

Official Journal of the European Union

L 173



English edition

Legislation

Volume 61

9 July 2018

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EN

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2018/956 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 28 June 2018****on the monitoring and reporting of CO₂ emissions from and fuel consumption of new heavy-duty vehicles****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) A binding target of at least a 40 % domestic reduction in economy-wide greenhouse gas emissions by 2030 compared to 1990 was endorsed in the conclusions of the European Council of 23-24 October 2014 on the 2030 climate and energy policy framework, and this target was reconfirmed at the European Council meeting of 17-18 March 2016.
- (2) The European Council conclusions of 23-24 October 2014 provided that the target has to be delivered collectively by the Union in the most cost-effective manner possible, with the reductions in the system for greenhouse gas emission allowance trading within the Union ('EU ETS') and non-ETS sectors amounting to 43 % and 30 % respectively by 2030 compared to 2005. The Paris Agreement ⁽³⁾, *inter alia*, sets out a long-term goal in line with the objective to keep the global average temperature increase well below 2 °C above pre-industrial levels and to pursue efforts to keep it to 1,5 °C above pre-industrial levels. It is necessary that all Member States participate in these efforts and that all sectors of the economy, including transport, contribute to achieving the emission reductions agreed by the European Council and to fulfilling the long-term objectives of the Paris Agreement.
- (3) The Commission's 2016 European Strategy for low-emission mobility sets the ambition that, by mid-century, greenhouse gas emissions from transport will need to be at least 60 % lower than in 1990, and be firmly on the path towards zero.
- (4) In order to meet that objective, it is appropriate to consider a range of different measures. In addition to setting CO₂ emission standards for heavy-duty vehicles, namely lorries, buses and coaches, those measures could include other actions that contribute to improving the efficiency and lower the CO₂ emissions of heavy-duty vehicles, such as load optimisation, platooning, training of drivers, the use of alternative fuels, fleet renewal schemes, low-rolling resistance tyres, congestion reduction and investments in infrastructure maintenance.

⁽¹⁾ OJ C 81, 2.3.2018, p. 95.

⁽²⁾ Position of the European Parliament of 12 June 2018 (not yet published in the Official Journal) and decision of the Council of 21 June 2018.

⁽³⁾ Paris Agreement (OJ L 282, 19.10.2016, p. 4).

- (5) Greenhouse gas emissions from heavy-duty vehicles currently represent around a quarter of road transport emissions in the Union and, if no additional measures are taken, are expected to increase by 10 % between 2010 and 2030 and by 17 % between 2010 and 2050. Effective measures to curb emissions from heavy-duty vehicles need to be introduced in order to contribute to the necessary emission reductions in the transport sector.
- (6) In its 2014 Communication on a Strategy for reducing Heavy-Duty Vehicles' fuel consumption and CO₂ emissions, the Commission recognised that a prerequisite to introducing such measures is a regulated procedure for the determination of CO₂ emissions and fuel consumption.
- (7) Regulation (EC) No 595/2009 of the European Parliament and the Council ⁽¹⁾ provides the framework for the setting up of such a regulated procedure. The measurements carried out in accordance with that procedure will provide robust and comparable CO₂ emissions and fuel consumption data for each heavy-duty vehicle in respect of a significant part of the heavy-duty vehicle fleet in the Union. The purchaser of a specific heavy-duty vehicle and the respective Member State of registration will have access to that information, partially closing the knowledge gap.
- (8) Transport companies are, to a large extent, small and medium-sized enterprises. Moreover, they do not yet have access to standardised information to evaluate fuel efficiency technologies or to compare heavy-duty vehicles in order to make the best-informed purchasing decisions, thereby reducing their fuel bills, which account for more than a quarter of their operating costs.
- (9) Information on a heavy-duty vehicle's performance in terms of CO₂ emissions and fuel consumption should be made publicly available to enable all vehicle operators to take well-informed purchasing decisions and to ensure a high level of transparency. All heavy-duty vehicle manufacturers will be able to compare their vehicles' performance with those of other makes. That will increase the incentives for innovation and encourage the development of more energy efficient heavy-duty vehicles, thereby increasing competitiveness. That information will also provide policy makers at Union and Member State level with a sound basis for developing policies to promote the uptake of more energy-efficient heavy-duty vehicles.
- (10) In order to acquire complete knowledge on the configuration of the heavy-duty vehicle fleet in the Union, its development over time and potential impact on CO₂ emissions, it is appropriate that the competent authorities of the Member States monitor and report to the Commission data on the registration of all new heavy-duty vehicles and all new trailers, including data on powertrains as well as the relevant bodywork.
- (11) It is therefore appropriate that heavy-duty vehicle manufacturers monitor and report to the Commission the CO₂ emissions and fuel consumption values determined for each new heavy-duty vehicle pursuant to Commission Regulation (EU) 2017/2400 ⁽²⁾.
- (12) The availability of data on CO₂ emissions and fuel consumption for the different heavy-duty vehicle categories depends on when the categories will be covered by Regulation (EU) 2017/2400. In order to provide clarity and legal certainty concerning monitoring and reporting obligations for manufacturers, this Regulation should set out the starting years for monitoring and reporting for each heavy-duty vehicle category falling within its scope. Pursuant to Regulation (EU) 2017/2400, data will be available for certain new heavy-duty vehicles that are registered in 2019. Starting from that year, manufacturers should be required to monitor and report the technical data relating to those vehicles. For other heavy-duty vehicle categories and heavy-duty vehicle groups the data will only become available from a later date. A reasonable timeframe should be set for determining the starting years for the monitoring and reporting of data for those vehicle categories and vehicle groups. Given the technical complexity of developing the procedures for determining the CO₂ emissions and fuel consumption of the remaining heavy-duty vehicle categories and heavy-duty vehicle groups, the timeframe should be set at seven years from the date of entry into force of this Regulation.

⁽¹⁾ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1).

⁽²⁾ Commission Regulation (EU) 2017/2400 of 12 December 2017 implementing Regulation (EC) No 595/2009 of the European Parliament and of the Council as regards the determination of the CO₂ emissions and fuel consumption of heavy-duty vehicles and amending Directive 2007/46/EC of the European Parliament and of the Council and Commission Regulation (EU) No 582/2011 (OJ L 349, 29.12.2017, p. 1).

- (13) It is in the public interest that technical data essential for determining the CO₂ emissions and fuel consumption performance of a heavy-duty vehicle be actively disseminated to the public to increase the transparency of the heavy-duty vehicle specifications and the related performance, and to foster competition among manufacturers. Data that are sensitive on the grounds of personal data protection and fair competition should not be published. Certain data related to the aerodynamic performance of heavy-duty vehicles should be made available to the public in a range format in order to take account of considerations of fair competition. The data reported should be made available to the public in an easily accessible manner and free of charge. This Regulation is without prejudice to the further rights of public access to environmental information, *inter alia*, in accordance with Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁽¹⁾.
- (14) It is important that the monitoring and reporting system be user friendly for all transport operators regardless of their size and resources. Likewise, it is important that the Commission actively promote such a system in order to ensure that it has a meaningful impact on the sector and to raise awareness on the availability of the reported data.
- (15) The Commission's analysis of the data transmitted by Member States and manufacturers for the preceding calendar year should be presented to the public in a way to show clearly the performance of the heavy-duty vehicle fleet of the Union and of each Member State as well as that of each manufacturer. It should allow comparability within and between fleets in terms of the average fuel consumption and CO₂ emissions for each heavy-duty vehicle group by mission profile.
- (16) It is essential that the CO₂ emission and fuel consumption values determined pursuant to Regulation (EU) 2017/2400 correctly reflect the performance of heavy-duty vehicles. That Regulation therefore sets out provisions for verifying and ensuring the conformity of the simulation tool operation as well as of the CO₂ emissions and fuel consumption related properties of the relevant components, separate technical units and systems. That verification procedure should include on-road testing. The new type approval framework as set out in Regulation (EU) 2018/858 of the European Parliament and of the Council ⁽²⁾ provides the means for ensuring that, in the case of deviations, remedial measures are taken by the manufacturer, and that in the case of non-compliance, the Commission is able to impose administrative fines. That new framework also acknowledges the importance of third parties being allowed to perform independent testing of vehicles and having access to necessary data. The Commission should monitor the results of such verification tests and should include an analysis of those results in its annual report.
- (17) It is important to ensure that the data monitored and reported be robust and reliable. The Commission should therefore have the means to verify and, where necessary, correct the final data. The monitoring requirements should therefore also provide for parameters that allow the data to be adequately traced and verified.
- (18) The Commission should have the possibility to impose an administrative fine where it finds that the data reported by the manufacturer deviates from the data recorded in the framework of Regulation (EC) No 595/2009 and, in particular, in accordance with Commission Regulation (EU) No 582/2011 ⁽³⁾ and Regulation (EU) 2017/2400 or where the manufacturer fails to deliver the required data within the applicable deadline. Those fines should be effective, proportionate and dissuasive.
- (19) Based on the experience gained from the monitoring and reporting of data on CO₂ emissions pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council ⁽⁴⁾ for new passenger cars and to Regulation (EU) No 510/2011 of the European Parliament and of the Council ⁽⁵⁾ for new light commercial

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

⁽²⁾ Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).

