

# Official Journal of the European Union

# L 430



English edition

## Legislation

Volume 64

2 December 2021

### Contents

#### I *Legislative acts*

##### DIRECTIVES

- ★ **Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability <sup>(1)</sup> ..... 1**

#### II *Non-legislative acts*

##### REGULATIONS

- ★ **Commission Implementing Regulation (EU) 2021/2119 of 1 December 2021 laying down detailed rules on certain records and declarations required from operators and groups of operators and on the technical means for the issuance of certificates in accordance with Regulation (EU) 2018/848 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2021/1378 as regards the issuance of the certificate for operators, groups of operators and exporters in third countries ..... 24**

##### DECISIONS

- ★ **Council Decision (EU) 2021/2120 of 25 November 2021 on the position to be taken on behalf of the European Union within the ACP-EU Committee of Ambassadors as regards the amendment of Decision No 3/2019 of the ACP-EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement ..... 28**
- ★ **Commission Decision (EU) 2021/2121 of 6 July 2020 on records management and archives ..... 30**

<sup>(1)</sup> Text with EEA relevance.

# EN

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

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

## Corrigenda

- ★ **Corrigendum to Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14.6.2021)..... 42**

## I

(Legislative acts)

## DIRECTIVES

**DIRECTIVE (EU) 2021/2118 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 24 November 2021****amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Insurance against civil liability in respect of the use of motor vehicles ('motor insurance') is of special importance for European citizens, whether they are policyholders or could become injured parties as a result of an accident. It is also a major concern for insurance undertakings, as it constitutes an important segment of the 'non-life' insurance market in the Union. Motor insurance also has a significant impact on the free movement of persons, goods and vehicles, and hence on the internal market. Reinforcing and consolidating the internal market for motor insurance should therefore be a key objective of Union action in the field of financial services.
- (2) In 2017, the Commission carried out an evaluation of the functioning of Directive 2009/103/EC of the European Parliament and of the Council <sup>(3)</sup>, including its efficiency, effectiveness and coherence with other Union policies. The conclusion of the evaluation was that Directive 2009/103/EC functions well on the whole, and does not need amendment in most aspects. However, four areas were identified in respect of which targeted amendments would be appropriate: compensation of parties injured as a result of accidents where the insurance undertaking concerned is insolvent, minimum obligatory amounts of insurance cover, insurance checks of vehicles by Member States, and the use of policyholders' claims-history statements by a new insurance undertaking. In addition to those four areas, the following, namely dispatched vehicles, accidents involving a trailer towed by a vehicle, motor insurance independent price comparison tools, and information centres and information to injured parties, have also been

<sup>(1)</sup> OJ C 440, 6.12.2018, p. 85.

<sup>(2)</sup> Position of the European Parliament of 21 October 2021 (not yet published in the Official Journal) and decision of the Council of 9 November 2021.

<sup>(3)</sup> Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p. 11).

identified as areas in respect of which targeted amendments would be appropriate. Furthermore, the clarity of Directive 2009/103/EC should be enhanced by replacing the term 'victim', which is used in that Directive as a synonym of 'injured party', by the term 'injured party' or 'party injured', as appropriate, through appropriate amendments. Those amendments have the exclusive objective of harmonising the terminology used in that Directive and do not constitute a change of substance.

- (3) Since the entry into force of Directive 2009/103/EC, many new types of motor-powered vehicles have come onto the market. Some of them are powered by a purely electrical motor, some of them by auxiliary equipment. Such vehicles should be taken into account in defining the meaning of 'vehicle'. That definition should be based on the general characteristics of such vehicles, in particular their maximum design speeds and net weights, and should provide that only vehicles propelled exclusively by mechanical power are covered. The definition should apply independently of the number of wheels that the vehicle has. Wheelchairs intended for use by persons with physical disabilities should not be included in the definition.
- (4) Light electric vehicles that do not fall within the definition of 'vehicle' should be excluded from the scope of Directive 2009/103/EC. However, nothing in that Directive should hinder Member States from requiring, under their national law, motor insurance, subject to conditions to be set by them, in respect of any motor equipment used on land that does not fall within that Directive's definition of 'vehicle', and for which consequently that Directive does not require such insurance. Nor should that Directive hinder Member States from providing, in their national laws, for the victims of accidents caused by any other motor equipment to have access to the Member State's compensation body as determined in Chapter 4. Member States should also be able to decide that, where residents of their territory are parties injured in an accident caused by such other motor equipment in another Member State in which motor insurance is not required for that motor equipment, those residents are to have access to the compensation body as determined in Chapter 4 in the Member State where they are residing. Compensation bodies of Member States should have the possibility of entering into a mutual agreement about the ways in which they will cooperate in that kind of situation.
- (5) In recent decisions of the Court of Justice of the European Union, namely in its judgments in the cases *Vnuk* <sup>(4)</sup>, *Rodrigues de Andrade* <sup>(5)</sup> and *Torreiro* <sup>(6)</sup>, the Court of Justice clarified the meaning of the concept 'use of vehicles'. In particular, the Court of Justice clarified that motor vehicles are intended normally to serve as a means of transport, irrespective of such vehicles' characteristics, and that the use of such vehicles covers any use of a vehicle consistent with its normal function as a means of transport, irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion. Directive 2009/103/EC does not apply if, at the time of the accident, the normal function of such a vehicle is 'use other than as a means of transport'. This could be the case if the vehicle is not being used within the meaning of Article 3, first paragraph, of that Directive, as its normal function is, for instance, 'use as an industrial or agricultural power source'. In the interest of legal certainty, it is appropriate to reflect that case-law in Directive 2009/103/EC by introducing a definition of 'use of a vehicle'.
- (6) Some motor vehicles are smaller and are therefore less likely to cause significant personal injury or damage to property than others. It would be disproportionate and not future proof to include them in the scope of Directive 2009/103/EC. Including them would also undermine the uptake of newer vehicles, such as electric bicycles that are not exclusively propelled by mechanical power, and discourage innovation. Furthermore, there is insufficient evidence that such smaller vehicles could cause accidents resulting in injured parties at the same scale as other vehicles, such as cars or trucks. In line with the principles of subsidiarity and proportionality, requirements at Union level should, therefore, cover only those vehicles that are defined as such in Directive 2009/103/EC.

<sup>(4)</sup> Judgment of the Court of Justice of 4 December 2014, *Vnuk*, C-162/13, ECLI:EU:C:2014:2146.

<sup>(5)</sup> Judgment of the Court of Justice of 28 November 2017, *Rodrigues de Andrade*, C-514/16, ECLI:EU:C:2017:908.

<sup>(6)</sup> Judgment of the Court of Justice of 20 December 2017, *Torreiro*, C-334/16, ECLI:EU:C:2017:1007.

- (7) As a matter of principle, motor insurance should cover accidents in all areas of the Member States. However, certain Member States have provisions governing vehicles used exclusively in specific areas with limited access. It should be possible for those Member States to make limited derogations from Article 3 of Directive 2009/103/EC in respect of restricted areas which unauthorised persons should not enter, such as location-specific areas and areas with equipment at ports and airports. A Member State that decides to make such derogations should also take appropriate measures to ensure that compensation is paid in respect of any loss or injury caused by such a vehicle.
- (8) It should also be possible for a Member State not to require compulsory motor insurance for vehicles that have not been admitted for use on public roads in accordance with its national law. Such Member State should nevertheless take appropriate measures to ensure that compensation is paid in respect of any loss or injury caused by such vehicles, except where the Member State also decides to derogate from Article 10 of Directive 2009/103/EC in respect of compensation for damage caused by such vehicles in areas not accessible to the public due to a legal or physical restriction on access to such areas, as defined by its national laws. Such derogation from Article 10 should apply to vehicles in respect of which a Member State has decided to derogate from the insurance obligation because those vehicles are not admitted for use on public roads in accordance with its national law, even if the insurance obligation for those vehicles could also benefit from a different derogation, provided for in Article 5 of Directive 2009/103/EC.
- (9) In certain Member States there are provisions regarding the use of vehicles as a means of deliberately causing personal injury or damage to property. Where applicable, in the most serious offences the Member States should be allowed to continue their legal practice of excluding such damage from compulsory motor insurance or of reclaiming the amount of insurance compensation that is paid out to the injured parties from the persons responsible for that injury or damage. However, in order not to reduce the protection granted by Directive 2009/103/EC, such legal practices should be allowed only if a Member State ensures that in such cases the injured parties are compensated for such damage in a manner that is as close as possible to how they would be compensated under Directive 2009/103/EC. Unless the Member State has provided for such an alternative compensation mechanism or guarantee, ensuring compensation of injured parties for such damage in a manner that is as close as possible to how they would be compensated under Directive 2009/103/EC, such damage should be covered in accordance with that Directive.
- (10) Member States should not apply Directive 2009/103/EC to the use of vehicles in motorsport events and activities, including races and competitions, as well as training, testing and demonstrations, including those of speed, reliability or skills, allowed in accordance with their national law. Such exempted activities should take place in a restricted and demarcated area in such a way as to ensure that ordinary traffic, members of the public and any parties unrelated to the activity are unable actually or potentially to share the route that is being driven. Such activities usually include those on designated motorsport tracks or routes and the areas of immediate vicinity, such as security areas, pit stop areas and garages, where the risk of an accident is much higher in comparison to normal roads and which unauthorised persons should not enter.
- (11) Such an exemption on motorsport events and activities should only apply where the Member State ensures that the organiser of the event or activity, or any other party, has taken out an alternative insurance or guarantee policy covering the damage to any third party, including spectators and other bystanders, but not necessarily the damage to participating drivers and their vehicles. Unless the organisers or other parties have, as a condition of that exemption, taken out an alternative insurance or guarantee policy, the damage, with the possible exception of damage to the participating drivers and their vehicles, should be covered in accordance with Directive 2009/103/EC.
- (12) In order not to reduce the protection granted by Directive 2009/103/EC, Member States should ensure that, in the motorsport events and activities allowed in accordance with their national law and eligible for that exemption, the injured parties are compensated for such damage in a manner that is as close as possible to how they would be compensated under Directive 2009/103/EC.

