying what constitutes making available to the public for the purposes of the definition of an index.

Where applicable, the Commission shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

3. The Commission shall adopt implementing acts in order to establish and review a list of public authorities in the Union falling within the definition under point (29) of paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).

Where applicable, the Commission shall take into account the market or technological developments and the international convergence of supervisory practice in relation to benchmarks.

TITLE II

BENCHMARK INTEGRITY AND RELIABILITY

CHAPTER 1

Governance of and control by administrators

Article 4

Governance and conflict of interest requirements

1. An administrator shall have in place robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent roles and responsibilities for all persons involved in the provision of a benchmark.

Administrators shall take adequate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees or any person directly or indirectly linked to them by control, and contributors or users, and to ensure that, where any judgement or discretion in the benchmark determination process is required, it is independently and honestly exercised.

2. The provision of a benchmark shall be operationally separated from any part of an administrator's business that may create an actual or potential conflict of interest.

3. Where a conflict of interest arises within an administrator due to the latter's ownership structure, controlling interests or other activities conducted by any entity owning or controlling the administrator or by an entity that is owned or controlled by the administrator or any of the administrator's affiliates, that cannot be adequately mitigated, the relevant competent authority may require the administrator to establish an independent oversight function which shall include a balanced representation of stakeholders, including users and contributors.

4. If such a conflict of interest cannot be adequately managed, the relevant competent authority may require the administrator to either cease the activities or relationships that create the conflict of interest or cease providing the benchmark.

5. An administrator shall publish or disclose all existing or potential conflicts of interest to users of a benchmark, to the relevant competent authority and, where relevant, to contributors, including conflicts of interest arising from the ownership or control of the administrator.

6. An administrator shall establish and operate adequate policies and procedures, as well as effective organisational arrangements, for the identification, disclosure, prevention, management and mitigation of conflicts of interest in order to protect the integrity and independence of benchmark determinations. Such policies and procedures shall be regularly reviewed and updated. The policies and procedures shall take into account and address conflicts of interest, the degree of discretion exercised in the benchmark determination process and the risks that the benchmark poses, and shall:

(a) ensure the confidentiality of information contributed to or produced by the administrator, subject to the disclosure and transparency obligations under this Regulation; and

(b) specifically mitigate conflicts of interest due to the administrator's ownership or control, or due to other interests in the administrator's group or as a result of other persons that may exercise influence or control over the administrator in relation to determining the benchmark.

7. Administrators shall ensure that their employees and any other natural persons whose services are placed at their disposal or under their control and who are directly involved in the provision of a benchmark:

(a) have the necessary skills, knowledge and experience for the duties assigned to them and are subject to effective management and supervision;

(b) are not subject to undue influence or conflicts of interest and that the compensation and performance evaluation of those persons do not create conflicts of interest or otherwise impinge upon the integrity of the benchmark determination process;

(c) do not have any interests or business connections that compromise the activities of the administrator concerned;

(d) are prohibited from contributing to a benchmark determination by way of engaging in bids, offers and trades on a personal basis or on behalf of market participants, except where such way of contribution is explicitly required as part of the benchmark methodology and is subject to specific rules therein; and

(e) are subject to effective procedures to control the exchange of information with other employees involved in activities that may create a risk of conflicts of interest or with third parties, where that information may affect the benchmark.

8. An administrator shall establish specific internal control procedures to ensure the integrity and reliability of the employee or person determining the benchmark, including at least internal sign-off by management before the dissemination of the benchmark.

Article 5

Oversight function requirements

1. Administrators shall establish and maintain a permanent and effective oversight function to ensure oversight of all aspects of the provision of their benchmarks.

2. Administrators shall develop and maintain robust procedures regarding their oversight function, which shall be made available to the relevant competent authorities.

3. The oversight function shall operate with integrity and shall have the following responsibilities, which shall be adjusted by the administrator based on the complexity, use and vulnerability of the benchmark:

(a) reviewing the benchmark's definition and methodology at least annually;

(b) overseeing any changes to the benchmark methodology and being able to request the administrator to consult on such changes;

(c) overseeing the administrator's control framework, the management and operation of the benchmark, and, where the benchmark is based on input data from contributors, the code of conduct referred to in Article 15;

(d) reviewing and approving procedures for cessation of the benchmark, including any consultation about a cessation;

(e) overseeing any third party involved in the provision of the benchmark, including calculation or dissemination agents;

(f) assessing internal and external audits or reviews, and monitoring the implementation of identified remedial actions;

(g) where the benchmark is based on input data from contributors, monitoring the input data and contributors and the actions of the administrator in challenging or validating contributions of input data;

(h) where the benchmark is based on input data from contributors, taking effective measures in respect of any breaches of the code of conduct referred to in Article 15; and

(i) reporting to the relevant competent authorities any misconduct by contributors, where the benchmark is based on input data from contributors, or administrators, of which the oversight function becomes aware, and any anomalous or suspicious input data.

4. The oversight function shall be carried out by a separate committee or by means of another appropriate governance arrangement.

5. ESMA shall develop draft regulatory technical standards to specify the procedures regarding the oversight function and the characteristics of the oversight function including its composition as well as its positioning within the organisational structure of the administrator, so as to ensure the integrity of the function and the absence of conflicts of interest. In particular, ESMA shall develop a non-exhaustive list of appropriate governance arrangements as laid down in paragraph 4.

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into consideration the differences in the ownership and control structure of administrators, the nature, scale and complexity of the provision of the benchmark, and the risk and impact of the benchmark, also in light of international convergence of supervisory practice in relation to governance requirements of benchmarks. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

Article 6

Control framework requirements

1. Administrators shall have in place a control framework that ensures that their benchmarks are provided and published or made available in accordance with this Regulation.

2. The control framework shall be proportionate to the level of conflicts of interest identified, the extent of discretion in the provision of the benchmark and the nature of the benchmark input data.

3. The control framework shall include:

(a) management of operational risk;

(b) adequate and effective business continuity and disaster recovery plans;

(c) contingency procedures that are in place in the event of a disruption to the process of the provision of the benchmark.

4. An administrator shall establish measures to:

(a) ensure that contributors adhere to the code of conduct referred to in Article 15 and comply with the applicable standards for input data;

(b) monitor input data including, where feasible, monitoring input data before publication of the benchmark and validating input data after publication to identify errors and anomalies.

5. The control framework shall be documented, reviewed and updated as appropriate and made available to the relevant competent authority and, upon request, to users.

Article 7

Accountability framework requirements

1. An administrator shall have in place an accountability framework, covering record-keeping, auditing and review, and a complaints process, that provides evidence of compliance with the requirements of this Regulation.

2. An administrator shall designate an internal function with the necessary capability to review and report on the administrator's compliance with the benchmark methodology and this Regulation.

3. For critical benchmarks, an administrator shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation, at least annually.

4. Upon the request of the relevant competent authority, an administrator shall provide to the relevant competent authority the details of the reviews and reports provided for in paragraph 2. Upon the request of the relevant competent authority or any user of a benchmark, an administrator shall publish the details of the audits provided for in paragraph 3.

Article 8

Record-keeping requirements

1. An administrator shall keep records of:

(a) all input data, including the use of such data;

(b) the methodology used for the determination of a benchmark;

(c) any exercise of judgement or discretion by the administrator and, where applicable, by assessors, in the determination of a benchmark, including the reasoning for said judgement or discretion;

(d) the disregard of any input data, in particular where it conformed to the requirements of the benchmark methodology, and the rationale for such disregard;

(e) other changes in or deviations from standard procedures and methodologies, including those made during periods of market stress or disruption;

(f) the identities of the submitters and of the natural persons employed by the administrator for the determination of a benchmark;

(g) all documents relating to any complaint, including those submitted by a complainant; and

(h) telephone conversations or electronic communications between any person employed by the administrator and contributors or submitters in respect of a benchmark.

2. An administrator shall keep the records set out in paragraph 1 for at least five years in such a form that it is possible to replicate and fully understand the determination of a benchmark and enable an audit or evaluation of input data, calculations, judgements and discretion. Records of telephone conversation or electronic communications recorded in accordance with point (h) of paragraph 1 shall be provided to the persons involved in the conversation or communication upon request and shall be kept for a period of three years.

Article 9

Complaints-handling mechanism

1. An administrator shall have in place and publish procedures for receiving, investigating and retaining records concerning complaints made, including about the administrator's benchmark determination process.

2. Such a complaints-handling mechanism shall ensure that:

(a) the administrator makes available the complaints-handling policy through which complaints may be submitted on whether a specific benchmark determination is representative of market value, on a proposed change to the benchmark determination process, on an application of the methodology in relation to a specific benchmark determination, and on other decisions in relation to the benchmark determination process;

(b) complaints are investigated in a timely and fair manner and the outcome of the investigation is communicated to the complainant within a reasonable period of time, unless such communication would be contrary to objectives of public policy or to Regulation (EU) No 596/2014; and

(c) the inquiry is conducted independently of any personnel who may be or may have been involved in the subject-matter of the complaint.

Article 10

Outsourcing

1. An administrator shall not outsource functions in the provision of a benchmark in such a way as to impair materially the administrator's control over the provision of the benchmark or the ability of the relevant competent authority to supervise the benchmark.

2. Where an administrator outsources to a service provider functions or any relevant services and activities in the provision of a benchmark, the administrator shall remain fully responsible for discharging all of the administrator's obligations under this Regulation.

3. Where outsourcing takes place, the administrator shall ensure that the following conditions are fulfilled:

(a) the service provider has the ability, capacity, and any authorisation required by law, to perform the outsourced functions, services or activities reliably and professionally;

(b) the administrator makes available to the relevant competent authorities the identity and the tasks of the service provider that participates in the benchmark determination process;

(c) the administrator takes appropriate action if it appears that the service provider may not be carrying out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(d) the administrator retains the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing;

(e) the service provider discloses to the administrator any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable law and regulatory requirements;

(f) the service provider cooperates with the relevant competent authority regarding the outsourced activities, and the administrator and the relevant competent authority have effective access to data related to the outsourced activities, as well as to the business premises of the service provider, and the relevant competent authority is able to exercise those rights of access;

(g) the administrator is able to terminate the outsourcing arrangements where necessary;

(h) the administrator takes reasonable steps, including contingency plans, to avoid undue operational risk related to the participation of the service provider in the benchmark determination process.

CHAPTER 2

Input data, methodology and reporting of infringements

Article 11

Input data

1. The provision of a benchmark shall be governed by the following requirements in respect of its input data:

(a) the input data shall be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

The input data shall be transaction data, if available and appropriate. If transaction data is not sufficient or is not appropriate to represent accurately and reliably the market or economic reality that the benchmark is intended to measure, input data which is not transaction data may be used, including estimated prices, quotes and committed quotes, or other values;

(b) the input data referred to in point (a) shall be verifiable;

(c) the administrator shall draw up and publish clear guidelines regarding the types of input data, the priority of use of the different types of input data and the exercise of expert judgement, to ensure compliance with point (a) and the methodology;

(d) where a benchmark is based on input data from contributors, the administrator shall obtain, where appropriate, the input data from a reliable and representative panel or sample of contributors so as to ensure that the resulting benchmark is reliable and representative of the market or economic reality that the benchmark is intended to measure;

(e) the administrator shall not use input data from a contributor if the administrator has any indication that the contributor does not adhere to the code of conduct referred to in Article 15, and in such a case shall obtain representative publicly available data.

2. Administrators shall ensure that their controls in respect of input data include:

(a) criteria that determine who may contribute input data to the administrator and a process for selecting contributors;

(b) a process for evaluating a contributor's input data and for stopping the contributor from providing further input data, or applying other penalties for non-compliance against the contributor, where appropriate; and

(c) a process for validating input data, including against other indicators or data, to ensure its integrity and accuracy.

3. Where the input data of a benchmark is contributed from a front office function, meaning any department, division, group, or personnel of contributors or any of its affiliates that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities, the administrator shall:

(a) obtain data from other sources that corroborate that input data; and

(b) ensure that contributors have in place adequate internal oversight and verification procedures.

4. Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.

5. ESMA shall develop draft regulatory technical standards to specify further how to ensure that input data is appropriate and verifiable, as required under points (a) and (b) of paragraph 1, as well as the internal oversight and verification procedures of a contributor that the administrator has to ensure are in place, in compliance with point (b) of paragraph 3, in order to ensure the integrity and accuracy of input data. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall take into account the different types of benchmarks and sectors as set out in this Regulation, the nature of input data, the characteristics of the underlying market or economic reality and the principle of proportionality, the vulnerability of the benchmarks to manipulation as well as the international convergence of supervisory practice in relation to benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

Article 12

Methodology

1. An administrator shall use a methodology for determining a benchmark that:

(a) is robust and reliable;

(b) has clear rules identifying how and when discretion may be exercised in the determination of that benchmark;

(c) is rigorous, continuous and capable of validation including, where appropriate, back-testing against available transaction data;

(d) is resilient and ensures that the benchmark can be calculated in the widest set of possible circumstances, without compromising its integrity;

(e) is traceable and verifiable.

2. When developing a benchmark methodology, a benchmark administrator shall:

(a) take into account factors including the size and normal liquidity of the market, the transparency of trading and the positions of market participants, market concentration, market dynamics, and the adequacy of any sample to represent the market or economic reality that the benchmark is intended to measure;

(b) determine what constitutes an active market for the purposes of that benchmark; and

(c) establish the priority given to different types of input data.

3. An administrator shall have in place clear published arrangements that identify the circumstances in which the quantity or quality of input data falls below the standards necessary for the methodology to determine the benchmark accurately and reliably, and that describe whether and how the benchmark is to be calculated in such circumstances.

Article 13

Transparency of methodology

1. An administrator shall develop, operate and administer the benchmark and methodology transparently. To that end, the administrator shall publish or make available the following information:

(a) the key elements of the methodology that the administrator uses for each benchmark provided and published or, when applicable, for each family of benchmarks provided and published;

(b) details of the internal review and the approval of a given methodology, as well as the frequency of such review;

(c) the procedures for consulting on any proposed material change in the administrator's methodology and the rationale for such changes, including a definition of what constitutes a material change and the circumstances in which the administrator is to notify users of any such changes.

2. The procedures required under point (c) of paragraph 1 shall provide for:

(a) advance notice, with a clear time frame, that gives the opportunity to analyse and comment upon the impact of such proposed material changes; and

(b) the comments referred to in point (a) of this paragraph, and the administrator's response to those comments, to be made accessible after any consultation, except where confidentiality has been requested by the originator of the comments.

3. ESMA shall develop draft regulatory technical standards to specify further the information to be provided by an administrator in compliance with the requirements laid down in paragraphs 1 and 2, distinguishing for different types of benchmarks and sectors as set out in this Regulation. ESMA shall take into account the need to disclose those elements of the methodology that provide for sufficient detail to allow users to understand how a benchmark is provided and to assess its representativeness, its relevance to particular users and its appropriateness as a reference for financial instruments and contracts and the principle of proportionality. However, the ESMA draft regulatory technical standards shall not cover or apply to administrators of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

4. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to administrators of non-significant benchmarks to specify further the elements referred to in paragraph 3 of this Article.

Article 14

Reporting of infringements

1. An administrator shall establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark, under Regulation (EU) No 596/2014.

2. An administrator shall monitor input data and contributors in order to be able to notify the competent authority and provide all relevant information where the administrator suspects that, in relation to a benchmark, any conduct has taken place that may involve manipulation or attempted manipulation of the benchmark, under Regulation (EU) No 596/2014, including collusion to do so.

The competent authority of the administrator shall, where applicable, transmit such information to the relevant authority under Regulation (EU) No 596/2014.

3. Administrators shall have procedures in place for their managers, employees and any other natural persons whose services are placed at their disposal or under their control to report internally infringements of this Regulation.

CHAPTER 3

Code of conduct and requirements for contributors

Article 15

Code of conduct

1. Where a benchmark is based on input data from contributors, its administrator shall develop a code of conduct for each benchmark clearly specifying contributors' responsibilities with respect to the contribution of input data and shall ensure that such code of conduct complies with this Regulation. The administrator shall be satisfied that contributors adhere to the code of conduct on a continuous basis and at least annually and in case of changes to it.

2. The code of conduct shall include at least the following elements:

(a) a clear description of the input data to be provided and the requirements necessary to ensure that input data is provided in accordance with Articles 11 and 14;

(b) identification of the persons that may contribute input data to the administrator and procedures to verify the identity of a contributor and any submitters, as well as authorisation of any submitters that contribute input data on behalf of a contributor;

(c) policies to ensure that a contributor provides all relevant input data;

(d) the systems and controls that a contributor is required to establish, including:

  (i) procedures for contributing input data, including requirements for the contributor to specify whether input data is transaction data and whether input data conforms to the administrator's requirements;

  (ii) policies on the use of discretion in contributing input data;

  (iii) any requirement for the validation of input data before it is provided to the administrator;

  (iv) record-keeping policies;

  (v) reporting requirements concerning suspicious input data;

  (vi) requirements concerning the management of conflicts of interest.

3. Administrators may develop a single code of conduct for each family of benchmarks they provide.

4. In the event that a relevant competent authority, in the use of its powers referred to in Article 41, finds that there are elements of a code of conduct which do not comply with this Regulation, it shall notify the administrator concerned. The administrator shall adjust the code of conduct to ensure that it complies with this Regulation within 30 days of such a notification.

5. Within 15 working days from the date of application of the decision to include a critical benchmark in the list referred to in Article 20(1), the administrator of that critical benchmark shall notify the code of conduct to the relevant competent authority. The relevant competent authority shall verify within 30 days whether the content of the code of conduct complies with this Regulation. In the event that the relevant competent authority finds elements which do not comply with this Regulation, paragraph 4 of this Article shall apply.

6. ESMA shall develop draft regulatory technical standards to specify further the elements of the code of conduct referred to in paragraph 2 for different types of benchmarks, and in order to take account of developments in benchmarks and financial markets.

ESMA shall take into account the different characteristics of benchmarks and contributors, in particular in terms of differences in input data and methodologies, the risks of input data of being manipulated and international convergence of supervisory practices in relation to benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

Article 16

Governance and control requirements for supervised contributors

1. The following governance and control requirements shall apply to a supervised contributor:

(a) the supervised contributor shall ensure that the provision of input data is not affected by any existing or potential conflict of interest and that, where any discretion is required, it is independently and honestly exercised based on relevant information in accordance with the code of conduct referred to in Article 15;

(b) the supervised contributor shall have in place a control framework that ensures the integrity, accuracy and reliability of input data and that input data is provided in accordance with this Regulation and the code of conduct referred to in Article 15.

2. A supervised contributor shall have in place effective systems and controls to ensure the integrity and reliability of all contributions of input data to the administrator, including:

(a) controls regarding who may submit input data to an administrator including, where proportionate, a process for sign-off by a natural person holding a position senior to that of the submitter;

(b) appropriate training for submitters, covering at least this Regulation and Regulation (EU) No 596/2014;

(c) measures for the management of conflicts of interest, including organisational separation of employees where appropriate and consideration of how to remove incentives, created by remuneration polices, to manipulate a benchmark;

(d) record-keeping, for an appropriate period of time, of communications in relation to provision of input data, of all information used to enable the contributor to make each submission, and of all existing or potential conflicts of interest including, but not limited to, the contributor's exposure to financial instruments which use a benchmark as a reference;

(e) record-keeping of internal and external audits.

3. Where input data relies on expert judgement, supervised contributors shall establish, in addition to the systems and controls referred to in paragraph 2, policies guiding any use of judgement or exercise of discretion and shall retain records of the rationale for any such judgement or discretion. Where proportionate, supervised contributors shall take into account the nature of the benchmark and its input data.

4. A supervised contributor shall fully cooperate with the administrator and the relevant competent authority in the auditing and supervision of the provision of a benchmark and make available the information and records kept in accordance with paragraphs 2 and 3.

5. ESMA shall develop draft regulatory technical standards to specify further the requirements concerning governance, systems and controls, and policies set out in paragraphs 1, 2 and 3.

ESMA shall take into account the different characteristics of benchmarks and supervised contributors, in particular in terms of differences in input data provided and methodologies used, the risks of manipulation of the input data and the nature of the activities carried out by the supervised contributors, and the developments in benchmarks and financial markets in light of international convergence of supervisory practices in relation to benchmarks. However, the ESMA draft regulatory technical standards shall not cover or apply to supervised contributors of non-significant benchmarks.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

6. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to supervised contributors to non-significant benchmarks to specify the elements referred to in paragraph 5 of this Article.

TITLE III

REQUIREMENTS FOR DIFFERENT TYPES OF BENCHMARKS

CHAPTER 1

Regulated-data benchmarks

Article 17

Regulated-data benchmarks

1. Article 11(1)(d) and (e), Article 11(2) and (3), Article 14(1) and (2), and Articles 15 and 16 shall not apply to the provision of and the contribution to regulated-data benchmarks. Article 8(1)(a) shall not apply to the provision of regulated-data benchmarks with reference to input data that are contributed entirely and directly as specified in point (24) of Article 3(1).

2. Articles 24 and 25 or Article 26 shall, as applicable, apply to the provision of, and the contribution to, regulated-data benchmarks that are used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of up to EUR 500 billion, on the basis of all the range of maturities or tenors of the benchmark, where applicable.

CHAPTER 2

Interest rate benchmarks

Article 18

Interest rate benchmarks

The specific requirements laid down in Annex I shall apply to the provision of, and contribution to, interest rate benchmarks in addition to, or as a substitute for, the requirements of Title II.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, interest rate benchmarks.

CHAPTER 3

Commodity benchmarks

Article 19

Commodity benchmarks

1. The specific requirements laid down in Annex II shall apply instead of the requirements of Title II, with the exception of Article 10, to the provision of, and contribution to, commodity benchmarks, unless the benchmark in question is a regulated-data benchmark or is based on submissions by contributors the majority of which are supervised entities.

Articles 24, 25 and 26 shall not apply to the provision of, and contribution to, commodity benchmarks.

2. Where a commodity benchmark is a critical benchmark and the underlying asset is gold, silver or platinum, the requirements of Title II shall apply instead of Annex II.

CHAPTER 4

Critical benchmarks

Article 20

Critical benchmarks

1. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 50(2) to establish and review at least every two years a list of benchmarks provided by administrators located within the Union which are critical benchmarks, provided that one of the following conditions is fulfilled:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable;

(b) the benchmark is based on submissions by contributors the majority of which are located in one Member State and is recognised as being critical in that Member State in accordance with the procedure laid down in paragraphs 2, 3, 4 and 5 of this Article;

(c) the benchmark fulfils all of the following criteria:

(i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds having a total value of at least EUR 400 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, but not exceeding the value provided for in point (a);

(ii) the benchmark has no, or very few, appropriate market-led substitutes;

(iii) in the event that the benchmark ceases to be provided, or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or on the basis of unreliable input data, there would be significant and adverse impacts on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

If a benchmark meets the criteria set out in point (c)(ii) and (iii) but does not meet the criterion set out in point (c)(i), the competent authorities of the Member States concerned together with the competent authority of the Member State where the administrator is established may agree that such benchmark should be recognised as critical under this subparagraph. In any case, the competent authority of the administrator shall consult the competent authorities of the Member States concerned. In the event of disagreement between the competent authorities, the competent authority of the administrator shall decide whether the benchmark should be recognised as critical under this subparagraph, taking into account the reasons for the disagreement. The competent authorities or, in the event of disagreement, the competent authority of the administrator, shall transmit the assessment to the Commission. After receiving the assessment, the Commission shall adopt an implementing act in accordance with this paragraph. In addition, in the event of disagreement, the competent authority of the administrator shall transmit its assessment to ESMA, which may publish an opinion.

2. Where the competent authority of a Member State referred to in point (b) of paragraph 1 considers that an administrator under its supervision provides a benchmark that should be recognised as critical, it shall notify ESMA and transmit to ESMA a documented assessment.

3. For the purposes of paragraph 2, the competent authority shall assess whether the cessation of the benchmark or its provision on the basis of input data or of a panel of contributors no longer representative of the underlying market or economic reality would have an adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in its Member State. The competent authority shall take into consideration in its assessment:

(a) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the total value of financial instruments and of financial contracts outstanding, and of the total value of investment funds, in the Member State;

(b) the value of financial instruments and financial contracts that reference the benchmark and the value of investment funds referencing the benchmark for measuring their performance within the Member State and their relevance in terms of the gross national product of the Member State;

(c) any other figure to assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in the Member State.

The competent authority shall review its assessment of the criticality of the benchmark at least every two years, and shall notify and transmit the new assessment to ESMA.

4. Within six weeks of receipt of the notification referred to in paragraph 2, ESMA shall issue an opinion on whether the assessment of the competent authority complies with the requirements of paragraph 3 and shall transmit such opinion to the Commission, together with the competent authority's assessment.

5. The Commission, after receiving the opinion referred to in paragraph 4, shall adopt implementing acts in accordance with paragraph 1.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to:

(a) specify how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed, including in the event of an indirect reference to a benchmark within a combination of benchmarks, in order to be compared with the thresholds referred to in paragraph 1 of this Article and in point (a) of Article 24(1);

(b) review the calculation method used to determine the thresholds referred to in paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts, or investment funds referencing them that is close to the thresholds; such review shall take place at least every two years as from 1 January 2018;

(c) specify how the criteria referred to in point (c)(iii) of paragraph 1 of this Article are to be applied, taking into consideration any data which helps assess on objective grounds the potential impact of the discontinuity or unreliability of the benchmark on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in one or more Member States.

Where applicable, the Commission shall take into account relevant market or technological developments.

Article 21

Mandatory administration of a critical benchmark

1. If an administrator of a critical benchmark intends to cease providing such benchmark, the administrator shall:

(a) immediately notify its competent authority; and

(b) within four weeks of such notification submit an assessment of how the benchmark:

(i) is to be transitioned to a new administrator; or

(ii) is to be ceased to be provided, taking into account the procedure established in Article 28(1).

During the period referred to in point (b) of the first subparagraph, the administrator shall not cease provision of the benchmark.

2. Upon receipt of the assessment of the administrator referred to in paragraph 1, the competent authority shall:

(a) inform ESMA and, where applicable, the college established under Article 46; and

(b) within four weeks, make its own assessment of how the benchmark is to be transitioned to a new administrator or be ceased to be provided, taking into account the procedure established in accordance with Article 28(1).

During the period of time referred to in point (b) of the first subparagraph of this paragraph, the administrator shall not cease the provision of the benchmark without the written consent of the competent authority.

3. Following completion of the assessment referred to in point (b) of paragraph 2, the competent authority shall have the power to compel the administrator to continue publishing the benchmark until such time as:

(a) the provision of the benchmark has been transitioned to a new administrator;

(b) the benchmark can be ceased to be provided in an orderly fashion; or

(c) the benchmark is no longer critical.

For the purposes of the first subparagraph, the period for which the competent authority may compel the administrator to continue to publish the benchmark shall not exceed 12 months.

By the end of that period, the competent authority shall review its decision to compel the administrator to continue to publish the benchmark and may, where necessary, extend the time period by an appropriate period not exceeding a further 12 months. The maximum period of mandatory administration shall not exceed 24 months in total.

4. Without prejudice to paragraph 1, in the event that the administrator of a critical benchmark is to be wound down due to insolvency proceedings, the competent authority shall make an assessment of whether and how the critical benchmark can be transitioned to a new administrator or can cease to be provided in an orderly fashion, taking into account the procedure established in accordance with Article 28(1).

Article 22

Mitigation of market power of critical benchmark administrators

Without prejudice to the application of Union competition law, when providing a critical benchmark, the administrator shall take adequate steps to ensure that licences of, and information relating to, the benchmark are provided to all users on a fair, reasonable, transparent and non-discriminatory basis.

Article 23

Mandatory contribution to a critical benchmark

1. This Article shall apply to critical benchmarks based on submissions by contributors the majority of which are supervised entities.

2. Administrators of one or more critical benchmarks shall, every two years, submit to their competent authority an assessment of the capability of each critical benchmark they provide to measure the underlying market or economic reality.

3. If a supervised contributor to a critical benchmark intends to cease contributing input data, it shall promptly notify in writing the benchmark administrator, which shall inform without delay its competent authority. Where the supervised contributor is located in another Member State, the competent authority of the administrator shall inform, without delay, the competent authority of that contributor. The benchmark administrator shall submit to its competent authority an assessment of the implications on the capability of the benchmark to measure the underlying market or economic reality as soon as possible but no later than 14 days after the notification made by the supervised contributor.

4. Upon receipt of an assessment of the benchmark administrator referred to in paragraphs 2 and 3 of this Article and on the basis of such assessment, the competent authority of the administrator shall promptly inform ESMA and, where applicable, the college established under Article 46, and make its own assessment on the capability of the benchmark to measure the underlying market and economic reality, taking into account the administrator's procedure for cessation of the benchmark established in accordance with Article 28(1).

5. From the date on which the competent authority of the administrator is notified of the intention of a contributor to cease contributing input data and until such time as the assessment referred to in paragraph 4 is complete, it shall have the power to require the contributors which made the notification in accordance with paragraph 3 to continue contributing input data, in any event for a period of no more than four weeks, without imposing an obligation on supervised entities to either trade or commit to trade.

6. In the event that the competent authority, after the period specified in paragraph 5 and on the basis of its own assessment referred to in paragraph 4, considers that the representativeness of a critical benchmark is put at risk, it shall have the power to:

(a) require supervised entities selected in accordance with paragraph 7 of this Article, including entities that are not yet contributors to the relevant critical benchmark, to contribute input data to the administrator in accordance with the administrator's methodology, the code of conduct referred to in Article 15 and other rules. Such requirement shall be in place for an appropriate period of time not exceeding 12 months from the date on which the initial decision requiring mandatory contribution was taken pursuant to paragraph 5 or, for those entities that are not yet contributors, from the date on which the decision requiring mandatory contribution is taken under this point;

(b) extend the period of mandatory contribution by an appropriate period of time not exceeding 12 months, following a review under paragraph 9 of any measures adopted pursuant to point (a) of this paragraph;

(c) determine the form in which, and the time by which, any input data is to be contributed without imposing an obligation on supervised entities to either trade or commit to trade;

(d) require the administrator to change the methodology, the code of conduct referred to in Article 15 or other rules of the critical benchmark.

The maximum period of mandatory contribution under points (a) and (b) of the first subparagraph shall not exceed 24 months in total.

7. For the purposes of paragraph 6, supervised entities that are to be required to contribute input data shall be selected by the competent authority of the administrator, with the close cooperation of the competent authorities of the supervised entities, on the basis of the size of the supervised entity's actual and potential participation in the market that the benchmark intends to measure.

8. The competent authority of a supervised contributor that has been required to contribute to a benchmark through measures taken in accordance with point (a), (b) or (c) of paragraph 6 shall cooperate with the competent authority of the administrator in the enforcement of such measures.

9. By the end of the period referred to in point (a) of the first subparagraph of paragraph 6, the competent authority of the administrator shall review the measures adopted under paragraph 6. It shall revoke any of them if it considers that:

(a) the contributors are likely to continue contributing input data for at least one year if the measure were revoked, which shall be evidenced by at least:

  (i) a written commitment by the contributors to the administrator and the competent authority to continue contributing input data to the critical benchmark for at least one year if the measure were revoked;

  (ii) a written report by the administrator to the competent authority providing evidence for its assessment that the critical benchmark's continued viability can be assured once mandatory contribution has been revoked;

(b) the provision of the benchmark is able to continue once the contributors mandated to contribute input data have ceased contributing;

(c) an acceptable substitute benchmark is available and users of the critical benchmark can switch to this substitute at minimal costs which shall be evidenced by at least a written report by the administrator detailing the means of transition to a substitute benchmark and the ability and costs to users of transitioning to this benchmark; or

(d) no appropriate alternative contributors can be identified and the cessation of contributions from the relevant supervised entities would weaken the benchmark to such an extent to require the cessation of the benchmark.

10. In the event that a critical benchmark is to be ceased to be provided, each supervised contributor to that benchmark shall continue to contribute input data for a period of time determined by the competent authority, but not exceeding the maximum 24-month period laid down in the second subparagraph of paragraph 6.

11. The administrator shall notify the relevant competent authority in the event that any contributors breach the requirements set out in paragraph 6 as soon as reasonably possible.

12. In the event that a benchmark is recognised as critical in accordance with the procedure laid down in Article 20 (2), (3), (4) and (5), the competent authority of the administrator shall have the power to require input data in accordance with paragraph 5, and points (a), (b) and (c) of paragraph 6, of this Article only from supervised contributors located in its Member State.

CHAPTER 5

Significant benchmarks

Article 24

Significant benchmarks

1. A benchmark which does not fulfil any of the conditions laid down in Article 20(1) is significant when:

(a) it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investments funds having a total average value of at least EUR 50 billion on the basis of all the range of maturities or tenors of the benchmark, where applicable, over a period of six months; or

(b) it has no or very few appropriate market-led substitutes and, in the event that the benchmark ceases to be provided or is provided on the basis of input data no longer fully representative of the underlying market or economic reality or unreliable input data, there would be a significant and adverse impact on market integrity, financial stability, consumers, the real economy or the financing of households or businesses in one or more Member States.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to review the calculation method used to determine the threshold referred to in point (a) of paragraph 1 of this Article in the light of market, price and regulatory developments as well as the appropriateness of the classification of benchmarks with a total value of financial instruments, financial contracts or investment funds referencing them that is close to that threshold. Such review shall take place at least every two years as from 1 January 2018.

3. An administrator shall immediately notify its competent authority when its significant benchmark falls below the threshold mentioned in point (a) of paragraph 1.

Article 25

Exemptions from specific requirements for significant benchmarks

1. An administrator may choose not to apply Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) or Article 15(2) with respect to its significant benchmark where that administrator considers that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmark or the size of the administrator.

2. In the event that an administrator chooses not to apply one or more of the provisions referred to in paragraph 1, it shall immediately notify the competent authority and provide it with all relevant information confirming the administrator's assessment that the application of one or more of those provisions would be disproportionate taking into account the nature or impact of the benchmarks or the size of the administrator.

3. A competent authority may decide that the administrator of a significant benchmark is nevertheless to apply one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2) if it considers that it would be appropriate taking into account the nature or the impact of the benchmarks or the size of the administrator. In its assessment, the competent authority shall, based on the information provided by the administrator, take into account the following criteria:

(a) the vulnerability of the benchmark to manipulation;

(b) the nature of the input data;

(c) the level of conflicts of interest;

(d) the degree of discretion of the administrator;

(e) the impact of the benchmark on markets;

(f) the nature, scale and complexity of the provision of the benchmark;

(g) the importance of the benchmark to financial stability;

(h) the value of financial instruments, financial contracts or investment funds that reference the benchmark;

(i) the administrator's size, organisational form or structure.

4. Within 30 days of receipt of a notification from an administrator under paragraph 2, the competent authority shall notify that administrator of its decision to apply an additional requirement pursuant to paragraph 3. In the event that the notification to the competent authority is made during the course of an authorisation or registration procedure, the deadlines set out in Article 34 shall apply.

5. When exercising its supervisory powers in accordance with Article 41, a competent authority shall regularly review whether its assessment pursuant to paragraph 3 of this Article is still valid.

6. If a competent authority finds, on reasonable grounds, that the information submitted to it pursuant to paragraph 2 of this Article is incomplete or that supplementary information is needed, the 30-day time limit referred to in paragraph 4 of this Article shall apply only from the date on which such complementary information is provided by the administrator, unless the deadlines of Article 34 apply pursuant to paragraph 4 of this Article.

7. Where an administrator of a significant benchmark does not comply with one or more of the requirements laid down in Article 4(2), points (c), (d) and (e) of Article 4(7), point (b) of Article 11(3) and Article 15(2), it shall publish and maintain a compliance statement that clearly states why it is appropriate for that administrator not to comply with those provisions.

8. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 7.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 1 April 2017.

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

9. ESMA shall develop draft regulatory technical standards to specify further the criteria referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

CHAPTER 6

Non-significant benchmarks

Article 26

Non-significant benchmarks

1. An administrator may choose not to apply Articles 4(2), points (c), (d) and (e) of Article 4(7), Articles 4(8), 5(2), 5(3), 5(4), 6(1), 6(3), 6(5), 7(2), point (b) of Article 11(1), points (b) and (c) of Article 11(2), and Articles 11(3), 13(2), 14(2), 15(2), 16(2) and (3) with respect to its non-significant benchmarks.

2. An administrator shall immediately notify its competent authority when the administrator's non-significant benchmark exceeds the threshold mentioned in point (a) of Article 24(1). In that case, it shall comply with the requirements applicable to significant benchmarks within three months.

3. Where an administrator of a non-significant benchmark chooses not to apply one or more of the provisions referred to in paragraph 1, it shall publish and maintain a compliance statement which shall clearly state why it is appropriate for that administrator not to comply with those provisions. The administrator shall provide the compliance statement to its competent authority.

4. The relevant competent authority shall review the compliance statement referred to in paragraph 3 of this Article. The competent authority may also request additional information from the administrator in respect of its non-significant benchmarks in accordance with Article 41 and may require changes to ensure compliance with this Regulation.

5. ESMA shall develop draft implementing technical standards to develop a template for the compliance statement referred to in paragraph 3.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 1 April 2017.

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

TITLE IV

TRANSPARENCY AND CONSUMER PROTECTION

Article 27

Benchmark statement

1. Within two weeks of the inclusion of an administrator in the register referred to in Article 36, the administrator shall publish, by means that ensure fair and easy access, a benchmark statement for each benchmark or, where applicable, for each family of benchmarks, that may be used in the Union in accordance with Article 29.

Where that administrator begins providing a new benchmark or family of benchmarks that may be used in the Union in accordance with Article 29, the administrator shall publish, within two weeks and by means that ensure a fair and easy access, a benchmark statement for each new benchmark or, where applicable, family of benchmarks.

The administrator shall review and, where necessary, update the benchmark statement for each benchmark or family of benchmarks in the event of any changes to the information to be provided under this Article and at least every two years.

The benchmark statement shall:

(a) clearly and unambiguously define the market or economic reality measured by the benchmark and the circumstances in which such measurement may become unreliable;

(b) lay down technical specifications that clearly and unambiguously identify the elements of the calculation of the benchmark in relation to which discretion may be exercised, the criteria applicable to the exercise of such discretion and the position of the persons that can exercise discretion, and how such discretion may be subsequently evaluated;

(c) provide notice of the possibility that factors, including external factors beyond the control of the administrator, may necessitate changes to, or the cessation of, the benchmark; and

(d) advise users that changes to, or the cessation of, the benchmark may have an impact upon the financial contracts and financial instruments that reference the benchmark or the measurement of the performance of investment funds.

2. A benchmark statement shall contain at least:

(a) the definitions for all key terms relating to the benchmark;

(b) the rationale for adopting the benchmark methodology and procedures for the review and approval of the methodology;

(c) the criteria and procedures used to determine the benchmark, including a description of the input data, the priority given to different types of input data, the minimum data needed to determine a benchmark, the use of any models or methods of extrapolation and any procedure for rebalancing the constituents of a benchmark's index;

(d) the controls and rules that govern any exercise of judgement or discretion by the administrator or any contributors, to ensure consistency in the use of such judgement or discretion;

(e) the procedures which govern the determination of the benchmark in periods of stress or periods where transaction data sources may be insufficient, inaccurate or unreliable and the potential limitations of the benchmark in such periods;

(f) the procedures for dealing with errors in input data or in the determination of the benchmark, including when a re-determination of the benchmark is required; and

(g) the identification of potential limitations of the benchmark, including its operation in illiquid or fragmented markets and the possible concentration of inputs.

3. ESMA shall develop draft regulatory technical standards to specify further the contents of a benchmark statement and the cases in which an update of such statement is required.

ESMA shall distinguish between the different types of benchmarks and sectors as set out in this Regulation and shall take into account the principle of proportionality.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

Article 28

Changes to and cessation of a benchmark

1. An administrator shall publish, together with the benchmark statement referred to in Article 27, a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the Union in accordance with Article 29(1). The procedure may be drafted, where applicable, for families of benchmarks and shall be updated and published whenever a material change occurs.

2. Supervised entities other than an administrator as referred to in paragraph 1 that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided. Where feasible and appropriate, such plans shall nominate one or several alternative benchmarks that could be referenced to substitute the benchmarks no longer provided, indicating why such benchmarks would be suitable alternatives. The supervised entities shall, upon request, provide the relevant competent authority with those plans and any updates and shall reflect them in the contractual relationship with clients.

TITLE V

USE OF BENCHMARKS IN THE UNION

Article 29

Use of a benchmark

1. A supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.

2. Where the object of a prospectus to be published under Directive 2003/71/EC or Directive 2009/65/EC is transferable securities or other investment products that reference a benchmark, the issuer, offeror, or person asking for admission to trade on a regulated market shall ensure that the prospectus also includes clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to in Article 36 of this Regulation.

Article 30

Equivalence

1. In order for a benchmark or a combination of benchmarks provided by an administrator located in a third country to be used in the Union in accordance with Article 29(1), the benchmark and the administrator shall be included in the register referred to in Article 36. The following conditions shall be complied with in order to be included in the register:

(a) an equivalence decision is adopted by the Commission in accordance with paragraph 2 or 3 of this Article;

(b) the administrator is authorised or registered, and is subject to supervision, in the third country in question;

(c) ESMA is notified by the administrator of its consent that its actual or prospective benchmarks may be used by supervised entities in the Union, of the list of the benchmarks for which they have given consent to be used in the Union and of the competent authority responsible for its supervision in the third country; and

(d) the cooperation arrangements referred to in paragraph 4 of this Article are operational.

2. The Commission may adopt an implementing decision stating that the legal framework and supervisory practice of a third country ensures that:

(a) administrators authorised or registered in that third country comply with binding requirements which are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and

(b) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that third country.

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

3. Alternatively, the Commission may adopt an implementing decision stating that:

(a) binding requirements in a third country with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under this Regulation, in particular taking account of whether the legal framework and supervisory practice of a third country ensures compliance with the IOSCO principles for financial benchmarks or, where applicable, with the IOSCO principles for PRAs; and

(b) such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that third country.

Such implementing decision shall be adopted in accordance with the examination procedure referred to in Article 50(2).

4. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2 or 3. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all relevant information regarding the administrator authorised in that third country that is requested by ESMA;

(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the administrator authorised in that third country that it is supervising is in breach of the conditions of its authorisation or other national legislation in the third country;

(c) the procedures concerning the coordination of supervisory activities, including on-site inspections.

5. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 4 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

Article 31

Withdrawal of registration of an administrator located in a third country

1. ESMA shall withdraw the registration of an administrator located in a third country by removing that administrator from the register referred to in Article 36 where it has well-founded reasons, based on documented evidence, that the administrator:

(a) is acting in a manner which is clearly prejudicial to the interests of the users of its benchmarks or the orderly functioning of markets; or

(b) has seriously infringed the national legislation in the third country or other provisions applicable to it in the third country and on the basis of which the Commission has adopted the implementing decision in accordance with Article 30(2) or (3).

2. ESMA shall take a decision under paragraph 1 only if the following conditions are fulfilled:

(a) ESMA has referred the matter to the competent authority of the third country and that competent authority has not taken the appropriate measures needed to protect investors and the orderly functioning of the markets in the Union, or has failed to demonstrate that the administrator concerned complies with the requirements applicable to it in the third country;

(b) ESMA has informed the competent authority of the third country of its intention to withdraw the registration of the administrator, at least 30 days before the withdrawal.

3. ESMA shall inform the other competent authorities of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.

Article 32

Recognition of an administrator located in a third country

1. Until such time as an equivalence decision in accordance with Article 30(2) or (3) is adopted, a benchmark provided by an administrator located in a third country may be used by supervised entities in the Union provided that the administrator acquires prior recognition by the competent authority of its Member State of reference in accordance with this Article.

2. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 of this Article shall comply with the requirements established in this Regulation, excluding Article 11(4) and Articles 16, 20, 21 and 23. The administrator may fulfil that condition by applying the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, provided that such application is equivalent to compliance with the requirements established in this Regulation, excluding Article 11(4), and Articles 16, 20, 21 and 23.

For the purposes of determining whether the condition referred to in the first subparagraph is fulfilled, and in order to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, the competent authority of the Member State of reference may rely on an assessment by an independent external auditor or, where the administrator located in a third country is subject to supervision, on the certification provided by the competent authority of the third country where the administrator is located.

If, and to the extent that, an administrator is able to demonstrate that a benchmark it provides is a regulated-data benchmark or a commodity benchmark that is not based on submissions by contributors the majority of which are supervised entities, there shall be no obligation on the administrator to comply with requirements not applicable to the provision of regulated-data benchmarks and of commodity benchmarks as provided for in Article 17 and Article 19(1) respectively.

3. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall have a legal representative established in its Member State of reference. The legal representative shall be a natural or legal person located in the Union, and which, expressly appointed by the administrator located in a third country, acts on behalf of such administrator vis-à-vis the authorities and any other person in the Union with regard to the administrator's obligations under this Regulation. The legal representative shall perform the oversight function relating to the provision of benchmarks performed by the administrator under this Regulation together with the administrator and, in that respect, shall be accountable to the competent authority of the Member State of reference.

4. The Member State of reference of an administrator located in a third country shall be determined as follows:

(a) where an administrator is part of a group that contains one supervised entity located in the Union, the Member State of reference shall be the Member State where that supervised entity is located. Such supervised entity shall be appointed as the legal representative for the purposes of paragraph 3;

(b) if point (a) does not apply, where an administrator is part of a group that contains more than one supervised entity located in the Union, the Member State of reference shall be the Member State where the highest number of supervised entities are located or, in the event that there is an equal number of supervised entities, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest. One of the supervised entities located in the Member State of reference determined pursuant to this point shall be appointed as the legal representative for the purposes of paragraph 3;

(c) if neither point (a) nor (b) of this paragraph applies, where one or more benchmarks provided by the administrator are used as a reference for financial instruments admitted to trading in a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU in one or more Member States, the Member State of reference shall be the Member State where the financial instrument referencing any of those benchmarks was admitted to trading or traded on a trading venue for the first time and is still traded. If the relevant financial instruments were admitted to trading or traded for the first time simultaneously on trading venues in different Member States, and are still traded, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest;

(d) if points (a), (b) and (c) do not apply, where one or more benchmarks provided by the administrator are used by supervised entities in more than one Member State, the Member State of reference shall be the Member State where the highest number of such supervised entities are located or, in the event that there is an equal number of supervised entities, the Member State of reference shall be the one where the value of financial instruments, financial contracts or investment funds that reference the benchmark is highest;

(e) if points (a), (b), (c) and (d) do not apply and if the administrator enters into an agreement consenting to the use of a benchmark it provides with a supervised entity, the Member State of reference shall be the Member State where such supervised entity is located.

5. An administrator located in a third country intending to obtain prior recognition as referred to in paragraph 1 shall apply for recognition with the competent authority of its Member State of reference. The applicant administrator shall provide all information necessary to satisfy the competent authority that it has established, at the time of recognition, all the necessary arrangements to meet the requirements referred to in paragraph 2 and shall provide the list of its actual or prospective benchmarks which may be used in the Union and shall, where applicable, indicate the competent authority responsible for its supervision in the third country.

Within 90 working days of receipt of the application referred to in the first subparagraph of this paragraph, the competent authority shall verify that the conditions laid down in paragraphs 2, 3 and 4 are fulfilled.

If the competent authority considers that the conditions laid down in paragraphs 2, 3 and 4 are not fulfilled, it shall refuse the recognition request and set out the reasons for that refusal. In addition, no recognition shall be granted unless the following additional conditions are fulfilled:

(a) where an administrator located in a third country is subject to supervision, an appropriate cooperation arrangement is in place between the competent authority of the Member State of reference and the competent authority of the third country where the administrator is located, in compliance with the regulatory technical standards adopted pursuant to Article 30(5), in order to ensure an efficient exchange of information that allows the competent authority to carry out its duties in accordance with this Regulation;

(b) the effective exercise by the competent authority of its supervisory functions under this Regulation is neither prevented by the laws, regulations or administrative provisions of the third country where the administrator is located, nor, where applicable, by limitations in the supervisory and investigatory powers of that third country's supervisory authority.

6. In the event that the competent authority of the Member State of reference considers that an administrator located in a third country provides a benchmark that fulfils the conditions of a significant or non-significant benchmark, as provided for in Articles 24 and 26 respectively, it shall, without undue delay, notify ESMA thereof. It shall support such assessment with the information provided by the administrator in the relevant application for recognition.

Within one month of receipt of the notification referred to in the first subparagraph, ESMA shall issue advice to the competent authority about the type of the benchmark and the requirements applicable to its provision, as provided for in Articles 24, 25 and 26. The advice may, in particular, address whether ESMA considers that the conditions for such type are fulfilled on the basis of the information provided by the administrator in the application for recognition.

The period of time referred to in paragraph 5 shall be suspended from the date on which the notification is received by ESMA, until such time as ESMA issues advice in accordance with this paragraph.

If the competent authority of the Member State of reference proposes to grant recognition contrary to ESMA's advice referred to in the second subparagraph, it shall inform ESMA thereof, stating its reasons. ESMA shall publish the fact that the competent authority does not comply or intend to comply with that advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that advice. The competent authority concerned shall receive advance notice of such publication.

7. The competent authority of the Member State of reference shall notify ESMA of any decision to recognise an administrator located in a third country within five working days, along with the list of the benchmarks provided by the administrator which may be used in the Union and, where applicable, the competent authority responsible for its supervision in the third country.

8. The competent authority of the Member State of reference shall suspend or, where appropriate, withdraw the recognition granted in accordance with paragraph 5 if it has well-founded reasons, based on documented evidence, to consider that the administrator is acting in a manner which is clearly prejudicial to the interests of users of its benchmarks or the orderly functioning of markets or the administrator has seriously infringed the relevant requirements set out in this Regulation, or that the administrator made false statements or used any other irregular means to obtain the recognition.

9. ESMA may develop draft regulatory technical standards to determine the form and content of the application referred to in paragraph 5 and, in particular, the presentation of the information required in paragraph 6.

In the event that such draft regulatory technical standards are developed, ESMA shall submit them to the Commission.

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

Article 33

Endorsement of benchmarks provided in a third country

1. An administrator located in the Union and authorised or registered in accordance with Article 34, or any other supervised entity located in the Union with a clear and well-defined role within the control or accountability framework of a third country administrator, which is able to monitor effectively the provision of a benchmark, may apply to the relevant competent authority to endorse a benchmark or a family of benchmarks provided in a third country for their use in the Union, provided that all of the following conditions are fulfilled:

(a) the endorsing administrator or other supervised entity has verified and is able to demonstrate on an on-going basis to its competent authority that the provision of the benchmark or family of benchmarks to be endorsed fulfils, on a mandatory or on a voluntary basis, requirements which are at least as stringent as the requirements of this Regulation;

(b) the endorsing administrator or other supervised entity has the necessary expertise to monitor effectively the activity of the provision of a benchmark in a third country and to manage the associated risks;

(c) there is an objective reason to provide the benchmark or family of benchmarks in a third country and for said benchmark or family of benchmarks to be endorsed for their use in the Union.

For the purpose of point (a), when assessing whether the provision of the benchmark or family of benchmarks to be endorsed fulfils requirements which are at least as stringent as the requirements of this Regulation, the competent authority may take into account whether the compliance of the provision of the benchmark or family of benchmarks with the IOSCO principles for financial benchmarks or the IOSCO principles for PRAs, as applicable, would be equivalent to compliance with the requirements of this Regulation.

2. An administrator or other supervised entity that makes an application for endorsement as referred to in paragraph 1 shall provide all information necessary to satisfy the competent authority that, at the time of application, all the conditions referred to in that paragraph are fulfilled.

3. Within 90 working days of receipt of the application for endorsement referred to in paragraph 1, the relevant competent authority shall examine the application and adopt a decision either to authorise the endorsement or to refuse it. An endorsed benchmark or an endorsed family of benchmarks shall be notified by the competent authority to ESMA.

4. An endorsed benchmark or an endorsed family of benchmarks shall be considered to be a benchmark or family of benchmarks provided by the endorsing administrator or other supervised entity. The endorsing administrator or other supervised entity shall not use the endorsement with the intention of avoiding the requirements of this Regulation.

5. An administrator or other supervised entity that has endorsed a benchmark or a family of benchmarks provided in a third country shall remain fully responsible for such a benchmark or family of benchmarks and for compliance with the obligations under this Regulation.

6. Where the competent authority of the endorsing administrator or other supervised entity has well-founded reasons to consider that the conditions laid down under paragraph 1 of this Article are no longer fulfilled, it shall have the power to require the endorsing administrator or other supervised entity to cease the endorsement and shall inform ESMA thereof. Article 28 shall apply in case of cessation of the endorsement.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions under which the relevant competent authorities may assess whether there is an objective reason for the provision of a benchmark or family of benchmarks in a third country and their endorsement for their use in the Union. The Commission shall take into account elements such as the specificities of the underlying market or economic reality the benchmark intends to measure, the need for proximity of the provision of the benchmark to such market or economic reality, the need for proximity of the provision of the benchmark to contributors, the material availability of input data due to different time zones, and specific skills required in the provision of the benchmark.

TITLE VI

AUTHORISATION, REGISTRATION AND SUPERVISION OF ADMINISTRATORS

CHAPTER 1

Authorisation and registration

Article 34

Authorisation and registration of an administrator

1. A natural or legal person located in the Union that intends to act as an administrator shall apply to the competent authority designated under Article 40 of the Member State in which that person is located in order to receive:

(a) authorisation if it provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation;

(b) registration if it is a supervised entity, other than an administrator, that provides or intends to provide indices which are used or intended to be used as benchmarks within the meaning of this Regulation, on condition that the activity of provision of a benchmark is not prevented by the sectoral discipline applying to the supervised entity and that none of the indices provided would qualify as a critical benchmark; or

(c) registration if it provides or intends to provide only indices which would qualify as non-significant benchmarks.

2. An authorised or registered administrator shall comply at all times with the conditions laid down in this Regulation and shall notify the competent authority of any material changes thereof.

3. The application referred to in paragraph 1 shall be made within 30 working days of any agreement entered into by a supervised entity to use an index provided by the applicant as a reference to a financial instrument or financial contract or to measure the performance of an investment fund.

4. The applicant shall provide all information necessary to satisfy the competent authority that the applicant has established, at the time of authorisation or registration, all the necessary arrangements to meet the requirements laid down in this Regulation.

5. Within 15 working days of receipt of the application, the relevant competent authority shall assess whether the application is complete and shall notify the applicant accordingly. If the application is incomplete, the applicant shall submit the additional information required by the relevant competent authority. The time limit referred to in this paragraph shall apply from the date on which such additional information is provided by the applicant.

6. The relevant competent authority shall:

(a) examine the application for authorisation and adopt a decision to authorise or refuse to authorise the applicant within four months of receipt of a complete application;

(b) examine the application for registration and adopt a decision to register or refuse to register the applicant within 45 working days of receipt of a complete application.

Within five working days of the adoption of a decision referred to in the first subparagraph, the competent authority shall notify it to the applicant. Where the competent authority refuses to authorise or to register the applicant, it shall give reasons for its decision.

7. The competent authority shall notify ESMA of any decision to authorise or to register an applicant within five working days of the date of adoption of said decision.

8. ESMA shall develop draft regulatory technical standards to specify further the information to be provided in the application for authorisation and in the application for registration, taking into account that authorisation and registration are distinct processes where authorisation requires a more extensive assessment of the administrator's application, the principle of proportionality, the nature of the supervised entities applying for registration under point (b) of paragraph 1 and the costs to the applicants and competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 April 2017.

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

Article 35

Withdrawal or suspension of authorisation or registration

1. A competent authority may withdraw or suspend the authorisation or registration of an administrator where the administrator:

(a) expressly renounces the authorisation or registration or has provided no benchmarks for the preceding 12 months;

(b) has obtained the authorisation or registration, or has endorsed a benchmark, by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised or registered; or

(d) has seriously or repeatedly infringed the provisions of this Regulation.

2. The competent authority shall notify ESMA of its decision within five working days of the adoption of said decision.

ESMA shall promptly update the register provided for in Article 36.

3. Following the adoption of a decision to suspend the authorisation or registration of an administrator, and where cessation of the benchmark would result in a force majeure event, or frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark, as specified in the delegated act adopted pursuant to Article 51(6), the provision of the benchmark in question may be permitted by the relevant competent authority of the Member State where the administrator is located until the decision of suspension has been withdrawn. During that period of time, the use of such benchmark by supervised entities shall be permitted only for financial contracts, financial instruments and investment funds that already reference the benchmark.

4. Following the adoption of a decision to withdraw the authorisation or registration of an administrator, Article 28(2) shall apply.

Article 36

Register of administrators and benchmarks

1. ESMA shall establish and maintain a public register that contains the following information:

(a) the identities of the administrators authorised or registered pursuant to Article 34 and the competent authorities responsible for the supervision thereof;

(b) the identities of administrators that comply with the conditions laid down in Article 30(1), the list of benchmarks referred to in point (c) of Article 30(1) and the third country competent authorities responsible for the supervision thereof;

(c) the identities of the administrators that acquired recognition in accordance with Article 32, the list of benchmarks referred to in Article 32(7) and, where applicable, the third country competent authorities responsible for the supervision thereof;

(d) the benchmarks that are endorsed in accordance with the procedure laid down in Article 33, the identities of their administrators, and the identities of the endorsing administrators or endorsing supervised entities.

2. The register referred to in paragraph 1 shall be publicly accessible on the website of ESMA and shall be updated promptly, as necessary.

CHAPTER 2

Supervisory cooperation

Article 37

Delegation of tasks between competent authorities

1. In accordance with Article 28 of Regulation (EU) No 1095/2010, a competent authority may delegate its tasks under this Regulation to the competent authority of another Member State with its prior consent.

The competent authorities shall notify ESMA of any proposed delegation 60 days prior to such delegation taking effect.

2. A competent authority may delegate some of its tasks under this Regulation to ESMA, subject to the agreement of ESMA.

3. ESMA shall notify the Member States of a proposed delegation within seven days. ESMA shall publish details of any agreed delegation within five working days of notification.

Article 38

Disclosure of information from another Member State

A competent authority may disclose information received from another competent authority only if:

(a) it has obtained the written agreement of that competent authority and the information is disclosed only for the purposes for which that competent authority gave its agreement; or

(b) such disclosure is necessary for legal proceedings.

Article 39

Cooperation on on-site inspections and investigations

1. A competent authority may request the assistance of another competent authority with regard to on-site inspections or investigations. The competent authority receiving the request shall cooperate to the extent possible and appropriate.

2. A competent authority making a request referred to in paragraph 1 shall inform ESMA thereof. In the event of an investigation or inspection with cross-border effect, the competent authorities may request ESMA to coordinate the on-site inspection or investigation.

3. Where a competent authority receives a request from another competent authority to carry out an on-site inspection or an investigation, it may:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in the on-site inspection or investigation;

(c) appoint auditors or experts to support or carry out the on-site inspection or investigation.

CHAPTER 3

Role of competent authorities

Article 40

Competent authorities

1. For administrators and supervised entities, each Member State shall designate the relevant competent authority responsible for carrying out the duties under this Regulation and shall inform the Commission and ESMA thereof.

2. Where a Member State designates more than one competent authority, it shall clearly determine their respective roles and shall designate a single authority to be responsible for coordinating cooperation and the exchange of information with the Commission, ESMA and other Member States' competent authorities.

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

Article 41

Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law, at least the following supervisory and investigatory powers:

(a) access to any document and other data in any form, and to receive or take a copy thereof;

(b) require or demand information from any person involved in the provision of, and contribution to, a benchmark, including any service provider to which functions, services or activities in the provision of a benchmark have been outsourced as provided for in Article 10, as well as their principals, and if necessary, summon and question any such person with a view to obtaining information;

(c) request, in relation to commodity benchmarks, information from contributors on related spot markets according, where applicable, to standardised formats and reports on transactions, and direct access to traders' systems;

(d) carry out on-site inspections or investigations, at sites other than the private residences of natural persons;

(e) enter premises of legal persons, without prejudice to Regulation (EU) No 596/2014, in order to seize documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove a breach of this Regulation. Where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall only be used after having obtained that prior authorisation;

(f) require existing recordings of telephone conversations, electronic communications or other data traffic records held by supervised entities;

(g) request the freezing or sequestration of assets or both;

(h) require temporary cessation of any practice that the competent authority considers contrary to this Regulation;

(i) impose a temporary prohibition on the exercise of professional activity;

(j) take all necessary measures to ensure that the public is correctly informed about the provision of a benchmark, including by requiring the relevant administrator or a person that has published or disseminated the benchmark or both to publish a corrective statement about past contributions to or figures of the benchmark.

2. Competent authorities shall exercise their functions and powers referred to in paragraph 1 of this Article and the powers to impose sanctions referred to in Article 42, in accordance with their national legal frameworks, in any of the following ways:

(a) directly;

(b) in collaboration with other authorities or with market undertakings;

(c) under their responsibility by delegation to such authorities or to market undertakings;

(d) by application to the competent judicial authorities.

For the exercise of those powers, competent authorities shall have in place adequate and effective safeguards in regard to the right of defence and fundamental rights.

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

4. An administrator or any other supervised entity making information available to a competent authority in accordance with paragraph 1 shall not be considered to be in breach of any restriction on disclosure of information posed by any contractual, legislative, regulatory or administrative provision.

Article 42

Administrative sanctions and other administrative measures

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 41, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

(a) any infringement of Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34 where they apply; and

(b) any failure to cooperate or comply in an investigation or with an inspection or request covered by Article 41.

Those administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

2. In the event of an infringement referred to in paragraph 1, Member States shall, in conformity with national law, confer on competent authorities the power to impose at least the following administrative sanctions and other administrative measures:

(a) an order requiring the administrator or supervised entity responsible for the infringement to cease the conduct and to desist from repeating that conduct;

(b) the disgorgement of the profits gained or losses avoided because of the infringement where those can be determined;

(c) a public warning which indicates the administrator or supervised entity responsible and the nature of the infringement;

(d) withdrawal or suspension of the authorisation or the registration of an administrator;

(e) a temporary ban prohibiting any natural person, who is held responsible for such infringement, from exercising management functions in administrators or supervised contributors;

(f) the imposition of maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement where those can be determined;

(g) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 4, 5, 6, 7, 8, 9, 10, points (a), (b), (c) and (e) of Article 11(1), Article 11(2) and (3), and Articles 12, 13,14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, EUR 500 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016; or

(ii) for infringements of point (d) of Article 11(1) or of Article 11(4), EUR 100 000 or in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016;

(h) in respect of a legal person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 4, 5, 6, 7, 8, 9, 10, points (a), (b), (c) and (e) of Article 11(1), Article 11(2) and (3), and Articles 12, 13,14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, either EUR 1 000 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 10 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher; or

(ii) for infringements of point (d) of Article 11(1) or of Article 11(4), either EUR 250 000 or, in the Member States whose official currency is not the euro, the corresponding value in the national currency on 30 June 2016, or 2 % of its total annual turnover according to the last available accounts approved by the management body, whichever is the higher.

For the purposes of point (h)(i) and (ii), where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council ([1]), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with Council Directive 86/635/EEC ([2]) for banks and Council Directive 91/674/EEC ([3]) for insurance companies according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10 % of the aggregate turnovers of its members.

3. By 1 January 2018, Member States shall notify the rules regarding paragraphs 1 and 2 to the Commission and ESMA.

Member States may decide not to lay down rules for administrative sanctions as provided for in paragraph 1 where the infringements referred to in that paragraph are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission and ESMA the relevant criminal law provisions along with the notification referred to in the first subparagraph of this paragraph.

They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

4. Member States may provide competent authorities under national law to have other powers to impose sanctions in addition to those referred to in paragraph 1 and may provide for higher levels of sanctions than those established in paragraph 2.

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

([2]) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

([3]) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

Article 43

Exercise of supervisory powers and imposition of sanctions

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

(a) the gravity and duration of the infringement;

(b) the criticality of the benchmark to financial stability and the real economy;

(c) the degree of responsibility of the responsible person;

(d) the financial strength of the responsible person, as indicated, in particular, by the total annual turnover of the responsible legal person or the annual income of the responsible natural person;

(e) the level of the profits gained or losses avoided by the responsible person, insofar as they can be determined;

(f) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the person concerned;

(h) measures taken, after the infringement, by a responsible person to prevent the repetition of the infringement.

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 42, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative sanctions and other administrative measures produce the desired results of this Regulation. They shall also coordinate their action in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative sanctions, including pecuniary sanctions, and other administrative measures to cross-border cases.

Article 44

Obligation to cooperate

1. Where Member States have chosen, in accordance with Article 42, to lay down criminal sanctions for infringements of the provisions referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Regulation. Those competent authorities shall provide that information to other competent authorities and ESMA, in order to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

2. Competent authorities shall provide assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities. Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

Article 45

Publication of decisions

1. Subject to paragraph 2, a competent authority shall publish any decision imposing an administrative sanction or other administrative measure in relation to infringements of this Regulation on its official website immediately after the person subject to that decision has been informed of that decision. Such publication shall include at least information on the type and nature of the infringement and the identity of the persons subject to the decision.

The first subparagraph does not apply to decisions imposing measures that are of an investigatory nature.

2. Where a competent authority considers that the publication of the identity of the legal person or of the personal data of a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation, it shall do any of the following:

(a) defer publication of the decision until such time as the reasons for that deferral cease to exist;

(b) publish the decision on an anonymous basis in accordance with national law where such anonymous publication ensures an effective protection of the personal data concerned;

(c) not publish the decision at all in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Where a competent authority decides to publish a decision on an anonymous basis as referred to in point (b) of the first subparagraph, it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication shall cease to exist during that period.

3. Where the decision is subject to an appeal before a national judicial, administrative or other authority, the competent authority shall also publish, immediately, on its official website such information and any subsequent information on the outcome of such appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. The competent authority shall ensure that any decision that is published in accordance with this Article shall remain accessible on its official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

5. Member States shall annually provide ESMA with aggregated information regarding all administrative sanctions and other administrative measures imposed pursuant to Article 42. That obligation does not apply to measures of an investigatory nature. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 42, to lay down criminal sanctions for infringements of the provisions referred to in that Article, their competent authorities shall annually provide ESMA with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report.

Article 46

Colleges

1. Within 30 working days from the inclusion of a benchmark referred to in points (a) and (c) of Article 20(1) in the list of critical benchmarks, with the exception of benchmarks where the majority of contributors are non-supervised entities, the competent authority shall establish a college.

2. The college shall comprise the competent authority of the administrator, ESMA, and the competent authorities of supervised contributors.

3. Competent authorities of other Member States shall have the right to be members of the college where, if the critical benchmark in question were to cease to be provided, it would have a significant adverse impact on the market integrity, financial stability, consumers, real economy, or financing of households and businesses of those Member States.

Where a competent authority intends to become a member of a college, it shall submit a request to the competent authority of the administrator containing evidence that the requirements of the first subparagraph of this paragraph are fulfilled. The relevant competent authority of the administrator shall consider the request and notify the requesting authority within 20 working days of receipt of the request whether or not it considers those requirements to be fulfilled. Where it considers those requirements not to be fulfilled, the requesting authority may refer the matter to ESMA in accordance with paragraph 9.

4. ESMA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges referred to in this Article in accordance with Article 21 of Regulation (EU) No 1095/2010. To that end, ESMA shall participate as appropriate and shall be considered to be a competent authority for that purpose.

Where ESMA acts in accordance with Article 17(6) of Regulation (EU) No 1095/2010 regarding a critical benchmark, it shall ensure appropriate exchange of information and cooperation with the other members of the college.

5. The competent authority of an administrator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college.

Where an administrator provides more than one critical benchmark, the competent authority of that administrator may establish a single college in respect of all the benchmarks provided by that administrator.

6. The competent authority of an administrator shall establish written arrangements within the framework of the college regarding the following matters:

(a) the information to be exchanged between competent authorities;

(b) the decision-making process between the competent authorities and the time frame within which each decision has to be taken;

(c) the cases in which the competent authorities must consult each other;

(d) the cooperation to be provided under Article 23(7) and (8).

7. The competent authority of an administrator shall give due consideration to any advice provided by ESMA concerning the written arrangements under paragraph 6 before agreeing their final text. The written arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of ESMA. The competent authority of the administrator shall transmit the written arrangements to the members of the college and to ESMA.

8. Before taking any measures referred to in Article 23(6), (7) and (9), and Articles 34, 35 and 42, the competent authority of an administrator shall consult the members of the college. The members of the college shall do everything reasonable within their power to reach an agreement within the time frame specified in the written arrangements referred to in paragraph 6 of this Article.

Any decision of the competent authority of the administrator to take such measures shall take into account the impact on the other Member States concerned, in particular the potential impact on the stability of their financial systems.

With regard to the decision to withdraw the authorisation or registration of an administrator in accordance with Article 35, whenever the cessation of a benchmark would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument, or the rules of any investment fund, which references that benchmark in the Union, within the meaning specified by the Commission in any delegated act adopted pursuant to Article 51(6), the competent authorities within the college shall consider whether to adopt measures to mitigate the effects referred to in this paragraph, including:

(a) a change to the code of conduct referred to in Article 15, the methodology or other rules of the benchmark;

(b) a transitional period, during which the procedures envisaged under Article 28(2) shall apply.

9. In the absence of agreement between the members of a college, competent authorities may refer to ESMA any of the following situations:

(a) where a competent authority has not communicated essential information;

(b) where, following a request made under paragraph 3, the competent authority of the administrator has notified the requesting authority that the requirements of that paragraph are not fulfilled or where it has not acted upon such request within a reasonable time;

(c) where the competent authorities have failed to reach an agreement on the matters set out in paragraph 6;

(d) where there is a disagreement concerning the measures to be taken in accordance with Articles 34, 35 and 42;

(e) where there is a disagreement concerning the measures to be taken in accordance with Article 23(6);

(f) where there is a disagreement concerning the measures to be taken in accordance with the third subparagraph of paragraph 8 of this Article.

10. In the situations referred to in points (a), (b), (c), (d) and (f) of paragraph 9, if the issue is not settled within 30 days after referral to ESMA, the competent authority of an administrator shall take the final decision and provide a detailed explanation of its decision in writing to the competent authorities referred to in that paragraph and to ESMA.

The period of time referred to in point (a) of Article 34(6) shall be suspended from the date of referral to ESMA until such time as a decision is taken in accordance with the first subparagraph of this paragraph.

Where ESMA considers that the competent authority of the administrator has taken any measures referred to in paragraph 8 of this Article which may not be in conformity with Union law it shall act in accordance with Article 17 of Regulation (EU) No 1095/2010.

11. In the situation referred to in point (e) of paragraph 9 of this Article, and without prejudice to Article 258 TFEU, ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

The power of the competent authority of an administrator under Article 23(6) may be exercised until such time as ESMA publishes its decision.

Article 47

Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 1 April 2017.

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

Article 48

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2.

2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking or natural or legal person to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority.

3. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

4. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

TITLE VII

DELEGATED AND IMPLEMENTING ACTS

Article 49

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 20(6), 24(2), 33(7), 51(6) and 54(3) shall be conferred on the Commission for an indeterminate period of time from 30 June 2016.