⁽³⁾ Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council (OJ L 167, 25.6.2011, p. 1).

⁽⁴⁾ Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 140, 5.6.2009, p. 1).

⁽⁵⁾ Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO₂ emissions from light-duty vehicles (OJ L 145, 31.5.2011, p. 1).

vehicles, it is appropriate to confer on the European Environment Agency the responsibility for the exchange of such data with the competent authorities of the Member States and manufacturers, as well as for the management of the final database on behalf of the Commission. It is also appropriate to align as far as possible the monitoring and reporting procedures for heavy-duty vehicles with those already existing for light-duty vehicles.

- (20) In order to ensure uniform conditions for the implementation of the provisions of this Regulation on the verification and correction of the monitored data, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (21) In order to ensure that the data requirements and the monitoring and reporting procedure remain relevant over time for assessing the heavy-duty vehicle fleet's contribution to CO₂ emissions, to ensure the availability of data on new and advanced CO₂ reducing technologies and on the results of on-road verification tests and to ensure that the air drag value ranges remain relevant for information and comparability purposes, as well as to supplement the provisions on administrative fines, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of completing the starting years for the monitoring and reporting of the heavy-duty vehicle categories covered, of amending the data requirements and the monitoring and reporting procedure laid down in the Annexes to this Regulation, of specifying the data to be reported by the Member States for the monitoring of the results of on-road verification tests, of amending the air drag value ranges, and of defining the criteria, the calculation and the method of collection of administrative fines imposed on manufacturers. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽²⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (22) Since the objective of this Regulation, namely the monitoring and reporting of CO₂ emissions and fuel consumption from new heavy-duty vehicles in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the requirements for the monitoring and reporting of CO₂ emissions from and fuel consumption of new heavy-duty vehicles registered in the Union.

Article 2

Scope

This Regulation applies to the monitoring and reporting by Member States and manufacturers of heavy-duty vehicles of data on new heavy-duty vehicles.

It applies with regard to the following vehicle categories:

- (a) vehicles of categories M₁, M₂, N₁ and N₂ with a reference mass that exceeds 2 610 kg and which do not fall within the scope of Regulation (EC) No 715/2007 of the European Parliament and of the Council ⁽³⁾, and all vehicles of categories M₃ and N₃;
- (b) vehicles of categories O₃ and O₄.

For the purposes of this Regulation, those vehicles are referred to as heavy-duty vehicles.

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

⁽²⁾ OJ L 123, 12.5.2016, p. 1.

⁽³⁾ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

*Article 3***Definitions**

For the purposes of this Regulation, the definitions set out in Directive 2007/46/EC of the European Parliament and of the Council ⁽¹⁾ and Regulation (EC) No 595/2009 apply.

*Article 4***Monitoring and reporting by Member States**

1. Starting from 1 January 2019, and for each subsequent calendar year, Member States shall monitor the data specified in Part A of Annex I relating to new heavy-duty vehicles registered for the first time in the Union.

By 28 February each year, starting in 2020, the competent authorities of the Member States shall report those data to the Commission in accordance with the reporting procedure set out in Annex II.

Data relating to new heavy-duty vehicles that were registered previously outside the Union shall not be monitored and reported, unless that registration was made less than three months before registration in the Union.

2. The competent authorities responsible for the monitoring and reporting of data in accordance with this Regulation shall be those designated by the Member States in accordance with Article 8(7) of Regulation (EC) No 443/2009.

*Article 5***Monitoring and reporting by manufacturers**

1. From the starting years set out in point 1 of Part B of Annex I, manufacturers of heavy-duty vehicles shall monitor, on a calendar year basis, the data specified in point 2 of Part B of Annex I, for each new heavy-duty vehicle.

By 28 February each year, from the starting years set out in point 1 of Part B of Annex I, manufacturers of heavy-duty vehicles shall report those data for each new heavy-duty vehicle with a date of simulation falling within the preceding calendar year to the Commission in accordance with the reporting procedure set out in Annex II.

The date of simulation shall be the date reported in accordance with data entry 71 in point 2 of Part B of Annex I.

2. Each manufacturer shall appoint a contact point for the purpose of reporting data in accordance with this Regulation.

*Article 6***Central Register for data on heavy-duty vehicles**

1. The Commission shall keep a Central Register for the data on heavy-duty vehicles ('the Register') reported in accordance with Articles 4 and 5.

The Register shall be publicly available with the exception of data entry (a) specified in Part A of Annex I and data entries 1, 24, 25, 32, 33, 39 and 40 specified in point 2 of Part B of Annex I. With regard to data entry 23 specified in point 2 of Part B of Annex I, the value shall be made publicly available in a range format as set out in Part C of Annex I.

2. The Register shall be managed by the European Environment Agency on behalf of the Commission.

*Article 7***Monitoring of the results of on-road verification tests**

1. The Commission shall monitor, where available, the results of on-road tests performed within the framework of Regulation (EC) No 595/2009 to verify the CO₂ emissions and fuel consumption of new heavy-duty vehicles.

2. The Commission is empowered to adopt delegated acts in accordance with Article 13 in order to supplement this Regulation by specifying the data to be reported by the competent authorities of the Member States for the purposes of paragraph 1 of this Article.

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

*Article 8***Data quality**

1. The competent authorities and manufacturers shall be responsible for the correctness and quality of the data they report pursuant to Articles 4 and 5. They shall inform the Commission without delay of any errors detected in the data reported.
2. The Commission shall carry out its own verification of the quality of the data reported pursuant to Articles 4 and 5.
3. Where the Commission is informed of errors in the data or finds, pursuant to its own verification, discrepancies in the dataset, it shall, where appropriate, take the necessary measures to correct the data published in the Register referred to in Article 6.
4. The Commission may, by means of implementing acts, determine the verification and correction measures referred to in paragraphs 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12.

*Article 9***Administrative fines**

1. The Commission may impose an administrative fine in each of the following cases:
 - (a) where it finds that the data reported by the manufacturer pursuant to Article 5 of this Regulation deviate from the data resulting from the manufacturer's records file or the engine type-approval certificate issued within the framework of Regulation (EC) No 595/2009, and the deviation is intentional or due to serious negligence;
 - (b) where the data are not submitted within the deadline applicable pursuant to Article 5(1) and the delay cannot be duly justified.

The Commission shall, for the purposes of verifying the data referred to in point (a), consult with the relevant approval authorities.

The administrative fines shall be effective, proportional and dissuasive and shall not exceed EUR 30 000 per heavy-duty vehicle concerned by deviating or delayed data as referred to in points (a) and (b).

2. The Commission shall, on the basis of the principles set out in paragraph 3 of this Article, adopt delegated acts in accordance with Article 13 to supplement this Regulation by laying down the procedure, methods for the calculation and collection of the administrative fines referred to in paragraph 1 of this Article.
3. The delegated acts referred to in paragraph 2 shall respect the following principles:
 - (a) the procedure established by the Commission shall respect the right to good administration, and in particular the right to be heard and the right to have access to the file, while respecting the legitimate interests of confidentiality and of commercial secrets;
 - (b) in calculating the appropriate administrative fine, the Commission shall be guided by the principles of effectiveness, proportionality and dissuasiveness, taking into consideration, where relevant, the seriousness and effects of the deviation or delay, the number of heavy-duty vehicles concerned by the deviating or delayed data, the good faith of the manufacturer, the degree of diligence and cooperation of the manufacturer, the repetition, frequency or duration of the deviation or the delay as well as prior sanctions imposed on the same manufacturer;
 - (c) administrative fines shall be collected without undue delay by fixing deadlines for the payment and, as appropriate, including the possibility of splitting payments into several instalments and phases.
4. The amounts of the administrative fines shall be considered as revenue for the general budget of the Union.

*Article 10***Report**

1. By 31 October every year, the Commission shall publish an annual report with its analysis of the data transmitted by Member States and manufacturers for the preceding calendar year.

2. The analysis shall indicate, as a minimum, the performance of the heavy-duty vehicle fleet of the Union as well as that of each Member State and each manufacturer in terms of the average fuel consumption and CO₂ emissions for each heavy-duty vehicle group by mission profile, load and fuel combination. It shall also, where available, take into account data on the uptake of new and advanced CO₂ reducing technologies, as well as of alternative powertrains. Moreover, it shall include an analysis of, where available, the results of on-road verification tests as monitored in accordance with Article 7.

3. The Commission shall prepare the analysis with the support of the European Environment Agency.

Article 11

Amendment of the Annexes

1. The Commission is empowered to adopt delegated acts in accordance with Article 13 with a view to amending the Annexes for the purpose of:

- (a) updating or adjusting the data requirements specified in Part A and Part B of Annex I, where this is deemed necessary in order to provide for a thorough analysis in accordance with Article 10;
- (b) completing the starting years in point 1 of Part B of Annex I;
- (c) updating or adjusting the ranges set out in Part C of Annex I to take into account changes in heavy-duty vehicle design and ensure that the ranges remain relevant for information and comparability purposes;
- (d) adjusting the monitoring and reporting procedure set out in Annex II in order to take into account the experience gained from the application of this Regulation.