- (13) While being manufactured and transported, vehicles lack transport functions and are not considered as being used in the sense of Article 3, first paragraph, of Directive 2009/103/EC. However, if a Member State chooses not to apply the requirement to have motor insurance in respect of such vehicles pursuant to Article 28(1) of Directive 2009/103/EC, there should be business liability insurance to cover the damage which those vehicles might cause.
- (14) Currently, the national laws of many Member States link the insurance obligation to the use of a vehicle within the meaning of Article 3, first paragraph, of Directive 2009/103/EC. In such Member States, the use of a vehicle is only allowed when the vehicle is registered. The laws of those Member States stipulate that the vehicle is to be covered by motor insurance during the vehicle's active registration and use within the meaning of Article 3, first paragraph, of Directive 2009/103/EC. Consequently, those Member States do not require insurance cover for the use of vehicles which are permanently or temporarily deregistered because, for example, they are in a museum, are undergoing restoration or have not been used for an extended period of time for another reason, such as seasonal use. Such Member States need to take appropriate measures to ensure that compensation in line with the compensation available under Directive 2009/103/EC is paid in respect of any loss or injury caused in their territory and in the territory of other Member States by vehicles as defined in that Directive which are used within the meaning of Article 3, first paragraph, thereof.
- (15) Currently, some Member States, in which the obligation to insure against civil liability in respect of the use of a motor vehicle is not linked to registration of a vehicle, choose not to require compulsory motor insurance for vehicles that have been formally withdrawn from use in accordance with their national law. Examples of such formal withdrawal from use include the sending of a notification to the competent authority or other designated parties performing the function of the competent authority or the taking of other verifiable physical measures. Those Member States need to take appropriate measures to ensure that compensation in line with the compensation available under Directive 2009/103/EC is paid in respect of any loss or injury caused in their territory and in the territory of other Member States by such vehicles.
- (16) Currently, Member States are to refrain from performing checks of insurance on vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. New technological developments, such as the technology allowing automatic number plate recognition, enable the insurance of vehicles to be checked without stopping them and thus without interfering with the free movement of persons. It is therefore appropriate to allow those checks of insurance on vehicles, but only if they are non-discriminatory, necessary and proportionate, form part of a general system of checks on the national territory which are also carried out in respect of vehicles normally based in the territory of the Member State performing the checks, and do not require the stopping of the vehicle.
- (17) Member States that opt to set up a system that processes personal data which may subsequently be shared with other Member States, such as data from number plate recognition technology, need to legislate to allow for the processing of personal data for the purposes of combatting uninsured driving, whilst establishing suitable measures to safeguard data subjects' rights and freedoms and legitimate interests. The provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(7)</sup> apply to the processing of personal data for the purpose of combatting uninsured driving. The Member States' legislation should in particular specify the precise purpose, refer to the relevant legal basis, comply with the relevant security requirements and respect the principles of necessity, proportionality, and 'purpose limitation', and should set a proportionate data retention period. In addition, the principles of 'personal data protection by design' and 'personal data protection by default' should be applied to all data processing systems developed and used within the framework of the Member States' legislation.
- (18) In line with those principles, Member States should not retain the personal data processed exclusively for the purpose of handling an insurance check longer than the period needed to verify whether a vehicle holds valid insurance coverage. When a vehicle is found to be covered, all data related to that verification should be erased. When a verification system is unable to determine whether a vehicle is insured, that data should be held only for a

---

<sup>(7)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

limited period, not exceeding the number of days necessary to determine whether the insurance coverage exists. For those vehicles which have been found not to be covered by a valid insurance policy, it is reasonable to require that such data are retained until any administrative or judicial processes are completed and the vehicle is covered by a valid insurance policy.

- (19) Directive 2009/103/EC currently lays down different reference dates for the periodic recalculation of the minimum amounts of cover in different Member States, which leads to different minimum amounts of cover depending on the Member State. To ensure equal minimum protection of injured parties across the Union, those minimum amounts should be harmonised, and a uniform review clause that uses as a benchmark the harmonised index of consumer prices as published by Eurostat, as well as procedural rules governing such a review and setting out a uniform timeframe, should be introduced.
- (20) Effective and efficient protection of parties injured as a result of traffic accidents requires that those injured parties are entitled to claim compensation in their Member States of residence and to receive a response within a reasonable time. It also requires, where their claims are justified, that those injured parties are always paid the amounts due for their personal injuries or for any damage to their property, irrespective of whether the insurance undertaking of the party liable is solvent. Member States should therefore set up or authorise a body to provide initial compensation for injured parties residing within their territory, and which has the right to reclaim that compensation from the body set up or authorised for the same purpose in the home Member State of the insolvent insurance undertaking which issued the policy of the vehicle of the liable party. Where a Member State has an existing compensation arrangement, the Member State should be able to allow it to continue to operate.
- (21) An insurance undertaking may become insolvent in various ways, for example, as a result of being declared bankrupt, of defaulting on the performance of its obligations once it has renounced its authorisation in its home Member State or of having been the subject of a revocation measure or a decision prohibiting its activity. When an order is made or a decision is taken to commence the bankruptcy or winding-up proceedings, that order or decision should be made public. The body set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking in the home Member State of the insurance undertaking should inform such bodies in all other Member States about that order or decision.
- (22) Member States should ensure that the body set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking in the Member State in the territory of which the injured party resides, is competent at all stages in the proceedings to request information, to inform and be informed by, and to cooperate with the other relevant bodies, authorities and stakeholders in the Union. Such information should be sufficient for the recipient to gain at least a general understanding of the situation. Such information is important to ensure that the body which compensates an injured party is able, before the payment of compensation is made, to ascertain by itself or together with all the relevant parties pursuant to the national legislation, whether the insurance undertaking has already compensated the claimant in respect of his or her claim. The claim presented to that body may even be transferred to the insurance undertaking for further scrutiny or for a decision, where national procedural law so requires. Member States should ensure that the body requests and receives more detailed information about specific claims.
- (23) The system of reimbursement should be without prejudice to the applicable law regarding coverage levels of injured parties. The same principles should apply to claims regardless of whether the insurance undertaking is solvent or insolvent. The body of the home Member State of the insurance undertaking which issued the policy of the liable party should make the payment to the body of the Member State in the territory of which the injured party resides within a reasonable time after the body of the home Member State of the insurance undertaking receives a claim for recompensation regarding a payment that the body of the Member State of residence of the injured party has made to the injured party.

- (24) Depending on the different stages of claims handling, on payments made to the injured parties and on reimbursement processes in different bodies, there may be outstanding liabilities between bodies set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking. The right of subrogation should pass from the body that has paid out compensation first to the body of the other Member State as the reimbursement of bodies progresses. Therefore, the body, to the extent that it has provided compensation for the loss or injury suffered and has not yet been reimbursed, should be subrogated to the rights of the injured party against the person who caused the accident, or his or her insurance undertaking. However, that body should not be subrogated to the rights of the injured party against the policyholder or other insured person who caused the accident insofar as the liability of the policyholder or of the insured person would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State should be obliged to acknowledge this subrogation as provided for by any other Member State.
- (25) To ensure efficient and effective protection of injured parties in the case of insolvency of an insurance undertaking, it is necessary for the Member States to make appropriate arrangements to ensure that the funds needed to compensate injured parties are available when compensation payments are due. In accordance with the principle of subsidiarity, those arrangements should be decided by home Member States at national level. They should, however, be in compliance with Union law and in particular with such principles as *lex specialis* and *lex posterior*. In order to prevent placing an unjustified and disproportionate burden on insurers, if a Member State requires financial contributions from insurance undertakings, those contributions should be collected only from insurance undertakings authorised by that Member State. This should be without prejudice to the funding of any other functions that could be attributed to the body set up or authorised to compensate injured parties in the case of insolvency of an insurance undertaking.
- (26) In order to ensure that the requirements provided for in this Directive concerning the compensation of injured parties in the case of the insolvency of an insurance undertaking are implemented effectively, the bodies entrusted with this task should strive to conclude an agreement concerning their functions and obligations and the procedures for reimbursement. If no such agreement has been reached within 24 months of the date of entry into force of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of specifying the procedural tasks and obligations of such bodies with regard to reimbursement.
- (27) In the case of the insolvency of an insurance undertaking, injured parties should be entitled to claim compensation from a body in their Member State of residence, including when they are injured as a result of accidents occurring in a Member State other than their Member State of residence. Member States should be able to attribute the function of compensating such injured parties to a new body or to a body that already exists, including to the compensation body established or approved under Article 24 of Directive 2009/103/EC. Member States should also be able to attribute the tasks of compensating, in the case of insolvency of the insurance undertaking, parties injured as a result of accidents in their Member State of residence and those injured as a result of accidents in Member States other than their Member State of residence to a single body. In the case of parties injured in Member States other than their Member State of residence, it is also important to ensure the exchange of information and the cooperation with the compensation bodies established or approved under Article 24 of Directive 2009/103/EC in all Member States and with claims representatives.
- (28) Member States are able to set up or authorise more than one compensation body under Directive 2009/103/EC, which could potentially make it harder for injured parties to identify the body to which they are to submit their claims. Member States that set up or authorise more than one compensation body should therefore ensure that injured parties have access to essential information on the possible ways to apply for compensation in a manner that allows them to easily understand to which body they should apply.
- (29) In the case of a dispatched vehicle, it should be possible for the person responsible for third party liability cover to choose whether to take up an insurance policy in the Member State in which the vehicle is registered or, for a period of 30 days from the date of acceptance of delivery by the purchaser, in the Member State of destination, even if the vehicle has not formally been registered in the Member State of destination. The information centre of the Member State in which the vehicle is registered and, where different, of the Member State of destination, as well as that of



any other relevant Member State, such as the Member State in the territory of which an accident occurred, or in which an injured party is resident, should cooperate with each other to ensure that the necessary information on the dispatched vehicle that they have in accordance with Article 23 of Directive 2009/103/EC is available.

- (30) In the case of accidents involving trailers in respect of which a third party liability insurance separate from the one of the towing vehicle was issued, the injured party should be able to bring the claim against the insurer of the trailer where national law so provides. Upon request, the injured party should be able to obtain from the insurer of the trailer information about the identity of the insurer of the towing vehicle or where the insurer of the trailer is unable to identify the insurer of the towing vehicle, despite having made reasonable efforts to do so, information about the compensation mechanism provided for in Article 10 of Directive 2009/103/EC.
- (31) In order to facilitate the recognition of the claims history when concluding a new insurance policy, it should be possible to easily authenticate the previous claims histories of policyholders who seek to conclude new insurance contracts with insurance undertakings. In order to simplify the verification and authentication of claims-history statements, it is important for their content and format to be the same across all Member States. In addition, insurance undertakings that take into account claims-history statements to determine motor insurance premiums should not discriminate on the basis of nationality or solely on the basis of the previous Member State of residence of the policyholder. Moreover, insurance undertakings should treat a claims-history statement from another Member State as equal to a domestic claims-history statement and apply to a client from another Member State any discounts that would be available to an otherwise identical domestic client, including those discounts that are required by the Member State's national legislation, such as 'bonus-malus' discounts. Member States should remain free to adopt national legislation concerning 'bonus-malus' systems, since such systems are national in nature and without any cross-border element, and therefore, under the principle of subsidiarity, decision-making concerning them should remain with the Member States. To enable Member States to verify whether and how insurance undertakings treat claims-history statements, insurance undertakings should publish a general overview of their policies in respect of their use of claims history when calculating premiums. Without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council <sup>(8)</sup>, insurance undertakings are not required to publish commercially sensitive information, such as details of tariff rules.
- (32) In order to ensure uniform conditions for the implementation of Directive 2009/103/EC, implementing powers should be conferred on the Commission regarding the form and content of the claims-history statement. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(9)</sup>.
- (33) Member States should be able to choose to certify tools which enable consumers to compare prices, tariffs and coverage between providers of motor insurance which comply with the conditions set out in Directive 2009/103/EC. If duly certified, such tools could be denominated as 'motor insurance independent price comparison tools'. Member States should also be able to establish public price comparison tools, operated by a public authority.
- (34) To ensure that claims are handled smoothly when an accident report is required under national law which ensures the right of the injured party to obtain a copy of the accident report from competent authorities, it is important that the injured party has access to it in a timely manner.
- (35) To ensure that the minimum amounts of cover of motor insurance are not eroded over time, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the adaptation of those minimum amounts to reflect the evolving economic reality.

<sup>(8)</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

<sup>(9)</sup> 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).