3. The delegation of power referred to in Articles 3(2), 20(6), 24(2), 33(7), 51(6) and 54(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of 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. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

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

6. A delegated act adopted pursuant to Articles 3(2), 20(6), 24(2), 33(7), 51(6) and 54(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 50

Committee procedure

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

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

TITLE VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 51

Transitional provisions

1. An index provider providing a benchmark on 30 June 2016 shall apply for authorisation or registration in accordance with Article 34 by 1 January 2020.

2. By 1 January 2020, the competent authority of the Member State where an index provider applying for authorisation in accordance with Article 34 is located shall have the power to decide to register that index provider as an administrator even if it is not a supervised entity, under the following conditions:

(a) the index provider does not provide a critical benchmark;

(b) the competent authority is aware, on a reasonable basis, that the index or indices provided by the index provider are not widely used, within the meaning of this Regulation, in the Member State where the index provider is located as well as in other Member States.

The competent authority shall notify ESMA of its decision adopted in accordance with the first subparagraph.

The competent authority shall keep evidence of the reasons for its decision adopted in accordance with the first subparagraph, in such a form that it is possible to fully understand the evaluations of the competent authority that the index or indices provided by the index provider are not widely used, including any market data, judgement or other information, as well as information received from the index provider.

3. An index provider may continue to provide an existing benchmark which may be used by supervised entities until 1 January 2020 or, where the index provider submits an application for authorisation or registration in accordance with paragraph 1, unless and until such authorisation or registration is refused.

4. Where an existing benchmark does not meet the requirements of this Regulation, but ceasing or changing that benchmark to fulfil the requirements of this Regulation would result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund, which references that benchmark, the use of the benchmark shall be permitted by the competent authority of the Member State where the index provider is located. No financial instruments, financial contracts, or measurements of the performance of an investment fund shall add a reference to such an existing benchmark after 1 January 2020.

5. Unless the Commission has adopted an equivalence decision as referred to in Article 30(2) or (3) or unless an administrator has been recognised pursuant to Article 32, or a benchmark has been endorsed pursuant to Article 33, the use in the Union by supervised entities of a benchmark provided by an administrator located in a third country where the benchmark is already used in the Union as a reference for financial instruments, financial contracts, or for measuring the performance of an investment fund, shall be permitted only for such financial instruments, financial contracts and measurements of the performance of an investment fund that already reference the benchmark in the Union on, or which add a reference to such benchmark prior to, 1 January 2020.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 concerning measures to determine the conditions on which the relevant competent authority may assess whether the cessation or the changing of an existing benchmark to conform with the requirements of this Regulation could reasonably result in a force majeure event, frustrate or otherwise breach the terms of any financial contract or financial instrument or the rules of any investment fund which references such benchmark.

Article 52

Deadline for updating the prospectuses and key information documents

Article 29(2) is without prejudice to outstanding prospectuses approved under Directive 2003/71/EC prior to 1 January 2018. For prospectuses approved prior to 1 January 2018 under Directive 2009/65/EC, the underlying documents shall be updated at the first occasion or at the latest within 12 months after that date.

Article 53

ESMA reviews

1. ESMA shall seek to build a common European supervisory culture and consistent supervisory practices and ensure consistent approaches among competent authorities in relation to the application of Articles 32 and 33. To that end, the recognitions granted in accordance with Article 32 and the endorsements authorised in accordance with Article 33 shall be reviewed by ESMA every two years.

ESMA shall issue an opinion to each competent authority that has recognised a third country administrator or endorsed a third country benchmark assessing how that competent authority applies the relevant requirements of Articles 32 and 33 respectively and the requirements of any relevant delegated act and regulatory or implementing technical standard based on this Regulation.

2. ESMA shall have the power to require the documented evidence from a competent authority for any of the decisions adopted in accordance with the first subparagraph of Article 51(2), Article 24(1) and Article 25(2).

Article 54

Review

1. By 1 January 2020, the Commission shall review and submit a report to the European Parliament and to the Council on this Regulation and in particular on:

(a) the functioning and effectiveness of the critical benchmark, mandatory administration and mandatory contribution regime under Articles 20, 21 and 23 and the definition of a critical benchmark in point (25) of Article 3(1);

(b) the effectiveness of the authorisation, registration and supervision regime of administrators under Title VI and the colleges under Article 46 and the appropriateness of supervision of certain benchmarks by a Union body;

(c) the functioning and effectiveness of Article 19(2), in particular the scope of its application.

2. The Commission shall review the evolution of international principles applicable to benchmarks and of legal frameworks and supervisory practices in third countries concerning the provision of benchmarks and report to the European Parliament and to the Council every five years after 1 January 2018. That report shall assess in particular whether there is a need to amend this Regulation and shall be accompanied by a legislative proposal, if appropriate.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to extend the 42-month period referred to in Article 51(2) by 24 months, if the report referred to in point (b) of paragraph 1 of this Article provides evidence that the transitional registration regime under Article 51(2) is not detrimental to a common European supervisory culture and consistent supervisory practices and approaches among competent authorities.

Article 55

Notification of benchmarks referenced and their administrators

When a benchmark is referenced in a financial instrument covered by Article 4(1) of Regulation (EU) No 596/2014, the notifications under Article 4(1) of that Regulation shall include the name of the benchmark referenced and its administrator.

Article 56

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(1) Article 19 is amended as follows:

(a) the following paragraph is inserted:

'1a. The notification obligation referred to in paragraph 1 shall not apply to transactions in financial instruments linked to shares or to debt instruments of the issuer referred to in that paragraph where at the time of the transaction any of the following conditions is met:

(a) the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the assets held by the collective investment undertaking;

(b) the financial instrument provides exposure to a portfolio of assets in which the exposure to the issuer's shares or debt instruments does not exceed 20 % of the portfolio's assets;

(c) the financial instrument is a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the person discharging managerial responsibilities or person closely associated with such a person does not know, and could not know, the investment composition or exposure of such collective investment undertaking or portfolio of assets in relation to the issuer's shares or debt instruments, and furthermore there is no reason for that person to believe that the issuer's shares or debt instruments exceed the thresholds in point (a) or (b).

If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the person discharging managerial responsibility or person closely associated with such a person shall make all reasonable efforts to avail themselves of that information.';

(b) in paragraph 7, the following subparagraph is inserted after the second subparagraph:

'For the purposes of point (b), transactions executed in shares or debt instruments of an issuer or derivatives or other financial instruments linked thereto by managers of a collective investment undertaking in which the person discharging managerial responsibilities or a person closely associated with them has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.'.

(2) Article 35 is amended as follows:

(a) in paragraphs (2) and (3), the phrase 'and Article 19(13) and (14)' is replaced by ', Article 19(13) and (14) and Article 38';

(b) paragraph (5) is replaced by the following:

'5. A delegated act adopted pursuant to Article 6(5) or (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) or (14) or Article 38, shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.'.

(3) In Article 38, the following paragraphs are added:

'By 3 July 2019, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the level of the thresholds set out in Article 19(1a)(a) and (b) in relation to managers' transactions where the issuer's shares or debt instruments form part of a collective investment undertaking or provide exposure to a portfolio of assets, with a view to assessing whether that level is appropriate or should be adjusted.

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 adjusting the thresholds in Article 19(1a)(a) and (b), if it determines in that report that those thresholds should be adjusted.'.

Article 57

Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

(1) In Article 5(1), the following subparagraph is inserted after the second subparagraph:

'Where the credit agreement references a benchmark as defined in point 3 of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council (*), the name of the benchmark and of its administrator and the potential implications on the consumer shall be provided by the creditor, or where applicable, by the credit intermediary, to the consumer in a separate document, which may be annexed to the Standard European Consumer Credit Information form.

(*) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).'.

(2) In Article 27(1), the following subparagraph is inserted after the second subparagraph:

'By 1 July 2018 Member States shall adopt and publish the provisions necessary to comply with the third subparagraph of Article 5(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018.'.

Article 58

Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

(1) In the second subparagraph of Article 13(1), the following point is inserted:

'(ea) where contracts that reference a benchmark as defined in point (3) of Article 3(1) of Regulation (EU) 2016/1011 of the European Parliament and of the Council (*) are available, the names of the benchmarks and of their administrators and the potential implications on the consumer;

(*) Regulation (EU) 2016/1011, of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).';

(2) In Article 42(2), the following subparagraph is inserted after the first subparagraph:

'By 1 July 2018, Member States shall adopt and publish the provisions necessary to comply with point (ea) of the second subparagraph of Article 13(1) and shall communicate them to the Commission. They shall apply those provisions from 1 July 2018.';

(3) In Article 43(1), the following subparagraph is added:

'Point (ea) of the second subparagraph of Article 13(1) shall not apply to credit agreements existing before 1 July 2018.'.

Article 59

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*.

It shall apply from 1 January 2018.

Notwithstanding the second paragraph of this Article, Articles 3(2), 5(5), 11(5), 13(3), 15(6), 16(5), Article 20 (excluding point (b) of paragraph (6)), Articles 21 and 23, Articles 25(8), 25(9), 26(5), 27(3), 30(5), 32(9), 33(7), 34(8), Article 46, and Articles 47(3) and 51(6) shall apply from 30 June 2016.

Notwithstanding the second paragraph of this Article, Article 56 shall apply from 3 July 2016.

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

Done at Strasbourg, 8 June 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

ANNEX I

INTEREST RATE BENCHMARKS

Accurate and sufficient data

1. For the purposes of points (a) and (c) of Article 11(1), in general the priority of use of input data shall be as follows:

   (a) a contributor's transactions in the underlying market that a benchmark intends to measure or, if not sufficient, its transactions in related markets, such as:

   — the unsecured inter-bank deposit market,

   — other unsecured deposit markets, including certificates of deposit and commercial paper, and

   — other markets such as overnight index swaps, repurchase agreements, foreign exchange forwards, interest rate futures and options, provided that those transactions comply with the input data requirements in the code of conduct;

   (b) a contributor's observations of third party transactions in the markets described in point (a);

   (c) committed quotes;

   (d) indicative quotes or expert judgements.

2. For the purposes of point (a) of Article 11(1) and Article 11(4), input data may be adjusted.

   In particular, input data may be adjusted by application of the following criteria:

   (a) proximity of transactions to the time of provision of the input data and the impact of any market events between the time of the transactions and the time of provision of the input data;

   (b) interpolation or extrapolation from transactions data;

   (c) adjustments to reflect changes in the credit standing of the contributors and other market participants.

Oversight function

3. The following requirements shall apply in substitution for the requirements of Article 5(4) and (5):

   (a) the administrator of an interest rate benchmark shall have in place an independent oversight committee. Details of the membership of that committee shall be made public, along with any declarations of any conflict of interest and the processes for election or nomination of its members;

   (b) the oversight committee shall hold no less than one meeting every four months and shall keep minutes of each such meeting;

   (c) the oversight committee shall operate with integrity and shall have all of the responsibilities provided for in Article 5(3).

Auditing

4. The administrator of an interest rate benchmark shall appoint an independent external auditor to review and report on the administrator's compliance with the benchmark methodology and this Regulation. The external audit of the administrator shall be carried out for the first time six months after the introduction of the code of conduct and subsequently every two years.

The oversight committee may require an external audit of a contributor to an interest rate benchmark if dissatisfied with any aspects of its conduct.

Contributor systems and controls

5. The following requirements shall apply to contributors to interest rate benchmarks, in addition to the requirements set out in Article 16. Article 16(5) shall not apply.

6. Each contributor's submitter and the direct managers of that submitter shall acknowledge in writing that they have read the code of conduct and that they will comply with it.

7. A contributor's systems and controls shall include:

(a) an outline of responsibilities within each firm, including internal reporting lines and accountability, including the location of submitters and managers and the names of relevant individuals and alternates;

(b) internal procedures for sign-off of contributions of input data;

(c) disciplinary procedures in respect of attempts to manipulate, or any failure to report, actual or attempted manipulation by parties external to the contribution process;

(d) effective conflicts of interest management procedures and communication controls, both within contributors and between contributors and other third parties, to avoid any inappropriate external influence over those responsible for submitting rates. Submitters shall work in locations physically separated from interest rate derivatives traders;

(e) effective procedures to prevent or control the exchange of information between persons engaged in activities involving a risk of conflict of interest where the exchange of that information may affect the benchmark data contributed;

(f) rules to avoid collusion among contributors, and between contributors and the benchmark administrators;

(g) measures to prevent, or limit, any person from exercising inappropriate influence over the way in which persons involved in the provision of input data carries out those activities;

(h) the removal of any direct link between the remuneration of employees involved in the provision of input data and the remuneration of, or revenues generated by, persons engaged in another activity, where a conflict of interest may arise in relation to those activities;

(i) controls to identify any reverse transaction subsequent to the provision of input data.

8. A contributor to an interest rate benchmark shall keep detailed records of:

(a) all relevant aspects of contributions of input data;

(b) the process governing input data determination and the sign-off of input data;

(c) the names of submitters and their responsibilities;

(d) any communications between the submitters and other persons, including internal and external traders and brokers, in relation to the determination or contribution of input data;

(e) any interaction of submitters with the administrator or any calculation agent;

(f) any queries regarding the input data and their outcome of those queries;

(g) sensitivity reports for interest rate swap trading books and any other derivative trading book with a significant exposure to interest rate fixings in respect of input data.

9. Records shall be kept on a medium that allows the storage of information to be accessible for future reference with a documented audit trail.

10. The compliance function of the contributor to an interest rate benchmark shall report any findings, including reverse transactions, to management on a regular basis.

11. Input data and procedures shall be subject to regular internal reviews.

12. An external audit of the input data of a contributor to an interest rate benchmark, compliance with the code of conduct and the provisions of this Regulation shall be carried out for the first time six months after the introduction of the code of conduct, and subsequently every two years.

ANNEX II

COMMODITY BENCHMARKS

Methodology

1. The administrator of a commodity benchmark shall formalise, document, and make public any methodology that the administrator uses for a benchmark calculation. At a minimum, such methodology shall contain and describe the following:

   (a) all criteria and procedures that are used to develop the benchmark, including how the administrator uses input data including the specific volume, concluded and reported transactions, bids, offers and any other market information in its assessment or assessment time periods or windows, why a specific reference unit is used, how the administrator collects such input data, the guidelines that control the exercise of judgement by assessors and any other information, such as assumptions, models or extrapolation from collected data that are considered in making an assessment;

   (b) procedures and practices that are designed to ensure consistency between its assessors in exercising their judgement;

   (c) the relative importance that shall be assigned to each criterion used in benchmark calculation, in particular the type of input data used and the type of criterion used to guide judgement so as to ensure the quality and integrity of the benchmark calculation;

   (d) criteria that identify the minimum amount of transaction data required for a particular benchmark calculation. If no such threshold is provided for, the reasons why a minimum threshold is not established shall be explained, including setting out the procedures to be used where no transaction data exist;

   (e) criteria that address the assessment periods where the submitted data fall below the methodology's recommended transaction data threshold or the requisite administrator's quality standards, including any alternative methods of assessment including theoretical estimation models. Those criteria shall explain the procedures to be used where no transaction data exist;

   (f) criteria for timeliness of contributions of input data and the means for such contributions of input data whether electronically, by telephone or otherwise;

   (g) criteria and procedures that address assessment periods where one or more contributors submit input data that constitute a significant proportion of the total input data for that benchmark. The administrator shall also define in those criteria and procedures what constitutes a significant proportion for each benchmark calculation;

   (h) criteria according to which transaction data may be excluded from a benchmark calculation.

2. The administrator of a commodity benchmark shall publish or make available the key elements of the methodology that the administrator uses for each commodity benchmark provided and published or, when applicable, for each family of benchmarks provided and published.

3. Along with the methodology referred to in paragraph 2, the administrator of a commodity benchmark shall also describe and publish all of the following:

   (a) the rationale for adopting a particular methodology, including any price adjustment techniques and a justification of why the time period or window within which input data is accepted is a reliable indicator of physical market values;

   (b) the procedure for internal review and approval of a given methodology, as well as the frequency of such review;

   (c) the procedure for external review of a given methodology, including the procedures to gain market acceptance of the methodology through consultation with users on important changes to their benchmark calculation processes.

Changes to a methodology

4. The administrator of a commodity benchmark shall adopt and make public to users explicit procedures and the rationale of any proposed material change in its methodology. Those procedures shall be consistent with the overriding objective that an administrator must ensure the continued integrity of its benchmark calculations and implement changes for good order of the particular market to which such changes relate. Such procedures shall provide:

   (a) advance notice in a clear time frame that gives users sufficient opportunity to analyse and comment on the impact of such proposed changes, having regard to the administrator's calculation of the overall circumstances;

   (b) for users' comments, and the administrator's response to those comments, to be made accessible to all market users after any given consultation period, except where the commenter has requested confidentiality.

5. The administrator of a commodity benchmark shall regularly examine its methodologies for the purpose of ensuring that they reliably reflect the physical market under assessment and shall include a process for taking into account the views of relevant users.

Quality and integrity of benchmark calculations

6. The administrator of a commodity benchmark shall:

   (a) specify the criteria that define the physical commodity that is the subject of a particular methodology;

   (b) give priority to input data in the following order, where consistent with its methodologies:

      (i) concluded and reported transactions;

      (ii) bids and offers;

      (iii) other information.

      If concluded and reported transactions are not given priority, the reasons should be explained, as required in point 7(b).

   (c) employ sufficient measures designed to use input data submitted and considered in a benchmark calculation which are bona fide, meaning that the parties submitting the input data have executed, or are prepared to execute, transactions generating such input data and the concluded transactions were executed at arms-length from each other and particular attention shall be paid to inter-affiliate transactions;

   (d) establish and employ procedures to identify anomalous or suspicious transaction data and keep records of decisions to exclude transaction data from the administrator's benchmark calculation process;

   (e) encourage contributors to submit all of their input data that falls within the administrator's criteria for that calculation. Administrators shall seek, so far as they are able and is reasonable, to ensure that input data submitted is representative of the contributors' actual concluded transactions; and

   (f) employ a system of appropriate measures to ensure that contributors comply with the administrator's applicable quality and integrity standards for input data.

7. The administrator of a commodity benchmark shall describe and publish for each calculation, to the extent reasonable without prejudicing due publication of the benchmark:

   (a) a concise explanation, sufficient to facilitate a benchmark subscriber's or competent authority's ability to understand how the calculation was developed including, at a minimum, the size and liquidity of the physical market being assessed (such as the number and volume of transactions submitted), the range and average volume and range and average of price, and indicative percentages of each type of input data that have been considered in a calculation; terms referring to the pricing methodology shall be included such as transaction-based, spread-based or interpolated or extrapolated; and

(b) a concise explanation of the extent to which, and the basis upon which, any judgement including the exclusions of data which otherwise conformed to the requirements of the relevant methodology for that calculation, basing prices on spreads or interpolation, extrapolation, or weighting bids or offers higher than concluded transactions, if any, was used in any calculation.

Integrity of the reporting process

8. The administrator of a commodity benchmark shall:

(a) specify the criteria that define who may submit input data to the administrator;

(b) have in place quality control procedures to evaluate the identity of a contributor and any submitter who reports input data and the authorisation of such submitter to report input data on behalf of a contributor;

(c) specify the criteria applied to employees of a contributor who are permitted to submit input data to an administrator on behalf of a contributor; encourage contributors to submit transaction data from back office functions and seek corroborating data from other sources where transaction data is received directly from a trader; and

(d) implement internal controls and written procedures to identify communications between contributors and assessors that attempt to influence a calculation for the benefit of any trading position (whether of the contributor, its employees or any third party), attempt to cause an assessor to violate the administrator's rules or guidelines or identify contributors that engage in a pattern of submitting anomalous or suspicious transaction data. Those procedures shall include, to the extent possible, provision for escalation of the inquiry by the administrator within the contributor's company. Controls shall include cross-checking market indicators to validate submitted information.

Assessors

9. In relation to the role of an assessor, the administrator of a commodity benchmark shall:

(a) adopt and have in place explicit internal rules and guidelines for selecting assessors, including their minimum level of training, experience and skills, as well as the process for periodic review of their competence;

(b) have in place arrangements to ensure that calculations can be made on a consistent and regular basis;

(c) maintain continuity and succession planning in respect of its assessors in order to ensure that calculations are made consistently and by employees who possess the relevant levels of expertise; and

(d) establish internal control procedures to ensure the integrity and reliability of calculations. At a minimum, such internal controls and procedures shall require the ongoing supervision of assessors to ensure that the methodology was properly applied and procedures for internal sign-off by a supervisor prior to releasing prices for dissemination to the market.

Audit trails

10. The administrator of a commodity benchmark shall have rules and procedures in place to document contemporaneously relevant information, including:

(a) all input data;

(b) the judgements that are made by assessors in reaching each benchmark calculation;

(c) whether a calculation excluded a particular transaction which otherwise conformed to the requirements of the relevant methodology for that calculation, and the rationale for doing so;

(d) the identity of each assessor and of any other person who submitted or otherwise generated any of the information in points (a), (b) or (c).

11. The administrator of a commodity benchmark shall have rules and procedures in place to ensure that an audit trail of relevant information is retained for at least five years in order to document the construction of its calculations.

Conflicts of interest

12. The administrator of a commodity benchmark shall establish adequate policies and procedures for the identification, disclosure, management or mitigation and avoidance of any conflict of interest and the protection of integrity and independence of calculations. Those policies and procedures shall be reviewed and updated regularly and shall:

    (a) ensure that benchmark calculations are not influenced by the existence of, or potential for, a commercial or personal business relationship or interest between the administrator or its affiliates, its personnel, clients, any market participant or persons connected with them;

    (b) ensure that personal interests and business connections of the administrator's personnel are not permitted to compromise the administrator's functions, including outside employment, travel, and acceptance of entertainment, gifts and hospitality provided by the administrator's clients or other commodity market participants;

    (c) ensure, in respect of identified conflicts, appropriate segregation of functions within the administrator by way of supervision, compensation, systems access and information flows;

    (d) protect the confidentiality of information submitted to or produced by the administrator, subject to the disclosure obligations of the administrator;

    (e) prohibit managers, assessors and other employees of the administrator from contributing to a benchmark calculation by way of engaging in bids, offers and trades on either a personal basis or on behalf of market participants; and

    (f) effectively address any identified conflict of interest which may exist between the administrator's provision of a benchmark (including all employees who perform or otherwise participate in benchmark calculation responsibilities), and any other business of the administrator.

13. The administrator of a commodity benchmark shall ensure that its other business operations have in place appropriate procedures and mechanisms designed to minimise the likelihood that a conflict of interest will affect the integrity of benchmark calculations.

14. The administrator of a commodity benchmark shall ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:

    (a) that the administrator satisfactorily implements the requirements of this Regulation; and

    (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.

15. The administrator of a commodity benchmark shall disclose to its users as soon as it becomes aware of a conflict of interest arising from the ownership of the administrator.

Complaints

16. The administrator of a commodity benchmark shall have in place and publish a complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator's calculation process. Such complaint mechanisms shall ensure that:

    (a) subscribers of the benchmark may submit complaints on whether a specific benchmark calculation is representative of market value, proposed benchmark calculation changes, applications of methodology in relation to a specific benchmark calculation and other editorial decisions in relation to the benchmark calculation processes;

(b) there is in place a target timetable for the handling of complaints;

(c) formal complaints made against the administrator and its personnel are investigated by that administrator in a timely and fair manner;

(d) the inquiry is conducted independently of any personnel who may be involved in the subject of the complaint;

(e) the administrator aims to complete its investigation promptly;

(f) the administrator advises the complainant and any other relevant parties of the outcome of the investigation in writing and within a reasonable period;

(g) there is recourse to an independent third party appointed by the administrator. if a complainant is dissatisfied with the way a complaint has been handled by the relevant administrator or the administrator's decision in the situation no later than six months from the time of the original complaint; and

(h) all documents relating to a complaint, including those submitted by the complainant as well as an administrator's own record, are retained for a minimum of five years.

17. Disputes as to daily pricing determinations, which are not formal complaints, shall be resolved by the administrator of a commodity benchmark with reference to its appropriate standard procedures. If a complaint results in a change in price, the details of that change in price shall be communicated to the market as soon as possible.

External auditing

18. The administrator of a commodity benchmark shall appoint an independent external auditor with appropriate experience and capability to review and report on the administrator's adherence to its stated methodology criteria and with the requirements of this Regulation. Audits shall take place annually and be published three months after each audit is completed with further interim audits carried out as appropriate.

REGULATION (EU) 2016/1012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation')

(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 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]),

After consulting the Committee of the Regions,

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

Whereas:

(1) The breeding of animals of the bovine, porcine, ovine, caprine and equine species occupies, in economic and social terms, a strategic place in Union agriculture and contributes to the Union's cultural heritage. This agricultural activity, which contributes to food security in the Union, is a source of income for the agricultural community. The breeding of animals of those species is best promoted by encouraging the use of purebred breeding animals or hybrid breeding pigs of recorded high genetic quality.

(2) Consequently, as part of their agricultural policy, Member States have consistently endeavoured to promote the production of livestock with particular genetic characteristics by setting standards, sometimes doing so through public investment. Disparities between those standards have the potential to create technical barriers to trade in breeding animals and their germinal products, as well as technical barriers to their entry into the Union.

(3) The legal framework for Union law on the breeding of purebred breeding animals of the bovine, porcine, ovine, caprine and equine species and hybrid breeding pigs is provided by Council Directives 88/661/EEC ([3]), 89/361/EEC ([4]), 90/427/EEC ([5]), 91/174/EEC ([6]), 94/28/EC ([7]) and 2009/157/EC ([8]). The aim of those Directives was to develop livestock breeding in the Union, while at the same time regulating the trade in breeding animals and their germinal products and their entry into the Union, thereby maintaining the competitiveness of the Union animal breeding sector.

([1]) OJ C 226, 16.7.2014, p. 70.
([2]) Position of the European Parliament of 12 April 2016 (not yet published in the Official Journal) and decision of the Council of 17 May 2016.
([3]) Council Directive 88/661/EEC of 19 December 1988 on the zootechnical standards applicable to breeding animals of the porcine species (OJ L 382, 31.12.1988, p. 36).
([4]) Council Directive 89/361/EEC of 30 May 1989 concerning pure-bred breeding sheep and goats (OJ L 153, 6.6.1989, p. 30).
([5]) Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae (OJ L 224, 18.8.1990, p. 55).
([6]) Council Directive 91/174/EEC of 25 March 1991 laying down zootechnical and pedigree requirements for the marketing of pure-bred animals and amending Directives 77/504/EEC and 90/425/EEC (OJ L 85, 5.4.1991, p. 37).
([7]) Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ L 178, 12.7.1994, p. 66).
([8]) Council Directive 2009/157/EC of 30 November 2009 on pure-bred breeding animals of the bovine species (OJ L 323, 10.12.2009, p. 1).

(4) Council Directives 87/328/EEC ([1]), 90/118/EEC ([2]) and 90/119/EEC ([3]) were adopted to prevent Member States from maintaining or adopting national rules relating to the acceptance for breeding purposes of breeding animals of the bovine and porcine species and the production and use of their semen, oocytes and embryos which could constitute a prohibition or restriction on trade or an obstacle thereto whether in the case of natural service, artificial insemination or collection of semen, oocytes or embryos.

(5) On the basis of Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 91/174/EEC, 94/28/EC and 2009/157/EC, the Commission, after consulting Member States through the Standing Committee on Zootechnics established in accordance with Council Decision 77/505/EEC ([4]), adopted a number of Decisions laying down species-specific criteria for the approval or recognition of breeding organisations and breeders' associations, for the entry of breeding animals in herd-books, flock-books and stud-books, for the acceptance of purebred breeding animals of the ovine and caprine species for breeding and artificial insemination, for performance testing and genetic evaluation of breeding animals of the bovine, porcine, ovine and caprine species, and for the establishment of pedigree or zootechnical certificates for trade in breeding animals and their germinal products.

(6) The Commission also established a list of breeding bodies in third countries and the model pedigree or zootechnical certificates for entry into the Union of breeding animals and their semen, oocytes and embryos.

(7) Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 91/174/EEC, 94/28/EC and 2009/157/EC are largely similar in structure and content. Several of those Directives have been amended over time. In the interests of the simplicity and consistency of Union law, it is appropriate to streamline the Union rules laid down in those Directives.

(8) Over the last 20 years, the Commission has had to respond to a significant number of complaints, raised by breeders and operators carrying out breeding programmes, in relation to the national transposition and interpretation of Union legal acts on the breeding of animals in different Member States. To ensure the uniform application of Union rules on breeding animals and to avoid obstacles to trade in breeding animals and their germinal products resulting from divergences in the national transposition of those Directives, the zootechnical and genealogical conditions for trade in breeding animals and their germinal products and their entry into the Union should be laid down in a Regulation.

(9) In addition, experience has shown that, in order to facilitate the application of the rules provided for in those Directives, more precise wording needs to be used in a number of their provisions, along with consistent terminology that is standard across all Member States. In the interests of clarity and consistency of Union law, it is also appropriate to provide for more definitions, including a definition of 'breed'.

(10) Efforts to achieve competitiveness in the animal breeding sector should not lead to the disappearance of breeds with characteristics that are adapted to specific biophysical contexts. If their population size is too small, local breeds could be at risk of losing genetic diversity. As an important part of the agricultural biodiversity, animal genetic resources provide an essential basis for the sustainable development of the livestock sector and offer opportunities to adapt animals to changing environments, production conditions and market and consumer demands. Union legal acts on the breeding of animals should thus contribute to the preservation of animal genetic resources, to the protection of biodiversity and to the production of typical quality regional products that rely on the specific hereditary characteristics of local breeds of domestic animals. Union legal acts should also promote viable breeding programmes for the improvement of breeds, and particularly in the case of endangered breeds or autochtonous breeds which are not commonly found in the Union, for the preservation of breeds and the preservation of the genetic diversity within and between breeds.

(11) Through selection and breeding significant progress has been achieved in the development of traits related to the productivity of farmed animals, leading to reduced production costs at farm level. However, this has, in some cases, led to undesirable side effects, raising concerns in society about animal welfare and environment-related issues. The application of genomics and the use of advanced information technologies such as 'Precision livestock

([1]) Council Directive 87/328/EEC of 18 June 1987 on the acceptance for breeding purposes of pure-bred breeding animals of the bovine species (OJ L 167, 26.6.1987, p. 54).
([2]) Council Directive 90/118/EEC of 5 March 1990 on the acceptance of pure-bred breeding pigs for breeding (OJ L 71, 17.3.1990, p. 34).
([3]) Council Directive 90/119/EEC of 5 March 1990 of hybrid breeding pigs for breeding (OJ L 71, 17.3.1990, p. 36).
([4]) Council Decision 77/505/EEC of 25 July 1977 setting up a Standing Committee on Zootechnics (OJ L 206, 12.8.1977, p. 11).

farming' — which allows large data sets on alternative traits, directly or indirectly related to animal welfare and sustainability issues, to be recorded — hold considerable potential to address concerns in society and achieve the objectives of sustainable animal breeding in terms of improved resource efficiency and the enhanced resilience and robustness of animals. The collection of data on these alternative traits should gain in importance within the framework of breeding programmes and should be given greater prominence in the definition of selection objectives. In this context, genetic resources of endangered breeds should be considered to be a reservoir of genes that can potentially contribute to achieving these animal welfare and sustainability goals.

(12) This Regulation should apply to breeding animals of the bovine, porcine, ovine, caprine and equine species and their germinal products where it is intended that those animals or the offspring resulting from those germinal products be entered as purebred breeding animals in a breeding book or registered as hybrid breeding pigs in a breeding register, in particular with a view to trading within the Union, including within a Member State, or the entry into the Union of those breeding animals and their germinal products.

(13) The term 'breeding animal' or 'purebred breeding animal' should not be understood as only covering animals which still possess their reproductive function. Indeed, castrated animals might contribute with their genealogical and zootechnical records to the assessment of the genetic quality of the breeding population and thus to the integrity of the rankings of breeding animals based on those results. Depending on the objectives of the breeding programme, a lack of or loss of data resulting from the explicit exclusion of castrated animals from entry in a breeding book or register would be likely to bias the results of the assessment of the genetic quality of breeding animals that are genetically related to those castrated animals.

(14) The aim of the rules on purebred breeding animals laid down in this Regulation should be to grant access to trade based on agreed principles applicable to the recognition of breed societies managing breeds and the approval of their respective breeding programmes. This Regulation should also lay down rules governing the entry of purebred breeding animals in the main section of the breeding books and, where they exist, in the different merit classes of the main section. It should also lay down rules for performance testing and genetic evaluation and rules for the acceptance of breeding animals for breeding as well as the content of the zootechnical certificates.

(15) Similarly, the aim of the rules on hybrid breeding pigs laid down in this Regulation should be to grant access to trade based on agreed principles applicable to the recognition of breeding operations managing different breeds, lines or crosses of the porcine species and the approval of their breeding programmes. This Regulation should also lay down rules governing the registration of hybrid breeding pigs in breeding registers. It should also lay down rules for performance testing and genetic evaluation and rules for the acceptance of hybrid breeding pigs for breeding as well as the content of the zootechnical certificates.

(16) It is not appropriate for issues relating to cloning to be addressed in this Regulation.

(17) Since the objectives of this Regulation, namely to ensure a harmonised approach to trade in breeding animals and their germinal products and their entry into the Union, as well as to the official controls necessary to be performed on breeding programmes carried out by breed societies and breeding operations, cannot be sufficiently achieved by the Member States but can rather, by reason of its effect, complexity, transborder and international character, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as referred to 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.

(18) The quality of the services provided by breed societies and breeding operations and the way that they evaluate and classify breeding animals has an impact on the quality and accuracy of zootechnical and genealogical information collected or determined in respect of those animals and their value on the market. Accordingly, rules should be laid down for the recognition of breed societies and breeding operations and the approval of their breeding programmes based on harmonised Union criteria. Those rules should also cover their supervision by the competent authorities of Member States in order to ensure that the rules established by breed societies and breeding operations do not give rise to disparities between breeding programmes, thereby creating technical barriers to trade in the Union.

(19) Similar procedures to those laid down in Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 91/174/EEC, 94/28/EC and 2009/157/EC for listing recognised breed societies and breeding operations, including the updating, transmission and publication of the lists, should be provided for in this Regulation.

(20) Breeding programmes on purebred breeding animals are carried out with the overall aim of improving, in a sustainable manner, the production and non-production traits of animals of a breed or to preserve a breed. Those breeding programmes should cover a sufficiently large number of purebred breeding animals kept by breeders which, through breeding and selection, promote and develop desirable traits in those animals or guarantee the preservation of the breed, in accordance with the objectives that are commonly accepted by the participating breeders. Likewise, breeding programmes concerning hybrid breeding pigs are carried out with the purpose of developing desirable traits by deliberate crossbreeding between different breeds, lines or crosses of pigs. Breeding animals (purebred or hybrid) participating in a breeding programme are entered in a breeding book or register, including information on their ascendants, and, depending on the breeding objectives set out in the breeding programme, undergo performance testing or any other assessment that results in the recording of data on traits in relation to the objectives of that breeding programme. Where specified in the breeding programme, genetic evaluation is carried out to estimate the breeding value of the animals which may be ranked accordingly. Those breeding values and performance test results, as well as the genealogical information, form the basis for breeding and selection.