2. The delegated acts referred to in point (b) of paragraph 1 shall be adopted by 30 July 2025.

Article 12

Committee procedure

1. The Commission shall be assisted by the Climate Change Committee established by Regulation (EU) No 525/2013 of the European Parliament and of the Council⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

Article 13

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 7(2), 9(2) and 11(1) shall be conferred on the Commission for a period of seven years from 29 July 2018. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-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 7(2), 9(2) and 11(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 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.

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

6. A delegated act adopted pursuant to Articles 7(2), 9(2) and 11(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 two 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 shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 14

Entry into force

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

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

Done at Brussels, 28 June 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

L. PAVLOVA

ANNEX I

Rules on data to be monitored and reported

PART A: DATA TO BE MONITORED AND REPORTED BY MEMBER STATES

- (a) vehicle identification numbers of all new heavy-duty vehicles as referred to in points (a) and (b) of the second paragraph of Article 2 that are registered in the Member State territory;
- (b) manufacturer name;
- (c) make (trade name of manufacturer);
- (d) the code for the bodywork as specified in entry 38 of the certificate of conformity, where available;
- (e) in the case of the heavy-duty vehicles referred to in point (a) of the second paragraph of Article 2, the information on the powerplant specified in entries 23, 23.1 and 26 of the certificate of conformity.

PART B: DATA TO BE MONITORED AND REPORTED BY MANUFACTURERS OF HEAVY-DUTY VEHICLES

1. Starting years for the monitoring and reporting of data for the heavy-duty vehicle categories set out in points (a) and (b) of the second paragraph of Article 2:

Category of heavy-duty vehicles	Vehicle group in vehicle category (as referred to in Annex I to Regulation (EU) 2017/2400)	Starting year Monitoring	Starting year Reporting
N ₁	—	—	—
N ₂	1 and 2	2020	2021
N ₃	3	2020	2021
	4, 5, 9 and 10	2019	2020
	11, 12 and 16	2020	2021
M ₁	—	—	—
M ₂	—	—	—
M ₃	—	—	—
O ₃	—	—	—
O ₄	—	—	—

2. Data to be monitored and reported:

No	Monitoring parameters	Source Part I of Annex IV to Regulation (EU) 2017/2400, unless otherwise specified	Description
1	Vehicle identification number (VIN)	1.1.3	Vehicle and component identification
2	Engine certification number	1.2.2	
3	CdxA (!) certification number (if applicable)	1.8.3	
4	Transmission certification number	1.3.2	
5	Axle certification number	1.6.2	
6	Tyre certification number, axle 1	1.9.2	
7	Tyre certification number, axle 2	1.9.6	
8	Tyre certification number, axle 3	1.9.10	
9	Tyre certification number, axle 4	1.9.14	

No	Monitoring parameters	Source Part I of Annex IV to Regulation (EU) 2017/2400, unless otherwise specified	Description
10	Vehicle category (N ₁ , N ₂ , N ₃ , M ₁ , M ₂ , M ₃)	1.1.4	Vehicle classification
11	Axle configuration	1.1.5	
12	Maximum gross vehicle weight (t)	1.1.6	
13	Vehicle group	1.1.7	
14	Name and address of manufacturer	1.1.1	Vehicle and chassis specification
15	Make (trade name of manufacturer)	1.1.7 Part II of Annex IV to Regulation (EU) 2017/2400	Main engine specifications
16	Corrected actual curb mass (kg)	1.1.8	
17	Engine rated power (kW)	1.2.3	
18	Engine idling speed (1/min)	1.2.4	
19	Engine rated speed (1/min)	1.2.5	Aerodynamics
20	Engine capacity (ltr)	1.2.6	
21	Engine reference fuel type (diesel/LPG/CNG...)	1.2.7	
22	Certification option used for generation of CdxA (standard values/measurement)	1.8.2	
23	CdxA value (air drag value)	1.8.4	Main transmission specifications
24	Name and address of transmission manufacturer	—	
25	Make (trade name of transmission manufacturer)	—	
26	Certification option used for the generation of simulation tool loss maps (Option 1/Option 2/Option 3/Standard values)	1.3.3	
27	Transmission type (SMT ⁽²⁾ , AMT ⁽³⁾ , APT ⁽⁴⁾ -S ⁽⁵⁾ , APT-P ⁽⁶⁾)	1.3.4	
28	Number of gears	1.3.5	
29	Transmission ratio final gear	1.3.6	
30	Retarder type	1.3.7	Main axle specifications
31	Power take off (yes/no)	1.3.8	
32	Name and address of axle manufacturer	—	
33	Make (trade name of axle manufacturer)	—	
34	Certification option used for the generation of a simulation tool loss map (standard values/measurement)	1.7.3	
35	Axle type (e.g. standard single driven axle)	1.7.4	
36	Axle ratio	1.7.5	

No	Monitoring parameters	Source Part I of Annex IV to Regulation (EU) 2017/2400, unless otherwise specified	Description
37	Certification option used for the generation of a simulation tool loss map (standard values/measurement)	1.6.3	Angle drive specifications
38	Angle drive ratio	1.6.4	
39	Name and address of tyre manufacturer	—	Main tyre specifications
40	Make (trade name of tyre manufacturer)	—	
41	Tyre dimension axle 1	1.9.1	
42	Specific rolling resistance coefficient (RRC) of all tyres on axle 1	1.9.3	
43	Tyre dimension axle 2	1.9.4	
44	Twin axle (yes/no) axle 2	1.9.5	
45	Specific RRC of all tyres on axle 2	1.9.7	
46	Tyre dimension axle 3	1.9.8	
47	Twin axle (yes/no) axle 3	1.9.9	
48	Specific RRC of all tyres on axle 3	1.9.11	
49	Tyre dimension axle 4	1.9.12	
50	Twin axle (yes/no) axle 4	1.9.13	
51	Specific RRC of all tyres on axle 4	1.9.15	
52	Engine cooling fan technology	1.10.1	Main auxiliary specifications
53	Steering pump technology	1.10.2	
54	Electric system technology	1.10.3	
55	Pneumatic system technology	1.10.4	
56	Mission profile (long haul, long haul (EMS (?)), regional, regional (EMS), urban, municipal, construction)	2.1.1	Simulation parameters (for each mission profile/load/fuel combination)
57	Load (as defined in the simulation tool) (kg)	2.1.2	
58	Fuel type (diesel/petrol/LPG/CNG/...)	2.1.3	
59	Total vehicle mass in simulation (kg)	2.1.4	
60	Average speed (km/h)	2.2.1	Vehicle driving performance (for each mission profile/load/fuel combination)
61	Minimum instantaneous speed (km/h)	2.2.2	
62	Maximum instantaneous speed (km/h)	2.2.3	
63	Maximum deceleration (m/s ²)	2.2.4	
64	Maximum acceleration (m/s ²)	2.2.5	
65	Full load percentage on driving time	2.2.6	

No	Monitoring parameters	Source Part I of Annex IV to Regulation (EU) 2017/2400, unless otherwise specified	Description
66	Total number of gear shifts	2.2.7	
67	Total driven distance (km)	2.2.8	
68	CO ₂ emissions (expressed in g/km, g/t-km, g/p-km, g/m ³ -km)	2.3.13-2.3.16	CO ₂ emissions and fuel consumption (for each mission profile/load/fuel combination)
69	Fuel consumption (expressed in g/km, g/t-km, g/p-km, g/m ³ -km, l/100km, l/t-km, l/p-km, l/m ³ -km, MJ/km, MJ/t-km, MJ/p-km, MJ/m ³ -km)	2.3.1-2.3.12	
70	Simulation tool version (X.X.X.)	3.1.1	Software and user information
71	Date and time of the simulation	3.1.2	
72	Number of licence to operate the simulation tool	—	
73	Cryptographic hash of simulation tool result	3.1.4	
74	Advanced CO ₂ reducing technologies	—	Vehicle CO ₂ reducing technologies
75	CO ₂ mass emission of the engine over WHTC ⁽⁸⁾ (g/kWh)	Point 1.4.2 of the addendum to Appendix 5, or point 1.4.2 of the addendum to Appendix 7, to Annex I to Regulation (EU) No 582/2011, whichever is applicable	Engine CO ₂ emission and specific fuel consumption
76	Fuel consumption of the engine over WHTC (g/kWh)	Point 1.4.2 of the addendum to Appendix 5, or point 1.4.2 of the addendum to Appendix 7, to Annex I to Regulation (EU) No 582/2011, whichever is applicable	
77	CO ₂ mass emission of the engine over WHSC ⁽⁹⁾ (g/kWh)	Point 1.4.1 of the addendum to Appendix 5, or point 1.4.1 of the addendum to Appendix 7, to Annex I to Regulation (EU) No 582/2011, whichever is applicable	
78	Fuel consumption of the engine over WHSC (g/kWh)	Point 1.4.1 of the addendum to Appendix 5, or point 1.4.1 of the addendum to Appendix 7, to Annex I to Regulation (EU) No 582/2011, whichever is applicable	

⁽¹⁾ Air drag.

⁽²⁾ Synchronised Manual Transmission.

⁽³⁾ Automated Manual Transmission or Automatic Mechanically-engaged Transmission.

⁽⁴⁾ Automatic Powershifting Transmission.

⁽⁵⁾ 'Case S' means the serial arrangement of a torque converter and the connected mechanical parts of the transmission.