- (36) When adopting delegated acts under empowerments in this Directive, 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 <sup>(10)</sup>. 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.
- (37) As part of the evaluation of the functioning of Directive 2009/103/EC, the Commission should monitor the application of that Directive, taking into account the number of injured parties, the amount of outstanding claims due to delays in payments following cross-border insolvency cases, the level of minimum amounts of cover in Member States, the amount of claims due to uninsured driving relating to cross-border traffic and the number of complaints regarding claims-history statements.
- (38) In addition, the Commission should prepare a report evaluating the functioning of, cooperation between and funding of the compensation bodies set up or authorised to compensate injured parties in the case of the insolvency of an insurance undertaking. If appropriate, the report should be accompanied by a legislative proposal.
- (39) In order to ensure that Directive 2009/103/EC continues to serve its purpose, which is to protect potential injured parties from accidents involving motor vehicles, the Commission should also monitor and review that Directive in light of technological developments, including the increased use of autonomous and semi-autonomous vehicles. It should also analyse the use by insurance undertakings of systems in which premiums are influenced by the policyholders' claims-history statements. Moreover, the Commission should assess the effectiveness of exchange of information systems used for the purpose of cross-border checks on insurance.
- (40) Since the objectives of this Directive, in particular to ensure an equal minimum protection of parties injured as a result of traffic accidents across the Union, to ensure their protection in case of insolvency of insurance undertakings and to ensure equal treatment of claims-history statements by insurers for potential policy holders crossing internal Union borders, cannot be sufficiently achieved by the Member States but can rather, by reason of their 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (41) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>(11)</sup>, 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.
- (42) Directive 2009/103/EC should therefore be amended accordingly,

<sup>(10)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(11)</sup> OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2009/103/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) point 1 is replaced by the following:

‘1. “vehicle” means:

- (a) any motor vehicle propelled exclusively by mechanical power on land but not running on rails with:
  - (i) a maximum design speed of more than 25 km/h; or
  - (ii) a maximum net weight of more than 25 kg and a maximum design speed of more than 14 km/h;
- (b) any trailer to be used with a vehicle referred to in point (a), whether coupled or uncoupled.

Without prejudice to points (a) and (b), wheelchair vehicles exclusively intended for use by persons with physical disabilities are not considered to be vehicles referred to in this Directive;’

(b) the following point is inserted:

‘1a. “use of a vehicle” means any use of a vehicle that is consistent with the vehicle’s function as a means of transport at the time of the accident, irrespective of the vehicle’s characteristics and irrespective of the terrain on which the motor vehicle is used and of whether it is stationary or in motion;’

(c) point 2 is replaced by the following:

‘2. “injured party” and “party injured” means any person entitled to compensation in respect of any loss or injury caused by vehicles;’

(d) the following point is added:

‘8. “home Member State” means ‘home Member State’ as defined in Article 13(8), point (a), of Directive 2009/138/EC of the European Parliament and of the Council (\*).

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

(2) Article 3 is amended as follows:

(a) the first paragraph is replaced by the following:

‘Each Member State shall, subject to Article 5, take all appropriate measures to ensure that civil liability in respect of the use of a vehicle normally based in its territory is covered by insurance.’;

(b) the following paragraph is inserted after the first paragraph:

‘This Directive shall not apply to the use of a vehicle in motorsport events and activities, including races, competitions, training, testing and demonstrations in a restricted and demarcated area in a Member State, where the Member State ensures that the organiser of the activity or any other party has taken out an alternative insurance or guarantee policy covering the damage to any third party, including spectators and other bystanders but not necessarily covering the damage to the participating drivers and their vehicles.’;

- (3) Article 4 is replaced by the following:

*'Article 4*

### **Checks on insurance**

1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State.

However, they may carry out such checks on insurance provided that those checks are non-discriminatory, necessary and proportionate to achieve the end pursued, and:

- (a) are carried out as part of a control which is not aimed exclusively at insurance verification; or
- (b) form part of a general system of checks on the national territory which are carried out also in respect of vehicles normally based in the territory of the Member State carrying out the check, and do not require the vehicle to stop.

2. On the basis of the law of the Member State to which the controller is subject, personal data may be processed where necessary for the purpose of combatting the uninsured driving of vehicles in Member States other than the Member State of the territory in which they are normally based. That law shall be in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council (\*) and shall also lay down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests.

Those Member State measures shall, in particular, specify the precise purpose for which the data is to be processed, refer to the relevant legal basis, comply with the relevant security requirements and respect the principles of necessity, proportionality, and purpose limitation, and shall set a proportionate data retention period. The personal data processed pursuant to this Article exclusively for the purpose of handling an insurance check shall only be retained for as long as they are necessary for that purpose, and as soon as this has been achieved, they shall be fully erased. Where an insurance check shows that a vehicle is covered by compulsory insurance under Article 3, the controller shall immediately erase those data. When a check is unable to determine if a vehicle is covered by compulsory insurance under Article 3, the data shall only be retained for a limited period, not exceeding the number of days necessary to determine whether the insurance coverage exists.

---

(\*) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).';

- (4) in Article 5, the following paragraphs are added:

'3. A Member State may derogate from Article 3 in respect of vehicles that are temporarily or permanently withdrawn and prohibited from use, provided that a formal administrative procedure or other verifiable measure in accordance with national law has been put in place.

Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles in respect of which the insurance obligation referred to in Article 3 has not been satisfied.

The guarantee fund of the Member State in which an accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

4. A Member State may derogate from Article 3 in respect of vehicles used exclusively on areas with restricted access, in accordance with its national law.

Any Member State so derogating shall ensure that vehicles referred to in the first subparagraph are treated in the same way as vehicles in respect of which the insurance obligation referred to in Article 3 has not been satisfied.

The guarantee fund of the Member State in which an accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

5. A Member State may derogate from Article 3 in respect of vehicles not admitted for use on public roads in accordance with its national law.

Any Member State derogating from Article 3 in respect of vehicles referred to in the first subparagraph shall ensure that those vehicles are treated in the same way as vehicles in respect of which the insurance obligation referred to in Article 3 has not been satisfied.

The guarantee fund of the Member State in which an accident has taken place shall then have a claim against the guarantee fund in the Member State where the vehicle is normally based.

6. Where a Member State derogates, under paragraph 5, from Article 3 in respect of vehicles not admitted for use on public roads, that Member State may also derogate from Article 10 in respect of compensation for damage caused by those vehicles in areas not accessible to the public due to a legal or physical restriction on access to such areas, as defined by its national laws.

7. In respect of paragraphs 3 to 6, Member States shall notify the Commission of the use of the derogation and the particular arrangements concerning its implementation. The Commission shall publish a list of those derogations.;

(5) Article 9 is replaced by the following:

*'Article 9*

#### **Minimum amounts**

1. Without prejudice to any higher guarantees which Member States may prescribe, each Member State shall require the insurance referred to in Article 3 to be compulsory in respect of the following minimum amounts:

- (a) for personal injuries: EUR 6 450 000 per accident, irrespective of the number of injured parties, or EUR 1 300 000 per injured party;
- (b) for damage to property, EUR 1 300 000 per accident, irrespective of the number of injured parties.

For Member States that have not adopted the euro, the minimum amounts shall be converted into their national currency by applying the exchange rate of 22 December 2021, published in the *Official Journal of the European Union*.

2. Every five years from 22 December 2021, the Commission shall review the amounts referred to in paragraph 1 in line with the harmonised index of consumer prices (HICP) established pursuant to Regulation (EU) 2016/792 of the European Parliament and of the Council (\*).

The Commission shall adopt delegated acts in accordance with Article 28b concerning the adaptation of those amounts to the HICP within six months after the end of each five year period.

For Member States that have not adopted the euro, the amounts shall be converted into their national currency by applying the exchange rate of the date of the calculation of the new minimum amounts published in the *Official Journal of the European Union*.

(\*) Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95 (OJ L 135, 24.5.2016, p. 11).;

- (6) the title of Chapter 4 is replaced by the following:

‘CHAPTER 4

**COMPENSATION FOR DAMAGE CAUSED BY AN UNIDENTIFIED VEHICLE OR A VEHICLE IN RESPECT OF WHICH THE INSURANCE OBLIGATION PROVIDED FOR IN ARTICLE 3 HAS NOT BEEN SATISFIED AND COMPENSATION IN CASE OF INSOLVENCY;**

- (7) Article 10 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:

‘The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the injured party in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the injured party establishing, in any way, that the person liable is unable or refuses to pay.’;

- (b) in paragraph 2, the first subparagraph is replaced by the following:

‘2. The injured party may in any event apply directly to the body which, on the basis of information provided at its request by the injured party, shall be obliged to give him or her a reasoned reply regarding the payment of any compensation.’;

- (c) in paragraph 3, the second subparagraph is replaced by the following:

‘However, where the body has paid compensation for significant personal injuries to any party injured as a result of the same accident in which damage to property was caused by an unidentified vehicle, Member States may not exclude the payment of compensation for damage to property on the basis that the vehicle is unidentified. Nevertheless, Member States may provide for an excess of not more than EUR 500 to be borne by the injured party who suffers such damage to property.’;

- (d) paragraph 4 is replaced by the following:

‘4. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body, without prejudice to any other practice which is more favourable to the injured party.’;

- (8) the following Article is inserted:

‘Article 10a

**Protection of injured parties in respect of damage resulting from accidents occurring in their Member State of residence in the case of the insolvency of an insurance undertaking**

1. Each Member State shall set up or authorise a body entrusted with the task of providing compensation to injured parties resident within its territory, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment when:

- (a) the insurance undertaking is subject to bankruptcy proceedings; or
- (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC.

2. Each Member State shall take appropriate measures to ensure that the body referred to in paragraph 1 has sufficient funds available to compensate injured parties in accordance with the rules set out in paragraph 10 when compensation payments are due in situations provided for in paragraph 1, points (a) and (b). Those measures may include requirements to make financial contributions, provided that they are only imposed on insurance undertakings that have been authorised by the Member State imposing them.

3. Without prejudice to any obligation under Article 280 of Directive 2009/138/EC, each Member State shall ensure that, whenever an order is made or a decision is taken by a competent court or any other competent authority to commence the proceedings referred to in paragraph 1, point (a) or (b), in respect of an insurance undertaking of

which that Member State is the home Member State, that order or decision is made public. The body referred to in paragraph 1 established in the home Member State of the insurance undertaking shall ensure that all the bodies referred to in paragraph 1 in all Member States are promptly informed about that order or decision.

4. The injured party may present a claim directly to the body referred to in paragraph 1.

5. Upon receipt of the claim, the body referred to in paragraph 1 shall inform the equivalent body in the home Member State of the insurance undertaking and the insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, as defined in Article 268(1), points (e) and (f), of Directive 2009/138/EC, respectively, that it has received a claim from the injured party.

6. The insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, shall inform the body referred to in paragraph 1 when it compensates or denies liability with regard to a claim that has also been received by the body referred to in paragraph 1.

7. Member States shall ensure that the body referred to in paragraph 1, on the basis, inter alia, of information provided at its request by the injured party, provides the injured party with a reasoned offer of compensation or a reasoned reply as provided for in the second subparagraph of this paragraph, in accordance with the applicable national law, within three months from the date when the injured party presented his or her claim for compensation to the body.

For the purposes of the first subparagraph, the body shall:

- (a) make a reasoned offer of compensation, where it has established that it is liable to provide compensation pursuant to paragraph 1, point (a) or (b), the claim is not contested and the damages have been partially or fully quantified;
- (b) provide a reasoned reply to the points made in the claim, where it has established that it is not liable to provide compensation pursuant to paragraph 1, point (a) or (b), or where liability is denied or has not been clearly determined or the damages have not been fully quantified.

8. Where compensation is due in accordance with the second subparagraph, point (a), of paragraph 7, the body referred to in paragraph 1 shall pay the compensation to the injured party without undue delay and in any event within three months of the acceptance by the injured party of the reasoned offer of compensation referred to in the second subparagraph, point (a), of paragraph 7.

Where the damage has been only partially quantified, the requirements concerning the payment of the compensation set out in the first subparagraph shall apply in respect of that partially quantified damage, and from the moment of acceptance of the corresponding reasoned offer of compensation.

9. Member States shall ensure that the body referred to in paragraph 1 has all the necessary powers and competences to be able to cooperate in due time with other such bodies in other Member States, with bodies set up or authorised under Article 25a in all Member States and with other interested parties, including an insurance undertaking subject to bankruptcy or winding-up proceedings, its administrator or liquidator, and the national competent authorities of the Member States, at all stages during the proceedings referred to in this Article. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims, where relevant.