(21) The right to be recognised as a breed society or breeding operation which meets the established criteria should be a fundamental principle of the Union law on the breeding of animals and of the internal market. The protection of the economic activity of an existing recognised breed society should not justify the refusal by the competent authority of the recognition of a further breed society for the same breed or violations of the principles governing the internal market. The same applies to the approval of a further breeding programme, or to the approval of the geographical extension of an existing breeding programme, which is carried out on the same breed, or on breeding animals of the same breed that can be recruited from the breeding population of a breed society that is already carrying out a breeding programme on that breed. However, where in a Member State one or more recognised breed societies are already carrying out an approved breeding programme on a given breed, the competent authority of that Member State should, in certain specific cases, be allowed to refuse to approve a further breeding programme for the same breed, even if that breeding programme complies with all the requirements necessary for approval. One reason for refusal could be that the approval of a further breeding programme for the same breed would compromise the preservation of that breed or the genetic diversity within that breed in that Member State. The preservation of that breed might, in particular, be compromised as a result of the fragmentation of the breeding population, possibly leading to higher inbreeding, to increased incidences of observed genetic defects, to a loss in the selection potential or to reduced access of the breeders to purebred breeding animals or the germinal products thereof. Another reason for refusal could be linked to inconsistencies in the defined breed characteristics or in the main objectives of those breeding programmes. Indeed, independently of the aim of the breeding programme, namely the preservation of the breed or the improvement of the breed, the competent authority should be allowed to refuse approval for a further breeding programme in respect of the same breed where differences in the main objectives of the two breeding programmes, or in essential traits of the breed characteristics defined in those breeding programmes, would result in a loss of efficiency in terms of genetic progress in those objectives or in those traits or any correlated traits, or where an exchange of animals between both breeding populations would bear a risk of out selection or out breeding of those essential traits in the initial breeding population. Finally, in the case of an endangered breed or an autochthonous breed not commonly found in one or more of the territories of the Union, a competent authority should also be allowed to refuse the approval of a further breeding programme for the same breed on the grounds that that further breeding programme would impede the effective implementation of the existing breeding programme, in particular due to a lack of coordination, or exchange, of genealogical and zootechnical information resulting in a failure to benefit from the common evaluation of data collected on that breed. In the event of a refusal to approve a breeding programme, the competent authority should always provide a reasoned explanation to the applicants and give them the right to appeal against that refusal.

(22) Breeders should have the right to design and implement a breeding programme for their own use, without that breeding programme having to be approved by the competent authorities. However, each Member State or its competent authorities should retain the possibility of regulating those activities, in particular as soon as such a breeding programme leads to business transactions in respect of breeding animals or the germinal products thereof or jeopardises an already existing approved breeding programme for that same breed.

(23) If the aim of the breeding programme is to preserve the breed, the requirements of the breeding programme could be complemented by ex situ and in situ conservation measures or any other tools for monitoring the status of the breed that would ensure a longterm, sustainable conservation of that breed. It should be possible for those measures to be laid down in the breeding programme.

(24) Breeders' associations, breeding organisations, including breeding organisations which are private undertakings, or public bodies should only be recognised as breed societies when they have breeders participating in their breeding programmes and when they ensure that those breeders have free choice in the selection and breeding of their purebred breeding animals, the right to have the offspring descended from those animals entered in their breeding books and the possibility of owning those animals.

(25) Prior to the implementation of changes in the approved breeding programme, a breed society or breeding operation should submit those changes to the competent authority that has recognised that breed society or breeding operation. In order to avoid an unnecessary administrative burden for the competent authority and the breed society or breeding operation, only those changes which are likely to substantially affect the breeding programme should be communicated by the breed society or breeding operation to the competent authority. Those changes should, in particular, cover the extension of the geographical territory, changes in the aim or in the selection and breeding objectives of the breeding programme, changes in the description of the breed characteristics or in the delegation of tasks to third parties, as well as major changes in the system for recording pedigrees or in the methods used for performance testing and genetic evaluation and any other changes which the competent authority considers to be a substantial modification of the breeding programme. Irrespective of the mandatory submission of significant changes to the competent authority, the breed society or breeding operation should, at the request of the competent authority, provide it with an up-to-date version of the breeding programme.

(26) Where there is a recognised need to maintain or promote the development of a breed on a certain territory, or in the case of an endangered breed, the competent authority should itself have the possibility to carry out, on a temporary basis, a breeding programme for that breed, provided that no breeding programme is already effectively in place for that breed. A competent authority carrying out such a breeding programme should, however, no longer have that possibility if it is possible for the breeding programme to be handed over to an operator fulfilling the requirements necessary for the proper implementation of that breeding programme.

(27) Because the preservation of endangered breeds requires the setting up and recognition of breed societies with a limited number of breeding animals participating in their breeding programmes, the size of the breeding population should not, in general, be considered to be an essential requirement for the recognition of breed societies managing endangered breeds or for the approval of their breeding programmes, particularly since the recognition is carried out nationally.

(28) Specific rules, in particular those on the upgrading from the supplementary section into the main section and on derogations for the performance testing and genetic evaluation, should be laid down in this Regulation to take account of the specific status of endangered breeds.

(29) The Union is a contracting party to the Convention on Biological Diversity, approved by Council Decision 93/626/EEC ([1]), the objectives of which are in particular the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. That Convention stipulates that the contracting parties have sovereign rights to their biological resources and are responsible for the conservation of their biological diversity and the sustainable use of their biological resources. The Union is also a party to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, approved by Council Decision 2014/283/EU ([2]). This Regulation should therefore take into account, where applicable, the Convention on Biological Diversity, as well as the Nagoya Protocol and should apply without prejudice to Regulation (EU) No 511/2014 of the European Parliament and of the Council ([3]).

([1]) Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

([2]) Council Decision 2014/283/EU of 14 April 2014 on the conclusion, on behalf of the European Union, of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (OJ L 150, 20.5.2014, p. 231).

([3]) Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (OJ L 150, 20.5.2014, p. 59).

(30) Breed societies and breeding operations recognised in one Member State should have the possibility to implement their approved breeding programme in one or more other Member States in order to ensure the best possible use, within the Union, of breeding animals of high genetic value. To this end a simplified notification procedure should ensure that the competent authority in the other Member State is aware of the intention to carrying out of crossborder activities. However, seasonal movements of breeding animals within the borders of a Member State or taking place over several Member States should not mandatorily entail the extension of the geographical territory.

(31) Cross-border cooperation between breed societies and between breeding operations which wish to engage therein should be facilitated, while ensuring free entrepreneurship and the removal of obstacles to the free movement of breeding animals and their germinal products.

(32) Since a competent authority might have to approve several breeding programmes carried out by one breed society or breeding operation it has recognised, and since a competent authority might have to approve the extension on its territories of breeding programmes carried out by a breed society or breeding operation recognised in another Member State, the recognition of the breed society or breeding operation should be separated from the approval of its breeding programmes. However, when evaluating an application for recognition as a breed society or breeding operation, the competent authority should also be provided with an application for the approval of at least one breeding programme.

(33) From various complaints the Commission has had to deal with in previous years, it appears that this Regulation should provide for clear rules governing the relationship between the breed society that establishes a filial breeding book for a particular breed of purebred breeding animals of the equine species and the breed society that claims to have established the breeding book of the origin of that breed.

(34) It is necessary to clarify the relationship between breeders and breed societies, in particular to ensure their right to participate in the breeding programme within the geographical territory for which it is approved and, where membership is provided for, to ensure that those breeders have the right to be members. Breed societies should have rules in place to settle disputes with breeders participating in their breeding programmes and to ensure that those breeders are treated equally. They should also set out their own rights and obligations as well as those of breeders participating in their breeding programmes.

(35) Breeders whose breeding animals are moved seasonally within the border of a Member State or an area straddling national borders should have the right to continue to participate in the breeding programme as long as the headquarters of their holding is located within the geographical territory of that breeding programme.

(36) The specific situation prevailing in the hybrid breeding pig sector should be taken into account in this Regulation. Most private undertakings in the hybrid breeding pig sector have closed production systems and manage their own breeding stock. Provision should therefore be made for a number of derogations for these undertakings, in particular as regards the participation by breeders in the breeding programme and the right to register hybrid breeding pigs in the breeding registers.

(37) The definition of 'hybrid breeding pig' covers animals from all levels in the breeding and selection pyramid, that are used for optimising cross-breeding by combining specific assets of their different genotypes and exploiting heterosis effects. Depending on the level of the breeding and selection pyramid, 'hybrid breeding pig' covers breeds, lines or crosses. Thus, not all animals are necessarily 'hybrid' in the traditional sense.

(38) Experience gained, particularly in the application of Directive 90/427/EEC, and to a lesser extent Directives 89/361/EEC and 2009/157/EC, indicates that more precise rules are required to settle effectively disputes between breeders on the one hand and breed societies on the other hand, based on clearly established rules of procedure and described rights and duties of breeders. This is best achieved if the disputes are settled within the legal system of the Member State where they arise.

(39) Breed societies which establish and maintain breeding books for purebred breeding animals of the bovine, porcine, ovine, caprine and equine species, as well as breeding operations other than private undertakings

operating in closed production systems, which establish and maintain breeding registers for hybrid breeding pigs, should enter breeding animals in their breeding books or register them in their breeding registers without discrimination as regards the Member State of origin of the animals or their owners and, where this is provided for in the breeding programme, should classify those animals according to their merits.

(40) Breed societies should also be allowed to establish supplementary sections for the recording of animals which do not meet the parentage criteria but which are judged by the breed societies to comply with the breed characteristics laid down in the breeding programme of the breed concerned, with the aim of subsequently breeding those animals with purebred breeding animals belonging to the breed covered by the breeding programme in order for the progeny to be upgraded into the main section of the breeding book. The specific rules for upgrading the progeny of those animals into the main section of a breeding book should be laid down at Union level.

(41) The upgrading of offspring to the main section of breeding books should only be allowed through the female line, except in the case of equine species. However, for an endangered breed of the bovine, porcine, ovine and caprine species and for 'hardy' sheep breeds for which there are not enough purebred male reproductive animals, Member States should have the possibility to authorise the breed societies to apply less stringent rules for upgrading the progeny of those animals recorded in supplementary sections to the main section of the breeding book in order to avoid the further deterioration of the genetic diversity of those breeds. Likewise, special rules should be provided for to allow for the reconstruction of breeds which have disappeared or are in serious danger of disappearing. Member States making use of such derogations should carefully evaluate the risk status of those breeding populations and ensure secure management of genetic resources.

(42) Where there is a need to create a new breed by associating characteristics from purebred breeding animals from different breeds or by assembling animals with a sufficient degree of physical resemblance which already reproduce with sufficient genetic stability for them to be considered as having evolved into a new breed, breed societies should be given the possibility of establishing breeding books and of carrying out breeding programmes on those new breeds.

(43) Nothing in this Regulation should prevent animals recorded in a supplementary section of a breeding book of a certain breed from falling under the scope of the commitments of the agri-environment-climate measure referred to in Article 28 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council [1] and thus being eligible for support by the national or regional authorities under their rural development programmes.

(44) For purebred breeding animals of the equine species, breed societies should be able to lay down rules in their breeding programmes that prohibit or limit the use of certain reproduction techniques and of certain purebred breeding animals, including the use of their germinal products. The breed societies should, for example, be able to request that the offspring result from natural mating only. Breed societies making use of this prohibition or limitation should lay down those rules in their breeding programme in accordance with the rules set out by the breed society which is maintaining the breeding book of origin.

(45) Purebred breeding animals entered in breeding books should be identified in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council [2].

(46) In the case of purebred breeding animals of the equine species, Regulation (EU) 2016/429 provides that the competent authorities in the field of animal health shall issue, for animals of the equine species, a single lifetime identification document which is to be further specified by the Commission through delegated acts. In order for the zootechnical certificate to be streamlined as far as possible with that single lifetime identification document as regards content and administrative procedure, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the format and content of a single lifetime identification document for animals of the equine species.

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[1] Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

[2] Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

(47) The eligibility of purebred breeding animals of the equine species to compete internationally is regulated by international private agreements. Considering the international dimension of the equine sector, the Commission, when preparing and drawing up the relevant delegated and implementing acts, should take into account those agreements, so as to maintain the eligibility of those purebred breeding animals of the equine species to compete at international level.

(48) The acceptance of breeding animals for breeding purposes, and in particular for natural service or assisted reproduction, should be regulated at Union level to prevent obstacles to trade, in particular where such breeding animals have undergone performance testing or genetic evaluation carried out in accordance with the rules laid down in this Regulation and in particular in Annex III.

(49) It is understood that Member States or their competent authorities should not use this Regulation in order to prohibit, restrict or impede the use of purebred breeding animals or germinal products thereof for the production of animals not intended to be entered or registered as breeding animals in a breeding book or breeding register.

(50) While the rules for performance testing and genetic evaluation have been established at Union level for breeding animals of the bovine, porcine, ovine and caprine species which are tested for a certain number of traits, the numerous requirements for different breeds, uses and selections of purebred breeding animals of the equine species have, to date, prevented their harmonisation. Instead, breed specific rules for performance testing and genetic evaluation are currently established by the studbook of the origin of the breed.

(51) In order to take account of technical developments, scientific advances or the need to preserve valuable genetic resources, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend Annex III to this Regulation. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should also be conferred on the Commission, enabling it to lay down uniform and more detailed rules for performance testing and for the genetic evaluation of purebred breeding animals of the bovine, ovine and caprine species.

(52) It should be possible for performance testing or genetic evaluation to be carried out by a third party designated by the breed society or the breeding operation or a public body including an authority exercising this mission as a sovereign task. That third party could be authorised and evaluated by the competent authority in the context of the approval of the breeding programme. A breed society or breeding operation outsourcing performance testing or genetic evaluation should, unless otherwise decided by the relevant Member State or its competent authorities, remain responsible for ensuring compliance with the requirements applicable to those activities and should specify the designated third party in its breeding programme.

(53) Depending, inter alia, on the species or on the breed, there might be a need for the harmonisation or the improvement of the methods of performance testing and genetic evaluation of purebred breeding animals used by breed societies or by the third parties designated by them. To ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission enabling it to designate European Union reference centres. In order, where necessary, to modify the task of those reference centres, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. Those European Union reference centres should qualify for Union financial support in accordance with Regulation (EU) No 652/2014 of the European Parliament and of the Council ([1]). In the case of purebred breeding animals of the bovine species, those tasks are carried out by the Interbull Centre, a permanent subcommittee of the International Committee for Animal Recording (ICAR), which is the European Union reference centre designated by Council Decision 96/463/EC ([2]).

(54) In addition, in order to provide support to breed societies managing endangered breeds, where there is a recognised need, implementing powers should be conferred on the Commission, enabling it to designate

([1]) Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC (OJ L 189, 27.6.2014, p. 1).

([2]) Council Decision 96/463/EC of 23 July 1996 designating the reference body responsible for collaborating in rendering uniform the testing methods and the assessment of the results for pure-bred breeding animals of the bovine species (OJ L 192, 2.8.1996, p. 19).

European Union reference centres charged with the specific task of promoting the establishment or harmonisation of methods used by those breed societies. In order, where necessary, to modify the task of those reference centres, the power to adopt acts in accordance with Article 290 TFEU should also be delegated to the Commission. When designating those centres and describing their tasks, the Commission should take duly into account the activities of the European Regional Focal Point for Animal Genetic Resources (ERFP) which has been established in the framework of the Global Plan of Action for Animal Genetic Resources in Europe of the Food and Agriculture Organisation (FAO). The methods established by these centres should not be binding.

(55) Breeders who are participating in a breeding programme should have the right to receive zootechnical certificates for their breeding animals covered by that breeding programme and for the germinal products of those animals. Zootechnical certificates should accompany breeding animals or the germinal products thereof where they are traded or entered into the Union in view of an entry or registration of those animals or of the progeny produced from those germinal products in other breeding books or breeding registers. Zootechnical certificates should inform the breeder about the genetic quality and the pedigree of the acquired animal. Such certificates should, for example, be issued, where necessary, to accompany breeding animals for exhibition purposes or when they are placed in test stations or in artificial insemination centres.

(56) It should be understood that this Regulation does not prohibit Member States or competent authorities from requiring that, when traded, the semen of purebred breeding animals of the bovine, porcine, ovine, caprine and equine species intended for artificial insemination in view of the production of animals that are not intended to become purebred breeding animals be accompanied by information on the quality and the pedigree of that animal. In general, by making the germinal products of breeding animals, and in particular their semen, and the related information on the zootechnical certificates also available for operators which reproduce animals without the intention of having their progeny entered in a breeding book, it is hoped that the competitiveness of the Union animal breeding sector could be improved.

(57) The entry into the Union and the export to third countries of breeding animals and their germinal products is important for Union agriculture. The entry into the Union of breeding animals and their germinal products should therefore be carried out under conditions that are closely comparable to the rules applicable to trade in the Union. However, breeding animals and their germinal products should only be entitled to entry in the main section of a breeding book or breeding register in the Union, if the level of controls carried out in the exporting third country ensures the same certainty of pedigree details and results of performance testing and genetic evaluation as in the Union and if the breeding bodies providing those details and results are included in a list maintained by the Commission. In addition, breeding bodies in third countries should, as a matter of reciprocity, accept breeding animals and their germinal products from the respective breed society or breeding operation recognised in the Union.

(58) Council Regulation (EEC) No 2658/87 ([1]) provides that a goods nomenclature, namely the 'Combined Nomenclature', or in abbreviated form 'CN', which meets at one and the same time the requirements of the Common Customs Tariff, the external trade statistics of the Community and other Union policies concerning the importation or exportation of goods, is to be established by the Commission. Annex I to that Regulation lists the CN codes for purebred breeding animals of the bovine, porcine, ovine, caprine and equine species and of bovine semen and indicates that they are exempt from the conventional rate of duties. In that case, those animals and their germinal products should be accompanied by the appropriate zootechnical certificate to support their classification as purebred breeding animals or germinal products thereof. In the case of purebred breeding animals, they should also be accompanied by a document indicating that they will be entered in a breeding book maintained by a breed society or registered in a breeding register maintained by a breeding operation.

(59) Upon entry into the Union, breeding animals and their germinal products undergo veterinary checks in accordance with Council Directives 91/496/EEC ([2]) and 97/78/EC ([3]). In the case of purebred breeding animals, they should also undergo the necessary checks for the application of the exemption of the conventional rate of duty for purebred breeding animals.

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

([2]) Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ L 268, 24.9.1991, p. 56).

([3]) Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ L 24, 30.1.1998, p. 9).

(60) It is necessary to lay down rules on official controls performed for the verification of compliance with the rules provided for in this Regulation and on other official activities carried out by the competent authorities in accordance with this Regulation that are adapted to the animal breeding sector. The competent authorities should have the possibility to carry out official controls on all operators that are subject to this Regulation, and in particular on breed societies, on breeding operations, on third parties carrying out performance testing or genetic evaluation and on breeders, and, if they issue zootechnical certificates, on semen collection and storage centres, embryo storage centres, and on embryo collection or production teams.

(61) Competent authorities should carry out official controls in order to verify compliance with the rules set out in this Regulation and the requirements laid down in the approved breeding programme. Those controls might include the inspection of equipment used for performance testing or the verification of the procedures put in place for recording zootechnical and genealogical data, or the examination of documents or systems used for storing and processing such data collected on breeding animals. That examination could take into account quality checks or control systems for ensuring the accuracy of the recorded data, such as parentage controls carried out in order to verify an animal's pedigree. The competent authorities might carry out official controls on the premises and offices and on the equipment of breeders, breed societies or breeding operations as well as on the breeding animals, or the germinal products collected from those breeding animals covered by the breeding programme.

(62) Where, in this Regulation, reference is made to 'other official activities', this should be interpreted as covering the recognition of breed societies and breeding operations, the approval of breeding programmes or the provision of assistance to other Member States and third countries.

(63) For the effective application of Union rules on breeding animals and their germinal products laid down in this Regulation, it is necessary for the competent authorities of the Member States to cooperate with each other and to provide administrative assistance whenever necessary. Accordingly, general rules on administrative assistance and cooperation, similar to those currently set out in Title IV of Regulation (EC) No 882/2004 of the European Parliament and of the Council ([1]), should be laid down, with the necessary adaptations, in this Regulation.

(64) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt, where there is evidence that widespread serious non-compliance with Union law on the breeding of animals is taking place in a third country, special measures in order to limit the impact of such non-compliance.

(65) The competent authorities of the Member States should also have the necessary powers to enforce zootechnical and genealogical rules on breeding animals laid down in this Regulation, including the suspension of the approval of a breeding programme or the withdrawal of the recognition of a breed society or breeding operation in the event of non-compliance with the rules laid down in this Regulation.

(66) The Commission should carry out controls in Member States as appropriate, inter alia, in the light of the results of the official controls carried out by Member States, to ensure the application of the rules laid down in this Regulation in all Member States.

(67) The Commission should carry out controls in third countries, as appropriate, with a view to establishing the list of third country breeding bodies from which entry into the Union of breeding animals and their semen, oocytes and embryos should be allowed, with a view to drawing up the conditions for their entry into the Union and with a view to obtaining the zootechnical and genealogical information relating to the functioning of equivalence agreements. The Commission should also carry out controls in third countries where any recurring or emerging problem in relation to breeding animals or the germinal products thereof so warrants.

(68) The verification of compliance with the rules provided for in this Regulation through official controls is of fundamental importance to ensuring that, across the Union, the objectives of this Regulation are effectively

([1]) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).

achieved. Failures in a Member State's control system might in certain cases substantially hinder the achievement of those objectives and lead to situations of serious widespread non-compliance with those rules. The Commission should, therefore, be able to react to serious failures in a Member State's control system by adopting measures applicable until such time as the Member State concerned takes the necessary action to remedy the disruption. Such measures include the prohibition or the enforcement of special conditions on the trade of breeding animals or their germinal products or any other measures which the Commission deems appropriate to address that widespread infringement.

(69) As Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 94/28/EC and 2009/157/EC are to be repealed and replaced by this Regulation, it is also necessary to repeal the Commission acts adopted pursuant to those Directives and, where necessary, to replace them by either delegated acts or implementing acts adopted pursuant to the respective powers conferred in this Regulation. Accordingly, those Commission acts should be repealed and, where necessary, replaced.

(70) In order to ensure the proper application of this Regulation and to supplement it, or to amend Annexes to it, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of laying down the requirements for performance testing and genetic evaluation, the tasks of and requirements for European Union reference centres and the content and format of zootechnical certificates.

(71) When preparing and drawing up delegated acts, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ([1]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as the Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(72) In order to ensure uniform conditions for the implementation of the provisions of this Regulation concerning model forms for the information to be provided by Member States to the public on the list of recognised breed societies and breeding operations, the methods for the verification of the identity of purebred breeding animals, the performance testing and genetic evaluation, the designation of European Union reference centres, the model forms of the single lifetime identification document for equidae, the models for zootechnical certificates accompanying breeding animals and their germinal products, the recognition of equivalence of measures applied in third countries, serious disruptions in the control system of a Member State and the establishment of special measures regarding the entry into the Union of breeding animals and their germinal products, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([2]). Where the Standing Committee on Zootechnics delivers no opinion, the Commission should not adopt the implementing act.

(73) The rules laid down in Directives 87/328/EEC, 88/661/EEC, 89/361/EEC, 90/118/EEC, 90/119/EEC, 90/427/EEC, 91/174/EEC, 94/28/EC and 2009/157/EC and Decision 96/463/EC are to be replaced by the rules laid down in this Regulation and in delegated and implementing acts of the Commission adopted pursuant to the powers conferred in this Regulation. Accordingly, those legal acts should therefore be repealed.

(74) The following Commission Decisions concerning, inter alia, species-specific criteria for the approval or recognition of breed societies and breeding operations, the entry of breeding animals in breeding books and the acceptance for breeding and artificial insemination, for performance testing and genetic evaluation were adopted pursuant to Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 94/28/EC and 2009/157/EC: Commission

([1]) OJ L 123, 12.5.2016, p. 1.
([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Decisions 84/247/EEC ([1]), 84/419/EEC ([2]), 89/501/EEC ([3]), 89/502/EEC ([4]), 89/504/EEC ([5]), 89/505/EEC ([6]), 89/507/EEC ([7]), 90/254/EEC ([8]), 90/255/EEC ([9]), 90/256/EEC ([10]), 90/257/EEC ([11]), 92/353/EEC ([12]), 96/78/EC ([13]) and 2006/427/EC ([14]). This Regulation should provide for rules replacing those laid down in those Commission decisions.

(75) Similar rules to those laid down in Commission Decision 92/354/EEC ([15]) should be laid down in this Regulation.

(76) The following Commission legal acts were adopted pursuant to Directives 88/661/EEC, 89/361/EEC, 90/427/EEC, 94/28/EC and 2009/157/EC: Commission Decisions 89/503/EEC ([16]), 89/506/EEC ([17]), 90/258/EEC ([18]), 96/79/EC ([19]), 96/509/EC ([20]), 96/510/EC ([21]) and 2005/379/EC ([22]), and Commission Implementing Regulation (EU) 2015/262 ([23]). This Regulation should provide for rules replacing those laid down in those Commission legal acts.

(77) To ensure legal clarity and to avoid duplication, the Commission legal acts referred to in Recitals 74, 75 and 76 should be repealed from the date of application of this Regulation. In addition, the Commission should, at least 18 months before the date of application of this Regulation, adopt implementing acts laying down the model forms for the presentation of the information to be included in the list of recognised breed societies and breeding

([1]) Commission Decision 84/247/EEC of 27 April 1984 laying down die criteria for the recognition of breeders' organizations and associations which maintain or establish herd-books for pure-bred breeding animals of the bovine species (OJ L 125, 12.5.1984, p. 58).
([2]) Commission Decision 84/419/EEC of 19 July 1984 laying down the criteria for entering cattle in herd-books (OJ L 237, 5.9.1984, p. 11).
([3]) Commission Decision 89/501/EEC of 18 July 1989 laying down the criteria for approval and supervision of breeders' associations and breeding organizations which establish or maintain herd-books for pure-bred breeding pigs (OJ L 247, 23.8.1989, p. 19).
([4]) Commission Decision 89/502/EEC of 18 July 1989 laying down the criteria governing entry in herd-books for pure-bred breeding pigs (OJ L 247, 23.8.1989, p. 21).
([5]) Commission Decision 89/504/EEC of 18 July 1989 laying down the criteria for approval and supervision of breeders' associations, breeding organizations and private undertakings which establish or maintain registers for hybrid breeding pigs (OJ L 247, 23.8.1989, p. 31).
([6]) Commission Decision 89/505/EEC of 18 July 1989 laying down the criteria governing entry in registers for hybrid breeding pigs (OJ L 247, 23.8.1989, p. 33).
([7]) Commission Decision 89/507/EEC of 18 July 1989 laying down methods for monitoring performance and assessing the genetic value of pure-bred and hybrid breeding pigs (OJ L 247, 23.8.1989, p. 43).
([8]) Commission Decision 90/254/EEC of 10 May 1990 laying down the criteria for approval of breeders' organizations and associations which establish or maintain flock-books for pure-bred breeding sheep and goats (OJ L 145, 8.6.1990, p. 30).
([9]) Commission Decision 90/255/EEC of 10 May 1990 laying down the criteria governing entry in flock-books for pure-bred breeding sheep and goats (OJ L 145, 8.6.1990, p. 32).
([10]) Commission Decision 90/256/EEC of 10 May 1990 laying down methods for monitoring performance and assessing the genetic value of pure-bred breeding sheep and goats (OJ L 145, 8.6.1990, p. 35).
([11]) Commission Decision 90/257/EEC of 10 May 1990 laying down the criteria for the acceptance for breeding purposes of pure-bred breeding sheep and goats and the use of their semen, ova or embryos (OJ L 145, 8.6.1990, p. 38).
([12]) Commission Decision 92/353/EEC of 11 June 1992 laying down the criteria for the approval or recognition of organizations and associations which maintain or establish stud-books for registered equidae (OJ L 192, 11.7.1992, p. 63).
([13]) Commission Decision 96/78/EC of 10 January 1996 laying down the criteria for entry and registration of equidae in stud-books for breeding purposes (OJ L 19, 25.1.1996, p. 39).
([14]) Commission Decision 2006/427/EC of 20 June 2006 laying down performance monitoring methods and methods for assessing cattle's genetic value for pure-bred breeding animals of the bovine species (OJ L 169, 22.6.2006, p. 56).
([15]) Commission Decision 92/354/EEC of 11 June 1992 laying down certain rules to ensure coordination between organizations and associations which maintain or establish stud-books for registered equidae (OJ L 192, 11.7.1992, p. 66).
([16]) Commission Decision 89/503/EEC of 18 July 1989 laying down the certificate of pure-bred breeding pigs, their semen, ova and embryos (OJ L 247, 23.8.1989, p. 22).
([17]) Commission Decision 89/506/EEC of 18 July 1989 laying down the certificate of hybrid breeding pigs, their semen, ova and embryos (OJ L 247, 23.8.1989, p. 34).
([18]) Commission Decision 90/258/EEC of 10 May 1990 laying down the zootechnical certificates for pure-bred breeding sheep and goats, their semen, ova and embryos (OJ L 145, 8.6.1990, p. 39).
([19]) Commission Decision 96/79/EC of 12 January 1996 laying down the zootechnical certificates of semen, ova and embryos from registered equidae (OJ L 19, 25.1.1996, p. 41).
([20]) Commission Decision 96/509/EC of 18 July 1996 laying down pedigree and zootechnical requirements for the importation of semen of certain animals (OJ L 210, 20.8.1996, p. 47).
([21]) Commission Decision 96/510/EC of 18 July 1996 laying down the pedigree and zootechnical certificates for the importation of breeding animals, their semen, ova and embryos (OJ L 210, 20.8.1996, p. 53).
([22]) Commission Decision 2005/379/EC of 17 May 2005 on pedigree certificates and particulars for pure-bred breeding animals of the bovine species, their semen, ova and embryos (OJ L 125, 18.5.2005, p. 15).
([23]) Commission Implementing Regulation (EU) 2015/262 of 17 February 2015 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (Equine Passport Regulation) (OJ L 59, 3.3.2015, p. 1).

operations that is to be made public by the Member States, as well as the model forms for the zootechnical certificates for breeding animals and their germinal products. Those implementing acts should be applicable by the date of application of this Regulation.

(78) In order to ensure a smooth transition for breeders' organisations, breeding organisations, breeders' associations, private undertakings or other organisations or associations which have been approved or recognised with or without a limitation in time under the acts repealed by this Regulation and for the breeding programmes carried out by those operators, those operators and their breeding programmes should be deemed to be recognised or approved in accordance with this Regulation. Consequently, those operators should not be subject to the procedures for recognition, for approval and for notification of the extension of the geographical territory to other Member States set out in this Regulation, although the other provisions of this Regulation should apply to them. Member States should ensure that those operators comply with all the rules provided for in this Regulation in particular by carrying out risk-based official controls on them. In the event of non-compliance, the competent authorities should ensure that those operators take the necessary measures to remedy that non-compliance and, where necessary, suspend or withdraw the recognition of those operators or the approval of their breeding programmes.

(79) The Commission recently adopted a proposal for a new Regulation on official controls and other official activities. That new Regulation is intended to repeal Regulation (EC) No 882/2004, Council Directive 89/608/EEC ([1]), Council Directive 90/425/EEC ([2]), and Directives 91/496/EEC and 97/78/EC. It is also intended to incorporate, with the necessary adaptations, certain of the rules laid down in Regulation (EC) No 882/2004 and in those Directives. However, the breeding of animals is not intended to fall within the scope of that new Regulation. For legal clarity and certainty and pending the repeal of Directives 89/608/EEC, 90/425/EEC, 91/496/EEC and 97/78/EC by means of that new Regulation, it is necessary to delete the references to 'zootechnical' from Directives 89/608/EEC and 90/425/EEC, while Directives 91/496/EEC and 97/78/EC do not require such amendment. Directives 89/608/EEC and 90/425/EEC should therefore be amended accordingly.

(80) Until the date of the application of Article 110 of Regulation (EU) 2016/429, breed societies carrying out approved breeding programmes on purebred breeding animals of the equine species should be able to continue to issue the identification documents for those purebred breeding animals in accordance with Article 8(1) of Directive 90/427/EEC.

(81) This Regulation should be applicable from the first day of the twenty-eighth month after the date it enters into force,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Subject matter and scope

1. This Regulation lays down:

(a) zootechnical and genealogical rules for trade in breeding animals and their germinal products, and for their entry into the Union;

(b) rules for the recognition of breed societies and breeding operations and for the approval of their breeding programmes;

([1]) Council Directive 89/608/EEC of 21 November 1989 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 legislation on veterinary and zootechnical matters (OJ L 351, 2.12.1989, p. 34).

([2]) Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224, 18.8.1990, p. 29).

(c) the rights and obligations of breeders, breed societies and breeding operations;

(d) rules for the entry of breeding animals in breeding books and breeding registers and for the acceptance for breeding of breeding animals and their germinal products;

(e) rules for the performance testing and genetic evaluation of breeding animals;

(f) rules for the issuing of zootechnical certificates for breeding animals and their germinal products;

(g) rules for the performance of official controls, and in particular those on breed societies and breeding operations, and rules for the performance of other official activities;

(h) rules for administrative assistance and cooperation and rules for enforcement by Member States;

(i) rules for the performance of controls by the Commission in Member States and third countries.

2. This Regulation applies to breeding animals and their germinal products where those animals or the offspring resulting from those germinal products are intended to be entered as purebred breeding animals in a breeding book or registered as hybrid breeding pigs in a breeding register.

3. This Regulation does not apply to breeding animals and their germinal products where those animals and germinal products are intended for technical or scientific experiments carried out under the supervision of the competent authorities.

4. Article 9(4), Article 13, Article 14(3) and (4), Articles 23 and 24, Article 28(2) and Article 36(1) do not apply to private undertakings, recognised as breeding operations, which operate in closed production systems.

5. This Regulation is without prejudice to Member States' rights to take national measures to regulate the carrying out of breeding programmes that have not been approved in accordance with Article 8(3), and, where applicable, Article 12.