⁽⁶⁾ 'Case P' means the parallel arrangement of a torque converter and the connected mechanical parts of the transmission (e.g. in power split installations).

⁽⁷⁾ European Modular System (EMS) in accordance with Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic (OJ L 235, 17.9.1996, p. 59).

⁽⁸⁾ World Harmonized Transient Driving Cycle.

⁽⁹⁾ Worldwide Harmonised Steady state Cycle.

PART C: AIR DRAG VALUE (CDXA) RANGES FOR THE PURPOSE OF PUBLICATION IN ACCORDANCE WITH ARTICLE 6

For the purpose of making publicly available the CdxA value specified in data entry 23 in accordance with Article 6, the Commission shall use the ranges defined in the following table containing the corresponding range for each CdxA value:

Range	CdxA value [m ²]	
	Min CdxA (CdxA ≥ min CdxA)	Max CdxA (CdxA < MaxCdxA)
A1	0,00	3,00
A2	3,00	3,15
A3	3,15	3,31
A4	3,31	3,48
A5	3,48	3,65
A6	3,65	3,83
A7	3,83	4,02
A8	4,02	4,22
A9	4,22	4,43
A10	4,43	4,65
A11	4,65	4,88
A12	4,88	5,12
A13	5,12	5,38
A14	5,38	5,65
A15	5,65	5,93
A16	5,93	6,23
A17	6,23	6,54
A18	6,54	6,87
A19	6,87	7,21
A20	7,21	7,57
A21	7,57	7,95
A22	7,95	8,35
A23	8,35	8,77
A24	8,77	9,21

ANNEX II

Data reporting and management

1. REPORTING BY MEMBER STATES

- 1.1. The data specified in Part A of Annex I shall be transmitted in accordance with Article 4 by the contact point of the competent authority via electronic data transfer to the Central Data Repository managed by the European Environment Agency ('the Agency').

The contact point shall notify the Commission and the Agency when the data are transmitted by email to the following addresses:

EC-CO2-HDV-IMPLEMENTATION@ec.europa.eu

and

HDV-monitoring@eea.europa.eu

2. REPORTING BY MANUFACTURERS

- 2.1. Manufacturers shall notify the Commission without delay and not later than by 31 December 2018 of the following information:

- (a) the manufacturer name indicated in the certificate of conformity or individual approval certificate;
- (b) the World Manufacturer Identifier code (WMI code) as defined in Commission Regulation (EU) No 19/2011⁽¹⁾ to be used in the vehicle identification numbers of new heavy-duty vehicles to be placed on the market;
- (c) the contact point responsible for uploading the data to the Business Data Repository of the Agency.

They shall notify the Commission without delay of any changes to that information.

The notifications shall be sent to the addresses referred to in point 1.1.

- 2.2. New manufacturers entering the market shall inform the Commission without delay of the information referred to in point 2.1.

- 2.3. The data specified in point 2 of Part B of Annex I shall be transmitted in accordance with Article 5(1) by the contact point of the manufacturer via electronic data transfer to the Business Data Repository managed by the Agency.

The contact point shall notify the Commission and the Agency when the data are transmitted by email to the addresses referred to in point 1.1.

3. DATA PROCESSING

- 3.1. The Agency shall process the data transmitted in accordance with points 1.1 and 2.3 and shall record the processed data in the Register.
- 3.2. The data relating to heavy-duty vehicles registered in the preceding calendar year and recorded in the Register shall be made public by 31 October each year, starting from 2020, with the exception of the data entries specified in Article 6(1).

⁽¹⁾ Commission Regulation (EU) No 19/2011 of 11 January 2011 concerning type-approval requirements for the manufacturer's statutory plate and for the vehicle identification number of motor vehicles and their trailers and implementing Regulation (EC) No 661/2009 of the European Parliament and of the Council concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 8, 12.1.2011, p. 1).

- 3.3. Where a competent authority or manufacturers identify errors in the data submitted, they shall without delay notify those to the Commission and the Agency by submitting an error notification report to the Central Data Repository or the Business Data Repository and by email sent to the addresses referred to in point 1.1.
 - 3.4. The Commission shall with the support of the Agency verify the notified errors and, where appropriate, correct the data in the Register.
 - 3.5. The Commission, with the support of the Agency, shall make available electronic formats for the data transmissions referred to in points 1.1 and 2.3 in due time before the transmission deadlines.
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DIRECTIVES

DIRECTIVE (EU) 2018/957 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 28 June 2018

amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

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

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

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

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

Whereas:

- (1) The freedom of movement for workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation and enforcement of those principles are further developed by the Union and aim to guarantee a level playing field for businesses and respect for the rights of workers.
- (2) The freedom to provide services includes the right of undertakings to provide services in the territory of another Member State and to post their own workers temporarily to the territory of that Member State for that purpose. In accordance with Article 56 TFEU, restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.
- (3) According to Article 3 of the Treaty on European Union, the Union is to promote social justice and protection. According to Article 9 TFEU, in defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.
- (4) More than 20 years after its adoption, it has become necessary to assess whether Directive 96/71/EC of the European Parliament and of the Council ⁽⁴⁾ still strikes the right balance between the need to promote the freedom to provide services and ensure a level playing field on the one hand and the need to protect the rights of posted workers on the other. To ensure that the rules are applied uniformly and to bring about genuine social convergence, alongside the revision of Directive 96/71/EC, priority should be given to the implementation and enforcement of Directive 2014/67/EU of the European Parliament and of the Council ⁽⁵⁾.

⁽¹⁾ OJ C 75, 10.3.2017, p. 81.

⁽²⁾ OJ C 185, 9.6.2017, p. 75.

⁽³⁾ Position of the European Parliament of 29 May 2018 (not yet published in the Official Journal) and decision of the Council of 21 June 2018.

⁽⁴⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

⁽⁵⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (the IMI Regulation) (OJ L 159, 28.5.2014, p. 11).

- (5) Sufficient and accurate statistical data in the area of posted workers is of utmost importance, in particular with regard to the number of posted workers in specific employment sectors and per Member State. The Member States and the Commission should collect and monitor such data.
- (6) The principle of equal treatment and the prohibition of any discrimination on grounds of nationality have been enshrined in Union law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between workers with fixed term contracts and comparable permanent workers, between part-time and full-time workers and between temporary agency workers and comparable workers of the user undertaking. Those principles include the prohibition of any measures which directly or indirectly discriminate on grounds of nationality. In applying those principles, the relevant case-law of the Court of Justice of the European Union is to be taken into consideration.
- (7) The competent authorities and bodies, in accordance with national law and/or practice, should be able to verify whether the conditions of accommodation for posted workers directly or indirectly provided by the employer comply with the national rules in the Member State to whose territory the workers are posted (host Member State) that also apply to posted workers.
- (8) Posted workers who are temporarily sent from their regular place of work in the host Member State to another place of work, should receive at least the same allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State. The same should apply as regards the expenditure incurred by posted workers required to travel to and from their regular place of work in the host Member State. Double payment of travel, board and lodging expenses should be avoided.
- (9) Posting is temporary in nature. Posted workers usually return to the Member State from which they were posted after completion of the work for which they were posted. However, in view of the long duration of some postings and in acknowledgment of the link between the labour market of the host Member State and the workers posted for such long periods, where posting lasts for periods longer than 12 months host Member States should ensure that undertakings which post workers to their territory guarantee those workers an additional set of terms and conditions of employment that are mandatorily applicable to workers in the Member State where the work is carried out. That period should be extended where the service provider submits a motivated notification.
- (10) Ensuring greater protection for workers is necessary to safeguard the freedom to provide, in both the short and the long term, services on a fair basis, in particular by preventing abuse of the rights guaranteed by the Treaties. However, the rules ensuring such protection for workers cannot affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services, including in cases where a posting exceeds 12 or, where applicable, 18 months. Any provision applicable to posted workers in the context of a posting exceeding 12 or, where applicable, 18 months must thus be compatible with that freedom. In accordance with settled case law, restrictions to the freedom to provide services are permissible only if they are justified by overriding reasons in the public interest and if they are proportionate and necessary.
- (11) Where a posting exceeds 12 or, where applicable, 18 months, the additional set of terms and conditions of employment to be guaranteed by the undertaking posting workers to the territory of another Member State should also cover workers who are posted to replace other posted workers performing the same task at the same place, to ensure that such replacements are not used to circumvent the otherwise applicable rules.
- (12) Directive 2008/104/EC of the European Parliament and of the Council ⁽¹⁾ gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. That principle should also apply to temporary agency workers posted to the territory of another Member State. Where that principle applies, the user undertaking should inform the temporary-work agency about the working conditions and remuneration it applies to its workers. Member States are able, under certain conditions to derogate from the principles of equal treatment and equal pay pursuant to Article 5(2) and (3) of Directive 2008/104/EC. Where such a derogation applies, the temporary-work agency has no need for the information about the user undertaking's working conditions and the information requirement should therefore not apply.