10. Where the home Member State of the insurance undertaking referred to in paragraph 1 is different from the Member State in which the injured party is resident, the body referred to in paragraph 1 in the Member State in which the injured party is resident which has compensated the injured party in accordance with paragraph 8 shall be entitled to claim full reimbursement of the sum paid by way of compensation from the body referred to in paragraph 1 in the home Member State of the insurance undertaking.

The body referred to in paragraph 1 in the home Member State of the insurance undertaking shall make the payment to the body referred to in paragraph 1 in the Member State in which the injured party is resident which has compensated the injured party in accordance with paragraph 8 in a reasonable time not exceeding six months, unless otherwise agreed in writing by those bodies, after it has received a claim for such reimbursement.

The body that has provided compensation pursuant to the first subparagraph shall be subrogated to the injured party in his or her rights against the person who caused the accident or his or her insurance undertaking, except against the policyholder or other insured person who caused the accident in so far as the liability of the policyholder or of the insured person would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State shall be obliged to acknowledge this subrogation as provided for by any other Member State.

11. Paragraphs 1 to 10 shall be without prejudice to the right of Member States to:

- (a) regard compensation paid by the body referred to in paragraph 1 as subsidiary or non-subsidiary;
- (b) make provision for the settlement of claims in respect of the same accident between:
  - (i) the body referred to in paragraph 1;
  - (ii) the person or persons responsible for the accident;
  - (iii) other insurance undertakings or social security bodies required to compensate the injured party.

12. Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to any requirements other than those laid down in this Directive. In particular, Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable is unable, or refuses, to pay.

13. The bodies referred to in paragraph 1 or the entities referred to in the second subparagraph of this paragraph shall strive to conclude an agreement by 23 December 2023 to implement this Article, concerning their functions and obligations and the procedures for reimbursement pursuant to this Article.

For that purpose, by 23 June 2023 each Member State shall:

- (a) set up or authorise the body referred to in paragraph 1 and empower it to negotiate and conclude such an agreement; or
- (b) designate an entity and empower it to negotiate and conclude such an agreement, to which the body referred to in paragraph 1 will become a party when it is set up or authorised.

The agreement referred to in the first subparagraph shall be immediately notified to the Commission.

Where the agreement referred to in the first subparagraph is not concluded by 23 December 2023, the Commission is empowered to adopt delegated acts in accordance with the procedure referred to in Article 28b in order to specify the procedural tasks and the procedural obligations of the bodies referred to in paragraph 1 with regard to reimbursement.;

- (9) in Article 11, the first paragraph is replaced by the following:

'In the event of a dispute between the body referred to in Article 10(1) and the civil liability insurer as to which must compensate the injured party, the Member States shall take the appropriate measures so that one of those parties is designated to be responsible in the first instance for paying compensation to the injured party without delay.;

- (10) the title of Chapter 5 is replaced by the following:

'CHAPTER 5

**SPECIAL CATEGORIES OF INJURED PARTY, EXCLUSION CLAUSES, SINGLE PREMIUM, VEHICLES DISPATCHED FROM ONE MEMBER STATE TO ANOTHER;**

- (11) the title of Article 12 is replaced by the following:

**'Special categories of injured party';**



(12) Article 13 is amended as follows:

(a) in paragraph 1:

(i) the introductory part of the first subparagraph is replaced by the following:

'1. Each Member State shall take all appropriate measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3 shall be deemed to be void in respect of claims by third parties injured as a result of an accident where that statutory provision or contractual clause excludes from insurance the use or driving of vehicles by:';

(ii) the third subparagraph is replaced by the following:

'Member States shall have the option – in the case of accidents occurring on their territory – of not applying the provision in the first subparagraph if and in so far as the injured party may obtain compensation for the damage suffered from a social security body:';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'Member States which, in the case of vehicles stolen or obtained by violence, provide that the body referred to in Article 10(1) is to pay compensation may fix in respect of damage to property an excess of not more than EUR 250 to be borne by the injured party:';

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

'1. By way of derogation from Article 13, point (13)(b), of Directive 2009/138/EC, where a vehicle is dispatched from one Member State to another, the Member State in which the risk is situated shall be considered, depending on the choice of the person responsible for third party liability cover, to be either the Member State of registration or, immediately upon acceptance of delivery by the purchaser, the Member State of destination, for a period of 30 days, even if the vehicle has not formally been registered in the Member State of destination.

Member States shall ensure that the information centre referred to in Article 23 of the Member State where the vehicle is registered, of the Member State of destination, where different, and of any other relevant Member State, such as the Member State where an accident occurred, or where an injured party is resident, cooperate with each other to ensure that the necessary information on the dispatched vehicle that they have in accordance with Article 23 is available:';

(14) the following Article is inserted:

*'Article 15a*

#### **Protection of injured parties in accidents involving a trailer towed by a vehicle**

1. In the case of an accident caused by a set of vehicles consisting of a vehicle towing a trailer, where the trailer has a separate third party liability insurance, the injured party may bring his or her claim directly against the insurance undertaking that insured the trailer, where:

(a) the trailer can be identified, but the vehicle that towed it cannot be identified; and

(b) the applicable national law provides for the insurer of the trailer to provide compensation.

An insurance undertaking that has compensated the injured party shall have recourse to the undertaking that insured the towing vehicle, or to the body referred to in Article 10(1), if and to the extent that this is provided for under the applicable national law.

This paragraph shall be without prejudice to applicable national law providing for rules more favourable to the injured party.

2. In the case of an accident caused by a set of vehicles consisting of a vehicle towing a trailer, the insurer of the trailer, unless the applicable national law requires it to provide full compensation, shall, at the request of the injured party, inform him or her without undue delay of:

(a) the identity of the insurer of the towing vehicle; or

(b) where the insurer of the trailer cannot identify the insurer of the towing vehicle, the compensation mechanism provided for in Article 10.;

(15) Article 16 is replaced by the following:

*'Article 16*

### **Statement relating to the third party liability claims**

Member States shall ensure that the policyholder has the right to request at any time a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims ("claims-history statement").

The insurance undertaking, or a body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, shall provide that claims-history statement to the policyholder within 15 days of the request. They shall do so using the form of the claims-history statement.

Member States shall ensure that, when taking account of claims-history statements issued by other insurance undertakings or other bodies as referred to in the second paragraph, insurance undertakings do not treat policyholders in a discriminatory manner or surcharge their premiums because of their nationality or solely on the basis of their previous Member State of residence.

Member States shall ensure that, where an insurance undertaking takes into account claims-history statements when determining premiums, it shall treat those issued in other Member States as equal to those issued by an insurance undertaking or bodies as referred to in the second paragraph within the same Member State, including when applying any discounts.

Member States shall ensure that insurance undertakings publish a general overview of their policies in respect of their use of claims-history statements when calculating premiums.

The Commission shall adopt by 23 July 2023 implementing acts specifying by means of a template, the form and content of the claims-history statement referred to in the second paragraph. That template shall contain information on the following:

- (a) the identity of the insurance undertaking or the body issuing the claims-history statement;
- (b) the identity of the policyholder, including his or her contact information;
- (c) the vehicle insured and its vehicle identification number;
- (d) the start date and end date of the insurance cover of the vehicle;
- (e) the number of third party liability claims settled under the insurance contract of the policyholder during the period covered by the claims-history statement, including the date of each claim;
- (f) additional information relevant under the rules or practices applicable in the Member States.

The Commission shall consult all interested parties and work closely with the Member States before adopting those implementing acts.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 28a(2).;

(16) the following Article is inserted:

*'Article 16a*

### **Motor insurance price comparison tools**

1. Member States may choose to certify tools which enable consumers free of charge to compare prices, tariffs and coverage between providers of the compulsory insurance referred to in Article 3 as "motor insurance independent price comparison tools" if the conditions of paragraph 2 are met.

2. A comparison tool within the meaning of paragraph 1 shall:
  - (a) be operationally independent from the providers of the compulsory insurance referred to in Article 3 and ensure that service providers are given equal treatment in search results;
  - (b) clearly disclose the identity of the owners and operators of the comparison tool;
  - (c) set out the clear, objective criteria on which the comparison is based;
  - (d) use plain and unambiguous language;
  - (e) provide accurate and up-to-date information and state the time of the last update;
  - (f) be open to any provider of the compulsory insurance referred to in Article 3, make available the relevant information, include a broad range of offers covering a significant part of the motor insurance market and, where the information presented is not a complete overview of that market, provide the user with a clear statement to that effect, before displaying results;
  - (g) provide an effective procedure to report incorrect information;
  - (h) include a statement that prices are based on the information provided and are not binding on insurance providers.;

(17) Article 23 is amended as follows:

- (a) the following paragraph is inserted:

‘1a. Member States shall ensure that insurance undertakings or other entities are required to provide the information referred to in paragraph 1, point (a)(i), (ii) and (iii), to the information centres and to inform them whenever an insurance policy becomes invalid or otherwise no longer covers a vehicle with a registration number.’;

- (b) paragraph 6 is replaced by the following:

‘6. The processing of personal data resulting from paragraphs 1 to 5 shall be carried out in accordance with Regulation (EU) 2016/679.’;

(18) the following Article is inserted:

*‘Article 25a*

**Protection of injured parties in respect of damage resulting from accidents occurring in a Member State other than their Member State of residence in the case of the insolvency of an insurance undertaking**

1. Each Member State shall set up or authorise a body entrusted with the task of providing compensation to injured parties resident within its territory, in the cases referred to in Article 20(1), at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, from the moment when:

- (a) the insurance undertaking is subject to bankruptcy proceedings; or
- (b) the insurance undertaking is subject to winding-up proceedings as defined in Article 268(1), point (d), of Directive 2009/138/EC.

2. Each Member State shall take appropriate measures to ensure that the body referred to in paragraph 1 has sufficient funds available to compensate injured parties in accordance with the rules set out in paragraph 10 when compensation payments are due in situations provided for in paragraph 1, points (a) and (b). Those measures may include requirements to make financial contributions, provided that they are only imposed on insurance undertakings that have been authorised by the Member State imposing them.

3. Without prejudice to any obligation under Article 280 of Directive 2009/138/EC, each Member State shall ensure that, whenever an order is made or a decision is taken by a competent court or any other competent authority to commence the proceedings referred to in paragraph 1, point (a) or (b), in respect of an insurance undertaking of which that Member State is the home Member State, that order or decision is made public. The body referred to in paragraph 1 established in the home Member State of the insurance undertaking shall ensure that all the bodies referred to in paragraph 1 and all the compensation bodies referred to in Article 24 in all Member States are promptly informed about that order or decision.

4. The injured party may present a claim directly to the body referred to in paragraph 1.

5. Upon receipt of the claim, the body referred to in paragraph 1 shall inform the equivalent body in the home Member State of the insurance undertaking, the compensation body under Article 24 in the Member State of residence of the injured party and the insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, as defined in Article 268(1), points (e) and (f), of Directive 2009/138/EC, respectively, that it has received a claim from the injured party.

6. The insurance undertaking subject to bankruptcy or winding-up proceedings, or its administrator or liquidator, shall inform the body referred to in paragraph 1 when it compensates or denies liability with regard to a claim that has also been received by the body referred to in paragraph 1.

7. Member States shall ensure that the body referred to in paragraph 1, on the basis, inter alia, of information provided at its request by the injured party, provides the injured party with a reasoned offer of compensation or a reasoned reply as provided for in the second subparagraph of this paragraph, in accordance with the applicable national law, within three months from the date when the injured party presented his or her claim for compensation to the body.