Article 2

Definitions

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

(1) 'animal' means a domestic animal of:

(a) the bovine species (*Bos taurus*, *Bos indicus* and *Bubalus bubalis*);

(b) the porcine species (*Sus scrofa*);

(c) the ovine species (*Ovis aries*);

(d) the caprine species (*Capra hircus*); or

(e) the equine species (*Equus caballus* and *Equus asinus*);

(2) 'breed' means a population of animals sufficiently uniform to be considered to be distinct from other animals of the same species by one or more groups of breeders which have agreed to enter those animals in breeding books with details of their known ascendants for the purpose of reproducing their inherited characteristics by way of reproduction, exchange and selection within the framework of a breeding programme;

(3) 'breeding animal' means a purebred breeding animal or a hybrid breeding pig;

(4) 'germinal products' means semen, oocytes and embryos collected or produced from breeding animals for the purpose of assisted reproduction;

(5) 'breed society' means any breeders' association, breeding organisation or public body, other than competent authorities, which is recognised by the competent authority of a Member State in accordance with Article 4(3) for the purpose of carrying out a breeding programme on purebred breeding animals entered in the breeding book(s) it maintains or establishes;

(6) 'breeding operation' means any breeders' association, breeding organisation, private undertaking operating in a closed production system or public body, other than competent authorities, which is recognised by the competent authority of a Member State in accordance with Article 4(3) for the purpose of carrying out a breeding programme on hybrid breeding pigs registered in the breeding register(s) it maintains or establishes;

(7) 'breeding body' means any breeders' association, breeding organisation, private undertaking, stock-rearing organisation or official service in a third country which, in respect of purebred breeding animals of the bovine, porcine, ovine, caprine or equine species or of hybrid breeding pigs, has been accepted by that third country in connection with the entry into the Union of breeding animals for breeding;

(8) 'competent authorities' means the authorities of a Member State which are responsible, pursuant to this Regulation, for:

(a) the recognition of breed societies and breeding operations and the approval of the breeding programmes they carry out on breeding animals;

(b) official controls on operators;

(c) the provision of assistance to other Member States and third countries in case of detected non-compliances;

(d) official activities other than those referred to in points (a) and (c);

(9) 'purebred breeding animal' means an animal which is entered or registered and eligible for entry in the main section of a breeding book;

(10) 'hybrid breeding pig' means an animal of the porcine species registered in a breeding register, which is produced by deliberate cross-breeding or used for deliberate cross-breeding between:

(a) purebred breeding pigs of different breeds or lines;

(b) breeding pigs which are themselves the outcome of a cross (hybrid) between different breeds or lines;

(c) breeding pigs belonging to one or the other of the categories referred to in (a) or (b);

(11) 'line' means a genetically stable and uniform subpopulation of purebred breeding animals of a particular breed;

(12) 'breeding book' means:

(a) any herd-book, flock-book, stud-book, file or data medium which is maintained by a breed society consisting of a main section and, where the breed society so decides, of one or more supplementary sections for animals of the same species that are not eligible for entry in the main section;

(b) where appropriate, any corresponding book maintained by a breeding body;

(13) 'main section' means the section of a breeding book in which purebred breeding animals are entered or registered and eligible for entry with details of their ascendants and, where applicable, their merits;

(14) 'class' means a horizontal division of the main section in which purebred breeding animals are entered according to their merits;

(15) 'merit' means a quantifiable heritable characteristic or a genetic peculiarity of a breeding animal;

(16) 'breeding value' means an estimate of the expected effect of the genotype of a breeding animal on a given characteristic in its progeny;

(17) 'breeding register' means:

(a) any file or data medium which is maintained by a breeding operation in which hybrid breeding pigs are registered with details of their ascendants;

(b) where appropriate, any corresponding register maintained by a breeding body;

(18) 'official control' means any type of control that the competent authorities perform in order to verify compliance with the rules laid down in this Regulation;

(19) 'other official activities' means any activity other than an official control which is performed by competent authorities in accordance with this Regulation in order to ensure the application of the rules laid down in this Regulation;

(20) 'zootechnical certificate' means breeding certificates, attestations or commercial documentation which are issued on paper or in electronic form for breeding animals and their germinal products and which provide information on pedigree, identification and, where available, results of performance testing or genetic evaluation;

(21) 'entering the Union' or 'entry into the Union' means the action of bringing breeding animals and their germinal products into one of the territories listed in Annex VI from outside those territories excluding transit;

(22) 'trade' means the action of buying, selling, exchanging or otherwise acquiring or releasing animals or their germinal products within the Union, including within a Member State;

(23) 'operator' means any natural or legal person subject to the rules provided for in this Regulation, such as breed societies, breeding operations, third parties that have been designated by breed societies or breeding operations in accordance with Article 27(1)(b), semen collection and storage centres, embryo storage centres, embryo collection or production teams, and breeders;

(24) 'endangered breed' means a local breed, recognised by a Member State to be endangered, genetically adapted to one or more traditional production systems or environments in that Member State and where the endangered status is scientifically established by a body possessing the necessary skills and knowledge in the area of endangered breeds;

(25) 'private undertaking operating in a closed production system' means a private undertaking with a breeding programme in which participate either no breeders or a restricted number of breeders who are bound to that private undertaking to accept from it the supply of hybrid breeding pigs or to supply hybrid breeding pigs to it;

(26) 'breeding programme' means a set of systematic actions, including recording, selection, breeding and exchange of breeding animals and their germinal products, designed and implemented to preserve or enhance desired phenotypic and/or genotypic characteristics in the target breeding population.

Article 3

General zootechnical and genealogical rules for trade in breeding animals and their germinal products, and for their entry into the Union

1. Trade in breeding animals and their germinal products and the entry into the Union of breeding animals and their germinal products shall not be prohibited, restricted or impeded on zootechnical or genealogical grounds other than those grounds resulting from the rules provided for in this Regulation.

2. Breeders of breeding animals, breed societies, breeding operations or breeding bodies shall not be discriminated against on the basis of their country of origin or of the country of origin of their breeding animals or the germinal products thereof.

CHAPTER II

Recognition of breed societies and breeding operations in Member States and approval of breeding programmes

Section 1

Recognition of breed societies and breeding operations

Article 4

Recognition of breed societies and breeding operations

1. In respect of purebred breeding animals, breeders' associations, breeding organisations or public bodies may apply to the competent authorities for recognition as a breed society.

In respect of hybrid breeding pigs, breeders' associations, breeding organisations, private undertakings operating in a closed production system or public bodies may apply to the competent authorities for recognition as a breeding operation.

2. The applications referred to in paragraph 1 shall be in writing, either on paper or in electronic form.

3. The competent authorities shall evaluate the applications referred to in paragraph 1. They shall recognise as a breed society any applicant referred to in the first subparagraph of paragraph 1, and as a breeding operation any applicant referred to in the second subparagraph of paragraph 1 that complies with the following requirements:

(a) it has its head office on the territory of the Member State where the competent authority is located;

(b) it demonstrates in its application that it complies with the requirements set out in Part 1 of Annex I for its breeding programmes in respect of which it intends to apply for approval in accordance with Article 8(3), and, where applicable, Article 12;

(c) its application contains, in respect of each of those intended breeding programmes, a draft version of the breeding programme which is to include the information set out in Part 2 of Annex I, and, additionally in the case of purebred breeding animals of the equine species, in Part 3 of Annex I;

(d) when submitting its application referred to in paragraph 1 of this Article, it submits an application for approval of at least one of those intended breeding programmes, in accordance with Article 8(2).

Article 5

Refusal of recognition of breed societies and breeding operations

1. For the purposes of Article 4(1), where the competent authority intends to refuse to recognise an applicant as a breed society or breeding operation, it shall provide that applicant with a reasoned explanation for doing so. That applicant shall have the right to request that the competent authority reconsider that intended refusal within 60 days from the date of receipt of the reasoned explanation, or earlier where national rules provide for shorter time-limits.

2. Where, in the light of the reconsideration referred to in paragraph 1 the competent authority decides to confirm its refusal, it shall provide the applicant with a reasoned explanation of its decision to refuse recognition within 90 days from its receipt of the applicant's request for reconsideration, or earlier where national rules provide for shorter time-limits. At the same time, the competent authority shall inform the Commission of its decision to refuse recognition and of its reasons for doing so.

Article 6

Submission of modified breeding programmes in cases of refusal and withdrawal of the recognition of breed societies or breeding operations in the absence of approved breeding programmes

1. Where the competent authority which has recognised a breed society or breeding operation in accordance with Article 4(3) refuses to approve a breeding programme submitted by that breed society or breeding operation in accordance with Article 8, that breed society or breeding operation shall have the possibility of submitting a modified version of that breeding programme within 6 months after that refusal.

2. The competent authority shall withdraw recognition from that breed society or breeding operation if, by the end of the period referred to in paragraph 1 of this Article, no modified version of the breeding programme has been submitted and where that breed society or breeding operation has no other breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

Article 7

Lists of recognised breed societies and breeding operations

1. Member States shall draw up and keep up to date a list of breed societies and breeding operations that their competent authorities have recognised in accordance with Article 4(3) and which have at least one breeding programme that has been approved in accordance with Article 8(3). Member States shall make that list available to the public.

2. The list provided for in paragraph 1 shall include the following information:

(a) the name, contact details and, where available, the website of the breed society or breeding operation;

(b) for each breed society or breeding operation on that list:

(i) in the case of purebred breeding animals, the name of the breed, or, in the case of hybrid breeding pigs, the name of the breed, line or cross, covered by each of its breeding programmes approved in accordance with Article 8(3), and, where the breed society makes use of the derogations referred to in Article 19 or point 2 of Chapter III of Part 1 of Annex II, a reference to those derogations;

(ii) the geographical territory where each of its breeding programmes is to be carried out;

(iii) in the case of purebred breeding animals of the equine species, where applicable, the name and contact details of the breed society which maintains the breeding book of the origin of the breed;

(iv) for each of its breeding programmes, where available, a reference to a website where information on those breeding programmes can be accessed.

3. Member States shall also include in the list provided for in paragraph 2 of this Article any competent authority which carries out a breeding programme in accordance with Article 38.

4. Where the recognition of a breed society or a breeding operation is withdrawn in accordance with point (e) of third subparagraph of Article 47(1) or the approval of a breeding programme is suspended or withdrawn in accordance with point (d) of third subparagraph of Article 47(1), Member States shall, without undue delay, indicate that suspension or withdrawal in the list provided for in paragraph 1 of this Article.

Where, for a period of 24 months, that recognition remains withdrawn or that approval remains suspended or withdrawn, Member States shall definitively remove that breed society, breeding operation or breeding programme from the list provided for in paragraph 1.

5. The Commission shall adopt implementing acts, laying down model forms for the presentation of the information to be included in the list of recognised breed societies and breeding operations provided for in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Section 2

Approval of breeding programmes

Article 8

Approval of breeding programmes carried out by breed societies and breeding operations

1. A breed society or a breeding operation shall submit applications for approval of its breeding programmes to the competent authority which has recognised that breed society or breeding operation in accordance with Article 4(3).

2. The applications referred to in paragraph 1 shall be in writing, either on paper or in electronic form.

3. The competent authority referred to in paragraph 1 shall evaluate those breeding programmes and approve them provided that:

(a) they have one or more of the following aims:

(i) in the case of purebred breeding animals:

— the improvement of the breed,

— the preservation of the breed,

— the creation of a new breed,

— the reconstruction of a breed;

(ii) in the case of hybrid breeding pigs:

— the improvement of the breed, line or cross,

— the creation of a new breed, line or cross;

(b) they describe in detail the selection and breeding objectives;

(c) they comply with the requirements set out in Part 2 of Annex I, and in addition in the case of purebred breeding animals of the equine species, in Part 3 of Annex I.

4. Breed societies or breeding operations may outsource to a third party specific technical activities related to the management of their breeding programmes, including performance testing and genetic evaluation, provided that:

(a) the breed societies and breeding operations remain responsible to the competent authority for ensuring compliance with the requirements provided for in Parts 2 and 3 of Annex I;

(b) there is no conflict of interests between that third party and the economic activities of breeders who participate in the breeding programme;

(c) that third party fulfils all the necessary requirements to carry out those activities;

(d) those breed societies and breeding operations specify the activities which they intend to outsource and the name and contact details of those third parties in their applications referred to in paragraph 2.

5. Where, for at least 24 months, there are no breeders which have their holdings, on which they keep their breeding animals, located on a given part of the geographical territory that are participating in a breeding programme approved in accordance with paragraph 3, the competent authority referred to in paragraph 1 may require the breed society or breeding operation concerned to adjust the geographical territory of its breeding programme so as not to include that given part.

Article 9

Changes to an approved breeding programme

1. Prior to the implementation of any significant changes relating to the requirements referred to in Article 8(3) in its breeding programme approved in accordance with that provision, a breed society or breeding operation shall notify those changes to the competent authority which has recognised that breed society or breeding operation in accordance with Article 4(3).

2. The notification shall be in writing, either on paper or in electronic form.

3. Unless that competent authority indicates otherwise within a period of 90 days from the date of notification, those changes shall be considered to have been approved.

4. Breed societies and breeding operations shall inform in a transparent and timely manner the breeders participating in their breeding programmes of the changes in their breeding programme that have been approved in accordance with paragraph 3.

Article 10

Derogations from Article 8(3) concerning the approval of breeding programmes

1. By way of derogation from Article 8(3), the competent authority which has recognised a breed society in accordance with Article 4(3) may refuse to approve a breeding programme of that breed society that complies with the requirements set out in Part 2 of Annex I, and additionally in the case of purebred breeding animals of the equine species, in Part 3 of Annex I, on the grounds that that breeding programme would compromise the breeding programme carried out by another breed society for the same breed which has already been approved in that Member State as regards at least one of the following:

(a) the essential traits of the breed characteristics or the main objectives of that breeding programme;

(b) the preservation of that breed or of the genetic diversity within that breed; or

(c) where the aim of that breeding programme is the preservation of that breed, the effective implementation of that breeding programme:

  (i) in the case of an endangered breed; or

  (ii) in the case of an autochthonous breed which is not commonly found in one or more of the territories of the Union.

2. For the purpose of paragraph 1, the competent authority shall take due account of the following:

(a) the number of breeding programmes already approved for that breed in that Member State;

(b) the size of the breeding populations covered by those breeding programmes;

(c) the possible genetic input from breeding programmes carried out by other breed societies for the same breed in other Member States or by breeding bodies in third countries.

Article 11

Refusal of the approval of breeding programmes

Where the competent authority which has recognised a breed society or breeding operation in accordance with Article 4(3) refuses to approve a breeding programme submitted by such breed society or breeding operation in accordance with Article 8(1) or refuses to approve changes to a breeding programme notified in accordance with Article 9(1), it shall provide that breed society or breeding operation with a reasoned explanation for its refusal.

Article 12

Notification and approval of breeding programmes carried out in Member States other than the Member State in which the breed society or breeding operation is recognised

1. Where a breed society or a breeding operation intends to carry out a breeding programme approved in accordance with Article 8(3) also on breeding animals kept in a Member State other than the Member State where that breed society or breeding operation is recognised in accordance with Article 4(3) (for the purpose of this Article, 'that other Member State'), that breed society or breeding operation shall notify the intended extension of its geographical territory to the competent authority which has recognised that breed society or breeding operation in accordance with Article 4(3).

2. The competent authority which has recognised that breed society or breeding operation in accordance with Article 4(3) shall:

(a) notify the competent authority of that other Member State at least 90 days before the intended commencement date of the breeding programme in that other Member State, and, at the request of the notified authority, provide a translation of that notification in one of the official languages of that other Member State;

(b) at the request of the notified authority, provide, at least 60 days before the intended commencement date of the breeding programme in that other Member State, a copy of the breeding programme as approved in accordance with Article 8(3) accompanied, if requested by that authority, by a translation into one of the official languages of that other Member State which shall be provided by the applying breed society or breeding operation.

3. The competent authority of that other Member State may, within 90 days from the date of receipt of the notification referred to in point (a) of paragraph 2, refuse to approve the carrying out on its territory of the breeding programme, where:

(a) an approved breeding programme is already being carried out in that other Member State on purebred breeding animals of the same breed; and

(b) the approval of a further breeding programme would compromise the breeding programme carried out by another breed society for the same breed which has already been approved in that other Member State as regards at least one of the following:

(i) the essential traits of the breed characteristics or the main objectives of that breeding programme;

(ii) the preservation of that breed or of the genetic diversity within that breed;

(iii) where the aim of that breeding programme is the preservation of that breed, the effective implementation of that breeding programme:

— in the case of an endangered breed, or

— in the case of an autochthonous breed which is not commonly found in one or more of the territories of the Union.

4. The competent authority of that other Member State shall inform the competent authority which has recognised the breed society or breeding operation in accordance with Article 4(3) about the result of the notification provided for in paragraph 1 of this Article and, where it refuses the approval for the carrying out on its territory of the breeding programme, shall provide a reasoned explanation for its refusal.

5. Failure by the competent authority of that other Member State to reply to the notification referred to in point (a) of paragraph 2 within 90 days from the date of receipt of that notification shall constitute approval.

6. The competent authority which has recognised the breed society or breeding operation in accordance with Article 4(3) shall inform the breed society or breeding operation of the result of the notification provided for in point (a) of paragraph 2 of this Article without undue delay and, in the case of refusal, shall provide that breed society or breeding operation with the reasoned explanation for that refusal referred to in paragraph 4 of this Article.

7. Where the competent authority of that other Member State refuses the approval in accordance with paragraph 3, it shall inform the Commission of its refusal together with a statement of reasons for that refusal.

8. Where the competent authority of that other Member State refuses the approval in accordance with paragraph 3 of this Article and the breed society or breeding operation which intends to carry out that breeding programme in that other Member State requests reconsideration of that refusal, the competent authority of that other Member State and the competent authority which has recognised the breed society or breeding operation in accordance with Article 4(3) shall cooperate with each other with regard to that request for reconsideration.

9. The competent authority which has recognised the breed society or breeding operation in accordance with Article 4(3) shall inform the competent authority of that other Member State of the changes in breeding programmes approved in accordance with Article 9(3).

10. At the request of the competent authority of that other Member State, the breed society or breeding operation operating in accordance with this Article on the territory of that other Member State shall provide up-to-date information to that competent authority in particular with regard to the number of breeders and breeding animals on which the breeding programme is carried out on that territory. Any such request shall be made in the same manner as requests to the breed societies or breeding operations recognised in that other Member State.

11. The competent authority of that other Member State may withdraw the approval of the breeding programme provided for in this Article, where, for at least 12 months, no breeder on the territory of that other Member State participates in that breeding programme.

CHAPTER III

Rights and obligations of breeders, breed societies and breeding operations

Article 13

Rights of breeders participating in breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12

1. Breeders shall have the right to participate in a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12 provided that:

(a) their breeding animals are kept on holdings located within the geographical territory of that breeding programme;

(b) their breeding animals belong, in the case of purebred breeding animals, to the breed, or, in the case of hybrid breeding pigs, to the breed, line or cross, covered by that breeding programme.

2. Breeders participating in a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12 shall have the right:

(a) to have their purebred breeding animals entered in the main section of the breeding book established for the breed by the breed society in accordance with Articles 18 and 20;

(b) to have their animals recorded in a supplementary section of the breeding book established for the breed by the breed society in accordance with Article 20;

(c) to have their hybrid breeding pigs registered in a breeding register established for the breed, line or cross by a breeding operation in accordance with Article 23;

(d) to participate in performance testing and genetic evaluation in accordance with Article 25;

(e) to be provided with a zootechnical certificate in accordance with Article 30(1) and (4);

(f) on request, to be provided, with up-to-date results of the performance testing and genetic evaluation for their breeding animals, where those results are available;

(g) to have access to all the other services provided in relation to that breeding programme to the participating breeders by the breed society or breeding operation carrying out that breeding programme.

3. In addition to the rights laid down in paragraphs 1 and 2, where the rules of a breed society or breeding operation provide for membership, the breeders referred to in paragraph 1 shall also have the right:

(a) to become a member of that breed society or breeding operation;

(b) to participate in the defining and development of the breeding programme in accordance with the rules of procedure referred to in point B(1)(b) of Part 1 of Annex I.

Article 14

Rights and obligations of breed societies and breeding operations

1. As regards their breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12, breed societies and breeding operations shall have the right to define and carry out such breeding programmes autonomously, provided that they comply with this Regulation and any conditions of their approval.

2. Breed societies or breeding operations shall have the right to exclude breeders from participating in a breeding programme where those breeders fail to comply with the rules of that breeding programme or with the obligations set out in the rules of procedure referred to in point B(1)(b) of Part 1 of Annex I.

3. In addition to the right referred to in paragraph 2, breed societies and breeding operations which provide for membership shall have the right to exclude breeders from membership where those breeders fail to comply with their obligations set out in the rules of procedure referred to in point B(1)(b) of Part 1 of Annex I.

4. Breed societies and breeding operations shall, without prejudice to the role of the courts, have a responsibility to settle disputes that may arise between breeders, and between breeders and the breed society or breeding operation, in the process of carrying out breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12, in accordance with the rules of procedure referred to in point B(1)(b) of Part 1 of Annex I.

CHAPTER IV

Entry of breeding animals in breeding books and breeding registers and acceptance for breeding

Section 1

Entry of purebred breeding animals in breeding books and acceptance for breeding

Article 15

Structure of breeding books

Breeding books shall consist of a main section and, where specified in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, one or more supplementary sections.

Article 16

Main section of breeding books

1. Where different criteria or procedures are established by breed societies for entering purebred breeding animals in different classes, those breed societies may divide the main section of breeding books into classes:

(a) according to the merits of those animals and subdivide those classes according to their age or gender; or

(b) according to the age or gender of those animals, provided that those classes are also subdivided according to their merits.

Those criteria and procedures may require that the purebred breeding animal undergo the performance testing or genetic evaluation provided for in Article 25 or any other assessment described in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12 prior to it being entered in a specific class of the main section.

2. Where the breeding programme establishes conditions for entry in the main section of the breeding book in addition to those set out in Chapter I of Part 1 of Annex II, the breed society carrying out that breeding programme shall establish, in that main section, at least one class for purebred breeding animals that fulfil only the conditions of Chapter I of Part 1 of Annex II and Article 21 to be entered, on application by the breeder.

Article 17

Supplementary sections of breeding books

Breed societies may establish one or more supplementary sections in the breeding book for animals of the same species that are not eligible for entry in the main section, provided that the rules set out in the breeding programme allow the progeny of those animals to be entered in the main section in accordance with the rules set out:

(a) in the case of female animals of the bovine, porcine, ovine and caprine species, in point 1(a) of Chapter III of Part 1 of Annex II;

(b) in the case of animals of endangered breeds of the bovine, porcine, ovine and caprine species or of 'hardy' sheep breeds, in point 2 of Chapter III of Part 1 of Annex II; or

(c) in the case of male and female animals of the equine species, in point 1(b) of Chapter III of Part 1 of Annex II.

Article 18

Entry of purebred breeding animals in the main section of the breeding book

1. Breed societies shall, at the request of breeders, enter or register for entry in the main section of their breeding book any purebred breeding animals of the breed covered by their breeding programme, provided that those animals comply with the requirements set out in Chapter I of Part 1 of Annex II and, where applicable, that those animals are the offspring of breeding animals or result from the germinal products thereof, in accordance with the rules provided for in Article 21.

2. Breed societies shall not refuse the entry in the main section of their breeding books of a purebred breeding animal on the grounds that it has already been entered in the main section of a breeding book of the same breed or, in the case of a cross-breeding programme carried out on purebred breeding animals of the equine species, of a different breed established by another breed society recognised in accordance with Article 4(3) or by a breeding body in a third country included in the list provided for in Article 34.

3. Where the main section of the breeding book is divided into classes, purebred breeding animals meeting the criteria for entry in the main section shall be entered by the breed society in the class that corresponds to the merits of those purebred breeding animals.

Article 19

Derogations from the requirements for the entry of animals in the main section of breeding books in the case of the creation of a new breed or the reconstruction of a breed

1. By way of derogation from Article 18(1), where a breed society carries out a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, for a breed for which no breeding book exists in any Member State or third country included in the list provided for in Article 34, that breed society may enter in the main section of that newly established breeding book, purebred breeding animals or descendants from purebred breeding animals of different breeds or any animal which is judged by the breed society to conform to the characteristics of that new breed and, where applicable, fulfils the minimum performance requirements laid down in the breeding programme.

Breed societies making use of this derogation shall:

(a) set in their breeding programme a period for the establishment of the new breeding book that is appropriate for the generation interval of the species or the breed concerned;

(b) make reference to any existing breeding book in which the purebred breeding animals or their parents have been entered for the first time after birth, together with the original registration number in that breeding book;

(c) in their system for recording pedigrees, identify the animals which are considered by them to be the breed's foundation stock.

2. Where a breed society intends to reconstruct a breed that has disappeared or that is in serious danger of disappearing, a Member State, or, if it so decides, the competent authority, may authorise the breed society to enter, in the main section of the breeding book, descendants of purebred breeding animals of the breed to be reconstructed or purebred breeding animals or descendants from purebred breeding animals of other breeds which enter in the reconstruction of that breed or any animal which is judged by the breed society to conform to the characteristics of the breed to be reconstructed and which, where applicable, fulfil the minimum performance requirements laid down in the breeding programme provided that:

(a) a period for the establishment or re-establishment of that breeding book, appropriate for the breed concerned, is set in the breeding programme;

(b) where applicable, reference is made to any breeding book in which those purebred breeding animals or ascendants have been entered together with the original registration number in that breeding book;

(c) the animals which are considered by that breed society to be the breed's reconstruction stock are identified in the system for recording pedigrees.

3. A breed society seeking to avail itself of the derogation referred to in paragraph 1 of this Article or the derogation referred to in paragraph 2 of this Article shall lay down a detailed plan for the creation or reconstruction of the breed in its breeding programme referred to in Article 8(1).

4. By the end of the periods referred to in point (a) of paragraph 1 of this Article and point (a) of paragraph 2 of this Article, the competent authority shall carry out an official control as provided for in Article 43.

5. Where a breed is being created or reconstructed in accordance with this Article, Member States shall make that information publicly available by including an indication to that effect in the list provided for in Article 7.

Article 20

Recording of animals in supplementary sections and upgrading of their offspring to the main section

1. Where supplementary sections are established by a breed society in accordance with Article 17, that breed society shall, on application by breeders, record in the appropriate supplementary sections provided for in Article 17 animals of the species covered by its breeding programme that are not eligible for entry in the main section, provided that those animals meet the conditions set out in Chapter II of Part 1 of Annex II.

2. Breed societies shall, on application by breeders, enter the progeny of the animals referred to in paragraph 1 of this Article in the main section provided for in Article 16 and shall regard that progeny as purebred breeding animals, provided that that progeny meets the conditions set out in Chapter III of Part 1 of Annex II.

Article 21

Acceptance of purebred breeding animals and their germinal products for breeding

1. A breed society carrying out a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12 for a breed shall accept:

(a) for natural service, any purebred breeding animal of that breed;

(b) for artificial insemination, semen collected from purebred breeding animals of the bovine species which have undergone genetic evaluation in accordance with Article 25;

(c) for artificial insemination, semen collected from purebred breeding animals of the porcine, ovine or caprine species which have undergone performance testing or genetic evaluation in accordance with Article 25;

(d) for artificial insemination, semen collected from purebred breeding animals of the equine species which have undergone, where required by the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, performance testing or genetic evaluation in accordance with Article 25;

(e) for embryo transfer, oocytes collected and used for in vitro production of embryos and in vivo derived embryos conceived by use of semen referred to in point (b) or (c) of this paragraph, provided that those oocytes and embryos have been collected from purebred breeding animals of the bovine, porcine, ovine or caprine species which have undergone performance testing or genetic evaluation in accordance with Article 25;

(f) for embryo transfer, oocytes collected and used for in vitro production of embryos and in vivo derived embryos conceived by use of semen referred to in point (d) of this paragraph, provided that those oocytes and embryos have been collected from purebred breeding animals of the equine species which have undergone, where required by the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, performance testing or genetic evaluation in accordance with Article 25;

(g) for testing of male purebred breeding animals of the bovine, porcine, ovine and caprine species, semen collected from purebred breeding animals which have not undergone performance testing or genetic evaluation provided that that semen is solely used for the purpose of testing those male purebred breeding animals within the quantity limits necessary to enable that breed society to carry out such tests in accordance with Article 25.

2. In the case of purebred breeding animals of the equine species, by way of derogation from paragraph 1 of this Article, a breed society may prohibit or limit the use of one or more reproduction techniques referred to in that paragraph or the use of purebred breeding animals for one or more of those reproduction techniques, including the use of their germinal products, provided that that prohibition or limitation is specified in its breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

Any such prohibition or limitation that is specified in the breeding programme of the breed society which has established the breeding book of the origin of the breed in accordance with point 3(a) of Part 3 of Annex I shall be binding for the breeding programmes of the breed societies that establish filial breeding books for the same breed in accordance with point 3(b) of Part 3 of Annex I.

3. In the case of an endangered breed, a breed society may prohibit or restrict the use of a purebred breeding animal of that breed, including the use of its germinal products, where that use would compromise the preservation or the genetic diversity of that breed.

4. Semen referred to in point (g) of paragraph 1 collected from male purebred breeding animals which are entered in the main section of a breeding book established by a breed society carrying out a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, shall be accepted by another breed society carrying out an approved breeding programme on the same breed in the same or another Member State under the same conditions and quantity limits for performance testing and, where applicable, genetic evaluation as those applied to its own male purebred breeding animals.

5. For the purpose of paragraphs 1 and 4, the germinal products of purebred breeding animals referred to in those paragraphs shall be collected, produced, processed and stored at a semen collection or storage centre, or by an embryo collection or production team, approved for intra-Union trade in these commodities in accordance with Union animal health law.

6. By way of derogation from paragraph 5, a Member State may authorise the collection, production, processing and storage for use within the territory of that Member State of germinal products of purebred breeding animals at a semen collection or storage centre, at an embryo storage centre, by an embryo collection or production team or by specifically qualified staff, approved in accordance with the legislation of that Member State.

7. By way of derogation from points (b), (c) and (e) of paragraph 1, where the aim of a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, is the preservation of the breed or the preservation of the genetic diversity existing within the breed, performance testing or genetic evaluation shall only be carried out where that breeding programme requires such performance testing or genetic evaluation.

Article 22

Methods for identity verification

1. Where purebred breeding animals of the bovine, ovine, caprine and equine species are used for the collection of semen for artificial insemination, breed societies shall require that those purebred breeding animals are identified by analysis of their blood group or by any other appropriate method providing at least the same degree of certainty such as DNA analysis.

2. Where breeding animals of the bovine, porcine, ovine, caprine and equine species are used for the collection of oocytes and embryos, and where breeding animals of the porcine species are used for the collection of semen for artificial insemination, breed societies and breeding operations may require that those breeding animals are identified by one of the methods referred to in paragraph 1.

3. At the request of a Member State or of a European association for breeding animals of the species concerned, the Commission may adopt implementing acts, approving methods for the verification of the identity of breeding animals provided that they offer at least the same degree of certainty as the analysis of the blood group of those breeding animals, taking into account technical advances and the recommendations of the European Union reference centres referred to in Article 29, ICAR or the International Society for Animal Genetics (ISAG). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Section 2

Registration of hybrid breeding pigs in breeding registers and acceptance for breeding

Article 23

Registration of hybrid breeding pigs in breeding registers

1. Breeding operations shall, at the request of their breeders, register in their breeding register any hybrid breeding pig of the same breed, line or cross that fulfils the requirements set out in Part 2 of Annex II.

2. Breeding operations shall not refuse to register in their breeding registers any hybrid breeding pigs that have been registered in accordance with Part 2 of Annex II in a breeding register established for the same breed, line or cross by a breeding operation recognised in accordance with Article 4(3) in the same or in another Member State.

Article 24

Acceptance of hybrid breeding pigs and their germinal products for breeding

1. A breeding operation carrying out a breeding programme, approved in accordance with Article 8(3), and, where applicable, Article 12, on hybrid breeding pigs of a breed, line or cross shall accept:

(a) for natural service, any hybrid breeding pig of the same breed, line or cross as defined in that breeding programme;

(b) for artificial insemination, semen collected from hybrid breeding pigs which have undergone, where required by the breeding programme, approved in accordance with Article 8(3), and, where applicable, Article 12, performance testing or genetic evaluation in accordance with Article 25;

(c) for embryo transfer, oocytes collected and used for in vitro production of embryos and in vivo derived embryos conceived by use of semen referred to in point (b), provided that those oocytes and embryos have been collected from hybrid breeding pigs which have undergone, where required by the breeding programme, approved in accordance with Article 8(3), and, where applicable, Article 12, performance testing or genetic evaluation in accordance with Article 25;

(d) for the testing of male hybrid breeding pigs, semen collected from those hybrid breeding pigs which have not undergone performance testing or genetic evaluation, provided that that semen is solely used for the purpose of testing of those hybrid breeding pigs within the quantity limits necessary for that breeding operation to carry out such tests in accordance with Article 25.

2. Male hybrid breeding pigs which are registered in a breeding register established by a breeding operation carrying out a breeding programme, approved in accordance with Article 8(3), and, where applicable, Article 12, and the germinal products thereof, shall be accepted by another breeding operation carrying out a breeding programme on the same breed, line or cross in the same or another Member State under the same conditions and quantity limits for performance testing, and, where applicable, genetic evaluation, as applied to its own hybrid breeding pigs.

3. For the purpose of paragraphs 1 and 2, the germinal products of hybrid breeding pigs referred to in those paragraphs shall be collected, produced, processed and stored at a semen collection or storage centre, or by an embryo collection or production team, approved for intra-Union trade in these commodities in accordance with Union animal health law.

4. By way of derogation from paragraph 3, a Member State may authorise the collection, production, processing and storage for use within the territory of that Member State of germinal products of hybrid breeding pigs at a semen collection or storage centre, at an embryo storage centre, by an embryo collection or production team or by specifically qualified staff, approved in accordance with the legislation of that Member State.

CHAPTER V

Performance testing and genetic evaluation

Article 25

Methods for performance testing and genetic evaluation

Where a breed society or a breeding operation, or a third party designated in accordance with Article 27(1)(b), carries out performance testing or genetic evaluation of breeding animals, that breed society, breeding operation or third party shall ensure that such performance testing or genetic evaluation is carried out in accordance with the rules set out in:

(a) in the case of purebred breeding animals of the bovine, porcine, ovine and caprine species and in the case of hybrid breeding pigs, Annex III;

(b) in the case of purebred breeding animals of the equine species, the breeding programme carried out by that breed society as approved in accordance with Article 8(3), and, where applicable, Article 12.

Article 26

Delegated powers and implementing powers concerning the requirements for performance testing and genetic evaluation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 61 concerning the amendments to Annex III as regards performance testing and genetic evaluation of purebred breeding animals of the bovine, ovine and caprine species, necessary to take account of:

(a) scientific advances;

(b) technical developments; or

(c) the needs to preserve valuable genetic resources.

2. The Commission may adopt implementing acts, laying down uniform rules for performance testing and genetic evaluation of purebred breeding animals of the bovine, ovine and caprine species referred to in this Article, including the interpretation of the results thereof. In doing so, it shall take into account technical and scientific advances or recommendations of the relevant European Union reference centres provided for in Article 29(1) or, in the absence of such, the principles agreed by ICAR. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Article 27

Carrying out of performance testing and genetic evaluation

1. Where performance testing or genetic evaluation is to be carried out according to the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, breed societies and breeding operations shall:

(a) carry out that performance testing or genetic evaluation themselves; or

(b) designate the third parties to which that performance testing or genetic evaluation is to be outsourced.

2. A Member State, or, if that Member State so decides, its competent authorities, may require that, in order for the third parties to be designated in accordance with point (b) of paragraph 1, those third parties must have been authorised to carry out performance testing or genetic evaluation of breeding animals by that Member State, or its competent authorities, except where the designated third party in question is a public body subject to control by that Member State, or its competent authorities.

3. A Member State, or, if that Member State so decides, its competent authorities, making use of the provision referred to in paragraph 2 shall ensure that an authorisation is granted to the third parties referred to in that paragraph, if they have:

(a) the facilities and equipment necessary to carry out that performance testing or genetic evaluation;

(b) suitably qualified staff; and

(c) the capability to carry out that performance testing or genetic evaluation in accordance with Article 25.

4. By way of derogation from Article 8(4)(a), a Member State or its competent authority may decide that a third party which is authorised in accordance with paragraph 2 of this Article, or the designated public body subject to control by the Member State or its competent authorities referred to in paragraph 2 of this Article, shall be responsible to that competent authority for ensuring compliance with the requirements provided for in this Regulation applicable to that outsourced performance testing or genetic evaluation.

5. Breed societies or breeding operations themselves carrying out performance testing or genetic evaluation or third parties designated by a breed society or breeding operation in accordance with point (b) of paragraph 1 of this Article or authorised by a Member State or its competent authorities as referred to in paragraph 2 of this Article may commit themselves to comply with the rules and standards established by ICAR or may participate in activities carried out by the European Union reference centres referred to in Article 29.

The results of such commitments or the participation in such activities may be taken into account by the competent authorities when recognising those breed societies or breeding operations, approving their breeding programmes, authorising those third parties or carrying out official controls on those operators.

6. Breed societies and breeding operations shall make publicly available the detailed information on those who carry out the performance testing or genetic evaluation.