⁽¹⁾ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

- (13) Experience shows that workers who have been hired out by a temporary employment undertaking or placement agency to a user undertaking are sometimes sent to the territory of another Member State in the framework of the transnational provision of services. The protection of those workers should be ensured. Member States should ensure that the user undertaking informs the temporary employment undertaking or placement agency about the posted workers who are temporarily working in the territory of a Member State other than the Member State in which they normally work for the temporary employment undertaking or placement agency or for the user undertaking, in order to allow the employer to apply, as appropriate, the terms and conditions of employment that are more favourable to the posted worker.
- (14) This Directive, in the same way as Directive 96/71/EC, should not prejudice the application of Regulations (EC) No 883/2004 ⁽¹⁾ and (EC) No 987/2009 ⁽²⁾ of the European Parliament and of the Council.
- (15) Because of the highly mobile nature of work in international road transport, the implementation of this Directive in that sector raises particular legal questions and difficulties, which are to be addressed, in the framework of the mobility package, through specific rules for road transport also reinforcing the combating of fraud and abuse.
- (16) In a truly integrated and competitive internal market, undertakings compete on the basis of factors such as productivity, efficiency, and the education and skill level of the labour force, as well as the quality of their goods and services and the degree of innovation thereof.
- (17) It is within Member States' competence to set rules on remuneration in accordance with national law and/or practice. The setting of wages is a matter for the Member States and the social partners alone. Particular care should be taken not to undermine national systems of wage setting or the freedom of the parties involved.
- (18) When comparing the remuneration paid to a posted worker and the remuneration due in accordance with the national law and/or practice of the host Member State, the gross amount of remuneration should be taken into account. The total gross amounts of remuneration should be compared, rather than the individual constituent elements of remuneration which are rendered mandatory as provided for by this Directive. Nevertheless, in order to ensure transparency and to assist the competent authorities and bodies in carrying out checks and controls it is necessary that the constituent elements of remuneration can be identified in enough detail according to the national law and/or practice of the Member State from which the worker was posted. Unless the allowances specific to the posting concern expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging, they should be considered to be part of the remuneration and should be taken into account for the purposes of comparing the total gross amounts of remuneration.
- (19) Allowances specific to posting often serve several purposes. Insofar as their purpose is the reimbursement of expenditure incurred on account of the posting, such as expenditure on travel, board and lodging, they should not be considered to be part of remuneration. It is for Member States, in accordance with their national law and/or practice, to set rules with regard to the reimbursement of such expenditure. The employer should reimburse posted workers for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.
- (20) In view of the relevance of allowances specific to posting, uncertainty as to which elements of such allowances are allocated to the reimbursement of expenditure incurred on account of the posting should be avoided. The entire allowance should be considered to be paid in reimbursement of expenditure unless the terms and conditions of employment resulting from the law, regulation or administrative provision, collective agreements, arbitration awards or contractual agreements that apply to the employment relationship determine which elements of the allowance are allocated to the reimbursement of expenditure incurred on account of the posting and which are part of remuneration.
- (21) The constituent elements of remuneration and other terms and conditions of employment under national law or collective agreements as referred to in this Directive should be clear and transparent to all undertakings and posted workers. As transparency of, and access to, information are essential for legal certainty and law enforcement, it is, with regard to Article 5 of Directive 2014/67/EU, justified to extend Member States' obligation to publish the information on the terms and conditions of employment, on the single official national website, to the constituent

⁽¹⁾ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

⁽²⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

elements of remuneration rendered mandatory as well as to the additional set of terms and conditions of employment applicable to postings exceeding 12 or, where applicable, 18 months under this Directive. Each Member State should ensure that the information provided on the single official national website is accurate and is updated on a regular basis. Any penalty imposed on an undertaking for non-compliance with the terms and conditions of employment to be ensured to posted workers should be proportionate, and the determination of the penalty should take into account, in particular, whether the information on the single official national website on the terms and conditions of employment was provided in accordance with Article 5 of Directive 2014/67/EU, respecting the autonomy of the social partners.

- (22) Directive 2014/67/EU lays down a number of provisions to ensure that rules on the posting of workers are enforced and are respected by all undertakings. Article 4 of that Directive provides for factual elements that may be taken into account in the overall assessment of the specific situations in order to identify genuine posting situations and to prevent abuse and circumvention of the rules.
- (23) Employers should, before the beginning of a posting, take appropriate measures to provide essential information to the worker about the terms and conditions of employment as regards the posting in accordance with Council Directive 91/533/EEC ⁽¹⁾.
- (24) This Directive establishes a balanced framework with regard to the freedom to provide services and the protection of posted workers, which is non-discriminatory, transparent and proportionate while respecting the diversity of national industrial relations. This Directive does not prevent the application of terms and conditions of employment which are more favourable to posted workers.
- (25) With a view to tackling abuses in subcontracting situations and in order to protect the rights of posted workers, Member States should take appropriate measures, in accordance with Article 12 of Directive 2014/67/EU, to ensure subcontracting liability.
- (26) In order to ensure that Directive 96/71/EC is correctly applied, coordination between the Member States' competent authorities and/or bodies and cooperation at Union level on combating fraud relating to the posting of workers should be strengthened.
- (27) In the context of combating fraud related to the posting of workers, the European Platform to enhance cooperation in tackling undeclared work (the 'Platform'), established by Decision (EU) 2016/344 of the European Parliament and the Council ⁽²⁾, should, in accordance with its mandate, participate in the monitoring and the evaluation of cases of fraud, improve the implementation and efficiency of administrative cooperation between Member States, develop alert mechanisms and bring assistance and support to reinforced administrative cooperation and information exchanges between the competent authorities or bodies. In doing so, the Platform is to work in close cooperation with the Committee of Experts on Posting of Workers, established by Commission Decision 2009/17/EC ⁽³⁾.
- (28) The transnational nature of certain situations of fraud or abuses related to the posting of workers justifies concrete measures aiming to reinforce the transnational dimension of inspections, inquiries and exchanges of information between the competent authorities or bodies of the Member States concerned. To that end, in the framework of administrative cooperation provided for in Directives 96/71/EC and 2014/67/EU, in particular Article 7(4) of Directive 2014/67/EU, the competent authorities or bodies should have the necessary means for alerting on such situations and exchanging information aiming to prevent and combat fraud and abuses.
- (29) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁴⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

⁽¹⁾ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

⁽²⁾ Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.3.2016, p. 12).

⁽³⁾ Commission Decision 2009/17/EC of 19 December 2008 setting up the Committee of Experts on Posting of Workers (OJ L 8, 13.1.2009, p. 26).

⁽⁴⁾ OJ C 369, 17.12.2011, p. 14.

(30) Directive 96/71/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 96/71/EC

Directive 96/71/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) the title is replaced by ‘Subject-matter and scope’;

(b) the following paragraphs are inserted:

‘-1. This Directive shall ensure the protection of posted workers during their posting in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers’ health and safety that must be respected.

-1a. This Directive shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.’;

(c) paragraph 3 is amended as follows:

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

‘(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.’;

(ii) the following subparagraphs are added:

‘Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council (*).

The user undertaking shall inform the temporary employment undertaking or placement agency which hired out the worker in due time before commencement of the work referred to in the second subparagraph.

(*) Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (OJ L 159, 28.5.2014, p. 11).’;

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

— by law, regulation or administrative provision, and/or

- by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:
 - (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual leave;
 - (c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - (g) equality of treatment between men and women and other provisions on non-discrimination;
 - (h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
 - (i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Point (i) shall apply exclusively to travel, board and lodging expenditure incurred by posted workers where they are required to travel to and from their regular place of work in the Member State to whose territory they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

For the purposes of this Directive, the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and means all the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with paragraph 8.

Without prejudice to Article 5 of Directive 2014/67/EU, Member States shall publish the information on the terms and conditions of employment, in accordance with national law and/or practice, without undue delay and in a transparent manner, on the single official national website referred to in that Article, including the constituent elements of remuneration as referred to in the third subparagraph of this paragraph and all the terms and conditions of employment in accordance with paragraph 1a of this Article.

Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.

Where, contrary to Article 5 of Directive 2014/67/EU, the information on the single official national website does not indicate which terms and conditions of employment are to be applied, that circumstance shall be taken into account, in accordance with national law and/or practice, in determining penalties in the event of infringements of the national provisions adopted pursuant to this Directive, to the extent necessary to ensure the proportionality thereof.;

- (b) the following paragraphs are inserted:

‘1a. Where the effective duration of a posting exceeds 12 months, Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down in the Member State where the work is carried out:

- by law, regulation or administrative provision, and/or
- by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8.

The first subparagraph of this paragraph shall not apply to the following matters:

- (a) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses;
- (b) supplementary occupational retirement pension schemes.

Where the service provider submits a motivated notification, the Member State where the service is provided shall extend the period referred to in the first subparagraph to 18 months.

Where an undertaking as referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place, the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual posted workers concerned.

The concept of “the same task at the same place” referred to in the fourth subparagraph of this paragraph shall be determined taking into consideration, inter alia, the nature of the service to be provided, the work to be performed and the address(es) of the workplace.

1b. Member States shall provide that the undertakings referred to in point (c) of Article 1(3) guarantee posted workers the terms and conditions of employment which apply pursuant to Article 5 of Directive 2008/104/EC of the European Parliament and of the Council (*) to temporary agency workers hired-out by temporary-work agencies established in the Member State where the work is carried out.

The user undertaking shall inform the undertakings referred to in point (c) of Article 1(3) of the terms and conditions of employment that it applies regarding the working conditions and remuneration to the extent covered by the first subparagraph of this paragraph.