For the purposes of the first subparagraph, the body shall:

- (a) make a reasoned offer of compensation, where it has established that it is liable to provide compensation pursuant to paragraph 1, point (a) or (b), the claim is not contested and the damages have been partially or fully quantified;
- (b) provide a reasoned reply to the points made in the claim, where it has established that it is not liable to provide compensation pursuant to paragraph 1, point (a) or (b), or where liability is denied or has not been clearly determined or the damages have not been fully quantified.

8. Where compensation is due in accordance with the second subparagraph, point (a), of paragraph 7, the body referred to in paragraph 1 shall pay the compensation to the injured party without undue delay and in any event within three months of the acceptance by the injured party of the reasoned offer of compensation referred to in the second subparagraph, point (a), of paragraph 7.

Where the damage has been only partially quantified, the requirements concerning the payment of the compensation set out in the first subparagraph shall apply in respect of that partially quantified damage, and from the moment of acceptance of the corresponding reasoned offer of compensation.

9. Member States shall ensure that the body referred to in paragraph 1 has all the necessary powers and competences to be able to cooperate in due time with other such bodies in other Member States, with bodies set up or authorised under Articles 10a and 24 in all Member States and with other interested parties, including an insurance undertaking subject to bankruptcy or winding-up proceedings, its claims representative or administrator or liquidator, and the national competent authorities of the Member States, at all stages during the proceedings referred to in this Article. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims, where relevant.

10. Where the home Member State of the insurance undertaking referred to in paragraph 1 is different from the Member State in which the injured party is resident, the body referred to in paragraph 1 in the Member State in which the injured party is resident which has compensated the injured party in accordance with paragraph 8 shall be entitled to claim full reimbursement of the sum paid by way of compensation from the body referred to in paragraph 1 in the home Member State of the insurance undertaking.

The body referred to in paragraph 1 in the home Member State of the insurance undertaking shall make the payment to the body referred to in paragraph 1 in the Member State in which the injured party is resident which has compensated the injured party in accordance with paragraph 8 in a reasonable time not exceeding six months, unless otherwise agreed in writing by those bodies, after it has received a claim for such reimbursement.

The body that has provided compensation pursuant to the first subparagraph shall be subrogated to the injured party in his or her rights against the person who caused the accident or his or her insurance undertaking, except against the policyholder or other insured person who caused the accident in so far as the liability of the policyholder or of the insured person would be covered by the insolvent insurance undertaking in accordance with the applicable national law. Each Member State shall be obliged to acknowledge this subrogation as provided for by any other Member State.

11. Paragraphs 1 to 10 shall be without prejudice to the right of Member States to:

- (a) regard compensation paid by the body referred to in paragraph 1 as subsidiary or non-subsidiary;
- (b) make provision for the settlement of claims in respect of the same accident between:
  - (i) the body referred to in paragraph 1;
  - (ii) the person or persons responsible for the accident;
  - (iii) other insurance undertakings or social security bodies required to compensate the injured party.

12. Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to any requirements other than those laid down in this Directive. In particular, Member States shall not allow the body referred to in paragraph 1 to make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable is unable, or refuses, to pay.

13. The bodies referred to in paragraph 1 or the entities referred to in the second subparagraph of this paragraph shall strive to conclude an agreement by 23 December 2023 to implement this Article, concerning their functions and obligations and the procedures for reimbursement pursuant to this Article.

For that purpose, by 23 June 2023 each Member State shall:

- (a) set up or authorise the body referred to in paragraph 1 and empower it to negotiate and conclude such an agreement; or
- (b) designate an entity and empower it to negotiate and conclude such an agreement, to which the body referred to in paragraph 1 will become a party when it is set up or authorised.

The agreement referred to in the first subparagraph shall be immediately notified to the Commission.

Where the agreement referred to in the first subparagraph is not concluded by 23 December 2023, the Commission is empowered to adopt delegated acts in accordance with the procedure referred to in Article 28b in order to specify the procedural tasks and the procedural obligations of the bodies referred to in paragraph 1 with regard to reimbursement.;

(19) in Article 26, the first paragraph is replaced by the following:

‘Member States shall take all appropriate measures to facilitate the timely provision to the injured parties, their insurers or their legal representatives of the basic data necessary for the settlement of claims.’;

(20) the following Article is inserted:

*‘Article 26a*

### **Information to injured parties**

Member States which set up or authorise different compensation bodies under Article 10(1), Article 10a(1), Article 24(1) and Article 25a(1) shall ensure that injured parties have access to essential information on possible ways to apply for compensation.’;

(21) in Article 28(1), the following subparagraph is added:

‘The Member States may require motor insurance that meets the requirements of this Directive for any motor equipment used on land that is not covered by the definition of “vehicle” in Article 1, point 1, and to which Article 3 does not apply.’;

(22) the following Articles are inserted:

*Article 28a*

### **Committee procedure**

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC (\*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (\*\*).
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 28b*

### **Exercise of delegated powers**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(2) shall be conferred on the Commission for an indeterminate period of time from 22 December 2021.

The power to adopt delegated acts referred to in Article 10a(13), fourth subparagraph, and Article 25a(13), fourth subparagraph, shall be conferred on the Commission for a period of seven years from 22 December 2021. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

3. The delegation of power referred to in Article 9(2), Article 10a(13), fourth subparagraph, and Article 25a(13), fourth subparagraph, 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 that decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (\*\*).
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 9(2), Article 10a(13), fourth subparagraph, and Article 25a(13), fourth subparagraph, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

*Article 28c*

### **Evaluation and review**

1. No later than five years after the respective dates of application of Articles 10a and 25a as referred to in Article 30, second, third and fourth paragraph, the Commission shall submit a report to the European Parliament and to the Council on the functioning of, the cooperation between and the funding of the bodies referred to in Articles 10a and 25a. Where appropriate, the report shall be accompanied by a legislative proposal. With regard to the funding of those bodies, that report shall include at least:
  - (a) an assessment of the financing capacities and financing needs of the compensation bodies in relation to their potential liabilities, taking into account the risk of insolvency of motor insurers in the Member States' markets;
  - (b) an assessment of the harmonisation of the funding approach of the compensation bodies;

(c) if the report is accompanied by a legislative proposal, an assessment of the impact of contributions upon motor insurance contract premiums.

2. No later than 24 December 2030, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee evaluating the implementation of this Directive, with the exception of the elements that are concerned by the evaluation referred to in paragraph 1, including in respect of:

(a) the application of this Directive with regard to technological developments, in particular with regard to autonomous and semi-autonomous vehicles;

(b) the adequacy of the scope of this Directive, considering the accident risks posed by different motor vehicles;

(c) in the form of a review, the effectiveness of information exchange systems for the purposes of checks on insurance in cross-border situations, including, if needed, an assessment, for such cases, of the feasibility of using existing information exchange systems, and in any event, an analysis of the objectives of the information exchange systems and an assessment of their costs; and

(d) the use by insurance undertakings of systems in which premiums are influenced by the policyholders' claims-history statements, inter alia, bonus-malus systems or "no claims bonus".

That report shall be accompanied, where appropriate, by a legislative proposal.

(\*) Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34).

(\*\*) 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).

(\*\*\*) OJ L 123, 12.5.2016, p. 1.;

(23) in Article 30, the following paragraphs are added:

'Article 10a(1) to (12) shall apply from the date of the agreement referred to in Article 10a(13), first subparagraph, or from the date of application of the Commission delegated act referred to in Article 10a(13), fourth subparagraph.

Article 25a(1) to (12) shall apply from the date of the agreement referred to in Article 25a(13), first subparagraph, or from the date of application of the Commission delegated act referred to in Article 25a(13), fourth subparagraph.

However, Articles 10a(1) to (12) and Article 25a(1) to (12) shall not apply before 23 December 2023.

Article 16, second paragraph, second sentence, and third, fourth and fifth paragraphs shall apply from 23 April 2024 or from the date of application of the Commission implementing act referred to in Article 16, sixth paragraph, whichever is the later.'

## Article 2

### Transposition

1. By 23 December 2023 Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 23 December 2023.

By way of derogation from the first subparagraph of this paragraph, by 23 June 2023 Member States shall adopt the measures necessary to comply with the amendments set out in Article 1, points (8) and (18), of this Directive as regards Article 10a(13), second subparagraph, and Article 25a(13), second subparagraph, respectively, of Directive 2009/103/EC.

When Member States adopt the measures referred to in this paragraph, they shall contain a reference to this Directive or 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 provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

#### **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 4*

#### **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 24 November 2021.

*For the European Parliament*  
*The President*  
D. M. SASSOLI

*For the Council*  
*The President*  
A. LOGAR



**Statement by the Commission**

The Commission remains committed to defend a high degree of protection of victims in the context of the Motor Insurance Directive. Our objective is to ensure that victims, including in cross-border situations, are compensated as swiftly as possible and are not subject to disproportionate procedural requirements that might hamper their access to compensation. The effectiveness of compensation largely depends on whether it is done in timely manner. We note in this respect the concerns repeatedly expressed by the European Parliament as regards differences across Member States in relation to limitation periods, i.e. the relevant timespan during which an injured party may address a claim. The Commission will consider this issue carefully and examine possible remedies in order to further strengthen the protection of victims, should the evidence show that action at Union level is warranted.

---

## II

(Non-legislative acts)

## REGULATIONS

**COMMISSION IMPLEMENTING REGULATION (EU) 2021/2119  
of 1 December 2021**

**laying down detailed rules on certain records and declarations required from operators and groups of operators and on the technical means for the issuance of certificates in accordance with Regulation (EU) 2018/848 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2021/1378 as regards the issuance of the certificate for operators, groups of operators and exporters in third countries**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 <sup>(1)</sup>, and in particular Article 35(10), Article 39(2), points (a) and (b) and Article 45(4), thereof,

Whereas:

- (1) In accordance with Article 35(1), point (a), of Regulation (EU) 2018/848, the certificate provided by the competent authorities or, where appropriate, control authorities or control bodies to operators or groups of operators is to be issued in electronic form wherever possible. With the development and full deployment of the electronic Trade Control and Expert System (TRACES) referred to in Article 2, point (36), of Commission Implementing Regulation (EU) 2019/1715 <sup>(2)</sup>, the issuance of certificates in electronic form will become possible from 1 January 2023 for all competent authorities, control authorities and control bodies in the Union. For this reason, it is necessary to provide that the certificate referred to in Article 35 of Regulation (EU) 2018/848 has to be issued in electronic form, using TRACES from 1 January 2023.
- (2) Regulation (EU) 2018/848 requires operators and groups of operators to keep records to demonstrate their compliance with that Regulation. Certain minimum record-keeping requirements and details are laid down in Article 9(10), point (c), and Article 34(5) of Regulation (EU) 2018/848 and in Annexes II and III to that Regulation.
- (3) In accordance with the general production rules of Regulation (EU) 2018/848, preventive and precautionary measures must be put in place, where appropriate, at every stage of production, preparation and distribution. For that reason, the relevant official controls include, in particular, the verification of the application of such measures by operators and groups of operators. Although the application of some of those measures can be verified by physical on-the-spot inspections, for other measures records are necessary to demonstrate their application. Therefore, operators and groups of operators should keep those records to allow them to provide evidence when needed. For example, evidence of measures taken to avoid contamination with non-authorised products and substances and the commingling with non-organic products can be provided by keeping proof of cleaning of facilities, equipment and transport vehicles, and proof of training.

<sup>(1)</sup> OJ L 150, 14.6.2018, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (‘the IMSOC Regulation’) (OJ L 261 14.10.2019, p. 37).