Article 28

Obligations of breed societies, breeding operations and third parties carrying out performance testing or genetic evaluation

1. Where a breed society or a breeding operation carries out performance testing or genetic evaluation of breeding animals or outsources those activities to a third party in accordance with Article 27(1)(b), that breed society or breeding operation shall, at the request of the competent authority referred to in Article 8(3), or, where applicable, in Article 12(5), provide the following information:

(a) records of all data resulting from performance testing and genetic evaluation in relation to breeding animals from holdings located on the territory where that competent authority operates;

(b) details of the recording methods for traits;

(c) details of the model of performance description used for the analysis of the results of performance testing;

(d) details of the statistical methods used for the analysis of the results of performance testing for each evaluated trait;

(e) details of the genetic parameters used for each evaluated trait, including, where applicable, details of the genomic evaluation.

2. The breed society or breeding operation or, on request by that breed society or breeding operation, the third party designated by that breed society or breeding operation in accordance with Article 27(1)(b), shall make the results of the genetic evaluation of breeding animals whose semen is used for artificial insemination in accordance with Article 21(1)(b), (c) and (d) and Article 24(1)(b) publicly available and shall keep them up-to-date.

CHAPTER VI

European Union reference centres

Article 29

European Union reference centres

1. Where there is a recognised need to promote the harmonisation or improvement of the methods of performance testing or genetic evaluation of purebred breeding animals used by breed societies or by third parties designated by breed societies in accordance with Article 27(1)(b), the Commission may adopt implementing acts, designating the European Union reference centres responsible for the scientific and technical contribution to the harmonisation or improvement of those methods.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

2. Where there is a recognised need to promote the establishment or harmonisation of the methods used by breed societies, third parties designated by breed societies in accordance with Article 27(1)(b), competent authorities or other authorities of the Member States for the preservation of endangered breeds or the preservation of the genetic diversity existing within those breeds, the Commission may adopt implementing acts, in order to designate the European Union reference centres responsible for the scientific and technical contribution to the establishment or harmonisation of those methods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

3. The designations provided for in paragraphs 1 and 2 shall follow a public selection process and shall be limited in time or reviewed regularly.

4. European Union reference centres designated in accordance with paragraph 1 or 2 of this Article shall:

(a) comply with the requirements set out in point 1 of Annex IV; and

(b) be responsible for the tasks:

(i) in the case of European Union reference centres designated in accordance with paragraph 1 of this Article, set out in point 2 of Annex IV;

(ii) in the case of European Union reference centres designated in accordance with paragraph 2 of this Article, set out in point 3 of Annex IV;

if those tasks are included in the reference centres' annual or multiannual work programmes established in conformity with the objectives and priorities of the relevant work programmes adopted by the Commission in accordance with Article 36 of Regulation (EU) No 652/2014.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 61 amending:

(a) the requirements for European Union reference centres set out in point 1 of Annex IV;

(b) the tasks of European Union reference centres set out in points 2 and 3 of Annex IV.

The delegated acts provided for in this paragraph shall take due account of:

(a) the species of purebred breeding animals for which the methods of performance testing and genetic evaluation are to be harmonised or improved and the scientific and technical advances in the area of performance testing or genetic evaluation; or

(b) the endangered breeds for which methods for the preservation of those breeds or the preservation of the genetic diversity within those breeds are to be established or harmonised and the scientific and technical advances in those areas.

6. European Union reference centres designated in accordance with paragraph 1 or 2 shall be subject to Commission controls to verify that:

(a) they comply with the requirements set out in point 1 of Annex IV;

(b) they fulfil the tasks:

(i) in the case of European Union reference centres designated in accordance with paragraph 1, set out in point 2 of Annex IV;

(ii) in the case of European Union reference centres designated in accordance with paragraph 2, set out in point 3 of Annex IV.

If the results of such a control disclose that a European Union reference centre does not comply with the requirements set out in point 1 of Annex IV or does not fulfil the tasks set out in point 2 or 3 of Annex IV, the Commission may adopt implementing acts, reducing the Union financial contribution granted in accordance with Article 30 of Regulation (EU) No 652/2014 or withdrawing the designation as a European Union reference centre. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

CHAPTER VII

Zootechnical certificates

Article 30

Issuing, content and format of zootechnical certificates accompanying breeding animals and the germinal products thereof

1. Where breeders participating in a breeding programme that has been approved in accordance with Article 8, and, where applicable, Article 12, request zootechnical certificates for their breeding animals or germinal products thereof, the breed society or breeding operation carrying out that breeding programme shall issue those certificates.

2. Zootechnical certificates accompanying breeding animals or germinal products thereof shall only be issued by:

(a) breed societies or breeding operations carrying out breeding programmes approved in accordance with Article 8, and, where applicable, Article 12, on those breeding animals;

(b) the competent authorities referred to in Article 8(3), or, where applicable, Article 12(2)(a), if those authorities so decide; or

(c) breeding bodies included in the list provided for in Article 34 carrying out breeding programmes on those breeding animals.

3. Breed societies or breeding operations shall ensure a timely transmission of zootechnical certificates.

4. Where breeding animals that have been entered in a breeding book maintained by a breed society or registered in a breeding register maintained by a breeding operation or their germinal products are traded and where those breeding animals, or the offspring produced from those germinal products, are intended to be entered or registered in another breeding book or breeding register, those breeding animals, or their germinal products, shall be accompanied by a zootechnical certificate.

The breed society or breeding operation of dispatch of the breeding animals, or of the germinal products thereof, maintaining the breeding book or breeding register where those breeding animals are entered or registered shall issue that zootechnical certificate.

5. Where breeding animals that have been entered in a breeding book or registered in a breeding register maintained by a breeding body included in the list provided for in Article 34, or their germinal products, enter the Union and where those breeding animals, or the offspring produced from those germinal products, are intended to be entered in a breeding book maintained by a breed society or registered in a breeding register maintained by a breeding operation, those breeding animals, or their germinal products, shall be accompanied by a zootechnical certificate.

That zootechnical certificate shall be issued by the breeding body listed in accordance with Article 34 that is maintaining the breeding book or breeding register in which those breeding animals are entered or registered, or by the official service of the third country of dispatch.

6. The zootechnical certificates referred to in paragraphs 4 and 5 shall:

(a) contain the information set out in the relevant Parts and Chapters of Annex V;

(b) comply with the corresponding model forms of zootechnical certificates provided for in the implementing acts adopted pursuant to paragraph 10.

7. A breed society or a breeding body that carries out performance testing or genetic evaluation, or both, in accordance with its breeding programme, or outsources those activities to third parties, in the case of a breed society in accordance with Article 27(1)(b), shall indicate, in the zootechnical certificate issued for a purebred breeding animal or its germinal products:

(a) results of that performance testing;

(b) up-to-date results of that genetic evaluation; and

(c) genetic defects and genetic peculiarities in relation to that breeding programme affecting that breeding animal or the donors of those germinal products.

8. A breeding operation or a breeding body that carries out performance testing or genetic evaluation, or both, in accordance with its breeding programme, or outsources those activities to third parties, in the case of a breeding operation in accordance with Article 27(1)(b), shall, where required to do so by that breeding programme, indicate in the zootechnical certificate issued for a hybrid breeding pig or its germinal products:

(a) results of that performance testing;

(b) up-to-date results of that genetic evaluation; and

(c) genetic defects and genetic peculiarities in relation to that breeding programme affecting that breeding animal or the donors of those germinal products.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 61 amending the contents of the zootechnical certificates set out in Annex V, in order to update them to take into account:

(a) scientific advances;

(b) technical developments;

(c) the functioning of the internal market; or

(d) the needs to preserve valuable genetic resources.

10. The Commission shall adopt implementing acts, laying down model forms for the zootechnical certificates for breeding animals and their germinal products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Article 31

Derogations from requirements concerning the issuing, content and format of zootechnical certificates for trade in breeding animals and their germinal products

1. By way of derogation from Article 30(2)(a), the competent authority may authorise that germinal products are to be accompanied by a zootechnical certificate issued, on the basis of the information received from the breed society or breeding operation, by a semen collection or storage centre, or by an embryo collection or production team, approved for intra-Union trade in those germinal products in accordance with Union animal health law.

2. By way of derogation from Article 30(6)(b), the competent authority may authorise the non-use of the model forms referred to in Article 30(6)(b) provided that:

(a) in the case of breeding animals of the bovine, porcine, ovine and caprine species, the information set out in Chapter I of Part 2 of Annex V or Chapter I of Part 3 of Annex V is contained in other documents accompanying those breeding animals, issued by the breed society or breeding operation;

(b) in the case of germinal products of the bovine, porcine, ovine, caprine and equine species:

(i) the information related to the donors of those germinal products is contained in other documents or in copies of the original zootechnical certificate accompanying those germinal products or, before or after the dispatch of those germinal products, it is, on request, made available by the breed society or breeding operation or the other operators referred to in paragraph 1;

(ii) the information related to the semen, oocytes or embryos is contained in other documents accompanying that semen, those oocytes or those embryos, issued by the breed society or breeding operation or the other operators referred to in paragraph 1.

3. By way of derogation from Article 30(7)(a) and (b) and Article 30(8)(a) and (b), where the results of performance testing or genetic evaluation are publicly available on a website, breed societies, breeding operations or the other operators referred to in paragraph 1 of this Article may, in the zootechnical certificate or in the documents referred to in point (a) of paragraph 2 of this Article, refer to the website where those results can be accessed.

Article 32

Derogations from requirements concerning the format of zootechnical certificates issued for purebred breeding animals of the equine species

1. By way of derogation from Article 30(6), in the case of purebred breeding animals of the equine species, the information set out in Chapter I of Part 2 of Annex V shall be contained in a single lifetime identification document for equidae. The Commission shall adopt delegated acts in accordance with Article 61 concerning the content and format of such identification documents.

2. The Commission may adopt implementing acts, laying down model forms of the single lifetime identification document for equidae. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

3. By way of derogation from paragraph 1, where updated results of performance testing or genetic evaluation are publicly available on a website, the competent authorities may authorise the non-inclusion of the information set out in point (1)(m) of Chapter I of Part 2 of Annex V in the document referred to in paragraph 1, provided that the breed society refers to that website in that document.

4. By way of derogation from paragraph 1, the competent authorities may authorise that the information set out in points (1)(m) and (n) of Chapter I of Part 2 of Annex V is contained in other documents issued by the breed society for the purebred breeding animals entered in a breeding book maintained by that breed society.

Article 33

Derogations from requirements concerning the issuing, content and format of zootechnical certificates for the entry into the Union of breeding animals and their germinal products

1. By way of derogation from Article 30(2)(c) and (5), germinal products may be accompanied by a zootechnical certificate issued on behalf of the breeding body on the basis of the information received from that breeding body, by a semen collection or storage centre, or by an embryo collection or production team, approved for the entry into the Union of those germinal products in accordance with Union animal health law.

2. By way of derogation from Article 30(6)(b), the model forms referred to in Article 30(6)(b) do not have to be used if:

(a) the information set out in the relevant Parts and Chapters of Annex V is contained in other documents accompanying the breeding animal or their germinal products;

(b) the breeding body carrying out the breeding programme, or another operator referred to in paragraph 1, provides an exhaustive list of those documents, declares that the information set out in the relevant Parts and Chapters of Annex V is contained in those documents and certifies the content of those documents.

3. By way of derogation from Article 30(7)(a) and (b) and Article 30(8)(a) and(b), where the results of performance testing or genetic evaluation are publicly available on a website, breeding bodies, or the other operators referred to in paragraph 1 of this Article, may, in the zootechnical certificate or the other documents referred to in point (a) of paragraph 2 of this Article, refer to the website where those results can be accessed.

CHAPTER VIII

Entry into the Union of breeding animals and their germinal products

Article 34

Listing of breeding bodies

1. The Commission shall maintain, update and publish a list of breeding bodies.

2. The Commission shall only include in the list provided for in paragraph 1 a breeding body in respect of which it has received from an official service of the third country documentation demonstrating that the breeding body meets the following requirements:

(a) it carries out a breeding programme that is equivalent to breeding programmes approved in accordance with Article 8(3) carried out by breed societies on the same breed, or carried out by breeding operations on the same breed, line or cross, as regards:

   (i) the entry of breeding animals in breeding books or their registration in breeding registers;

   (ii) the acceptance of breeding animals for breeding;

   (iii) the use of germinal products of breeding animals for testing and breeding;

   (iv) the methods used for performance testing and genetic evaluation;

(b) it is supervised or controlled by an official service in that third country;

(c) it has adopted rules of procedure to ensure that breeding animals entered in breeding books by breed societies or registered in breeding registers by breeding operations, and the offspring produced from germinal products of such breeding animals, are entered or eligible for entry without discrimination on account of their country of origin, in the case of purebred breeding animals, in the breeding book of the same breed, or, in the case of hybrid breeding pigs, in the breeding register of the same breed, line or cross, maintained by that breeding body.

3. The Commission shall also include in the list provided for in paragraph 1 of this Article the reference to those third countries that have measures in place which are considered to be equivalent in accordance with Article 35, including a reference to all the breeding bodies in those third countries.

4. The Commission shall, without undue delay, remove from the list any breeding bodies which no longer fulfil at least one of the requirements referred to in paragraph 2.

Article 35

Equivalence of measures applied to animal breeding in third countries

1. The Commission may adopt implementing acts, recognising that measures applied in a third country are equivalent to those required by this Regulation in relation to the following:

(a) the recognition of breed societies and breeding operations provided for in Article 4;

(b) the approval of breeding programmes of breed societies and breeding operations provided for in Article 8;

(c) the entry of purebred breeding animals in breeding books and the registration of hybrid breeding pigs in breeding registers provided for in Articles 18, 20 and 23;

(d) the acceptance of breeding animals for breeding provided for in Articles 21, 22 and 24;

(e) the use of germinal products of breeding animals for testing and breeding provided for in Articles 21 and 24;

(f) the performance testing and genetic evaluation provided for in Article 25;

(g) the official controls on operators provided for in Article 43.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

2. The implementing acts referred to in paragraph 1 shall be adopted on the basis of:

(a) a thorough examination of the information and data provided by the third country which is seeking to have its measures recognised as equivalent to those required by this Regulation;

(b) where appropriate, the satisfactory outcome of a control performed by the Commission in accordance with Article 57.

3. The implementing acts referred to in paragraph 1 may set out the detailed arrangements governing the entry of breeding animals and the germinal products thereof into the Union from the third country concerned and may include:

(a) the format and content of the zootechnical certificates accompanying those breeding animals or the germinal products thereof;

(b) specific requirements applicable to the entry into the Union of those breeding animals or the germinal products thereof and the official controls to be performed on those breeding animals or on the germinal products thereof upon entry into the Union;

(c) where necessary, procedures for drawing up and amending lists of breeding bodies, located in the third country concerned, from which the entry into the Union of breeding animals and the germinal products thereof is permitted.

4. The Commission shall, without undue delay, adopt implementing acts repealing the implementing acts referred to in paragraph 1 where any of the conditions for the recognition of equivalence of measures established at the time of their adoption are no longer fulfilled. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Article 36

Entry in breeding books or registration in breeding registers of breeding animals and offspring produced from germinal products that have entered the Union

1. On application by a breeder, a breed society or breeding operation shall enter in the main section of its breeding book or register in its breeding register any breeding animals that have entered the Union and the offspring produced from germinal products that have entered the Union where:

(a) that breeding animal or the donors of those germinal products are entered in a breeding book or registered in a breeding register maintained by a breeding body in the third country of dispatch;

(b) those germinal products meet the conditions laid down in Article 21(1) or (2), where that is a requirement of the breeding programme carried out by that breed society or that breeding operation;

(c) that breeding animal meets the characteristics of the breed or, in the case of a hybrid breeding pig, the characteristics of the breed, line or cross set out in the breeding programme carried out by that breed society or breeding operation;

(d) the breeding body referred to in point (a) is included in the list of breeding bodies provided for in Article 34.

2. Member States or competent authorities shall not prohibit, restrict or impede, on zootechnical or genealogical grounds, the entry into the Union of breeding animals or the germinal products thereof and the subsequent use of those animals or the germinal products thereof, where those breeding animals or the donors of those germinal products are entered in a breeding book or registered in a breeding register maintained by a breeding body included in the list of breeding bodies established in accordance with Article 34.

Article 37

Checks for entitlement to the conventional rate of duty for purebred breeding animals entering the Union

1. Where the operator responsible for a consignment of purebred breeding animals requests the application of the conventional rate of duty for purebred breeding animals provided for in Regulation (EEC) No 2658/87 on the animals of that consignment:

(a) those animals shall be accompanied by:

(i) the zootechnical certificate referred to in Article 30(5) or Article 32;

(ii) a document indicating that they are to be entered in a breeding book maintained by a breed society or registered in a breeding register maintained by a breeding operation;

(b) checks shall be carried out on that consignment at the border inspection post in which the documentary, identity and physical checks referred to in Article 4 of Directive 91/496/EEC are carried out.

2. The purpose of the checks provided for in point (b) of paragraph 1 shall be to verify that:

(a) the consignment is accompanied by the documents referred to in point (a) of paragraph 1;

(b) the content and the labelling of the consignment correspond to the information provided in the documents referred to in point (a) of paragraph 1.

CHAPTER IX

Competent authorities carrying out a breeding programme on purebred breeding animals

Article 38

Competent authorities carrying out a breeding programme on purebred breeding animals

1. If, in a Member State or on a territory where a competent authority operates, there is no breeding organisation, breeders' association or public body carrying out a breeding programme on purebred breeding animals belonging to a breed of the bovine, porcine, ovine, caprine or equine species, that competent authority may decide to carry out a breeding programme for that breed, provided that:

(a) there is a need to maintain that breed or to establish that breed in the Member State or territory where that competent authority operates; or

(b) that breed is an endangered breed.

2. A competent authority which carries out a breeding programme in accordance with this Article shall take the necessary measures to ensure that this does not have a negative effect on the possibility:

(a) for breeding organisations, breeders' associations or public bodies to be recognised as breed societies in accordance with Article 4(3);

(b) for breed societies to have their breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12.

3. Where a competent authority carries out a breeding programme on purebred breeding animals, that competent authority shall:

(a) have sufficient and qualified staff and adequate facilities and equipment to implement efficiently that breeding programme;

(b) be capable of carrying out the checks necessary for recording pedigrees of the purebred breeding animals covered by that breeding programme;

(c) have a sufficiently large population of purebred breeding animals and a sufficient number of breeders within the geographical territory covered by that breeding programme;

(d) be capable of generating, or have had generated for them, and be capable of using data collected on purebred breeding animals necessary for carrying out that breeding programme;

(e) have adopted rules of procedure:

(i) regulating the settlement of disputes with breeders participating in that breeding programme;

(ii) ensuring equal treatment of breeders participating in that breeding programme;

(iii) setting out the rights and obligations of breeders participating in that breeding programme.

4. The breeding programme referred to in paragraph 1 shall contain:

(a) information on its aim which is to be the preservation of the breed, the improvement of the breed, the creation of a new breed or the reconstruction of a breed, or any combination thereof;

(b) the name of the breed covered by that breeding programme to prevent confusion with similar purebred breeding animals of other breeds entered in other existing breeding books;

(c) the detailed characteristics of the breed, including an indication of the essential traits, covered by that breeding programme;

(d) information on the geographical territory where it is carried out;

(e) information on the system for identifying purebred breeding animals which is to ensure that purebred breeding animals are only entered in the breeding book when they are identified individually and in accordance with Union animal health law on the identification and registration of animals of the species concerned;

(f) information on the system for recording pedigrees of purebred breeding animals entered or registered and eligible for entry in breeding books;

(g) the selection and breeding objectives of the breeding programme, including an indication of the main objectives of that breeding programme, and, where applicable, the detailed evaluation criteria related to those objectives for the selection of purebred breeding animals;

(h) where the breeding programme requires performance testing or genetic evaluation:

(i) the information on the systems used to generate, record, communicate and use the results of performance testing;

(ii) the information on the systems for the genetic evaluation and, where applicable, for the genomic evaluation of purebred breeding animals;

(i) where supplementary sections are established, as provided for in Article 17, or where the main section is subdivided into classes, as provided for in Article 16, the rules for the division of the breeding book and the criteria or procedures applied for recording animals in those sections or classifying them in those classes;

(j) where in the case of purebred breeding animals of the equine species, the breeding programme prohibits or limits the use of one or more reproduction techniques or the use of purebred breeding animals for one or more reproduction techniques as referred to in Article 21(2), information on such prohibitions or limitations;

(k) where the competent authority outsources specific technical activities related to the management of its breeding programme to third parties, information on those activities and the name and contact details of the designated third parties.

5. Where a competent authority carries out a breeding programme on purebred breeding animals of the equine species, the requirements set out in points 1, 2, 3, 4(a) and 4(c) of Part 3 of Annex I shall apply in addition to those set out in paragraphs 3 and 4.

6. Where a competent authority carries out a breeding programme on purebred breeding animals, that competent authority shall inform in a transparent and timely manner the breeders participating in that breeding programme of any changes therein.

7. Where a competent authority carries out a breeding programme on purebred breeding animals, Articles 3, 13 to 22, 25, 27, Article 28(2), Articles 30, 31, 32 and Article 36(1) shall apply *mutatis mutandis*.

CHAPTER X

Official controls and other official activities, administrative assistance, cooperation and enforcement by Member States

Article 39

Designation of competent authorities

1. Member States shall designate the competent authorities with the responsibility for performing official controls for the verification of compliance of operators with the rules provided for in this Regulation, and for performing other official activities to ensure the application of those rules.

2. Each Member State shall:

(a) draw up and keep up to date a list of the competent authorities it has designated in accordance with paragraph 1, including their contact details;

(b) specify in the list provided for in point (a) the address to which the following is to be sent:

(i) the notifications referred to in Article 12; or

(ii) the information, requests or notifications referred to in Articles 48 and 49;

(c) make the list referred to in point (a) available to the public on a website and notify that website to the Commission.

3. The Commission shall draw up and keep up to date a list of the websites referred to in point (c) of paragraph 2 and make such list available to the public.

Article 40

Compliance by competent authorities carrying out breeding programmes

By way of derogation from this Chapter, Member States shall take the necessary measures to verify that competent authorities carrying out breeding programmes in accordance with Article 38 comply with the rules laid down in that Article.

Article 41

General obligations of competent authorities

Competent authorities shall:

(a) have procedures or arrangements, or both, in place to ensure and verify the effectiveness, appropriateness, impartiality, quality and consistency of the official controls and of the other official activities that they perform;

(b) have procedures or arrangements, or both, in place to ensure that their staff performing official controls and other official activities are free from any conflict of interest as regards the operators in respect of which they perform those official controls and other official activities;

(c) have, or have access to, a sufficient number of suitably qualified, trained and experienced staff so that official controls and other official activities can be performed efficiently and effectively;

(d) have appropriate and properly maintained facilities and equipment to ensure that their staff can perform official controls and other official activities efficiently and effectively;

(e) have the legal powers to perform official controls and other official activities and to take the action provided for in this Regulation;

(f) have legal procedures in place in order to ensure that their staff have access to the premises of, and documents and computerised information management systems kept by, operators so as to be able to carry out their tasks properly.

Article 42

Confidentiality obligations of the competent authorities

1. Without prejudice to situations where its disclosure is required by Union law or national law, competent authorities shall require members of their staff to undertake not to disclose to third parties information acquired when undertaking their duties, in the context of official controls and other official activities, which is, by its nature, covered by professional confidentiality, unless there is an overriding public interest in its disclosure.

2. Information covered by professional confidentiality shall include information the disclosure of which would undermine:

(a) the purpose of official controls or investigations;

(b) the protection of commercial interests of an operator or any other natural or legal person;

(c) the protection of court proceedings and legal advice.

Article 43

Rules on official controls

1. Competent authorities shall perform official controls on operators with appropriate frequency, taking account of:

(a) the risk of non-compliance with the rules provided for in this Regulation;

(b) the past records of operators as regards the results of official controls performed in their respect and their compliance with the rules provided for in this Regulation;

(c) the reliability and results of self-checks performed by the operators, or by third parties at their request, for the purpose of verifying compliance with the rules provided for in this Regulation;

(d) any information that might indicate non-compliance with the rules provided for in this Regulation.

2. Competent authorities shall perform official controls in accordance with documented procedures, which shall contain instructions for staff performing official controls.

3. Official controls shall be performed after the operator has been notified in advance unless there are reasons to carry out the official controls without prior notice.

4. Official controls shall, as far as possible, be performed in a manner that minimises the burden on the operators without this negatively affecting the quality of those official controls.

5. Competent authorities shall perform official controls in the same manner irrespective of whether the breeding animals or the germinal products thereof:

(a) originate in the Member State where the official controls are performed or in another Member State; or

(b) are entering the Union.

Article 44

Transparency of official controls

The competent authority shall perform official controls with a high level of transparency and shall make relevant information concerning the organisation and the performance of official controls publicly available.

Article 45

Written records of official controls

1. Competent authorities shall draw up written records of every official control that they perform.

Those written records shall contain:

(a) a description of the purpose of the official control;

(b) the control methods applied;

(c) the results of the official control;

(d) where appropriate, action that the competent authorities require the operators to take as a result of the official control.

2. Unless the purposes of judicial investigations or the protection of court proceedings require otherwise, competent authorities shall provide the operators which have been subject to an official control with a copy of the written records referred to in paragraph 1.

Article 46

Obligations of operators subject to official controls or other official activities

1. To the extent that this is necessary for the performance of official controls or other official activities, operators shall, when required to do so by the competent authorities, give to the staff of those competent authorities the necessary access to:

(a) their equipment, premises and other places under their control;

(b) their computerised information management systems;

(c) their breeding animals and the germinal products thereof under their control;

(d) their documents and any other relevant information.

2. During official controls and other official activities, operators shall assist and cooperate with the staff of the competent authorities in the accomplishment of their tasks.

Article 47

Actions in case of established non-compliance

1. Where non-compliance is established, the competent authorities shall:

(a) take any action necessary to determine the origin and extent of that non-compliance and to establish the responsibilities of the operators concerned;

(b) take appropriate measures to ensure that the operators concerned remedy the non-compliance and prevent further occurrences of it.

When deciding which measures to take, the competent authorities shall take account of the nature of the non-compliance and the past record of the operators concerned with regard to compliance.

In particular competent authorities shall, as appropriate:

(a) order that the breed society postpones the entry in breeding books of purebred breeding animals or that the breeding operation postpones the registration in breeding registers of hybrid breeding pigs;

(b) order that the breeding animals or their germinal products shall not be used for breeding in accordance with this Regulation;

(c) suspend the issuing of zootechnical certificates by the breed society or the breeding operation;

(d) suspend or withdraw the approval of a breeding programme carried out by a breed society or breeding operation, where the activities of that breed society or breeding operation repeatedly, continuously or generally fail to comply with the requirements of the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

(e) withdraw the recognition of the breed society or breeding operation granted in accordance with Article 4(3), where that breed society or breeding operation repeatedly, continuously or generally fails to comply with the requirements referred to in Article 4(3);

(f) take any other measures that they deem to be appropriate to ensure compliance with the rules provided for in this Regulation.

2. The competent authorities shall provide the operators concerned, or their representatives, with:

(a) a written notification of their decision concerning the action or measure to be taken in accordance with paragraph 1, together with the reasons for that decision;

(b) information on any right of appeal against such decisions, and on the applicable procedure and time limits.

3. The competent authorities shall monitor the situation and shall modify, suspend or withdraw the measures that they have taken in accordance with this Article, depending on the severity of the non-compliance and the existence of clear evidence of a return to compliance.

4. Member States may provide that the operators concerned are to bear all or part of expenditure incurred pursuant to this Article by competent authorities concerned.

Article 48

Cooperation and administrative assistance

1. Where non-compliance originates in, spreads to or affects more than one Member State, the competent authorities in those Member States shall cooperate with one another as well as provide one another with administrative assistance in order to ensure the correct application of the rules provided for in this Regulation.

2. The cooperation and administrative assistance provided for in paragraph 1 may include:

(a) the reasoned request by a competent authority of a Member State ('requesting competent authority') for information from a competent authority of another Member State ('requested competent authority') that is needed in order to perform official controls or to follow them up;

(b) in the case of a non-compliance which might have implications in other Member States, the notification of the competent authorities of those other Member States by the competent authority aware of the non-compliance;

(c) the provision, by the requested competent authority, of necessary information and documents to the requesting competent authority, without undue delay when the relevant information and documents become available;

(d) the performance of investigations or official controls by the requested competent authority that are necessary to:

(i) provide the requesting competent authority with all necessary information and documents, including information concerning the results of such investigations or official controls and, where appropriate, the measures taken;

(ii) verify, where necessary 'on-the-spot', compliance within their jurisdiction with the rules provided for in this Regulation;

(e) by agreement between the competent authorities concerned, participation by a competent authority of a Member State in on-the-spot official controls that the competent authorities of another Member State perform.

3. Where official controls performed on breeding animals or their germinal products originating in another Member State show repeated instances of non-compliance with the rules provided for in this Regulation, the competent authority of the Member State that has performed those official controls shall inform the Commission and the competent authorities of the other Member States thereof without undue delay.

4. This Article shall apply without prejudice to national rules that are:

(a) applicable to the release of documents that are the object of, or related to, judicial proceedings;

(b) aimed at the protection of commercial interests vested in natural or legal persons.

5. All communications between competent authorities in accordance with this Article shall be in writing, either on paper or in electronic form.

Article 49

Notification of the Commission and Member States on the basis of information provided by third countries

1. Where competent authorities receive information from a third country indicating non-compliance with the rules provided for in this Regulation, they shall, without undue delay:

(a) notify such information to the competent authorities of the other Member States known to be concerned by that non-compliance;

(b) where such information is or might be relevant at Union level, communicate such information to the Commission.

2. Information obtained through official controls or investigations performed in accordance with this Regulation may be communicated to the third country referred to in paragraph 1, provided that:

(a) the competent authorities which have provided the information consent to such communication;

(b) relevant Union and national rules applicable to the communication of personal data to third countries are complied with.

Article 50

Coordinated assistance and follow-up by the Commission

1. The Commission shall, without delay, coordinate the measures and actions undertaken by the competent authorities in accordance with this Chapter where:

(a) information available to the Commission indicates the existence of activities that are, or appear to be, non-compliant with the rules provided for in this Regulation and that concern more than one Member State;

(b) the competent authorities in the Member States concerned are unable to agree on appropriate actions to address the non-compliance with the rules provided for in this Regulation.

2. In the cases referred to in paragraph 1, the Commission may:

(a) request that the competent authorities of the Member States concerned by the activities that are, or appear to be, non-compliant with the rules provided for in this Regulation, provide it with a report on the measures that they have taken;

(b) in collaboration with the Member States concerned by the activities that are, or appear to be, non-compliant with the rules provided for in this Regulation, send an inspection team to perform an on-the-spot Commission control;

(c) request that the competent authorities of the Member State of dispatch and, where appropriate, in other Member States concerned, appropriately intensify their official controls and provide it with a report on the measures that they have taken;

(d) submit information concerning such cases to the Committee referred to in Article 62(1), together with a proposal for measures to remedy the cases of non-compliance referred to in point (a) of paragraph 1 of this Article;

(e) take any other appropriate measures.

Article 51

General principle for the financing of official controls

Member States shall ensure that adequate financial resources are available so that the competent authorities have the staff and other resources necessary to perform official controls and other official activities.

Article 52

Penalties

Member States shall lay down the penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are applied. Those penalties must be effective, proportionate and dissuasive.

Member States shall notify those provisions to the Commission by 1 November 2018 and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER XI

Controls by the Commission

Section 1

Commission controls in Member States

Article 53

Commission controls in Member States

1. Commission experts may, within the scope of this Regulation, perform controls in Member States in order, as appropriate, to:

(a) verify the application of the rules provided for in this Regulation;

(b) verify enforcement practices and the functioning of official control systems and of the competent authorities which operate them;

(c) investigate and collect information:

(i) on important or recurring problems concerning the application or enforcement of the rules provided for in this Regulation;

(ii) on emerging problems or new developments in relation to particular practices of operators.

2. The controls provided for in paragraph 1 shall be organised in cooperation with the competent authorities of the Member States.

3. The controls provided for in paragraph 1 may include on-the-spot verifications performed in cooperation with the competent authorities performing official controls.

4. Member States' experts may assist the Commission experts. Member States' experts accompanying Commission experts shall be given the same rights of access as those Commission experts.

Article 54

Reports by the Commission on controls performed by its experts in Member States

1. The Commission shall:

(a) prepare a draft report on the findings and on the recommendations addressing the shortcomings identified by its experts during the controls provided for in Article 53(1);

(b) send to the Member State where those controls were performed a copy of the draft report referred to in point (a) for its comments;

(c) take the comments of the Member State referred to in point (b) of this paragraph into account in preparing the final report on the findings resulting from the controls provided for in Article 53(1) performed by its experts in that Member State;

(d) make publicly available the final report referred to in point (c) and the comments of the Member State referred to in point (b).

2. Where appropriate, the Commission may, in its final report referred to in point (c) of paragraph 1 of this Article, recommend corrective or preventive action to be taken by the Member States to address the specific or systemic shortcomings identified during the Commission controls performed in accordance with Article 53(1).

Article 55

Obligations of Member States as regards Commission controls

1. Member States shall:

(a) at the request of the Commission experts, provide the necessary technical assistance and the available documentation and other technical support to enable those experts to perform the controls referred to in Article 53(1) efficiently and effectively;

(b) provide necessary assistance to ensure that Commission experts have access to all premises, including parts thereof, and to other places, to equipment and to information, including computerised information management systems, as well as, where appropriate, to breeding animals and the germinal products thereof, necessary to perform the controls referred to in Article 53(1).

2. Member States shall take appropriate follow-up action in the light of the recommendations set out in the final report referred to in Article 54(1)(c) in order to ensure compliance with the rules provided for in this Regulation.

Article 56

Serious disruption in the control system of a Member State

1. Where the Commission has evidence of a serious disruption in the control system of a Member State and where such disruption may result in a widespread infringement of the rules provided for in this Regulation, it shall adopt implementing acts, laying down one or more of the following:

(a) special conditions for, or a prohibition on, trade in the breeding animals or the germinal products thereof concerned by the disruption in the official control system;

(b) any other appropriate temporary measures.

Those implementing acts shall cease to apply once that disruption has been eliminated.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

2. The measures provided for in paragraph 1 shall be adopted only where the Commission has requested that the Member State concerned correct the situation with an appropriate time limit and the Member State has failed to do so.

3. The Commission shall monitor the situation referred to in paragraph 1 and shall adopt implementing acts, amending or repealing the measures adopted, depending on the way in which the situation develops. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

Section 2

Commission controls in third countries

Article 57

Commission controls in third countries

1. Commission experts may perform controls in a third country in order, as appropriate, to:

(a) verify the compliance or equivalence of the third country's legislation and systems with the requirements laid down in this Regulation;

(b) verify the capacity of the third country's control system to ensure that consignments of breeding animals and the germinal products thereof entering into the Union comply with relevant requirements in Chapter VIII of this Regulation;

(c) collect information and data to elucidate the causes of recurring or emerging problems in relation to breeding animals and their germinal products from the third country entering into the Union.

2. The Commission controls referred to in paragraph 1 shall have particular regard to:

(a) the zootechnical and genealogical legislation of the third country concerning breeding animals and their germinal products;

(b) the organisation of the competent authorities of the third country, their powers and independence, the supervision to which they are subject and the authority they have to enforce the applicable legislation effectively;

(c) the training of the staff in the third country responsible for the performance of the controls on, or the supervision of, breeding bodies;

(d) the resources that are available to the competent authorities of the third country;

(e) the existence and operation of documented control procedures and control systems based on priorities;

(f) the extent and operation of controls performed by the competent authorities of the third country on breeding animals and their germinal products arriving from other third countries;

(g) the assurances which the third country is able to give regarding compliance with, or equivalence to, the requirements laid down in this Regulation.