(*) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).;

- (c) paragraph 7 is replaced by the following:

‘7. Paragraphs 1 to 6 shall not prevent the application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. The employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.

Where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure.’;

- (d) in paragraph 8, the second and third subparagraphs are replaced by the following:

‘In the absence of, or in addition to, a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
- collective agreements which have been concluded by the most representative employers’ and labour organisations at national level and which are applied throughout national territory,

provided that their application to undertakings as referred to in Article 1(1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, with regard to the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.

Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:

- are subject, in the place in question or in the sector concerned, to the same obligations as undertakings as referred to in Article 1(1) as regards the matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, as regards the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, and
- are required to fulfil such obligations with the same effects.’;

(e) paragraphs 9 and 10 are replaced by the following:

‘9. Member States may require undertakings as referred to in Article 1(1) to guarantee workers referred to in point (c) of Article 1(3), in addition to the terms and conditions of employment referred to in paragraph 1b of this Article, other terms and conditions that apply to temporary agency workers in the Member State where the work is carried out.

10. This Directive shall not preclude the application by Member States, in compliance with the Treaties, to national undertakings and to the undertakings of other Member States, on the basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions.’;

(3) in Article 4(2), the first subparagraph is replaced by the following:

‘2. Member States shall make provision for cooperation between the competent authorities or bodies, including public authorities, which, in accordance with national law, are responsible for monitoring the terms and conditions of employment referred to in Article 3, including at Union level. Such cooperation shall in particular consist in replying to reasoned requests from those authorities or bodies for information on the transnational hiring-out of workers, and in tackling manifest abuses or possible cases of unlawful activities, such as transnational cases of undeclared work and bogus self-employment linked to the posting of workers. Where the competent authority or body in the Member State from which the worker is posted does not possess the information requested by the competent authority or body of the Member State to whose territory the worker is posted, it shall seek to obtain that information from other authorities or bodies in that Member State. In the event of persistent delays in the provision of such information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.’;

(4) Article 5 is replaced by the following:

‘Article 5

Monitoring, control and enforcement

The Member State to whose territory the worker is posted and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and in Directive 2014/67/EU and shall take appropriate measures in the event of failure to comply with this Directive.

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

Member States shall in particular ensure that adequate procedures are available to workers and/or workers’ representatives for the enforcement of obligations under this Directive.

Where, following an overall assessment made pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this Directive, that Member State shall ensure that the worker benefits from relevant law and practice.

Member States shall ensure that this Article does not lead to the worker concerned being subject to less favourable conditions than those applicable to posted workers.’;

(5) the introductory wording of the Annex is replaced by the following:

‘The activities referred to in Article 3(2) include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:’.

*Article 2***Review**

1. The Commission shall review the application and implementation of this Directive. By 30 July 2023, the Commission shall submit a report on the application and implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments to this Directive and to Directive 96/71/EC.
2. The report referred to in paragraph 1 shall include an assessment of whether further measures to ensure a level playing field and protect workers are required:
 - (a) in the case of subcontracting;
 - (b) in the light of Article 3(3) of this Directive, taking into account the developments concerning the legislative act amending Directive 2006/22/EC of the European Parliament and of the Council⁽¹⁾ as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

*Article 3***Transposition and application**

1. Member States shall adopt and publish, by 30 July 2020, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from 30 July 2020. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
3. This Directive shall apply to the road transport sector from the date of application of a legislative act amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

*Article 4***Entry into force**

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

*Article 5***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 28 June 2018.

For the European Parliament
The President
A. TAJANI

For the Council
The President
L. PAVLOVA

⁽¹⁾ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

DIRECTIVE (EU) 2018/958 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 June 2018
on a proportionality test before adoption of new regulation of professions

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 46, Article 53(1) and Article 62 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 freedom to choose an occupation is a fundamental right. The Charter of Fundamental Rights of the European Union ('the Charter') guarantees the freedom to choose an occupation, as well as the freedom to conduct a business. The free movement of workers, the freedom of establishment and the freedom to provide services are fundamental principles of the internal market enshrined in the Treaty on the Functioning of the European Union (TFEU). National rules organising access to regulated professions should therefore not constitute an unjustified or disproportionate obstacle to the exercise of those fundamental rights.
- (2) In the absence of specific provisions harmonising the requirements on access to a regulated profession or the pursuit thereof laid down in Union law, it is a Member State competence to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.
- (3) The principle of proportionality is one of the general principles of Union law. It follows from case-law ⁽³⁾ that national measures liable to hinder, or to make less attractive, the exercise of fundamental freedoms guaranteed by the TFEU should fulfil four conditions, namely, they should: be applied in a non-discriminatory manner; be justified by public interest objectives; be suitable for securing the attainment of the objective which they pursue; and not go beyond what is necessary in order to attain that objective.
- (4) Directive 2005/36/EC of the European Parliament and of the Council ⁽⁴⁾ includes an obligation for Member States to assess the proportionality of their requirements restricting access to, or the pursuit of, regulated professions, and to communicate the results of that assessment to the Commission, launching the 'mutual evaluation process'. That process means that Member States had to carry out a screening of all their legislation on all of the professions that were regulated in their territory.
- (5) The results of the mutual evaluation process revealed a lack of clarity as regards the criteria to be used by Member States when assessing the proportionality of requirements restricting access to, or the pursuit of, regulated professions, as well as an uneven scrutiny of such requirements at all levels of regulation. To avoid fragmentation of the internal market and to eliminate barriers to the taking-up and pursuit of certain employed or self-employed activities, there should be a common approach at Union level, preventing disproportionate measures from being adopted.
- (6) In its Communication of 28 October 2015 entitled 'Upgrading the Single market: more opportunities for people and businesses', the Commission identified the need to adopt an analytical proportionality framework for Member States to use when reviewing existing regulations of professions or when proposing new ones.

⁽¹⁾ OJ C 288, 31.8.2017, p. 43.

⁽²⁾ Position of the European Parliament of 14 June 2018 (not yet published in the Official Journal) and decision of the Council of 21 June 2018.

⁽³⁾ Judgement of the Court of Justice of 30 November 1995, *Gebhard*, C-55/94, ECLI:EU:C:1995:411, paragraph 37.

⁽⁴⁾ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

- (7) This Directive aims to establish rules for proportionality assessments to be conducted by Member States before the introduction of new, or the amendment of existing, professional regulations, in order to ensure the proper functioning of the internal market, while guaranteeing transparency and a high level of consumer protection.
- (8) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. This Directive should apply to requirements restricting access to, or the pursuit of, existing regulated professions or new professions that Member States are considering whether to regulate. This Directive should apply in addition to Directive 2005/36/EC and without prejudice to other provisions laid down in a separate Union act concerning access to, or the pursuit of, a given regulated profession.
- (9) This Directive is without prejudice to the competence of Member States to define the organisation and the content of their systems of education and professional training, and in particular as regards the possibility for them to delegate to professional organisations the power to organise or supervise professional education and training. Provisions which do not restrict access to, or the pursuit of, regulated professions, including editorial amendments, technical adaptations to the content of training courses or the modernisation of training regulations, should not fall within the scope of this Directive. Where professional education or training consists of activities which are remunerated, the freedom of establishment and the freedom to provide services should be guaranteed.
- (10) Where Member States transpose specific requirements concerning the regulation of a given profession established in a separate Union act which does not leave Member States a choice as to the exact way in which they are to be transposed, the assessment of proportionality, as required by specific provisions of this Directive, should not be applied.
- (11) Member States should be able to rely on a common regulatory framework based on clearly defined legal concepts concerning the different ways to regulate a profession across the Union. There are several ways to regulate a profession, for instance by reserving access to, or the pursuit of, a particular activity to holders of a professional qualification. Member States may also regulate one of the modes of pursuit of a profession by laying down conditions for the use of professional titles or by imposing qualification requirements only on self-employed, on salaried professionals, or on the managers or legal representatives of undertakings, especially where the activity is pursued by a legal person in the form of a professional company.
- (12) Before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions, Member States should assess the proportionality of such provisions. The extent of the assessment should be proportionate to the nature, the content and the impact of the provision being introduced.
- (13) The burden of proof of justification and proportionality lies with the Member States. The reasons for regulating invoked by a Member State by way of justification should thus be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that Member State and by specific evidence substantiating its arguments. Although a Member State does not necessarily have to produce a specific study or a specific form of evidence or materials establishing the proportionality of such a measure prior to its adoption, it should carry out an objective analysis, taking into account the specific circumstances of that Member State, that demonstrates that there are genuine risks for the achievement of public interest objectives.
- (14) Member States should carry out proportionality assessments in an objective and independent manner, including where a profession is regulated indirectly by giving a particular professional body the power to regulate. Those assessments could include an opinion obtained from an independent body, including existing bodies that are part of the national legislative process, entrusted by the Member States concerned with the task of providing such opinion. This is particularly important in cases where the assessment is made by local authorities, regulatory bodies or professional organisations, whose greater proximity to local conditions and specialised knowledge could in certain cases make them better placed to identify the best way of meeting the public interest objectives, but whose policy choices could provide benefits to established operators at the expense of new market entrants.
- (15) It is appropriate to monitor the proportionality of new or amended provisions restricting access to, or the pursuit of, regulated professions after their adoption. A review of the proportionality of a restrictive national measure in the area of regulated professions should be based not only on the objective of that national measure at the time of its adoption, but also on its effects, assessed after its adoption. The assessment of the proportionality of the national measure should be based on developments found to have occurred in the area of the regulated profession since the measure was adopted.