- (4) Documentary accounts are also relevant for traceability purposes and mass balance, and consequently for the assessment of compliance with Regulation (EU) 2018/848. The traceability and mass balance checks under Commission Delegated Regulation (EU) 2021/771 <sup>(3)</sup> cover specific information that is to be justified by appropriate documents. Operators and groups of operators should keep those documents in order to provide evidence of compliance of their activities.
- (5) In accordance with Article 38(2) of Regulation (EU) 2018/848, official controls are to be performed in particular based on the likelihood of non-compliance. For that purpose, competent authorities or, where appropriate, control authorities or control bodies need relevant information. Therefore, Article 39(1), point (b), of Regulation (EU) 2018/848 requires operators and groups of operators to make all declarations and other communications that are necessary for official controls. In addition, Article 39(1), point (d)(i), of that Regulation requires, inter alia, a full description of their organic or in-conversion production units and of their activities.
- (6) In order to ensure that official controls can be appropriately planned, it is necessary to specify the information that is to be included in those declarations and other communications, in particular, information relating to the activities that are subcontracted and certain details of the production units and other premises, facilities and units used for the activities of the operators and groups of operators, and the planned forecast of production.
- (7) In accordance with Article 1, first paragraph and second paragraph, point (a), of Commission Implementing Regulation (EU) 2021/1378 <sup>(4)</sup>, which applies from 1 January 2022, control authorities and control bodies recognised in accordance with Article 46(1) of Regulation (EU) 2018/848 are to provide operators, groups of operators and exporters in third countries that have been subject to the controls referred to in Article 45(1), point (b)(i), of that Regulation with a certificate, to be issued in electronic form and by using TRACES. As the use of TRACES will not be possible before 1 January 2023, it is necessary to defer the obligation to use TRACES also in Implementing Regulation (EU) 2021/1378.
- (8) Implementing Regulation (EU) 2021/1378 should therefore be amended accordingly.
- (9) In the interest of clarity and legal certainty, this Regulation should apply from the date of application of Regulation (EU) 2018/848. However, the provision on the use of TRACES should apply from 1 January 2023.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Organic Production Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Issuance of the certificate referred to in Article 35(1) of Regulation (EU) 2018/848 in electronic form**

The certificate referred to in Article 35(1) of Regulation (EU) 2018/848 shall be issued as follows:

- (a) in accordance with the model set out in Annex VI to Regulation (EU) 2018/848;
- (b) in electronic form, using the electronic Trade Control and Expert System (TRACES) referred to in Article 2, point (36), of Implementing Regulation (EU) 2019/1715.

<sup>(3)</sup> Commission Delegated Regulation (EU) 2021/771 of 21 January 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council by laying down specific criteria and conditions for the checks of documentary accounts in the framework of official controls in organic production and the official controls of groups of operators (OJ L 165, 11.5.2021, p. 25).

<sup>(4)</sup> Commission Implementing Regulation (EU) 2021/1378 of 19 August 2021 laying down certain rules concerning the certificate issued to operators, groups of operators and exporters in third countries involved in the imports of organic and in-conversion products into the Union and establishing the list of recognised control authorities and control bodies in accordance with Regulation (EU) 2018/848 of the European Parliament and of the Council (OJ L 297, 20.8.2021, p. 24).

*Article 2***Records to be kept by operators and groups of operators**

1. Operators and groups of operators shall keep all the necessary documents, including stock and financial records, that will enable competent authorities or, where appropriate, control authorities or control bodies to carry out, in particular, the following checks:

- (a) checks on the preventive and precautionary measures taken in accordance with Article 9(6) and Article 28 of Regulation (EU) 2018/848;
- (b) the traceability check in accordance with Article 1(4) of Delegated Regulation (EU) 2021/771;
- (c) the mass balance check in accordance with Article 1(5) of Delegated Regulation (EU) 2021/771.

2. The documents to be kept for the purposes of the checks referred to in paragraph 1, point (a), shall include, in particular, documents confirming that the operator or group of operators has taken the proportionate and appropriate measures in order to:

- (a) prevent pests and diseases;
- (b) avoid contamination with products and substances that are not authorised for use in organic production in accordance with Regulation (EU) 2018/848 and the commingling with non-organic products.

*Article 3***Declarations and other communications necessary for official controls**

Operators and groups of operators shall include the following information in their declarations or communications pursuant to Article 39(1), point (b), of Regulation (EU) 2018/848 to the competent authority, control authority or control body that performs official controls:

- (a) which activities covered by the certificate referred to in Article 35(1) of Regulation (EU) 2018/848 are subcontracted;
- (b) the address or the geolocation of the organic, in-conversion and non-organic production units, the area of collection of wild plants or algae and of other premises and units used for their activities;
- (c) in case of holdings split into different production units in accordance with Article 9(7) of Regulation (EU) 2018/848, the description and the address or geolocation of the non-organic production units;
- (d) their planned forecast of production.

Those declarations and communications shall be updated where appropriate.

*Article 4***Amendment to Implementing Regulation (EU) 2021/1378**

Implementing Regulation (EU) 2021/1378 is amended as follows:

(1) in Article 1, second paragraph, point (a) is replaced by the following:

‘(a) be issued as follows:

- (i) in accordance with the model set out in Annex I to this Regulation;

(ii) in electronic form by using the electronic Trade Control and Expert System (TRACES) referred to in Article 2, point (36), of Commission Implementing Regulation (EU) 2019/1715 (\*);

---

(\*) Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation) (OJ L 261, 14.10.2019, p. 37).;

(2) in Article 3, the following third paragraph is added:

‘Article 1, second paragraph, point (a)(ii), shall apply from 1 January 2023.’.

#### Article 5

#### **Entry into force and application**

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

It shall apply from 1 January 2022.

Article 1, point (b), shall apply from 1 January 2023.

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

Done at Brussels, 1 December 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

---

# DECISIONS

## COUNCIL DECISION (EU) 2021/2120

of 25 November 2021

**on the position to be taken on behalf of the European Union within the ACP-EU Committee of Ambassadors as regards the amendment of Decision No 3/2019 of the ACP-EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part <sup>(1)</sup> (the 'ACP-EU Partnership Agreement') was signed in Cotonou on 23 June 2000 and entered into force on 1 April 2003. In accordance with Decision No 3/2019 of the ACP-EU Committee of Ambassadors <sup>(2)</sup> (the 'decision on transitional measures'), it is to be applied until 30 November 2021.
- (2) Pursuant to Article 95(4), first subparagraph, of the ACP-EU Partnership Agreement, negotiations towards a new ACP-EU Partnership Agreement (the 'new Agreement') were launched in September 2018. The new Agreement will not be ready to be applied by 30 November 2021, the expiry date of the current legal framework. It is therefore necessary to amend the decision on transitional measures in order to further extend the application of the provisions of the ACP-EU Partnership Agreement.
- (3) Article 95(4), second subparagraph, of the ACP-EU Partnership Agreement provides for the ACP-EU Council of Ministers to adopt any transitional measures that may be required until the new Agreement comes into force.
- (4) Pursuant to Article 15(4) of the ACP-EU Partnership Agreement, on 23 May 2019, the ACP-EU Council of Ministers delegated the powers to adopt the transitional measures to the ACP-EU Committee of Ambassadors <sup>(3)</sup>. Therefore it is for the ACP-EU Committee of Ambassadors to amend the transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the ACP-EU Committee of Ambassadors, as the envisaged act will be binding on the Union.
- (6) The provisions of the ACP-EU Partnership Agreement will continue to be applied with the aim of maintaining continuity in relations between the Union and its Member States, on the one hand, and the ACP States, on the other. Accordingly, the amended transitional measures are not intended as amendments to the ACP-EU Partnership Agreement as provided for in Article 95(3) thereof,

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 3. The ACP-EU Partnership Agreement was amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

<sup>(2)</sup> Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 1, 3.1.2020, p. 3).

<sup>(3)</sup> Decision No 1/2019 of the ACP-EU Council of Ministers of 23 May 2019 on the delegation of powers to the ACP-EU Committee of Ambassadors on the decision to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 146, 5.6.2019, p. 114).

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf within the ACP-EU Committee of Ambassadors, pursuant to Article 95(4) of the ACP-EU Partnership Agreement, shall be to amend Decision No 3/2019 of the ACP-EU Committee of Ambassadors in order to extend the application of the provisions of the ACP-EU Partnership Agreement until 30 June 2022, or until the entry into force of the new Agreement or the provisional application between the Union and the ACP States of the new Agreement, whichever comes first.

The provisions of the ACP-EU Partnership Agreement shall be applied in line with the purpose and objective of Article 95(4) thereof.

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 25 November 2021.

*For the Council*  
*The President*  
Z. POČIVALŠEK

---

**COMMISSION DECISION (EU) 2021/2121**  
**of 6 July 2020**  
**on records management and archives**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community <sup>(1)</sup>, and in particular Article 9(1) thereof,

Whereas:

- (1) The records held by the Commission form the basis of its operation and daily work. They are part of the Commission's assets and fulfil the functions of facilitating the exchange of information, providing evidence of action taken, meeting the institution's legal obligations and preserving its memory. They must therefore be managed in accordance with effective rules applicable to all directorates-general and equivalent departments.
- (2) The Commission keeps records that are created, received and managed in the course of its activities. All records, regardless of format and the technological environment in which they are collected, created or generated, are captured and maintained in an official electronic repository of records.
- (3) Provisions on records management and archives set out principles to ensure: the creation, receipt and proper preservation or elimination of records and their consultation and communication; the authenticity, reliability, integrity and readability over time of records and the metadata accompanying them; the identification of each record together with the extraction and allocation of metadata, so that it can be filed, searched and is easily traceable; the development, maintenance and updating of the structure of the Commission's records and archives management systems, its electronic repositories and its repositories for analogue media.
- (4) These principles are intended to cover the lifecycle of the Commission's records, whatever their medium, making available, exchanging, sharing, reusing and disseminating data, information and records, in line with the policy, governance arrangements and practice of the Commission's data and information management.
- (5) Effective and proper records management and archiving help meet the Commission's transparency obligations, in particular by facilitating public access to documents and implementing the principle of accountability of public actions.
- (6) Provisions on records management and archives should be aligned with the obligation to provide access to documents held by the Commission in accordance with the principles, arrangements and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council <sup>(2)</sup>.
- (7) By Commission Decision 2002/47/EC, ECSC, Euratom <sup>(3)</sup>, the Commission amended its Rules of Procedure to include provisions on document management and by Commission Decision 2004/563/EC, Euratom <sup>(4)</sup> it amended the Rules of Procedure to include provisions on electronic and digitised documents to set up electronic document management and archiving, laying down a common set of rules and procedures applicable to all departments.

<sup>(1)</sup> OJ L 43, 15.2.1983, p. 1.

<sup>(2)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>(3)</sup> Commission Decision 2002/47/EC, ECSC, Euratom of 23 January 2002 amending its Rules of Procedure (OJ L 21, 24.1.2002, p. 23).

<sup>(4)</sup> Commission Decision 2004/563/EC, Euratom of 7 July 2004 amending its Rules of Procedure (OJ L 251, 27.7.2004, p. 9).