Article 58

Frequency and organisation of Commission controls in third countries

1. The frequency of the controls in a third country referred to in Article 57(1) shall be determined on the basis of:

(a) the principles and objectives of the rules provided for in this Regulation;

(b) the volume and nature of breeding animals and the germinal products thereof entering the Union from that third country;

(c) the results of controls referred to in Article 57(1) that have already been performed;

(d) the results of official controls on breeding animals and the germinal products thereof entering the Union from the third country and of any other official controls performed by the competent authorities of Member States;

(e) any other information that the Commission deems to be appropriate.

2. In order to facilitate the efficiency and effectiveness of the controls provided for in Article 57(1), the Commission may, prior to performing such controls, request that the third country concerned provides:

(a) the information referred to in Article 34(2) or in Article 35(2)(a);

(b) where appropriate and necessary, the written records on the controls performed by the competent authorities of that third country.

3. The Commission may appoint experts from the Member States to assist its own experts during the controls referred to in Article 57(1).

Article 59

Reports by the Commission on controls performed by its experts in third countries

The Commission shall report on the findings of each control performed in accordance with Articles 57 and 58.

Those reports shall, where appropriate, contain recommendations. The Commission shall make those reports publicly available.

Article 60

Establishment of special measures regarding the entry into the Union of breeding animals and their germinal products

1. Where there is evidence that widespread serious non-compliance with the rules provided for in this Regulation is taking place in a third country, the Commission shall adopt implementing acts concerning one or more of the following:

(a) prohibiting the entry into the Union, as breeding animals, or the germinal products thereof, of animals, or their semen, oocytes or embryos originating from that third country;

(b) prohibiting the entry in breeding books maintained by breed societies or the registration in breeding registers maintained by breeding operations of breeding animals, and the offspring produced from the germinal products thereof, originating from that third country.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(2).

In addition to, or instead of those implementing acts, the Commission may do one or more of the following:

(a) delete that third country or the breeding bodies of that third country from the list provided for in Article 34(1);

(b) take any other appropriate measures.

2. The implementing acts and other measures referred to in paragraph 1 shall identify breeding animals and their germinal products by their codes in the Combined Nomenclature.

3. When adopting the implementing acts and other measures referred to in paragraph 1, the Commission shall take account of:

(a) the information collected in accordance with Article 58(2);

(b) any other information that the third country concerned by the non-compliance referred to in paragraph 1 has provided;

(c) where necessary, the results of controls referred to in Article 57(1).

4. The Commission shall monitor the non-compliance referred to in paragraph 1 and shall, in accordance with the same procedure as for their adoption, amend or repeal the measures adopted, depending on how the situation develops.

CHAPTER XII

Delegation and implementation

Article 61

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 26(1), 29(5), 30(9) and 32(1) shall be conferred on the Commission for a period of 5 years from 19 July 2016. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-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 no later than 3 months before the end of each period.

3. The delegation of power referred to in Articles 26(1), 29(5), 30(9) and 32(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. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

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

6. A delegated act adopted pursuant to Articles 26(1), 29(5), 30(9) and 32(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to 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 may be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 62

Committee Procedure

1. The Commission shall be assisted by the Standing Committee on Zootechnics established by Decision 77/505/EEC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

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

Article 63

Transitional measures related to the date of adoption of certain implementing acts

The Commission shall adopt the implementing acts referred to in Articles 7(5) and 30(10) by 1 May 2017. In accordance with Article 69, those implementing acts shall apply from 1 November 2018.

CHAPTER XIII

Final Provisions

Article 64

Repeals and transitional measures

1. Directives 87/328/EEC, 88/661/EEC, 89/361/EEC, 90/118/EEC, 90/119/EEC, 90/427/EEC, 91/174/EEC, 94/28/EC and 2009/157/EC and Decision 96/463/EC are repealed.

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

3. Article 8(1) of Directive 90/427/EEC shall continue to apply until 21 April 2021.

4. Breeders' organisations, breeding organisations, breeders' associations, private undertakings, other organisations or associations which have been approved or recognised in accordance with the repealed acts referred to in paragraph 1 shall be considered to have been recognised in accordance with this Regulation; in all other respects, they shall be subject to the rules provided for in this Regulation.

5. Breeding programmes carried out by the operators referred to in paragraph 4 shall be considered to have been approved in accordance with this Regulation; in all other respects, they shall be subject to the rules provided for in this Regulation.

6. Where operators referred to in paragraph 4 already carry out breeding programmes in a Member State other than the Member State where their approval or recognition was granted under the repealed acts referred to in paragraph 1, those operators shall inform the competent authority which has granted the approval or recognition about those activities.

The competent authority referred to in the first subparagraph shall inform the relevant competent authority of that other Member State about the carrying out of those activities.

7. Where, before 19 July 2016, an operator referred to in paragraph 4 maintains, in accordance with the repealed acts referred to in paragraph 1, a breeding book with a specific section where purebred breeding animals of a breed of the porcine species from another Member State or a third country having specific characteristics distinguishing them from the population of that breed covered by the breeding programme carried out by that operator are entered, that operator may continue to maintain that specific section.

Article 65

Amendments to Regulation (EU) No 652/2014

Article 30 of Regulation (EU) No 652/2014 is amended as follows:

(1) the heading is replaced by the following:

'European Union reference laboratories and centres';

(2) paragraph 1 is replaced by the following:

'1. Grants may be awarded to the European Union reference laboratories referred to in Article 32 of Regulation (EC) No 882/2004 and to the European Union reference centres referred to in Article 29 of Regulation (EU) 2016/1012 of the European Parliament and of the Council (*) for the costs that they incur in implementing the work programmes approved by the Commission.

(*) Regulation (EU) 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ("Animal Breeding Regulation") (OJ L 171, 29.6.2016, p. 66).';

(3) in paragraph 2, point (a) is replaced by the following:

'(a) costs of personnel, regardless of their status, directly involved in activities of the laboratories or centres which are carried out in their capacity as European Union reference laboratory or centre;'.

Article 66

Amendments to Directive 89/608/EEC

Directive 89/608/EEC is amended as follows:

(1) the title is replaced by the following:

'Council Directive 89/608/EEC of 21 November 1989 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 legislation on veterinary matters';

(2) Article 1 is replaced by the following:

'Article 1

The Directive lays down the ways in which the competent authorities responsible in the Member States for monitoring legislation on veterinary matters shall cooperate with those in the other Member States and with the relevant Commission departments in order to ensure compliance with such legislation.';

(3) in Article 2(1), the second indent is deleted;

(4) in Article 4(1), the first indent is replaced by the following:

'— communicate to the applicant authority all information, attestations, documents or certified copies thereof in its possession or which it can obtain as prescribed in paragraph 2 and which are such as to enable it to check that the provisions laid down in legislation on veterinary matters have been complied with,';

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

'1. At the request of the applicant authority, the requested authority shall, while observing the rules in force in the Member State in which it is situated, notify the applicant authority or have it notified of all instruments or decisions which emanate from the competent authorities and concern the application of legislation on veterinary matters.';

(6) Article 7 is replaced by the following:

'Article 7

At the request of the applicant authority, the requested authority shall supply to it any relevant information in its possession or which it obtains in accordance with Article 4(2), in particular in the form of reports and other documents or certified copies of or extracts from such reports or documents, concerning operations actually detected which appear to the applicant authority to be contrary to legislation on veterinary matters.';

(7) Article 8(2) is replaced by the following:

'2. Where they consider it useful in connection with compliance with the legislation on veterinary matters, the competent authorities of each Member State shall:

(a) as far as possible keep the watch referred to in Article 6 or arrange for such watch to be kept;

(b) communicate to the competent authorities of the other Member States concerned as soon as possible all available information, in particular in the form of reports and other documents or copies of or extracts from such reports or documents, concerning operations which are or appear to them to be contrary to legislation on veterinary matters, and particularly the means or methods used to carry out such operations.';

(8) Article 9 is replaced by the following:

'Article 9

1. The competent authorities of each Member State shall communicate to the Commission as soon as it is available to them:

(a) any information they consider useful concerning:

— goods which have been or are suspected of having been the subject of transactions contrary to legislation on veterinary matters,

— the methods or processes used or suspected of having been used to contravene such legislation;

(b) any information on deficiencies of, or lacunae in, the said legislation which application thereof has revealed or suggested.

2. The Commission shall communicate to the competent authorities of each Member State, as soon as it is available to it, any information which is such as to enable compliance with legislation on veterinary matters to be enforced.';

(9) Article 10 is amended as follows:

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

'1. Where the competent authorities of a Member State become aware of operations which are, or appear to be, contrary to the rules on veterinary matters and which are of particular interest at Union level, and in particular:';

(b) paragraph 3 is replaced by the following:

'3. Information relating to natural or legal persons shall be communicated as provided for in paragraph 1 only to the extent strictly necessary to enable operations which are contrary to legislation on veterinary matters to be noted.';

(10) in Article 11, the introductory phrase is replaced by the following:

'The Commission and the Member States meeting within the Standing Veterinary Committee shall:';

(11) in Article 15(2), the first subparagraph is replaced by the following:

'2. Paragraph 1 shall not impede the use of information obtained pursuant to this Directive in any legal actions or proceedings subsequently instituted for failure to comply with legislation on veterinary matters on or in the prevention and discovery of irregularities detrimental to Union funds.'.

Article 67

Amendments to Directive 90/425/EEC

Directive 90/425/EEC is amended as follows:

(1) the title is replaced by the following:

'Council Directive 90/425/EEC of 26 June 1990 concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market';

(2) in Article 1, the second paragraph is deleted;

(3) Article 2 is amended follows:

(a) point 2 is deleted;

(b) point 6 is replaced by the following:

'6. "competent authority" shall mean the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence;';

(4) in Article 3(1), the second subparagraph of point (d) is replaced by the following:

'Those certificates or documents, issued by the official veterinarian responsible for the holding, centre or organisation of origin must accompany the animals and products to their destination.';

(5) Article 4 is amended as follows:

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

'(a) the holders of livestock and products referred to in Article 1 comply with the national or Union health requirements referred to in this Directive at all stages of production and marketing;';

(b) paragraph 3 is replaced by the following:

'3. Member States of dispatch shall take the appropriate measures to penalise any infringement of veterinary legislation by natural or legal persons where it is found that Union rules have been infringed, and in particular where it is found that certificates, documents or identification marks do not correspond to the status of the animals or to their holdings of origin or to the actual characteristics of the products.';

(6) Article 19 is deleted;

(7) in Annex A, Chapter II is deleted.

Article 68

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 66 and 67 by 1 November 2018. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Regulation or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Regulation shall be construed as references to this Regulation. Member States shall determine how such reference is to be made and how that statement is to be formulated.

Article 69

Entry into force and applicability

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 1 November 2018.

Article 65 shall apply from 19 July 2016.

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

Done at Strasbourg, 8 June 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

ANNEX I

RECOGNITION OF BREED SOCIETIES AND BREEDING OPERATIONS AND APPROVAL OF BREEDING PROGRAMMES REFERRED TO IN CHAPTER II

PART 1

Requirements for the recognition of breed societies and breeding operations referred to in Article 4(3)(b)

A. Breeders' associations, breeding organisations, private undertakings operating in closed production systems and public bodies shall:

1. have legal personality in accordance with the legislation in force in the Member State where the application for recognition is made;

2. have sufficient and qualified staff and adequate facilities and equipment to implement efficiently the breeding programmes in respect of which it intends to apply for approval in accordance with Article 8(3), and, where applicable, Article 12;

3. be capable of carrying out the checks necessary for recording pedigrees of the breeding animals to be covered by those breeding programmes;

4. have, in respect of each breeding programme, a sufficiently large population of breeding animals within the geographical territories to be covered by those breeding programmes;

5. be capable of generating, or have had generated for them, and be capable of using data collected on breeding animals necessary for carrying out those breeding programmes.

B. In addition to the requirements referred to in point A:

1. breeders' associations, breeding organisations and public bodies shall:

   (a) have a sufficient number of breeders participating in each of their breeding programmes;

   (b) have adopted rules of procedure:

      (i) regulating the settlement of disputes with breeders participating in their breeding programmes;

      (ii) ensuring equal treatment of breeders participating in their breeding programmes;

      (iii) setting out the rights and obligations of breeders participating in their breeding programmes and of the breed society or breeding operation;

      (iv) setting out the rights and obligations of member breeders where membership of breeders is provided for;

2. nothing in the rules of procedure referred to in point 1(b) shall prevent the breeders participating in the breeding programmes from:

   (a) exercising free choice in the selection and breeding of their breeding animals;

   (b) having the offspring descended from those breeding animals entered in the breeding books or registered in the breeding registers in accordance with the rules provided for in Chapter IV of this Regulation;

   (c) having the ownership of their breeding animals.

PART 2

Requirements for the approval of breeding programmes carried out by breed societies and breeding operations referred to in Article 8(3), and, where applicable, Article 12

1. The breeding programme referred to in Article 8(3), and, where applicable, Article 12 shall contain:

(a) information on its aim, which shall be the preservation of the breed, the improvement of the breed, line or cross, the creation of a new breed, line or cross, or the reconstruction of a breed, or a combination thereof;

(b) the name of the breed, in the case of purebred breeding animals, or of the breed, line or cross, in the case of hybrid breeding pigs, covered by the breeding programme to prevent confusion with similar breeding animals of other breeds, lines or crosses entered or registered in other existing breeding books or breeding registers;

(c) in the case of purebred breeding animals, the detailed characteristics of the breed covered by the breeding programme, including an indication of its essential traits,

(d) in the case of hybrid breeding pigs, the detailed characteristics of the breed, line or cross covered by the breeding programme;

(e) information on the geographical territory where it is carried out or where it is intended that it will be carried out;

(f) information on the system for identifying breeding animals which is to ensure that those animals are only entered in a breeding book or registered in a breeding register when they are identified individually and in accordance with Union animal health law on the identification and registration of animals of the species concerned;

(g) information on the system for recording pedigrees of purebred breeding animals entered or registered and eligible for entry in breeding books or of hybrid breeding pigs registered in breeding registers;

(h) the selection and breeding objectives of the breeding programme, including an indication of the main objectives of that breeding programme, and, where applicable, the detailed evaluation criteria related to those objectives, for the selection of breeding animals;

(i) in the case of the establishment of a new breed or in the case of the reconstruction of a breed, as referred to in Article 19, the information on the detailed circumstances justifying the establishment of that new breed or the reconstruction of that breed;

(j) where the breeding programme requires performance testing or genetic evaluation:

(i) the information on the systems used to generate, record, communicate and use the results of performance testing;

(ii) the information on the systems for the genetic evaluation and, where applicable, for the genomic evaluation of breeding animals;

(k) where supplementary sections are established or the main section is subdivided into classes, the rules for the division of the breeding book and the criteria or procedures applied for recording animals in those sections or classifying them in those classes;

(l) where the breed society or breeding operation outsources specific technical activities related to the management of its breeding programme to third parties as referred to in Article 8(4), information on those activities and the name and contact details of the designated third parties;

(m) where the breed society or breeding operation intends to make use of the derogation provided for in Article 31(1), information on the semen collection or storage centre, or embryo collection or production team, issuing the zootechnical certificates and information on the modalities of the issuing of those zootechnical certificates;

(n) where the breeding operation decides to indicate information on the results of performance testing or genetic evaluation, on genetic defects and on genetic peculiarities in the zootechnical certificates issued for its hybrid breeding pigs and the germinal products thereof, as referred to in Article 30(8), information on that decision.

2. The breeding programme shall cover a sufficiently large population of breeding animals and a sufficient number of breeders within the geographical territory where it is carried out or where it is intended that it will be carried out.

PART 3

Additional requirements for breed societies establishing or maintaining breeding books for purebred breeding animals of the equine species

1. In addition to the identification requirements set out in point 1(f) of Part 2, purebred breeding animals of the equine species shall only be entered in a breeding book if they are identified by a covering certificate and, where required by the breeding programme, as 'foal at foot'.

   By way of derogation from the first subparagraph, a Member State or, if it so decides, its competent authority may authorise a breed society to enter purebred breeding animals of the equine species in the breeding book maintained by that breed society where those animals are identified by any other appropriate method that provides at least the same degree of certainty as a covering certificate such as parentage control based on DNA analysis or analysis of their blood groups, provided that that authorisation is in accordance with the principles established by the breed society which maintains the breeding book of the origin of that breed.

2. In addition to the requirements set out in Part 2, breeding programmes approved in accordance with Articles 8(3), and, where applicable, Article 12, carried out on purebred breeding animals of a breed of the equine species shall contain:

   (a) where applicable, the conditions for entering in the main section of the breeding book purebred breeding animals belonging to another breed or to a specific stallion line or mare family within that other breed;

   (b) where that breeding programme prohibits or limits the use of one or more reproduction techniques or the use of purebred breeding animals for one or more reproduction techniques as referred to in Article 21(2), information on that prohibition or limitation;

   (c) rules with regard to the issuing of covering certificates, to the use of other appropriate methods as referred to in paragraph 1, and, where required by the breeding programme, to the identification as 'foal at foot'.

3. The following specific requirements shall apply to purebred breeding animals of the equine species, in addition to those set out in Parts 1 and 2:

   (a) Where a breed society declares to the competent authority that the breeding book it has established is the breeding book of the origin of the breed covered by its breeding programme, that breed society shall:

      (i) have in its possession a historical record of the establishment of that breeding book and have made the principles of that breeding programme publicly available;

      (ii) demonstrate that there is, at the time of the application referred to in Article 4(1), no other known breed society or breeding body which is recognised in the same or another Member State or in a third country, which has established a breeding book for the same breed and which is carrying out a breeding programme on that breed based on the principles referred to in point (i);

      (iii) cooperate closely with the breed societies referred to in point (b), and in particular inform, in a transparent and timely manner, those breed societies of any changes to the principles referred to in point (i);

      (iv) have, where necessary, established non-discriminatory rules as regards its activities with respect to breeding books established for the same breed by breeding bodies that are not included in the list provided for in Article 34.

   (b) Where a breed society declares to the competent authority that the breeding book it has established is a filial breeding book of the breed covered by its breeding programme, that breed society shall:

      (i) incorporate into its own breeding programme the principles established by the breed society referred to in point (a) that maintains the breeding book of the origin of the same breed;

(ii) make the information regarding the use of the principles referred to in point (i) and their source publicly available;

(iii) have mechanisms in place to ensure the necessary adjustments of the rules set out in its breeding programme, referred to in Article 8(3), and, where applicable, Article 12, to the changes made to those principles by the breed society referred to in point (a) of this paragraph that maintains the breeding book of the origin of the breed.

4. The following derogations shall apply to the requirements for the recognition of breed societies of purebred breeding animals of the equine species:

(a) By way of derogation from point B(1)(b) of Part 1, where, for one breed on the territories listed in Annex VI, there are several breed societies which maintain breeding books for that breed, and where their breeding programmes, referred to in Article 8(3), cover together the whole of the territories listed in Annex VI, the rules of procedure referred to in point B(1)(b) of Part 1 established by those breed societies:

(i) may provide that purebred breeding animals of the equine species of that breed must be born in a specified territory listed in Annex VI to qualify for entry in the breeding book of that breed for birth declaration purposes;

(ii) are to ensure that the restriction provided for in point (i) does not apply to the entry in a breeding book of that breed for reproduction purposes.

(b) By way of derogation from point 3(a) of this Part, where the principles of the breeding programme are established exclusively by an international organisation operating at a global level and where there is neither a breed society in a Member State nor a breeding body in a third country that maintains the breeding book of the origin of that breed, the competent authority in a Member State may recognise breed societies maintaining a filial breeding book for that breed, provided that they lay down the objectives and criteria referred to in point 1(h) of Part 2 in accordance with the principles established by that international organisation and that those principles are:

(i) made available by that breed society to the competent authority referred to in Article 4(3) for verification purposes;

(ii) incorporated in the breeding programme of that breed society.

(c) By way of derogation from point 3(b) of this Part, a breed society maintaining a filial breeding book may establish additional classes according to merits, provided that the purebred breeding animals of the equine species which are entered in the classes in the main section of the breeding book of the origin of the breed or of other filial breeding books of the breed may be entered in the corresponding classes of the main section of that filial breeding book.

ANNEX II

ENTRY IN BREEDING BOOKS AND REGISTRATION IN BREEDING REGISTERS REFERRED TO IN CHAPTER IV

PART 1

Entry of purebred breeding animals in breeding books and recording of animals in supplementary sections

CHAPTER I

Entry of purebred breeding animals in the main section

1. The requirements referred to in Article 18(1) are as follows:

   (a) the animal shall meet the following parentage criteria:

      (i) for the bovine, porcine, ovine and caprine species, the animal shall have descended from parents and grandparents which have been entered in the main section of a breeding book of the same breed;

      (ii) for the equine species, the animal shall have descended from parents which have been entered in the main section of a breeding book of the same breed;

   (b) the animal shall have its pedigree established in accordance with the rules set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

   (c) the animal shall be identified in accordance with Union animal health law on the identification and registration of animals of the species concerned and the rules set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

   (d) in the case of trade in or entry into the Union of an animal and where that animal is intended to be entered or registered for entry in the breeding book, that animal shall be accompanied by a zootechnical certificate issued in accordance with Article 30;

   (e) where an animal is produced from a germinal product which is traded or which entered into the Union and where that animal is intended to be entered or registered for entry in a breeding book, that germinal product shall be accompanied by a zootechnical certificate issued in accordance with Article 30.

2. By way of derogation from point 1(a)(ii) of this Chapter, a breed society which carries out a breeding programme on purebred breeding animals of the equine species may enter in the main section of its breeding book a purebred breeding animal of the equine species:

   (a) which, in the case of cross-breeding, is entered in the main section of a breeding book of a different breed, provided that that other breed and the criteria for entry of that purebred breeding animal are set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12; or

   (b) which, in the case of lineage breeding, belongs to a specific stallion line or mare family of a different breed, provided that those lines and families and the criteria for the entry of that purebred breeding animal are set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

3. In addition to the rules set out in point 1(c) of this Chapter, a breed society that enters in its breeding book a purebred breeding animal of the equine species which has already been entered in a breeding book established by another breed society carrying out a breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12 shall enter that purebred breeding animal under the identification number ascribed to it under Regulation (EU) 2016/429 which shall ensure the uniqueness and continuity of the identification of that animal and, except where a derogation has been agreed by the two breed societies concerned, under the same name, with an indication, in accordance with international agreements for the breed concerned, of the code of the country of birth.

CHAPTER II

Recording of animals in supplementary sections

1. The conditions referred to in Article 20(1) are as follows:

   (a) the animal shall be identified in accordance with Union animal health law on the identification and registration of animals of the species concerned and the rules set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

   (b) the animal shall have been judged by the breed society to conform to the characteristics of the breed referred to in point (1)(c) of Part 2 of Annex I;

   (c) the animal shall, where applicable, fulfil at least the minimum performance requirements laid down in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12, for those traits for which purebred breeding animals entered in the main section are tested in accordance with Annex III.

2. The breed society may apply different requirements for the conformity with the breed characteristics referred to in point 1(b) of this Chapter or the performance requirements referred to in point 1(c) of this Chapter depending on whether the animal:

   (a) belongs to the breed, although it has no known origin; or

   (b) was obtained from a cross-breeding programme mentioned in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

CHAPTER III

Upgrading of the progeny of animals recorded in supplementary sections to the main section

1. The conditions referred to in Article 20(2) are as follows:

   (a) for the bovine, porcine, ovine and caprine species, the female animal shall have descended from:

      (i) a mother and a maternal grandmother which are recorded in a supplementary section of a breeding book of the same breed as provided for in Article 20(1);

      (ii) a father and two grandfathers which are entered in the main section of a breeding book of the same breed.

      The first generation offspring descended from the female animal referred to in the introductory phrase of the first subparagraph and a male purebred breeding animal entered in the main section of the breeding book of the same breed shall likewise be regarded as a purebred breeding animal and be entered or registered and eligible for entry in the main section of that breeding book;

   (b) for the equine species, the animal shall meet the conditions for entry in the main section of male and female animals descending from animals recorded in the supplementary section as set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

2. By way of derogation from point 1 of this Chapter and point 1(a)(i) of Chapter I, a Member State or, if it so decides, its competent authority referred to in Article 4(3), may authorise a breed society which carries out a breeding programme on purebred breeding animals of an endangered breed of the bovine, porcine, ovine or caprine species or of a 'hardy' sheep breed to enter in the main section of its breeding book, an animal descending from parents and grandparents entered or recorded in the main or supplementary sections of a breeding book of that breed.

   A Member State, or, if it so decides, its competent authority authorising a breed society to make use of that derogation, shall ensure that:

   (a) that breed society has justified the need for making use of that derogation, in particular by demonstrating the lack of male purebred breeding animals of that breed available for breeding purposes;

(b) that breed society has established one or more supplementary sections in its breeding book;

(c) the rules under which the breed society enters or records animals in the main or supplementary sections of that breeding book are laid down in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

Member States making use of this derogation shall make publicly available the breeds which are granted such a derogation in the list referred to in Article 7.

PART 2

Registration of hybrid breeding pigs in breeding registers

The requirements referred to in Article 23 are as follows:

(a) the hybrid breeding pig shall have descended from parents and grandparents entered in breeding books or registered in breeding registers;

(b) the hybrid breeding pig shall be identified after birth in accordance with Union animal health law on the identification and registration of animals of the porcine species and the rules set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

(c) the hybrid breeding pig shall have a parentage established in accordance with the rules set out in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12;

(d) the hybrid breeding pig shall be accompanied, where required, by a zootechnical certificate issued in accordance with Article 30.

ANNEX III

PERFORMANCE TESTING AND GENETIC EVALUATION REFERRED TO IN ARTICLE 25

PART 1

General requirements

Where breed societies or breeding operations, or third parties designated by those breed societies or breeding operations in accordance with Article 27(1)(b), carry out performance testing or genetic evaluation, they shall establish and use methods for performance testing or genetic evaluation which shall be scientifically acceptable according to established zootechnical principles and shall take into account, where they exist:

(a) the rules and standards established by the relevant European Union reference centres provided for in Article 29(1); or

(b) in the absence of those rules and standards, the principles agreed by ICAR.

PART 2

Requirements for performance testing

1. Performance testing shall be carried out on the basis of one or more of the following performance testing schemes set up in accordance with the methods referred to in Part 1:

   (a) individual performance testing of breeding animals themselves or of breeding animals based on their progeny, siblings ('sib') or collaterals at test stations;

   (b) individual performance testing of breeding animals themselves or of breeding animals based on their progeny, siblings ('sib'), collaterals and other relatives on farms;

   (c) performance testing through survey data collected by farms, points of sale, points of slaughter or other operators;

   (d) performance testing of contemporary groups of breeding animals (contemporary group comparison);

   (e) any other performance testing scheme carried out in accordance with the methods referred to in Part 1.

   The performance testing schemes shall be set up in such a way to allow a valid comparison between the breeding animals. The progeny, siblings or collaterals to be tested at test stations or on farm shall be chosen in an unbiased manner and not be treated selectively. In the case of on-farm testing, they shall be distributed amongst farms in such a way as to allow a valid comparison between the tested breeding animals.

   Breed societies and breeding operations carrying out those performance testing schemes at test stations shall in accordance with the methods referred to in Part 1 lay down, in a test protocol, the terms of admission of breeding animals, information on the identity and relevant previous test results of the participating animals, the traits to be recorded, the test methods used and any other relevant information.

2. Breed societies and breeding operations shall define in their breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12, the traits to be recorded in relation to the selection objectives set out in those breeding programmes.

3. Where milk production traits are to be recorded, data shall be recorded on milk production, milk composition traits and other relevant traits set out in the methods referred to in Part 1. Additional data may be recorded on other milk or milk quality traits.

4. Where meat production traits are to be recorded, data shall be recorded on meat production traits and other relevant traits set out in the methods referred to in Part 1. Additional data may be recorded on other meat or meat quality traits.

5. Where other traits than those referred to in points 3 and 4 of this Part are to be recorded, those traits shall be recorded in accordance with the methods referred to in Part 1. They may include species and breed specific traits such as body conformation, fertility, ease of parturition, health related traits, viability of progeny, longevity, fibre quality, feed efficiency, docility, sustainability traits and any other relevant traits in relation to the selection objectives of the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

6. Data collected on the traits referred to in points 3, 4 and 5 shall only be included in the genetic evaluation where that data is generated on the basis of a recording system specified in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

7. For each of the traits recorded referred to in points 3, 4 and 5 information on the applied performance testing schemes, the applied test protocol, and, where relevant, the applied method for the validation of the test results, shall be specified in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

8. Where genetic evaluation is carried out on the traits referred to in points 3, 4 and 5, the recording of those traits shall ensure that, at the end of the testing, reliable breeding values can be estimated for those traits.

9. Survey data referred to in point 1(c) of this Part may only be recorded and included in the genetic evaluation where that data has been validated in accordance with the methods referred to in Part 1.

PART 3

Requirements for genetic evaluation

1. The genetic evaluation of breeding animals shall include the relevant production and non-production traits referred to in Part 2 in relation to the selection objectives set out in the breeding programmes approved in accordance with Article 8(3), and, where applicable, Article 12.

2. The genetic evaluation shall only include traits referred to in Part 2 in respect of which the recording is carried out as specified in the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12.

3. Breeding values of breeding animals shall be estimated in accordance with the methods referred to in Part 1 on the basis of:

   (a) data collected on breeding animals through performance testing, referred to in Part 2;

   (b) genomic information collected on breeding animals;

   (c) data generated by any other method in accordance with the methods referred to in Part 1; or

   (d) a combination of the information and data, referred to in points (a), (b) and (c).

4. The statistical methods applied for the genetic evaluation shall comply with the methods referred to in Part 1. Those statistical methods shall guarantee a genetic evaluation that is not biased by the main environmental effects and data structure, and that takes into account all information available for the breeding animal, its progeny, siblings, collaterals and other relatives depending on the performance testing scheme.

5. The reliabilities of the estimated breeding values shall be calculated in accordance with methods referred to in Part 1. When publishing the estimated breeding values for breeding animals, the reliabilities of those published breeding values and the date of evaluation shall be indicated.

6. Male purebred breeding animals of the bovine species of which the semen is intended to be used for artificial insemination shall be subject to genetic evaluation. That genetic evaluation shall be carried out on the main production traits in relation to the breeding programme as set out in the methods referred to in Part 1 and may be carried out on other relevant production and non-production traits set out in the methods referred to in Part 1. Where for those traits a genetic evaluation is carried out on male purebred breeding animals of the bovine species of which the semen is intended to be used for artificial insemination, the breeding values relating to those traits shall be published at the exception of those relating to animals referred to in Article 21(1)(g) (unproven bulls).

7. For male purebred breeding animals of the bovine species of which the semen is intended to be used for artificial insemination, the minimum reliability of the breeding values shall be at least:

   (a) in the case of bulls belonging to dairy breeds (including dual-purpose breeds), 0,5 for the main milk production traits or for the main composite indexes combining breeding values estimated for several individual traits;

   (b) in the case of bulls belonging to beef breeds (including dual-purpose breeds), 0,3 for the main meat production traits or for the main composite indexes combining breeding values estimated for several individual traits.

8. The requirements on minimum reliability values referred to in point 7 shall not apply to male purebred breeding animals of the bovine species which are:

   (a) used for the purpose of testing within the quantity limits necessary for a breed society to carry out such tests as referred to in Article 21(1)(g) (unproven bulls); or

   (b) participating in a breeding programme which requires performance testing and genetic evaluation and which has as its aim the preservation of the breed or the preservation of the genetic diversity within the breed.

9. Genomically evaluated male purebred breeding animals of the bovine species shall be considered suitable for artificial insemination if their genomic evaluation is:

   (a) validated in accordance with the methods referred to in Part 1 for each genomically evaluated trait;

   (b) revalidated for each of those traits at regular intervals and at any time when there are major changes either in the genomic evaluation or in the genetic evaluation or in the reference population.

10. The breed society or the breeding operation, or, at the request of that breed society or breeding operation, the third party designated by that breed society or breeding operation in accordance with Article 27(1)(b), shall make publicly available the information on the genetic defects and genetic peculiarities of breeding animals which are related to the breeding programme.

ANNEX IV

EUROPEAN UNION REFERENCE CENTRES REFERRED TO IN ARTICLE 29

1. Requirements referred to in Article 29(4)(a)

European Union reference centres designated in accordance with Article 29 shall:

(a) have suitably qualified staff:

(i) who have adequate training:

— where those centres are designated in accordance with Article 29(1), in performance testing and genetic evaluation of purebred breeding animals,

— where those centres are designated in accordance with Article 29(2), in the preservation of endangered breeds;

(ii) who have been instructed to respect the confidential nature of certain subjects, results or communications; and

(iii) who have sufficient knowledge of research activities at national, Union and international level;

(b) possess or have access to the infrastructure, equipment and products necessary to carry out the tasks:

(i) where those centres are designated in accordance with Article 29(1), referred to in point (2); and

(ii) where those centres are designated in accordance with Article 29(2), referred to in point (3).

2. Tasks referred to in Article 29(4)(b)(i) for European Union reference centres designated in accordance with Article 29(1)

European Union reference centres designated in accordance with Article 29(1) shall:

(a) work with breed societies and third parties designated by breed societies in accordance with Article 27(1)(b) to facilitate the uniform application of methods for performance testing and genetic evaluation for purebred breeding animals, referred to in Article 25;

(b) inform breed societies, third parties designated by those breed societies in accordance with Article 27(1)(b), or competent authorities on methods of performance testing and genetic evaluation of purebred breeding animals;

(c) review regularly the results of performance testing and genetic evaluations carried out by breed societies or third parties designated by those breed societies in accordance with Article 27(1)(b) and the data on which they are based;

(d) compare methods of performance testing and genetic evaluation of purebred breeding animals;

(e) at the request of the Commission or a Member State:

(i) provide assistance in the harmonisation of methods of performance testing and genetic evaluation of purebred breeding animals;

(ii) recommend calculation methods to be used for the performance testing and genetic evaluation of purebred breeding animals;

(iii) establish a platform for the comparison of the results of the methods of performance testing and genetic evaluation of purebred breeding animals used in Member States, in particular by:

— developing control protocols for performance testing and genetic evaluation of purebred breeding animals carried out in Member States to improve the comparability of the results and the effectiveness of breeding programmes,

— carrying out an international assessment of livestock on the basis of the combined results of performance testing and genetic evaluation of purebred breeding animals carried out in Member States and third countries,

— disseminating the results of those international assessments;

— publishing the conversion formulae and the related information based on which the formulae were established;

(f) provide data on the genetic evaluation of purebred breeding animals and training to support breed societies or third parties designated by those breed societies in accordance with Article 27(1)(b), which are participating in international comparisons of the results of genetic evaluations;

(g) facilitate the resolution of emerging problems in Member States linked to the genetic evaluation of purebred breeding animals;

(h) cooperate, within the scope of their tasks, with internationally recognised organisations;

(i) provide, at the request of the Commission, technical expertise to the Standing Committee on Zootechnics.

3. Tasks referred to in Article 29(4)(b)(ii) for European Union reference centres designated in accordance with Article 29(2).

European Union reference centres designated in accordance with Article 29(2) shall:

(a) work with breed societies, third parties designated by breed societies in accordance with Article 27(1)(b), competent authorities and other authorities of the Member States to facilitate the preservation of endangered breeds or the preservation of the genetic diversity existing within those breeds;

(b) inform breed societies, third parties designated by those breed societies in accordance with Article 27(1)(b), competent authorities or other authorities on methods used for the preservation of endangered breeds and the preservation of genetic diversity within those breeds;

(c) at the request of the Commission:

(i) develop or harmonise methods used for the in situ and ex situ conservation of endangered breeds or the preservation of the genetic diversity within those breeds or provide assistance in such development or harmonisation;

(ii) develop methods used for the characterisation of the status of endangered breeds with regard to their genetic diversity or their danger of being lost to farming or provide assistance in such development;

(iii) encourage exchanges between Member States of information on the preservation of the endangered breeds or the preservation of the genetic diversity within those breeds;

(iv) provide training to support breed societies or third parties designated by those breed societies in accordance with Article 27(1)(b), competent authorities and other authorities in the preservation of endangered breeds and the preservation of genetic diversity within those breeds;

(v) cooperate, within the scope of their tasks, with European and internationally recognised organisations;

(vi) provide, within the scope of their tasks, technical expertise to the Standing Committee on Zootechnics.