- (16) As confirmed by settled case-law, any unjustified restriction resulting from national law restricting the freedom of establishment or the freedom to provide services is prohibited, including any discrimination on grounds of nationality or residence.
- (17) Where the taking-up and the pursuit of employed or self-employed activities are conditional on complying with certain requirements relating to specific professional qualifications, laid down directly or indirectly by the Member States, it is necessary to ensure that such requirements are justified by public interest objectives, such as those within the meaning of the TFEU, namely public policy, public security and public health, or by overriding reasons in the public interest, recognised as such in the case-law of the Court of Justice. It is also necessary to clarify that the following are among the overriding reasons in the public interest, recognised by the Court of Justice: preserving the financial equilibrium of the social security system; the protection of consumers, of recipients of services, including by guaranteeing the quality of craft work, and of workers; the safeguarding of the proper administration of justice; ensuring the fairness of trade transactions; the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision; transport safety; the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage; social policy objectives; and cultural policy objectives. According to settled case-law, purely economic reasons, namely promoting the national economy to the detriment of the fundamental freedoms, as well as purely administrative reasons, such as carrying out controls or gathering statistics, cannot constitute an overriding reason in the public interest.
- (18) It is for the Member States to determine the level of protection which they wish to afford to the public interest objectives and the appropriate level of regulation, within the limits of proportionality. The fact that one Member State imposes less strict rules than another Member State does not mean that the latter Member State's rules are disproportionate and therefore incompatible with Union law.
- (19) With regard to the protection of public health, according to Article 168(1) TFEU, a high level of human health protection is to be ensured in the definition and implementation of all Union policies and activities. This Directive is fully in line with that objective.
- (20) In order to ensure that the provisions they introduce, and that amendments they make to existing provisions, are proportionate, Member States should consider the criteria for assessing the proportionality and the additional criteria which are relevant for the regulated profession being analysed. Where a Member State intends to regulate a profession or to amend existing rules, account should be taken of the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients, including consumers, to professionals or to third parties. It should also be borne in mind that, in the field of professional services, there is usually an asymmetry of information between consumers and professionals, given that professionals display a high level of technical knowledge which consumers may not have.
- (21) Requirements linked to professional qualifications should be considered to be necessary only where existing measures, such as product safety law or consumer protection law, cannot be regarded as being suitable or genuinely effective to achieve the aim pursued.
- (22) To meet the requirement of proportionality, a measure should be suitable for securing the attainment of the objective pursued. A measure should be considered to be suitable for securing the attainment of the objective pursued only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner, for instance where similar risks related to certain activities are addressed in a comparable way and where any exceptions to the restrictions involved are applied in line with the stated objective. Furthermore, the national measure should effectively contribute to achieving the objective pursued and therefore, where it has no effect on the ground for justification, it should not be considered to be suitable.
- (23) The overall impact of the measure on the free movement of persons and services within the Union, on consumer choice and on the quality of the service provided should be duly taken into account by the Member States. On that basis, Member States should ascertain, in particular, whether the extent of the restriction to access to, or the pursuit of, regulated professions is proportionate to the importance of the objectives pursued and the expected gains.
- (24) Member States should carry out a comparison between the national measure at issue and alternative, less restrictive means that would result in the same objective being attained but would impose fewer restrictions. Where the measures are justified by consumer protection only and where the risks identified are limited to the relationship between the professional and the consumer and therefore do not negatively affect third parties, Member States

should assess whether their objective could be attained by means that are less restrictive than reserving activities to professionals. For instance, where consumers can reasonably make a choice between using the services of qualified professionals or not, less restrictive means, such as protection of the professional title or enrolment on a professional register, should be used. Regulation by way of reserved activities and protected professional title should be considered where the measures aim to prevent a risk of serious harm to public interest objectives, such as public health.

- (25) Where relevant in view of the nature and the content of the measure being analysed, Member States should also take the following elements into account: the connection between the scope of professional activities covered by a profession and the professional qualification required; the complexity of the tasks in particular as regards the level, the nature and the duration of the training or experience required; the existence of different routes to obtain the professional qualification; whether the activities reserved to certain professionals can be shared with other professionals; and the degree of autonomy in exercising a regulated profession in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional.
- (26) This Directive takes account of scientific and technological progress, and contributes to the proper functioning of the internal market, including in the digital environment. In view of the speed of technological change and scientific developments, updates in access requirements could be of particular importance for a number of professions, especially for professional services provided by electronic means. Where a Member State regulates a profession, account should be taken of the fact that scientific and technological developments could reduce or increase the asymmetry of information between professionals and consumers. Where the scientific and technological developments carry a high risk to the public interest objectives, it is for the Member States, where necessary, to encourage professionals to keep up with those developments.
- (27) Member States should carry out a comprehensive assessment of the circumstances in which the measure is adopted and implemented and examine in particular the effect of the new or amended provisions when combined with other requirements restricting access to, or the pursuit of, the profession. The taking-up and pursuit of certain activities may be conditional on complying with several requirements such as rules relating to the organisation of the profession, compulsory membership of a professional organisation or body, professional ethics, supervision and liability. Therefore, when assessing the effect of the new or amended provisions, Member States should take into account the existing requirements, including continuous professional development, compulsory membership of a professional organisation or body, registration or authorisation schemes, quantitative restrictions, specific legal form requirements and shareholding requirements, territorial restrictions, multidisciplinary restrictions and incompatibility rules, requirements concerning insurance cover, language knowledge requirements, to the extent necessary to practise the profession, fixed minimum and/or maximum tariff requirements, and requirements on advertising.
- (28) The introduction of additional requirements may be suitable to attain the public interest objectives. The mere fact that their individual or combined effect should be assessed does not mean that those requirements are *prima facie* disproportionate. For example, the obligation to undergo continuous professional development may be suitable to ensure that professionals keep abreast of developments in their respective areas, as long as it does not lay down discriminatory and disproportionate conditions to the detriment of new entrants. Likewise, compulsory membership of a professional organisation or body may be considered appropriate where those professional organisations or bodies are entrusted by the State with safeguarding the relevant public interest objectives, for example in supervising the legitimate practice of the profession, or organising or supervising continuous professional training. Where the independence of a profession cannot be adequately guaranteed by other means, Member States could consider the application of safeguards, such as limiting the shareholding of persons outside the profession or providing that the majority of the voting rights are to be held by persons practising the profession, as long as such safeguards do not go beyond what is necessary in order to protect the public interest objective. Member States could consider establishing fixed minimum and/or maximum tariff requirements with which the service providers must comply, especially for services where this is necessary for the effective application of the principle of reimbursing costs, as long as such restriction is proportionate and, where necessary, derogations from the minimum and/or maximum tariffs are provided for. Where the introduction of additional requirements duplicates requirements which have already been introduced by a Member State in the context of other rules or procedures, such requirements cannot be regarded as proportionate to achieve the objective pursued.
- (29) Under Title II of Directive 2005/36/EC, Member States cannot impose on service providers established in another Member State providing professional services on a temporary and occasional basis requirements or restrictions prohibited in that Directive, such as authorisation by, registration with, or membership of, a professional organisation or body or having representatives on the territory of the host Member State for the purposes of having access to, or the pursuit of, a regulated profession. Member States can, where necessary, require service providers

wishing to provide services on a temporary basis, to provide information in the form of a written declaration to be made in advance of the first service provision and to renew this declaration on a yearly basis. Therefore, in order to facilitate the provision of professional services, it is necessary to reiterate, taking into account the temporary or occasional nature of the service, that requirements, such as automatic temporary registration or pro forma membership of a professional organisation or body, prior declarations and document requirements, as well as the payment of a fee or any charges, should be proportionate. These requirements should not lead to a disproportionate burden on service providers nor should they hinder or render less attractive the exercise of the freedom to provide services. Member States should, in particular, assess whether the requirement to provide certain information and documents in accordance with Directive 2005/36/EC and the possibility of obtaining further details by way of administrative cooperation between Member States through the Internal Market Information System are proportionate and are sufficient to prevent a serious risk of circumvention of the applicable rules by service providers. This Directive should however not apply to measures designed to ensure compliance with applicable employment terms and conditions.