- (8) It is necessary to update the rules determining the conditions under which electronic, digitised and electronically transmitted documents are valid and stored for the Commission's purposes.
- (9) The records management and archiving policy should take account of the Commission's digital transformation programme <sup>(5)</sup>. Therefore, the principle of the creation of records only in electronic format should be strongly emphasised, although exceptions to this principle should nevertheless be possible.
- (10) The Union institutions, bodies, offices and agencies are encouraged to recognise electronic identification and trust services covered by Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(6)</sup> for the purpose of administrative cooperation capitalising, in particular, on existing good practice and the results of ongoing projects in the areas covered by this Regulation.
- (11) The Commission's rules and procedures on records management and archives should be regularly updated, taking account of developments in and the results of academic and scientific research, including the emergence of relevant standards and developments in information and communication technologies.
- (12) A records management system does not only register records, but more broadly captures them to clearly and reliably identify them, ensure their traceability and make them available to other users through filing or other means of aggregation of records throughout their life cycle.
- (13) Information systems, networks and transmission facilities that feed the Commission's records system should be protected by appropriate security measures in accordance with the applicable security rules for protecting information.
- (14) Data and information should be available and shared as widely as possible within the Commission in order to facilitate the collaborative working of its staff and the retrievability and reuse of data and information and to promote the synergy of its resources and improve efficiency.
- (15) Each institution of the Union creates and maintains its historical archives and opens them to the public in accordance with Regulation (EEC, Euratom) No 354/83. Each institution furthermore adopts internal rules regarding the application of that Regulation.
- (16) Under Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(7)</sup>, the Commission is required to provide information to data subjects on the processing of personal data concerning them and to respect their rights as data subjects. However, the Commission should balance these rights with the objectives of archiving in the public interest in accordance with data protection law.
- (17) Articles 16(5) and 19(3) of Regulation (EU) 2018/1725 provide for exceptions to data subjects' right to information and right to erasure in respect of processing data for archiving purposes in the public interest. Those rights should not apply in principle in the particular context of the Commission's historical archives, taking into account the size of the institution and its records and the nature of archiving in the public interest. The erasure of personal data contained in such records, in particular, would undermine the validity, integrity and authenticity of the Commission's archives and is therefore likely to seriously impair the achievement of the objectives of archiving in the public interest.

---

<sup>(5)</sup> Communication to the Commission C(2018) 7118 on the European Commission Digital Strategy. See also Commission Communication C(2016) 6626, which sets out the general direction of the internal policy for data, information and knowledge management at the Commission.

<sup>(6)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

<sup>(7)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (18) The Commission may be unable or would be required to make a disproportionate effort to provide information on processing once its files and records selected for permanent preservation have been transferred to its historical archives. Data subjects should be informed that records containing their personal data may be transferred to the Commission's historical archives at the end of the retention period identified for those records as part of the information referred to in Articles 15 and 16 of Regulation (EU) 2018/1725. That information is provided in relation to the original processing operations for which the personal data were initially collected.
- (19) Article 25(4) of Regulation (EU) 2018/1725 gives the Commission the possibility of providing for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 of that Regulation, insofar as those rights are likely to render impossible or seriously impair the achievement of archiving purposes in the public interest and derogations are necessary for the fulfilment of those purposes. Unless derogations are provided for in a legal act adopted on the basis of the Treaties, internal rules must be adopted under which the Commission is entitled to derogate from those rights.
- (20) Granting access to personal data in case of a data subject request which does not provide specific information regarding the processing to which the request relates may involve a disproportionate administrative effort or be practically impossible, given the size and nature of the Commission's historical archives.
- (21) The rectification of personal data would undermine the integrity and authenticity of the Commission's archives and defeat the purpose of archiving in the public interest. This is without prejudice to the possibility that the Commission, in duly justified cases of inaccurate personal data, may decide to include a supplementary statement or annotation to the relevant record.
- (22) Personal data form an integral and indispensable part of records selected for permanent preservation. Therefore, granting the right to object to the processing of personal data contained in such records would render impossible the achievement of the purposes of archiving in the public interest.
- (23) The Commission should provide for derogations subject to the conditions and safeguards referred to in Article 13 of Regulation (EU) 2018/1725.
- (24) In applying the principle of accountability, the Commission should keep a record of its application of derogations.
- (25) To guarantee the utmost protection of the rights and freedoms of data subjects and in accordance with Article 44(1) of Regulation (EU) 2018/1725, the Data Protection Officer of the Commission should be informed as soon as possible of the application of derogations under this Decision.
- (26) The European Data Protection Supervisor was consulted on these rules and delivered an opinion with its recommendations on 3 March 2020.
- (27) All members of staff should be accountable for the creation and correct management of records relating to policies, process and procedures for which they are responsible,

HAS DECIDED AS FOLLOWS:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

##### **Subject matter**

This Decision lays down rules concerning:

- (a) the management of Commission records and archives;

- (b) the preservation and opening to the public of the Commission's archives and the deposit of the Commission's historical archives at the Historical Archives of the European Union at the European University Institute (EUI) in Florence.

## Article 2

### Scope

This Decision applies to records held by the Commission and to its archives, irrespective of their form, medium, age and location.

It may apply, by specific agreement, to records held by other entities responsible for applying certain Union policies or to records exchanged via data transmission networks between administrations and the Commission.

## Article 3

### Definitions

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

- (1) 'record' means information, received and created in the form of a document <sup>(8)</sup>, a collection of data or other form in a digital or analogue medium that is captured in an official repository and managed and maintained as evidence and as an asset <sup>(9)</sup>;
- (2) 'metadata' means any information describing the context, content and structure of records and their management over time for the purposes of, inter alia, retrieval, accessibility and reuse;
- (3) 'digitisation' means the process of transforming a record on paper or any other traditional medium into an electronic rendition;
- (4) 'official repository of records' means a system, recognised and approved by the Secretariat-General, in which records held by the Commission are collected, organised and categorised to facilitate records retrieval, distribution, use, disposal or preservation;
- (5) 'capture' means the insertion of a document into an official electronic repository by combining a unique identifier and metadata <sup>(10)</sup>;
- (6) 'unique identifier' means a sequence of digits or letters, or both, unambiguously assigned to a record by a machine or person and which identifies that record as unique and distinct from all other records;
- (7) 'registration' means capturing a record into a register, establishing that it is complete and properly constituted from an administrative and/or legal standpoint and certifying that it has been sent by an author to an addressee on a given date, as incoming or outgoing mail, or has been incorporated into one of the Commission's official repositories;
- (8) 'file' means an aggregation of records organised in line with the Commission's activities, for reasons of proof, justification or information and to guarantee efficiency in the work; the group of records making up the file is organised in such a way as to form a coherent and relevant unit in terms of the activities conducted by the Commission or its departments;
- (9) 'filing plan' means an instrument with a hierarchical and logical structure, in the form of a tree structure with a number of interlinked headings, which enables files (or other aggregations of records) to be intellectually organised and linked to the context in which they were drawn up, on the basis of the functions, activities and working processes;
- (10) 'authenticity' means the fact that a record can be proved to be what it purports to be, to have been created or sent by the person purported to have created or sent it and to have been created or sent when purported <sup>(11)</sup>;

<sup>(8)</sup> 'document' is understood within the meaning of Article 3(a) of Regulation (EC) No 1049/2001.

<sup>(9)</sup> ISO 15489-1:2016, point 3.14.

<sup>(10)</sup> ISO 15489-1:2016, point 9.3.

<sup>(11)</sup> ISO 15489-1:2016, point 5.2.2.1.

- (11) 'reliability' means the fact that the content of a record can be trusted as a full and accurate representation of the transactions, activities or facts to which they attest and that the record can be depended upon in the course of subsequent transactions or activities <sup>(12)</sup>;
- (12) 'integrity' means the fact that a record is complete and unaltered <sup>(13)</sup>;
- (13) 'validity' means the fact that a document has all the intrinsic and extrinsic characteristics required by its production context, necessary in order to be accepted as an expression of its author with all its legal consequences;
- (14) 'admissibility' means the fact that a document has all the intrinsic and extrinsic characteristics required by its reception context, necessary for it to be accepted as an expression of its author with all its legal consequences;
- (15) 'preservation' means all technical processes and operations which make it possible to keep records over time, to maintain their integrity and authenticity and to guarantee access to their content.

## CHAPTER II

### RECORDS MANAGEMENT

#### *Article 4*

##### **Creation**

1. The author of any newly created information shall analyse it in order to determine the electronic management system by which the information is to be managed, if it is to be captured and in which official repository system it is to be preserved.
2. Records shall be created in accordance with the formal requirements set out for the relevant type of records.
3. The Commission's records shall be created as electronic records and shall be kept in its official electronic repositories.

However, in the following situations records may be created in a different medium or kept in a different manner:

- (a) where a provision of Union or national law so requires;
- (b) where protocol convenience imposes paper medium;
- (c) where practical reasons impede digitisation of the document;
- (d) where the preservation of the original analogue document has an added value because of its form or the material from which it is made or for historical reasons.

#### *Article 5*

##### **Digitisation**

1. Information in analogue media created or received by the Commission shall be systematically digitised. The resulting electronic renditions, when captured in an official electronic repository, shall replace the corresponding original analogue documents, unless a handwritten signature is required by a provision of Union law or the law of the Member State or third country concerned.
2. Implementing rules adopted pursuant to Article 22 shall set out the procedural and technical details of digitisation, the applicable exceptions and the elimination of analogue records following their digitisation.

<sup>(12)</sup> ISO 15489-1:2016, point 5.2.2.2.

<sup>(13)</sup> ISO 15489-1:2016, point 5.2.2.3.

*Article 6***Capture**

1. Each directorate-general or equivalent department shall regularly review the types of information created or received in the course of its activities to identify which ones are to be captured in an official electronic repository and, taking account of the context in which they were produced, to organise the management of these throughout their life cycle.
2. The captured records shall not be altered. They may be removed or replaced by subsequent versions until the file they belong to is closed.

*Article 7***Registration**

1. Documents shall be registered if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments.
2. Registers shall be set up to generate unique identifiers for the registered records.

Each register shall be connected to one or more electronic repositories. Exceptions may be made for security reasons.

*Article 8***Filing plan**

The Commission's filing plan shall use a common file classification across all Commission departments. That classification shall form part of the Commission's activity-based management.

*Article 9***Computerised processes and systems**

The directorates-general and equivalent departments shall keep and manage their records by means of computerised processes and computerised systems and structures with interfaces to ensure storage of, access to and recovery of records, unless required otherwise by a Commission provision.

*Article 10***Legal effects of electronic signatures, seals, timestamps and registered delivery services**

1. A qualified electronic signature <sup>(14)</sup> shall have the equivalent legal effect of a handwritten signature.
2. A qualified electronic seal <sup>(15)</sup> shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked.
3. A qualified electronic time stamp <sup>(16)</sup> shall enjoy the presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound.

<sup>(14)</sup> 'electronic signature' is understood within the meaning of Article 3(10) to (12) of Regulation (EU) No 910/2014.

<sup>(15)</sup> 'electronic seal' is understood within the meaning of Article 3(25) to (27) of Regulation (EU) No 910/2014.

<sup>(16)</sup> 'electronic stamp' is understood within the meaning of Article 3(33) and (34) of Regulation (EU) No 910/2014.

4. Data sent and received using a qualified electronic registered delivery service <sup>(17)</sup> shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

#### Article 11

### Validity of documents and procedures

1. A document created or received by the Commission shall be considered to satisfy the validity or admissibility criteria where the following conditions are met:

- (a) the person from whom it originates is identified;
- (b) the context in which the document was produced is reliable and the document meets the conditions that guarantee its integrity;
- (c) the document complies with the formal requirements set out in the applicable Union or national law;
- (d) in the case of an electronic document, the document is created in a way that guarantees the integrity, reliability and usability of its content and the accompanying metadata.

2. An electronic rendition created by digitising an analogue document created or received by the Commission shall be considered to satisfy the validity or admissibility criteria where the following conditions are fulfilled:

- (a) no signature is required by a provision of Union law or the law of a Member State or third country concerned;
- (b) its format offers guarantees of integrity, reliability, durability, readability over time and ease of access to the information it contains.

Where a signed analogue document is not required, such an electronic rendition may be used for any exchange of information and for any internal procedure within the Commission.

3. Where a provision of Union or national law requires a signed original of a document, a document drawn up or received by the Commission shall satisfy that requirement if the document contains any of the following:

- (a) one or more handwritten or qualified electronic signatures;
- (b) one or more electronic signatures, other than qualified, providing sufficient guarantees about the identification of the signatory and the expression of their will in the signed document.