ANNEX V

INFORMATION TO BE PROVIDED IN THE ZOOTECHNICAL CERTIFICATES REFERRED TO IN CHAPTER VII

PART 1

General requirements

The title of the zootechnical certificate shall:

(a) indicate if the animal is a purebred breeding animal or a hybrid breeding pig or if the germinal products originate from purebred breeding animals or hybrid breeding pigs;

(b) include a reference to the taxonomic species;

(c) indicate if the consignment is intended for trade or for entry into the Union;

(d) include a reference to this Regulation.

PART 2

Zootechnical certificates for purebred breeding animals and their germinal products

CHAPTER I

Zootechnical certificates, referred to in Article 30, for purebred breeding animals

1. Zootechnical certificates, referred to in Article 30, for purebred breeding animals shall contain the following information:

   (a) the name of the issuing breed society, or, in the case of entry into the Union of the purebred breeding animal, the name of the issuing breeding body, and, where available, a reference to the website of that breed society or breeding body;

   (b) the name of the breeding book;

   (c) where applicable, the class within the main section where the purebred breeding animal is entered;

   (d) the name of the breed of the purebred breeding animal;

   (e) the sex of the purebred breeding animal;

   (f) the entry number in the breeding book ('Breeding-book No') of the purebred breeding animal;

   (g) the system of identification and the individual identification number given to the purebred breeding animal in accordance with:

      (i) Union animal health law on the identification and registration of animals of the species concerned;

      (ii) in the absence of Union animal health law on the identification and registration of animals requiring an individual identification number, the rules of the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12; or

      (iii) in the case of entry into the Union of the purebred breeding animal the legislation of the third country;

   (h) where required in accordance with Article 22(1) and (2), the method used for identity verification of purebred breeding animals used for the collection of semen, oocytes and embryos and the results of the verification of that identity;

   (i) the date and country of birth of the purebred breeding animal;

   (j) the name, address and, where available, the e-mail address of the breeder (place of birth of the purebred breeding animal);

(k) the name and address and, where available, the e-mail address of the owner;

(l) the pedigree:

Sire Breeding-book No. and section	Paternal Grandsire Breeding-book No. and section
	Paternal Granddam Breeding-book No. and section
Dam Breeding-book No. and section	Maternal Grandsire Breeding-book No. and section
	Maternal Granddam Breeding-book No. and section

(m) where available results of performance testing and up-to-date results of the genetic evaluation including the date of that evaluation and genetic defects and genetic peculiarities in relation to the breeding programme affecting the purebred breeding animal itself;

(n) in the case of pregnant females, the date of insemination or mating and the identification of the fertilising male, which may be indicated in a separate document;

(o) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breed society, or, in the case of entry into the Union of a purebred breeding animal, by the issuing breeding body; that individual shall be a representative from that breed society or breeding body, or a representative from a competent authority, referred to in Article 30(2)(b).

2. Where zootechnical certificates are issued for a group of purebred breeding animals of the porcine species, the information referred to in point 1 of this Chapter may be contained in a single zootechnical certificate, provided that those purebred breeding animals have the same age and the same genetic dam and sire.

CHAPTER II

Zootechnical certificates, referred to in Article 30, for semen of purebred breeding animals

Zootechnical certificates, referred to in Article 30, for semen of purebred breeding animals shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the purebred breeding animal that provided the semen;

(b) information allowing the identification of the semen, the number of doses to be dispatched, the place and the date of its collection, the name, the address and the approval number of the semen collection or storage centre and the name and the address of the consignee;

(c) for semen intended for testing of purebred breeding animals which have not undergone performance testing or genetic evaluation, the number of doses of that semen which shall be in accordance with the quantity limits referred to in Article 21(1)(g), the name and address of the breed society, or the third party designated by that breed society in accordance with Article 27(1)(b), responsible for carrying out that testing in accordance with Article 25;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breed society, or in the case of entry into the Union of semen, by the issuing breeding body; that individual shall be a representative from that breed society or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority, referred to in Article 30(2)(b).

CHAPTER III

Zootechnical certificates, referred to in Article 30, for oocytes of purebred breeding animals

Zootechnical certificates, referred to in Article 30, for oocytes of purebred breeding animals shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the donor female that provided the oocytes;

(b) information allowing the identification of the oocytes, the number of straws, the place and the date of their collection, the name, the address and the approval number of the embryo collection or production team and the name and the address of the consignee;

(c) where there is more than one oocyte in a straw, a clear indication of the number of oocytes collected from the same purebred breeding animal;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breed society, or in the case of entry into the Union of oocytes, by the issuing breeding body; that individual shall be a representative from that breed society or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority referred to in Article 30(2)(b).

CHAPTER IV

Zootechnical certificates, referred to in Article 30, for embryos of purebred breeding animals

Zootechnical certificates, referred to in Article 30, for embryos of purebred breeding animals shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the donor female and the fertilising male;

(b) information allowing the identification of the embryos, the number of straws, the place and the date of their collection or production, the name, the address and the approval number of the embryo collection or production team and the name and the address of the consignee;

(c) where there is more than one embryo in a straw, a clear indication of the number of embryos having the same parentage;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breed society, or in the case of entry into the Union of embryos, by the issuing breeding body; that individual shall be a representative from that breed society or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority referred to in Article 30(2)(b).

PART 3

Zootechnical certificates, referred to in Article 30, for hybrid breeding pigs and their germinal products

CHAPTER I

Zootechnical certificates for hybrid breeding pigs

1. Zootechnical certificates, referred to in Article 30, for hybrid breeding pigs shall contain the following information:

   (a) the name of the issuing breeding operation or, in the case of entry into the Union of the hybrid breeding pig, the name of the breeding body and, where available, a reference to the website of that breeding operation or breeding body;

   (b) the name of the breeding register;

   (c) the name of the breed, line or cross of the hybrid breeding pig and the parents and grandparents of that pig;

   (d) the sex of the hybrid breeding pig;

(e) the entry number in the breeding register ('Breeding-register No') of the hybrid breeding pig;

(f) the system of identification and the individual identification number given to the hybrid breeding pig in accordance with:

(i) Union animal health law on the identification and registration of animals of the porcine species;

(ii) in the absence of Union animal health law on the identification and registration of animals requiring an individual identification number, the rules of the breeding programme approved in accordance with Article 8(3), and, where applicable, Article 12; or

(iii) in the case of entry into the Union of the hybrid breeding pig, in accordance with the legislation of the third country;

(g) where required in accordance with Article 22(2), the method used for identity verification of the hybrid breeding pig and the results of the verification of that identity;

(h) the date and country of birth of the hybrid breeding pig;

(i) the name and address and, where available, the e-mail address of the breeder (place of birth of the hybrid breeding pig);

(j) the name and address and, where available, the e-mail address of the owner;

(k) the pedigree:

<table>
<tr><td rowspan="2">Sire
Breeding-register No.
Breed, line or cross</td><td>Paternal Grandsire
Breeding-register No.
Breed, line or cross</td></tr>
<tr><td>Paternal Granddam
Breeding-register No.
Breed, line or cross</td></tr>
<tr><td rowspan="2">Dam
Breeding-register No.
Breed, line or cross</td><td>Maternal Grandsire
Breeding-register No.
Breed, line or cross</td></tr>
<tr><td>Maternal Granddam
Breeding-register No.
Breed, line or cross</td></tr>
</table>

(l) where required to do so by the breeding programme, results of performance testing or up-to-date results of the genetic evaluation or both, including the date of that evaluation and genetic defects and genetic peculiarities in relation to the breeding programme affecting the hybrid breeding pig itself or, to the extent known, its progeny;

(m) in the case of pregnant females, the information on the date of insemination or mating, as well as the identification of the fertilising male, which may be indicated in a separate document;

(n) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breeding operation, or in the case of entry into the Union of a hybrid breeding pig, by the issuing breeding body; that individual shall be a representative from that breeding operation or breeding body, or a representative from a competent authority referred to in Article 30(2)(b).

2. Where zootechnical certificates are issued for a group of hybrid breeding pigs, the information referred to in point 1 of this Chapter may be contained in a single zootechnical certificate provided that those hybrid breeding pigs have the same age and the same genetic dam and sire.

CHAPTER II

Zootechnical certificates, referred to in Article 30, for semen of hybrid breeding pigs

Zootechnical certificates, referred to in Article 30, for semen of hybrid breeding pigs shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the hybrid breeding pig that provided the semen;

(b) information allowing the identification of the semen, the number of doses, the date of its collection, the name, the address and the approval number of the semen collection or storage centre and the name and the address of the consignee;

(c) for semen intended for performance testing or genetic evaluation of hybrid breeding pigs, which have not undergone such testing or evaluation, the number of doses of that semen, which shall be in accordance with the quantity limits referred to in Article 24(1)(d), the name and address of the breeding operation, or the third party designated by that breeding operation in accordance with Article 27(1)(b), responsible for carrying out that testing in accordance with Article 25;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breeding operation or, in the case of entry into the Union of semen, by the issuing breeding body; that individual shall be a representative from that breeding operation or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority referred to in Article 30(2)(b).

CHAPTER III

Zootechnical certificates, referred to in Article 30, for oocytes of hybrid breeding pigs

Zootechnical certificates, referred to in Article 30, for oocytes of hybrid breeding pigs shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the donor female that provided the oocytes;

(b) information allowing the identification of the oocytes, the number of straws, the date of their collection, the name, the address and the approval number of the embryo collection or production team and the name and the address of the consignee;

(c) where there is more than one oocyte in a straw, a clear indication of the number of oocytes collected from the same hybrid breeding pig;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breeding operation or, in the case of entry into the Union of the oocytes, by the issuing breeding body; that individual shall be a representative from that breeding operation or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority referred to in Article 30(2)(b).

CHAPTER IV

Zootechnical certificates, referred to in Article 30, for embryos of hybrid breeding pigs

Zootechnical certificates, referred to in Article 30, for embryos of hybrid breeding pigs shall contain the following information:

(a) all the information referred to in Chapter I of this Part concerning the donor female and the fertilising male;

(b) information allowing the identification of the embryos, the number of straws, the place and the date of their collection or production, the name, the address and the approval number of the embryo collection or production team and the name and the address of the consignee;

(c) where there is more than one embryo in a straw, a clear indication of the number of embryos that have the same parentage;

(d) the date and place of issue of the zootechnical certificate and the name, capacity and signature of the individual authorised to sign that certificate by the issuing breeding operation or, in the case of entry into the Union of embryos, authorised by the issuing breeding body; that individual shall be a representative from that breeding operation or breeding body or an operator referred to in Article 31(1) or Article 33(1), or a representative from a competent authority referred to in Article 30(2)(b).

ANNEX VI

TERRITORIES REFERRED TO IN POINT 21 OF ARTICLE 2

1. The territory of the Kingdom of Belgium
2. The territory of the Republic of Bulgaria
3. The territory of the Czech Republic
4. The territory of the Kingdom of Denmark with the exception of the Faroe Islands and Greenland
5. The territory of the Federal Republic of Germany
6. The territory of the Republic of Estonia
7. The territory of Ireland
8. The territory of the Hellenic Republic
9. The territory of the Kingdom of Spain with the exception of Ceuta and Melilla
10. The territory of the French Republic
11. The territory of the Republic of Croatia
12. The territory of the Italian Republic
13. The territory of the Republic of Cyprus
14. The territory of the Republic of Latvia
15. The territory of the Republic of Lithuania
16. The territory of the Grand Duchy of Luxembourg
17. The territory of Hungary
18. The territory of the Republic of Malta
19. The territory of the Kingdom of the Netherlands in Europe
20. The territory of the Republic of Austria
21. The territory of the Republic of Poland
22. The territory of the Portuguese Republic
23. The territory of Romania
24. The territory of the Republic of Slovenia
25. The territory of the Slovak Republic
26. The territory of the Republic of Finland
27. The territory of the Kingdom of Sweden
28. The territory of the United Kingdom of Great Britain and Northern Ireland

ANNEX VII

CORRELATION TABLE

Council Directive 2009/157/EC	This Regulation
Article 1	Article 2, points 9 and 12
Article 2(a),(b), (e)	Article 3(1)
Article 2(c)	Article 8(3)
Article 2(d)	Article 4(3)
Article 3	Article 18(1)
Article 4(1)	Article 7(1)
Article 4(2)	Article 7(5)
Article 5	Article 30(1), Article 30(4), first subparagraph, Article 30(6) and point 1(d) of Chapter I of Part 1 of Annex II
Article 6(a)	Article 26(1) and Annex III
Article 6(b)	Part 1 of Annex I
Article 6(c)	Part 2 of Annex I
Article 6(d)	Part 1 of Annex II
Article 6(e)	Article 30(9) and (10) and Annex V
Article 7(1)	Article 62(1)
Article 7(2)	Article 62(2)
Article 8	—
Article 9	—
Article 10	—
Article 11	—

Council Directive 87/328/EEC	This Regulation
Article 1	Article 21(1)
Article 2(1)	Article 21(4)
Article 2(2)	Articles 12 and 13
Article 2(3)	—
Article 3	Article 22(1) and (3)

Council Directive 87/328/EEC	This Regulation
Article 4	Article 21(5)
Article 5	Article 29(1)
Article 6	—
Article 7	—

Council Decision 96/463/EC	This Regulation
Article 1(1)	Article 29(1)
Article 1(2)	Article 29(4)(a) and (b)(i)
Article 2	—
Annex II	Points 1 and 2 of Annex IV

Council Directive 88/661/EEC	This Regulation
Article 1	Article 2, points 9, 10, 12 and 17
Article 2(1)	Article 3(1), Article 4(3) and Article 8(3)
Article 2(2)	—
Article 3	Article 21(2)
Article 4(1)	Article 18(1)
Article 4(2)	Article 64(7)
Article 4a, first paragraph	Article 7(1)
Article 4a, second paragraph	Article 7(5)
Article 5	Article 30(1), Article 30(4), first subparagraph, Article 30(6) and point 1(d) of Chapter I of Part 1 of Annex II
Article 6(1)	Article 30(9) and (10), Parts 1 and 2 of Annex I, Part 1 of Annex II, Annex III and Annex V
Article 6(2)	—
Article 7(1)	Article 3(1), Article 4(3) and Article 8(3)
Article 7(2)	Article 1(3)
Article 7a	Article 7(1) and (5)
Article 8	Article 25(2)

Council Directive 88/661/EEC	This Regulation
Article 9	Article 30(1), Article 30(4), first subparagraph, Article 30(6) and point 1(d) of Part 2 of Annex II
Article 10(1)	Article 30(9) and (10), Parts 1 and 2 of Annex I, Part 2 of Annex II, Annex III and Annex V
Article 10(2)	—
Article 11(1)	Article 62(1)
Article 11(2)	Article 62(2)
Article 11(3)	Article 62(2)
Article 12	Article 1(3)
Article 13	—
Article 14	—

Council Directive 90/118/EEC	This Regulation
Article 1	Article 21(1)
Article 2(1)	Article 21(4)
Article 2(2)	Articles 12 and 13 and Article 28(2)
Article 2(3)	Article 14 and Article 28(2)-
Article 3	Article 21(5)
Article 4	Article 62(1)
Article 5	—
Article 6	—

Council Directive 90/119/EEC	This Regulation
Article 1	Article 24(1) and Article 25
Article 2	Article 24(3)
Article 3	—
Article 4	—

Council Directive 89/361/EEC	This Regulation
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(3)

Council Directive 89/361/EEC	This Regulation
Article 2	Article 2, points 9 and 12
Article 3(1)	Article 3(1), Article 4(3) and Article 8(3)
Article 3(2)	Article 1(3)
Article 4	Parts 1 and 2 of Annex I, Part 1 of Annex II, Annex III
Article 5	Article 7(1) and (5)
Article 6	Article 30(1), Article 30(4), first subparagraph, Article 30(6) and point 1(d) of Chapter I of Part 1 of Annex II
Article 7	Article 1(3)
Article 8	Article 62(1)
Article 9	—
Article 10	—

Council Directive 90/427/EEC	This Regulation
Article 1	Article 1(1)
Article 2	Article 2, points 9 and 12
Article 3, first paragraph	Article 3(1)
Article 3, second paragraph	Article 1(3)
Article 4(1)(a)	Parts 1 and 3 of Annex I
Article 4(1)(b)	Point 1(c) of Chapter I of Part 1 of Annex II
Article 4(2)	Article 4(3), Article 19(4), Article 33, Article 34(1)(c), Article 30(9) and (10), Article 32, Annex I, Part 1 of Annex II and Annex V
Article 5	Article 7(1) and (5)
Article 6	Point 3 of Chapter I of Part 1 of Annex II
Article 7	Part 1 of Annex II and Part 1 of Annex III
Article 8(1)	Point 1(c) of Chapter I of Part 1 of Annex II
Article 8(2)	Article 30(1), Article 30(4), first subparagraph, Article 30(6), Article 32 and point 1(d) of Chapter I of Part 1 of Annex II
Article 9	Article 1(3)

Council Directive 90/427/EEC	This Regulation
Article 10	Article 62(1)
Article 11	—
Article 12	—
Annex	—

Council Directive 91/174/EEC	This Regulation
Article 1	Article 2
Article 2	Article 3, Article 35(1) and Article 45(1)
Article 3	—
Article 4	—
Article 5	—
Article 6	—
Article 7	—
Article 8	—

Council Directive 94/28/EC	This Regulation
Article 1(1)	Article 1(1)
Article 1(2)	—
Article 1(3)	—
Article 1(4)	Article 3(1) and Article 36(2)
Article 2	Article 2
Article 3	Articles 34
Article 4	Article 36(1)(a), (c) and (d) and Article 37(1)(a)
Article 5	Article 36(1)(b) and (d)
Article 6	Article 36(1)(b) and (d)
Article 7	Article 36(1)(b) and (d)
Article 8	Article 39(2)
Article 9(1) and (2)	Article 37(1)(b) and (2)

Council Directive 94/28/EC	This Regulation
Article 9(3)	—
Article 10	Articles 57 and 60
Article 11	—
Article 12	Article 62(1)
Article 13	—
Article 14	—
Article 15	—

REGULATION (EU) 2016/1013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

amending Regulation (EC) No 184/2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment

(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 338(1) thereof,

Having regard to the proposal from the European Commission,

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

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

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

Whereas:

(1) As a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under Regulation (EC) No 184/2005 of the European Parliament and of the Council ([3]) should be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

(2) Balance of payments, international trade in services and foreign direct investment (FDI) statistics of high quality and comparability are essential for those responsible for public policy in the Union, researchers and all European citizens. The Commission (Eurostat) should take all necessary measures to allow easy and user-friendly online access to data series as well as to provide users with an intuitive presentation of the data.

(3) European statistics concerning the balance of payments, international trade in services and FDI are of vital importance in ensuring informed economic policymaking and accurate economic forecasting.

(4) In light of the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([4]), the Commission has committed itself, by means of a Statement ([5]), to reviewing, in light of the criteria laid down in the TFEU, legislative acts which currently contain references to the regulatory procedure with scrutiny.

(5) Regulation (EC) No 184/2005 contains references to the regulatory procedure with scrutiny and should therefore be reviewed in light of the criteria laid down in the TFEU.

(6) In order to align Regulation (EC) No 184/2005 with Articles 290 and 291 TFEU, implementing powers conferred on the Commission by that Regulation should be replaced by powers to adopt delegated and implementing acts.

(7) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission when, as a result of economic or technical changes, the geographical breakdown levels, institutional sector breakdown levels

([1]) OJ C 31, 30.1.2015, p. 3.
([2]) Position of the European Parliament of 10 May 2016 (not yet published in the Official Journal) and Council decision of 30 May 2016.
([3]) Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment (OJ L 35, 8.2.2005, p. 23).
([4]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
([5]) OJ L 55, 28.2.2011, p. 19.

and economic activity breakdown levels set out in Tables 6, 7 and 8 of Annex I to Regulation (EC) No 184/2005 need to be updated, provided that such updates neither affect the reporting burden nor modify the applicable underlying conceptual framework. The power to adopt acts in accordance with Article 290 TFEU should also be delegated to the Commission whenever certain requirements of data flows in Annex I to that Regulation need to be eliminated or reduced, provided that such elimination or reduction does not reduce the quality of the statistics produced in accordance with this Regulation. Such delegated acts should also cover the extension of the deadline for the report on the findings of the studies on FDI statistics based on the ultimate ownership concept and FDI statistics distinguishing greenfield FDI transactions from takeovers. The Commission should ensure that those delegated acts do not impose a significant additional burden on Member States or on the respondent units, exceeding what is necessary for the purposes of this Regulation, nor modify the applicable underlying conceptual framework. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([1]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(8) In order to ensure uniform conditions for the implementation of Regulation (EC) No 184/2005, implementing powers should be conferred on the Commission with a view to harmonising the modalities, structure and periodicity of the quality reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(9) The Balance of Payments Committee referred to in Article 11 of Regulation (EC) No 184/2005 has provided advice to and assisted the Commission in the exercise of its implementing powers. Under the strategy for a new European statistical system (ESS) structure aimed at improving coordination and partnership in a clear pyramid structure within the ESS, the European Statistical System Committee (ESSC), established by Regulation (EC) No 223/2009 of the European Parliament and of the Council ([2]), should have an advisory role and assist the Commission in exercising its implementing powers. To that effect, Regulation (EC) No 184/2005 should be amended by replacing the references to the Balance of Payments Committee with references to the ESSC.

(10) The existing good operative cooperation between the national central banks (NCBs) and the national statistical institutes (NSIs), and between Eurostat and the European Central Bank (ECB), is an asset that should be preserved and further developed with a view to improving the overall consistency and quality of macroeconomic statistics, such as balance of payments statistics, financial statistics, government finance statistics and national accounts. The NCBs and NSIs are to continue to be closely involved in the preparation of all the decisions related to balance of payments, international trade in services and FDI statistics via their participation in the relevant expert groups responsible for balance of payments, international trade in services and FDI statistics. The cooperation between the ESS and the European System of Central Banks (ESCB) is coordinated at strategic level within the European Statistical Forum, established pursuant to a Memorandum of Understanding on the cooperation between the members of the European Statistical System and the members of the European System of Central Banks signed on 24 April 2013.

(11) In order to further strengthen cooperation between the ESS and the ESCB, the Commission should request the opinion of the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB), set up by Council Decision 2006/856/EC ([3]), on all matters falling within its competences as referred to in that Decision.

(12) Pursuant to Articles 127(4) and 282(5) TFEU, the ECB should be consulted on any proposed Union act in its fields of competence.

(13) Member States should provide the data required to produce European statistics in a timely manner, in the appropriate form and of the requisite quality with regard to balance of payments, international trade in services and FDI.

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

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

([3]) Council Decision 2006/856/EC of 13 November 2006 establishing a Committee on Monetary, Financial and Balance of Payments Statistics (OJ L 332, 30.11.2006, p. 21).

(14) Since the adoption of Regulation (EC) No 184/2005, international capital flows have both intensified and become more complex. The increased use of special purpose vehicles and legal constructions for channelling capital flows have made it more difficult to monitor such flows so as to ensure their traceability and to avoid double or multiple accounting.

(15) Regulation (EC) No 184/2005 should therefore be updated so as to improve transparency and granularity concerning balance of payments, international trade in services and FDI.

(16) In order to collect the appropriate information required pursuant to this Regulation, Member States should use all relevant and appropriate sources, including administrative data sources such as business registers or the EuroGroups Register. Transparency could also be enhanced by taking advantage of recent innovations, such as the global legal entity identifier, as well as the registries of beneficial ownership established in the framework of Directive (EU) 2015/849 of the European Parliament and of the Council ([1]).

(17) In order to develop FDI statistics based on the ultimate ownership concept and FDI statistics distinguishing greenfield FDI transactions from FDI resulting in takeovers, which for a given period, generally, do not lead to an increase in the gross capital formation in the Member States, the appropriate methodology for those domains should be developed and enhanced. This should be done in collaboration with relevant stakeholders such as the Organisation for Economic Cooperation and Development, the International Monetary Fund and the United Nations Conference on Trade and Development.

(18) Pilot studies should establish the conditions, including the methodological framework to introduce new data collections on annual FDI statistics, and assess the costs of the related data collections, the quality of the statistics, as well as the cross-country comparability. The results of those studies should be the subject of a report prepared by the Commission and submitted to the European Parliament and to the Council.

(19) In order to ensure the quality of statistical data submitted by Member States, the Commission should use the appropriate prerogatives and powers provided for in Article 12 of Regulation (EC) No 223/2009.

(20) Regulation (EC) No 184/2005 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 184/2005 is amended as follows:

(1) In Article 2, the following paragraph is added:

'3. The Commission is empowered to adopt delegated acts in accordance with Article 10 when, as a result of economic or technical changes, the geographical breakdown levels, institutional sector breakdown levels and economic activity breakdown levels set out in Tables 6, 7 and 8 of Annex I need to be updated, provided that such updates neither affect the reporting burden nor modify the applicable underlying conceptual framework.

The Commission is empowered to adopt delegated acts in accordance with Article 10 whenever certain requirements of data flows in Annex I need to be eliminated or reduced, provided that such elimination or reduction does not reduce the quality of the statistics produced in accordance with this Regulation.

When exercising these powers, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States or on the respondents.

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

Furthermore, the Commission shall duly justify the actions provided for in those delegated acts, considering, where appropriate, cost-effectiveness, including the burden on respondents and the production costs in accordance with Article 14(3) of Regulation (EC) No 223/2009 of the European Parliament and of the Council (*).

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

(2) Article 4 is replaced by the following:

'*Article 4*

Quality criteria and reports

1. For the purpose of this Regulation, the quality criteria set out in Article 12(1) of Regulation (EC) No 223/2009 shall apply to the data to be transmitted in accordance with Article 5 of this Regulation.

2. Member States shall provide the Commission (Eurostat) with a report on the quality of the data transmitted ("quality report").

3. In applying the quality criteria referred to in paragraph 1 to the data covered by this Regulation, the modalities, structure and periodicity of the quality reports shall be defined by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(2).

4. The Commission (Eurostat) shall assess the quality of the data transmitted on the basis of an appropriate analysis of the quality reports, with the assistance of the European Statistical System Committee referred to in Article 11(1), and shall prepare and publish a report on the quality of European statistics covered by this Regulation. That report shall be submitted to the European Parliament and to the Council for information purposes.

5. Member States shall communicate to the Commission (Eurostat) any major methodological or other type of changes that would influence the data transmitted, no later than three months after any such change becomes applicable. The Commission shall notify the European Parliament and the other Member States of any such communication.'.

(3) Article 5 is replaced by the following:

'*Article 5*

Data Flows

1. The statistics to be produced shall be grouped for transmission to the Commission (Eurostat) in accordance with the following data flows:

(a) balance of payments monthly statistics;

(b) balance of payments quarterly statistics;

(c) international trade in services;

(d) FDI flows;

(e) FDI positions.

2. The Commission (Eurostat) and Member States, in cooperation with the relevant international partners, shall develop the appropriate methodology for compiling FDI statistics based on the ultimate ownership concept in addition to the immediate counterpart principle and FDI statistics distinguishing greenfield FDI transactions from takeovers.

3. By 20 July 2018, the Commission (Eurostat) shall institute pilot studies to be carried out by Member States relating to annual FDI statistics based on the ultimate ownership concept and FDI statistics distinguishing greenfield FDI transactions from takeovers. The purpose of such studies shall be to establish the conditions, including the methodological framework, to introduce new data collections on annual FDI statistics and to assess the costs of the related data collections, the implied statistical quality, as well as the cross-country comparability.

4. In order to facilitate carrying out the studies referred to in paragraph 3, the Union may provide financial support to the Member States in the form of grants in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (*).

5. By 20 July 2019, the Commission (Eurostat) shall prepare a report on the findings of the studies referred to in paragraph 3. That report shall be forwarded to the European Parliament and to the Council and, if appropriate, shall identify the remaining conditions which need to be fulfilled in order to develop the methodology referred to in paragraph 2.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 10 in order to extend by 12 months the reporting deadline laid down in paragraph 5 of this Article where the Commission's assessment of the pilot studies referred to in that paragraph establishes that the identification of the remaining conditions is appropriate.

When exercising those powers, the Commission shall ensure that the delegated acts do not impose a significant additional burden on the Member States or on the respondents.

Furthermore, the Commission shall duly justify the actions provided for in those delegated acts, considering, where appropriate, cost-effectiveness, including the burden on respondents and the production costs in accordance with Article 14(3) of Regulation (EC) No 223/2009.

7. No later than 12 months after the date of issuing the report referred to in paragraph 5, the Commission shall, where appropriate, and depending in particular on the assessment by the Commission of the result of the pilot studies referred to in paragraph 3, make a proposal for amendments to this Regulation in order to define the methodological and data requirements for annual FDI statistics on the ultimate ownership concept and for annual FDI statistics distinguishing greenfield FDI transactions from takeovers.

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

(4) Article 9 is replaced by the following:

'Article 9

Dissemination

1. The Commission (Eurostat) shall disseminate the European statistics produced pursuant to this Regulation, with a similar periodicity to that specified in Annex I. Those statistics shall be made available on the Commission (Eurostat) website.

2. In accordance with Article 18 of Regulation (EC) No 223/2009, and without prejudice to the protection of statistical confidentiality, Member States and the Commission (Eurostat) shall ensure the dissemination of data and metadata required by this Regulation as well as the precise methodology used for their compilation.'.

(5) Article 10 is replaced by the following:

'Article 10

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 2(3) and 5(6) shall be conferred on the Commission for a period of five years from 19 July 2016. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 2(3) and 5(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

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

6. A delegated act adopted pursuant to Articles 2(3) and 5(6) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.'.

(6) Article 11 is replaced by the following:

'*Article 11*

Committee procedure

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

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

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

(7) Article 12 is replaced by the following:

'*Article 12*

Reports on implementation

By 28 February 2018 and every five years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Regulation.

In particular, that report shall:

(a) evaluate the quality of data on balance of payments, international trade in services and FDI;

(b) assess the benefits accruing to the Union, the Member States and the providers and users of statistical information of the statistics produced in relation to the costs;

(c) identify areas for potential improvement and amendments considered necessary in the light of the results obtained.'.

(8) The following article is inserted:

'*Article 12a*

Cooperation with other committees

On all matters falling within the competence of the Committee on Monetary, Financial and Balance of Payments Statistics established by Council Decision 2006/856/EC (*), the Commission shall request the opinion of that Committee in accordance with that Decision.

(*) Council Decision 2006/856/EC of 13 November 2006 establishing a Committee on Monetary, Financial and Balance of Payments Statistics (OJ L 332, 30.11.2006, p. 21).'.

(9) Annex I is amended in accordance with the Annex to this Regulation.

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, 8 June 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

ANNEX

Annex I to Regulation (EC) No 184/2005 is amended as follows:

(1) The introductory text to Table 2 is replaced by the following:

'Periodicity: Quarterly

First reference period: First Quarter 2014

Deadline: T+85 from 2014 to 2016; T+82 from 2017 ([2])

([2]) The transition to T+82 shall not be mandatory for Member States not participating in the Monetary Union.'.

(2) In Table 2, under Part E. 'International investment position', the entry 'Financial derivatives (other than reserves) and employee stock options' is replaced by the following:

'Financial derivatives(other than reserves) and employee stock options By resident sector (Sec 2)	Geo 2 ([1])			Geo 2 ([1])			Geo 2 ([1])'

(3) Table 4.1 is amended as follows:

(a) the entry 'Direct investment abroad (DIA) — Transactions' is replaced by the following:

'Direct investment abroad (DIA) — Transactions	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(b) the entry 'Direct investment in the reporting economy (DIRE) — Transactions' is replaced by the following:

'Direct investment in the reporting economy (DIRE) — Transactions	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(c) the following endnote is added:

'(*) Geo 6: Geo 6 in bold, mandatory from reference year 2015 onwards.'.

(4) Table 4.2 is amended as follows:

(a) the entry 'Direct investment abroad (DIA) — Income' is replaced by the following:

'Direct investment abroad (DIA) — Income	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(b) the entry 'Direct investment in the reporting economy (DIRE) — Income' is replaced by the following:

'Direct investment in the reporting economy (DIRE) — Income	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(c) the following endnote is added:

'(*) Geo 6: Geo 6 in bold, mandatory from reference year 2015 onwards.'.

(5) Table 5.1 is amended as follows:

(a) the entry 'Direct investment abroad (DIA)' is replaced by the following:

'Direct investment abroad (DIA)	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(b) the entry 'Direct investment in the reporting economy (DIRE)' is replaced by the following:

'Direct investment in the reporting economy (DIRE)	Geo 6	**Geo 6** (*)	**Geo 6** (*)'

(c) the following endnote is added:

'(*) Geo 6: Geo 6 in bold, mandatory from reference year 2015 onwards.'.

REGULATION (EU) 2016/1014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 8 June 2016

amending Regulation (EU) No 575/2013 as regards exemptions for commodity dealers

(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) Regulation (EU) No 575/2013 of the European Parliament and of the Council ([4]) exempts investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council ([5]) and to whom Council Directive 93/22/EEC ([6]) did not apply on 31 December 2006 ('commodity dealers') from the requirements for large exposures and from own funds requirements. Those exemptions apply until 31 December 2017.

(2) Regulation (EU) No 575/2013 also requires the Commission to prepare, by 31 December 2015, a report on an appropriate regime for the prudential supervision of commodity dealers. Furthermore, that Regulation requires the Commission to prepare, by the same date, a report on an appropriate regime for the prudential supervision of investment firms in general. Where appropriate, those reports are to be followed by legislative proposals.

(3) A review of the prudential treatment of investment firms ('investment firms review'), including commodity dealers, is currently underway but has not yet been completed. The finalisation of that review and the adoption of new legislation that may be required in light of that review will be concluded only after 31 December 2017.

(4) Under the existing regime, after 31 December 2017 commodity dealers will become subject to the requirements for large exposures and own funds requirements. This could force them to significantly increase the amount of own funds that they need to have in order to continue their activities and could therefore increase the related costs of performing such activities.

([1]) OJ C 130, 13.4.2016, p. 1.
([2]) Opinion of 27 April 2016 (not yet published in the Official Journal).
([3]) Position of the European Parliament of 11 May 2016 (not yet published in the Official Journal) and decision of the Council of 30 May 2016.
([4]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([5]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).
([6]) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27).

(5) A decision to apply the requirements for large exposures and own funds requirements to commodity dealers should not be arrived at as a result of a lapsed exemption. Instead, that decision should be a thoroughly reasoned one, based on conclusions of the investment firms review, and should be clearly expressed in legislation.

(6) It is therefore necessary to establish a new date until which the exemptions for commodity dealers should continue to apply. Regulation (EU) No 575/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) in Article 493(1), the second sentence is replaced by the following:

'This exemption is available until 31 December 2020 or the date of entry into force of any amendments pursuant to paragraph 2 of this Article, whichever is the earlier.';

(2) in Article 498(1), the second subparagraph is replaced by the following:

'This exemption shall apply until 31 December 2020 or the date of entry into force of any amendments pursuant to paragraphs 2 and 3, whichever is the earlier.'.

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, 8 June 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

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