- (30) As confirmed by settled case-law, the health and life of humans ranks foremost among the interests protected by the TFEU. Consequently, Member States should duly take account of the objective of ensuring a high level of human health protection when assessing requirements for healthcare professions, such as reserved activities, protected professional title, continuous professional development or rules relating to the organisation of the profession, professional ethics and supervision, while respecting the minimum training conditions, laid down in Directive 2005/36/EC. Member States should in particular ensure that the regulation of healthcare professions, having public health and patient safety implications, is proportionate and contributes to the guaranteeing of access to healthcare, recognised as a fundamental right in the Charter, as well as to safe, high quality and efficient healthcare for citizens on their territory. In establishing policies for healthcare services, account should be taken of the need to ensure accessibility, a high quality of service, and an adequate and safe supply of medicinal products, in accordance with the public health needs in the territory of the Member State concerned, as well as of the need to ensure the professional independence of healthcare professionals. With regard to the justification for the regulation of healthcare professions, Member States should take into account the objective of ensuring a high level of human health protection, including accessibility and high quality of healthcare for citizens, and adequate and safe supply of medicinal products, taking into consideration the margin of discretion referred to in Article 1 of this Directive.
- (31) It is essential for the proper functioning of the internal market to ensure that Member States provide information to citizens, representative associations and other relevant stakeholders, including social partners, before introducing new, or amending existing, requirements restricting access to, or the pursuit of, regulated professions. Member States should involve all parties concerned and give them the opportunity to make their views known. Where relevant and appropriate, Member States should carry out public consultations in accordance with their national procedures.
- (32) Member States should also give full consideration to citizens' rights of access to justice, as guaranteed by Article 47 of the Charter and Article 19(1) of the Treaty on European Union (TEU). It follows that, in accordance with procedures laid down in national law and constitutional principles, national courts should be able to assess the proportionality of requirements falling within the scope of this Directive, in order to ensure, for each natural or legal person, the right to an effective remedy against restrictions on the freedom to choose an occupation, on the freedom of establishment and on the freedom to provide services.
- (33) For the purposes of exchanging information on best practices, Member States should take the necessary measures to encourage the sharing of adequate and regularly updated information with other Member States on the regulation of professions, as well as on the effects of such regulation. The Commission should facilitate that exchange.
- (34) In order to increase transparency and to promote proportionality assessments based on comparable criteria, the information submitted by Member States, without prejudice to Article 346 TFEU, should be easily accessible in the database of regulated professions, in order to allow other Member States and interested parties to submit comments to the Commission and the Member State concerned. Those comments should be duly taken into account by the Commission in its summary report, produced in accordance with Directive 2005/36/EC.
- (35) Since the objectives of this Directive, namely to ensure the proper functioning of the internal market and to avoid disproportionate restrictions on access to, or the pursuit of, regulated professions, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions, with a view to ensuring the proper functioning of the internal market, while guaranteeing a high level of consumer protection. It does not affect the Member States' competence, in the absence of harmonisation, and margin of discretion to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Article 2

Scope

1. This Directive shall apply to the legislative, regulatory or administrative provisions of the Member States restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title, falling within the scope of Directive 2005/36/EC.
2. Where specific requirements concerning the regulation of a given profession are established in a separate Union act which does not leave Member States a choice as to the exact way in which they are to be transposed, the corresponding provisions of this Directive shall not apply.

Article 3

Definitions

For the purpose of this Directive, the definitions of Directive 2005/36/EC apply.

In addition, the following definitions apply:

- (a) 'protected professional title' means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;
- (b) 'reserved activities' means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

Article 4

Ex ante assessment of new measures and monitoring

1. Member States shall undertake an assessment of proportionality in accordance with the rules laid down in this Directive before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.
2. The extent of the assessment referred to in paragraph 1 shall be proportionate to the nature, the content and the impact of the provision.
3. Any provision referred to in paragraph 1 shall be accompanied by an explanation which is sufficiently detailed to make it possible to appraise compliance with the principle of proportionality.
4. The reasons for considering that a provision referred to in paragraph 1 is justified and proportionate shall be substantiated by qualitative and, wherever possible and relevant, quantitative elements.
5. Member States shall ensure that the assessment referred to in paragraph 1 is carried out in an objective and independent manner.
6. Member States shall monitor the compliance of new or amended legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions, after adoption, with the principle of proportionality, having due regard to any developments that have occurred since the provisions concerned were adopted.

*Article 5***Non-discrimination**

When introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions, Member States shall ensure that those provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.

*Article 6***Justification on grounds of public interest objectives**

1. Member States shall ensure that the legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions that they intend to introduce and that the amendments that they intend to make to existing provisions are justified by public interest objectives.
2. Member States shall consider in particular whether the provisions referred to in paragraph 1 are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as preserving the financial equilibrium of the social security system; the protection of consumers, of recipients of services and of workers; the safeguarding of the proper administration of justice; ensuring the fairness of trade transactions; the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision; transport safety; the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage; social policy objectives; and cultural policy objectives.
3. Grounds of a purely economic nature or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to, or the pursuit of, regulated professions.

*Article 7***Proportionality**

1. Member States shall ensure that the legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions that they introduce, and that the amendments that they make to existing provisions, are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.
2. To that end, before adopting the provisions referred to in paragraph 1, Member States shall consider:
 - (a) the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients, including consumers, to professionals or to third parties;
 - (b) whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient for the attainment of the objective pursued;
 - (c) the suitability of the provision as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus addresses the risks identified in a similar way as in comparable activities;
 - (d) the impact on the free movement of persons and services within the Union, on consumer choice and on the quality of the service provided;
 - (e) the possibility of using less restrictive means to achieve the public interest objective; for the purposes of this point, where the provisions are justified by consumer protection only and where the risks identified are limited to the relationship between the professional and the consumer, and therefore do not negatively affect third parties, Member States shall assess in particular whether the objective can be attained by means that are less restrictive than reserving activities;
 - (f) the effect of new or amended provisions, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the new or amended provisions, combined with other requirements contribute to and whether they are necessary for the achievement of the same public interest objective.

Member States shall also consider the following elements where relevant to the nature and the content of the provision being introduced or amended:

- (a) the connection between the scope of activities covered by a profession or reserved to it and the professional qualification required;

- (b) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required;
- (c) the possibility of obtaining the professional qualification by alternative routes;
- (d) whether, and why, the activities reserved to certain professions can or cannot be shared with other professions;
- (e) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;
- (f) the scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

3. For the purposes of point (f) of the first subparagraph of paragraph 2, Member States shall assess the effect of the new or amended provision when combined with one or more requirements, bearing in mind the fact that such effects might be positive as well as negative, and in particular the following:

- (a) reserved activities, protected professional title or any other form of regulation within the meaning of point (a) of Article 3(1) of Directive 2005/36/EC;
- (b) obligations to undergo continuous professional development;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;
- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding specific professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, including where the profession is regulated in parts of a Member State's territory in a manner that is different to the way in which it is regulated in other parts;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;
- (k) fixed minimum and/or maximum tariff requirements;
- (l) requirements on advertising.

4. Before introducing new, or amending existing, provisions, Member States shall, in addition, ensure the compliance with the principle of the proportionality of specific requirements related to temporary or occasional provision of services, provided under Title II of Directive 2005/36/EC, including:

- (a) automatic temporary registration with or pro forma membership of a professional organisation or body, referred to in point (a) of the first paragraph of Article 6 of Directive 2005/36/EC;
- (b) a declaration to be made in advance pursuant to Article 7(1) of Directive 2005/36/EC, documents required pursuant to paragraph 2 of that Article or any other equivalent requirement;
- (c) the payment of a fee, or any charges, required for the administrative procedures, related to the access to, or the pursuit of, regulated professions which the service provider incurs.

This paragraph shall not apply to measures designed to ensure compliance with applicable employment terms and conditions that Member States apply in accordance with Union law.

5. Where provisions referred to in this Article concern the regulation of healthcare professions and have patient safety implications, Member States shall take account of the objective of ensuring a high level of human health protection.

Article 8

Information and involvement of stakeholders

1. Member States shall, by appropriate means, make information available to citizens, service recipients and other relevant stakeholders, including those who are not members of the profession concerned, before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions.

2. Member States shall appropriately involve all parties concerned and shall give them the opportunity to make their views known. Where relevant and appropriate, Member States shall carry out public consultations in accordance with their national procedures.

Article 9

Effective remedy

Member States shall ensure that an effective remedy is available with regard to the matters covered by this Directive, in accordance with procedures laid down in national law.

Article 10

Exchange of information between Member States

1. For the purposes of the efficient application of this Directive, Member States shall take the necessary measures to encourage the exchange of information among Member States on matters covered by this Directive and on the particular way that they regulate a profession, or on the effects of such regulation. The Commission shall facilitate such exchange of information.

2. Member States shall inform the Commission of the public authorities responsible for transmitting and receiving information for the purposes of applying paragraph 1.

Article 11

Transparency

1. The reasons for considering that provisions, assessed in accordance with this Directive, are justified and proportionate, which, together with the provisions, are to be communicated to the Commission pursuant to Article 59(5) of Directive 2005/36/EC, shall be recorded by the Member States in the database of regulated professions, referred to in Article 59(1) of Directive 2005/36/EC and shall be made publicly available by the Commission.

2. Member States and other interested parties may submit comments to the Commission or to the Member State which has communicated the provisions and the reasons for considering that they are justified and proportionate. These comments shall be duly taken into account by the Commission in its summary report produced pursuant to Article 59(8) of Directive 2005/36/EC.

Article 12

Review

1. By 18 January 2024 and every five years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation and performance of this Directive, including, among other aspects, its scope and its effectiveness.

2. Where appropriate, the report referred to in paragraph 1 shall be accompanied by relevant proposals.

Article 13

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 July 2020. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 14

Entry into force

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

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 28 June 2018.

For the European Parliament

The President

A. TAJANI

For the Council

The President

L. PAVLOVA

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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