4. Where a procedure specific to the Commission requires the signature of an authorised person or the approval of a person at one or more stages of the procedure, the procedure may be managed by computer systems, provided that each person is clearly and unambiguously identified and that the system in question provides guarantees that the content is not altered during the procedure.

5. Where a procedure involves the Commission and other entities and requires the signature of an authorised person or the approval of a person at one or more stages of the procedure, the procedure may be managed by computer systems meeting conditions and providing technical assurances determined by mutual agreement.

---

<sup>(17)</sup> 'electronic registered delivery service' is understood within the meaning of Article 3(36) and (37) of Regulation (EU) No 910/2014.

*Article 12***Provision of data and information within the Commission**

1. Data and information shall be made available and shared as widely as possible within the Commission, unless legal obligations require access to be limited.
2. In the interest of information sharing, directorates-general and equivalent departments shall ensure that their files are as widely accessible as the sensitivity of their content allows.

*Article 13***Information security and protection**

Records shall be managed in accordance with the Commission's security rules applicable to the protection of information. To this end, records, files, information systems and archives, including their networks and means of transmission, shall be protected by appropriate security measures for the management of classified information, sensitive non-classified information and personal data <sup>(18)</sup>.

Classified information shall be processed in accordance with the rules in force on security.

## CHAPTER III

**PRESERVATION AND HISTORICAL ARCHIVES***Article 14***Storage and preservation**

1. Storage and preservation shall take place under the following conditions:
  - (a) records shall be stored in the form in which they were created, sent or received or in a form which preserves the authenticity, reliability and the integrity of their content and of the accompanying metadata;
  - (b) the content of records and their relevant metadata must be readable throughout their period of storage by any person authorised to have access to them;
  - (c) where records are sent or received electronically, the information required to determine the origin or destination of the record and the date and time of the capture or registration, shall be part of the minimum metadata to be stored;
  - (d) as regards electronic procedures managed by IT systems, information about the formal stages of the procedure shall be stored under such conditions as to ensure that those stages and the authors and participants can be identified.
2. The Secretary-General shall ensure the implementation of a digital preservation strategy to ensure long-term access to electronic records on the basis of the retention lists referred in Article 15(1). The strategy shall be drawn up in cooperation with the Commission's Historical Archives Service and shall ensure that processes, tools and resources are in place to ensure the authenticity, reliability and integrity of records and their accessibility.

*Article 15***Retention, transfer and elimination**

1. The retention period for the various categories of files and, in certain cases, records, shall be set for the whole Commission by way of regulatory instruments, such as the common retention list, or one or more specific retention lists drawn up on the basis of the organisational context, the existing legislation and the Commission's legal obligations.

---

<sup>(18)</sup> 'personal data' is understood within the meaning of Article 3(1) of Regulation (EU) 2018/1725.

2. Directorates-general and equivalent departments shall regularly conduct an appraisal of records and files managed by them to assess whether they shall be transferred to the Commission's historical archives referred to in Article 16, or eliminated.

However, a set of metadata on records and files shall be retained in the original electronic repository as evidence of such records and files and their transfer or elimination.

3. EU classified information with a classification of CONFIDENTIEL UE/EU CONFIDENTIAL or higher shall not be transferred to the Commission's Historical Archives Service.

#### Article 16

### Commission's Historical Archives Service

The tasks of the Commission's Historical Archives Service shall be to:

- (a) guarantee the authenticity, reliability and integrity of and access to the Commission's records, files and archives which have been transferred to it;
- (b) ensure the material protection and integrity of the metadata of records and files provided by the transferring departments;
- (c) make records and files available on request to the directorates-general or equivalent departments;
- (d) undertake, where necessary and in cooperation with the originating directorate-general or equivalent department or its successor, a second review of all transferred records, files and archives;
- (e) initiate the declassification of classified documents as referred to in Articles 3 and 5 of Regulation (EEC, Euratom) No 354/83;
- (f) open the Commission's historical archives to the public after the expiry of a period of 30 years, except for those records covered by exceptions relating to the privacy and integrity of individuals, or the commercial interests of a natural or legal person, including intellectual property;
- (g) deposit the Commission's historical archives that have been opened to the public at the Historical Archives of the European Union at the EUJ.

#### Article 17

### Processing of personal data contained in the Commission's historical archives

1. The following derogations from the rights of data subjects shall apply in accordance with Article 25(4) of Regulation (EU) 2018/1725, as necessary to fulfil archiving purposes in the public interest and to preserve the integrity of the Commission's historical archives, in particular:

- (a) the right of access <sup>(19)</sup>, in so far as the request of the data subject does not allow for the identification of specific records without involving disproportionate administrative effort. In assessing the action to be taken on the request of the data subject and the administrative effort required, particular account shall be taken of the information provided by the data subject and the nature, scope and size of the records potentially concerned;
- (b) the right to rectification <sup>(20)</sup>, in so far as rectification renders it impossible to preserve the integrity and authenticity of records selected for permanent preservation in the Commission's historical archives, without prejudice to the possibility of a supplementary statement or annotation to the record concerned, unless this proves impossible or involves disproportionate effort;

<sup>(19)</sup> Article 17 of Regulation (EU) 2018/1725.

<sup>(20)</sup> Article 18 of Regulation (EU) 2018/1725.



- (c) the obligation to notify the rectification or erasure of personal data <sup>(21)</sup> in so far as this proves impossible or involves disproportionate effort;
- (d) the right to object to the processing <sup>(22)</sup>, in so far as the personal data are contained in records selected for permanent preservation in the Commission's historical archives as an integral and indispensable part of these records.

2. The Commission shall implement appropriate safeguards to ensure compliance with Article 13 of Regulation (EU) 2018/1725. Such safeguards shall include technical and organisational measures, in particular, in order to ensure respect for the principle of data minimisation. The safeguards shall include:

- (a) the files to be transferred to the Commission's historical archives shall be selected following a case-by-case assessment according to the Commission's retention lists. All the other files, including structured personal data files, such as personal and medical files, shall be eliminated at the end of the administrative retention period;
- (b) the retention lists shall provide for the administrative elimination of certain types of records before the end of the administrative retention period. Consequently, these types of records shall not be processed for archiving purposes in the public interest;
- (c) prior to processing for archiving purposes in the public interest, the directorate-general or equivalent department shall report the potential presence of records covered by Article 2(1) of Regulation (EEC, Euratom) No 354/83 in the files to be transferred to the Commission's historical archives;
- (d) before any Commission file is opened to the public, the Commission's Historical Archives Service shall review it to verify the possible presence of records covered by the exceptions indicated in Article 2(1) of Regulation (EEC, Euratom) No 354/83, including on the basis of the signposting referred to in point (c) with the aim of protecting personal data.

3. The Commission shall record the reasons for derogations applied pursuant to this Decision. The record and, where applicable, the documents concerning the factual or legal context shall be registered. They shall be made available to the European Data Protection Supervisor on request.

4. The Data Protection Officer of the Commission shall be informed, as soon as possible of the application of derogations from data subject rights in accordance with this Decision. Upon request, the Data Protection Officer shall be provided with access to the associated records and any documents setting out the factual or legal context.

#### Article 18

#### **Deposit of the Commission's historical archives at the EUI**

1. The Commission's Historical Archives Service shall provide the EUI, where possible, with access to digitised copies of records held in an analogue medium.
2. The EUI shall be the main access point to the Commission's historical archives that are open to the public.
3. The Commission's Historical Archives Service shall send the EUI descriptions of the archives deposited. In accordance with international standards and to facilitate the exchange of metadata, the Commission will promote interoperability between its archives systems and those of the EUI.

<sup>(21)</sup> Article 21 of Regulation (EU) 2018/1725.

<sup>(22)</sup> Article 23 of Regulation (EU) 2018/1725.

4. The EUI acts as a processor <sup>(23)</sup> in accordance with Article 3 of Regulation (EU) 2018/1725, under instructions from the Commission, which acts as the controller <sup>(24)</sup> of personal data contained in its historical archives, deposited at the EUI. The Commission's Historical Archives Service provides, on behalf of the Commission, the necessary instructions for the processing of personal data contained in the Commission's deposited archives by the EUI and monitors its performance.
5. Classified information shall not be deposited at the EUI.

#### CHAPTER IV

### GOVERNANCE AND IMPLEMENTATION

#### *Article 19*

#### **Governance at Commission level**

1. Each director-general or head of department shall put in place the necessary organisational, administrative and physical structure and provide the staff required to implement this Decision and the implementing rules by their departments.
2. The Secretariat-General shall be responsible for ensuring that this Decision and its implementing rules are applied.
3. The Directorate-General for Informatics shall be responsible for providing the technological infrastructure to implement this Decision.

#### *Article 20*

#### **Network of document management officers**

1. Each director-general or head of department shall designate a document management officer to maintain a modern and efficient records management system in their department and to ensure coordination within their department, with the Secretariat-General and the other departments of the Commission.
2. The role of the network of document management officers, chaired by the Secretariat-General, shall be to:
  - (a) ensure the correct and uniform application of this Decision within the directorates-general and equivalent departments;
  - (b) deal with any issues which may arise from its application;
  - (c) share the requirements of directorates-general and equivalent departments as regards training and support measures.

#### *Article 21*

#### **Information, training and support**

The Secretariat-General, in close cooperation with the Directorate-General for Informatics, the Directorate-General for Human Resources and Security and the Commission's Historical Archives Service, shall put in place the information, training and support measures necessary to ensure the application of this Decision within the directorates-general and equivalent departments.

<sup>(23)</sup> 'processor' is understood within the meaning of Article 3(12) of Regulation (EU) 2018/1725.

<sup>(24)</sup> 'controller' is understood within the meaning of Article 3(8) of Regulation (EU) 2018/1725.

*Article 22***Implementing rules**

The Secretary-General shall draw up the implementing rules in coordination with the directorates-general and equivalent departments and shall ensure their implementation.

They shall be regularly updated taking account in particular of:

- (a) developments regarding records and archives management and results of academic and scientific research, including the emergence of relevant standards;
- (b) developments in information and communication technologies;
- (c) the applicable rules on the probative value of electronic records;
- (d) the Commission's obligations as regards transparency, public access to documents and the opening to the public of archives;
- (e) any new obligations by which the Commission may be bound;
- (f) harmonisation in the presentation of records drawn up by the Commission and its departments.

*Article 23***Final provision**

Decision 2002/47/EC, ECSC, Euratom and Decision 2004/563/EC, Euratom have no longer effect.

Done at Brussels, 6 July 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

---

## CORRIGENDA

**Corrigendum to Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009**

(Official Journal of the European Union L 209 of 14 June 2021)

(1) the title on the Contents page and the title on page 1:

*for:* 'Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009';

*read:* 'Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009';

(2) on page 32, Article 25(2), point (c):

*for:* '(c) exceptional assistance measures referred to in Article 23(4) for which the Union's funding does not exceed EUR 20 000 000;';

*read:* '(c) exceptional assistance measures referred to in Article 23(6) for which the Union's funding does not exceed EUR 20 000 000;';

(3) on page 46, Article 38, paragraph 8, the first sentence:

*for:* '8. The Commission shall submit an annual report to the EFSD+ strategic board, to regional operational boards, to the European Parliament and to the Council on financial instruments, budgetary guarantees, including those implemented by the EIB, financial assistance in accordance with Article 41(4) and (5) and Articles 241 and 250 of the Financial Regulation.';

*read:* '8. The Commission shall submit an annual report to the EFSD+ strategic board, to regional operational boards, to the European Parliament and to the Council on financial instruments, budgetary guarantees, including those implemented by the EIB, financial assistance in accordance with Article 41(4) and (5) of this Regulation and Articles 241 and 250 of the Financial Regulation.';

---



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



Publications Office  
of the European Union  
L-2985 Luxembourg  
LUXEMBOURG

EN